

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
Form 10-Q**

(Mark One)

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

For the quarterly period ended July 30, 2021

OR

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

For the transition period from                      to

Commission File Number 001-33622

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**VMWARE, INC.**

(Exact name of registrant as specified in its charter)

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<p><b>Delaware</b> (State or other jurisdiction of incorporation or organization)</p> <p><b>3401 Hillview Avenue</b> <b>Palo Alto, CA</b> (Address of principal executive offices)</p>	<p><b>94-3292913</b> (I.R.S. Employer Identification Number)</p> <p><b>94304</b> (Zip Code)</p>
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**(650) 427-5000**  
(Registrant's telephone number, including area code)

Title of each class	Securities registered pursuant to Section 12(b) of the Act:	Name of each exchange on which registered
<b>Class A common stock</b>	<b>VMW</b>	<b>New York Stock Exchange</b>

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

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

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

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

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

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

As of August 27, 2021, the number of shares of common stock, par value \$0.01 per share, of the registrant outstanding was 418,751,917, of which 111,530,081 shares were Class A common stock and 307,221,836 were Class B common stock.

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**PART I**  
**FINANCIAL INFORMATION**

**ITEM 1. FINANCIAL STATEMENTS**

**VMware, Inc.**  
**CONDENSED CONSOLIDATED STATEMENTS OF INCOME**  
(amounts in millions, except per share amounts, and shares in thousands)  
(unaudited)

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>July 30, 2021</b>	<b>July 31, 2020</b>	<b>July 30, 2021</b>	<b>July 31, 2020</b>
Revenue <sup>(1)</sup> :				
License	\$ 738	\$ 719	\$ 1,384	\$ 1,379
Subscription and SaaS	776	631	1,516	1,204
Services	1,624	1,525	3,232	3,026
Total revenue	3,138	2,875	6,132	5,609
Operating expenses <sup>(2)</sup> :				
Cost of license revenue	37	35	75	74
Cost of subscription and SaaS revenue	170	132	327	258
Cost of services revenue	352	321	689	639
Research and development	775	679	1,483	1,344
Sales and marketing	1,023	897	1,981	1,814
General and administrative	256	277	492	523
Realignment	—	—	1	4
Operating income	525	534	1,084	953
Investment income	1	1	1	7
Interest expense	(49)	(55)	(99)	(104)
Other income (expense), net	3	15	(19)	8
Income before income tax	480	495	967	864
Income tax provision	69	48	131	31
Net income	\$ 411	\$ 447	\$ 836	\$ 833
Net income per weighted-average share, basic for Classes A and B	\$ 0.98	\$ 1.06	\$ 1.99	\$ 1.99
Net income per weighted-average share, diluted for Classes A and B	\$ 0.97	\$ 1.06	\$ 1.98	\$ 1.97
Weighted-average shares, basic for Classes A and B	419,355	420,031	419,235	419,208
Weighted-average shares, diluted for Classes A and B	422,802	423,050	422,419	422,428
<sup>(1)</sup> Includes related party revenue as follows (refer to Note C):				
License	\$ 374	\$ 364	\$ 661	\$ 687
Subscription and SaaS	195	122	368	237
Services	606	478	1,194	921
<sup>(2)</sup> Includes stock-based compensation as follows:				
Cost of license revenue	\$ —	\$ —	\$ 1	\$ 1
Cost of subscription and SaaS revenue	5	5	11	9
Cost of services revenue	24	26	49	48
Research and development	150	132	277	257
Sales and marketing	81	88	153	159
General and administrative	33	42	64	91

The accompanying notes are an integral part of the condensed consolidated financial statements.

**VMware, Inc.**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
(in millions)  
(unaudited)

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>July 30, 2021</b>	<b>July 31, 2020</b>	<b>July 30, 2021</b>	<b>July 31, 2020</b>
Net income	\$ 411	\$ 447	\$ 836	\$ 833
Other comprehensive income (loss):				
Changes in fair value of effective foreign currency forward contracts:				
Unrealized gains (losses), net of tax provision (benefit) of \$—, \$1, \$— and (\$1)	1	5	2	(5)
Reclassification of (gains) losses realized during the period, net of tax (provision) benefit of \$—, \$1, \$— and \$—	(1)	3	—	—
Net change in fair value of effective foreign currency forward contracts	—	8	2	(5)
Foreign currency translation adjustments	—	1	—	—
Total other comprehensive income (loss)	—	9	2	(5)
Comprehensive income, net of taxes	\$ 411	\$ 456	\$ 838	\$ 828

The accompanying notes are an integral part of the condensed consolidated financial statements.

**VMware, Inc.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(amounts in millions, except per share amounts, and shares in thousands)  
(unaudited)

	July 30, 2021	January 29, 2021
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 5,855	\$ 4,692
Short-term investments	82	23
Accounts receivable, net of allowance of \$4 and \$5	1,718	1,929
Due from related parties, net	915	1,438
Other current assets	604	530
Total current assets	9,174	8,612
Property and equipment, net	1,373	1,334
Other assets	2,678	2,697
Deferred tax assets	5,785	5,781
Intangible assets, net	856	993
Goodwill	9,598	9,599
Total assets	\$ 29,464	\$ 29,016
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 220	\$ 131
Accrued expenses and other	2,176	2,382
Unearned revenue	5,879	5,873
Total current liabilities	8,275	8,386
Note payable to Dell	270	270
Long-term debt	4,721	4,717
Unearned revenue	4,459	4,441
Income tax payable	768	805
Operating lease liabilities	912	891
Other liabilities	439	455
Total liabilities	19,844	19,965
Contingencies (refer to Note D)		
Stockholders' equity:		
Class A common stock, par value \$0.01; authorized 2,500,000 shares; issued and outstanding 111,753 and 112,082 shares	1	1
Class B convertible common stock, par value \$0.01; authorized 1,000,000 shares; issued and outstanding 307,222 shares	3	3
Additional paid-in capital	1,716	1,985
Accumulated other comprehensive loss	(3)	(5)
Retained earnings	7,903	7,067
Total stockholders' equity	9,620	9,051
Total liabilities and stockholders' equity	\$ 29,464	\$ 29,016

The accompanying notes are an integral part of the condensed consolidated financial statements.

**VMware, Inc.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in millions)  
(unaudited)

	Six Months Ended	
	July 30, 2021	July 31, 2020
<b>Operating activities:</b>		
Net income	\$ 836	\$ 833
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	544	496
Stock-based compensation	555	565
Deferred income taxes, net	(31)	(196)
Unrealized (gain) loss on equity securities, net	34	(6)
(Gain) loss on disposition of assets, revaluation and impairment, net	3	7
Loss on extinguishment of debt	—	8
Other	4	(2)
Changes in assets and liabilities, net of acquisitions:		
Accounts receivable	206	(79)
Other current assets and other assets	(390)	(345)
Due to/from related parties, net	522	560
Accounts payable	70	11
Accrued expenses and other liabilities	(218)	207
Income taxes payable	(29)	(51)
Unearned revenue	24	86
Net cash provided by operating activities	2,130	2,094
<b>Investing activities:</b>		
Additions to property and equipment	(157)	(163)
Sales of investments in equity securities	34	—
Purchases of strategic investments	(7)	(11)
Proceeds from disposition of assets	1	21
Business combinations, net of cash acquired, and purchases of intangible assets	(15)	(335)
Net cash used in investing activities	(144)	(488)
<b>Financing activities:</b>		
Proceeds from issuance of common stock	139	142
Net proceeds from issuance of long-term debt	—	1,979
Repayment of current portion of long-term debt	—	(1,257)
Repurchase of common stock	(729)	(311)
Shares repurchased for tax withholdings on vesting of restricted stock	(242)	(276)
Payment to acquire non-controlling interests	—	(91)
Principal payments on finance lease obligations	(2)	(1)
Net cash provided by (used in) financing activities	(834)	185
Net increase in cash, cash equivalents and restricted cash	1,152	1,791
Cash, cash equivalents and restricted cash at beginning of the period	4,770	3,031
Cash, cash equivalents and restricted cash at end of the period	\$ 5,922	\$ 4,822
<b>Supplemental disclosures of cash flow information:</b>		
Cash paid for interest	\$ 97	\$ 91
Cash paid for taxes, net	204	282
<b>Non-cash items:</b>		
Changes in capital additions, accrued but not paid	\$ 11	\$ (7)

The accompanying notes are an integral part of the condensed consolidated financial statements.

**VMware, Inc.**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(in millions)  
(unaudited)

Three Months Ended July 30, 2021								
	Class A Common Stock		Class B Convertible Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Stockholders' Equity
	Shares	Par Value	Shares	Par Value				
Balance, April 30, 2021	111	\$ 1	307	\$ 3	\$ 1,960	\$ 7,492	\$ (3)	\$ 9,453
Proceeds from issuance of common stock	—	—	—	—	8	—	—	8
Repurchase and retirement of common stock	(2)	—	—	—	(358)	—	—	(358)
Issuance of restricted stock	4	—	—	—	—	—	—	—
Shares withheld for tax withholdings on vesting of restricted stock	(1)	—	—	—	(191)	—	—	(191)
Stock-based compensation	—	—	—	—	297	—	—	297
Net income	—	—	—	—	—	411	—	411
Balance, July 30, 2021	112	\$ 1	307	\$ 3	\$ 1,716	\$ 7,903	\$ (3)	\$ 9,620

  

Six Months Ended July 30, 2021								
	Class A Common Stock		Class B Convertible Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Stockholders' Equity
	Shares	Par Value	Shares	Par Value				
Balance, January 29, 2021	112	\$ 1	307	\$ 3	\$ 1,985	\$ 7,067	\$ (5)	\$ 9,051
Proceeds from issuance of common stock	2	—	—	—	139	—	—	139
Repurchase and retirement of common stock	(5)	—	—	—	(729)	—	—	(729)
Issuance of restricted stock	4	—	—	—	—	—	—	—
Shares withheld for tax withholdings on vesting of restricted stock	(1)	—	—	—	(243)	—	—	(243)
Stock-based compensation	—	—	—	—	564	—	—	564
Total other comprehensive income (loss)	—	—	—	—	—	—	2	2
Net income	—	—	—	—	—	836	—	836
Balance, July 30, 2021	112	\$ 1	307	\$ 3	\$ 1,716	\$ 7,903	\$ (3)	\$ 9,620

  

Three Months Ended July 31, 2020								
	Class A Common Stock		Class B Convertible Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Stockholders' Equity
	Shares	Par Value	Shares	Par Value				
Balance, May 1, 2020	112	\$ 1	307	\$ 3	\$ 2,047	\$ 5,395	\$ (18)	\$ 7,428
Proceeds from issuance of common stock	1	—	—	—	31	—	—	31
Repurchase and retirement of common stock	(1)	—	—	—	(130)	—	—	(130)
Issuance of restricted stock	2	—	—	—	—	—	—	—
Shares withheld for tax withholdings on vesting of restricted stock	(1)	—	—	—	(120)	—	—	(120)
Stock-based compensation	—	—	—	—	287	—	—	287
Amount due from tax sharing arrangement	—	—	—	—	(45)	—	—	(45)
Total other comprehensive income (loss)	—	—	—	—	—	—	9	9
Net income	—	—	—	—	—	447	—	447
Balance, July 31, 2020	113	\$ 1	307	\$ 3	\$ 2,070	\$ 5,842	\$ (9)	\$ 7,907

  

Six Months Ended July 31, 2020								
	Class A Common Stock		Class B Convertible Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Stockholders' Equity
	Shares	Par Value	Shares	Par Value				
Balance, January 31, 2020	110	\$ 1	307	\$ 3	\$ 2,000	\$ 5,009	\$ (4)	\$ 7,009
Proceeds from issuance of common stock	2	—	—	—	142	—	—	142
Repurchase and retirement of common stock	(2)	—	—	—	(311)	—	—	(311)
Issuance of restricted stock	5	—	—	—	—	—	—	—
Shares withheld for tax withholdings on vesting of restricted stock	(2)	—	—	—	(275)	—	—	(275)
Stock-based compensation	—	—	—	—	559	—	—	559
Amount due from tax sharing arrangement	—	—	—	—	(45)	—	—	(45)
Total other comprehensive income (loss)	—	—	—	—	—	—	(5)	(5)
Net income	—	—	—	—	—	833	—	833
Balance, July 31, 2020	113	\$ 1	307	\$ 3	\$ 2,070	\$ 5,842	\$ (9)	\$ 7,907

The accompanying notes are an integral part of the condensed consolidated financial statements.





**VMware, Inc.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(unaudited)**

**A. Overview and Basis of Presentation**

***Company and Background***

VMware, Inc. (“VMware” or the “Company”) originally pioneered the development and application of virtualization technologies with x86 server-based computing, separating application software from the underlying hardware. Information technology (“IT”) driven innovation continues to disrupt markets and industries. Technologies emerge faster than organizations can absorb, creating increasingly complex environments. IT is working at an accelerated pace to harness new technologies, platforms and cloud models, ultimately guiding businesses through a digital transformation. To take on these challenges, VMware is working with customers in the areas of hybrid and multi-cloud, virtual cloud networking, digital workspaces, modern applications and intrinsic security. VMware’s software provides a flexible digital foundation to enable customers in their digital transformation.

***Accounting Principles***

The financial statements and accompanying notes are prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”).

***Unaudited Interim Financial Information***

The accompanying unaudited condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (the “SEC”) for interim financial reporting. In the opinion of management, these unaudited condensed consolidated financial statements include all adjustments, consisting of normal recurring adjustments and accruals, for a fair statement of VMware’s condensed consolidated results of operations, financial position and cash flows for the periods presented. Results of operations are not necessarily indicative of the results that may be expected for the full fiscal year 2022. Certain information and footnote disclosures typically included in annual consolidated financial statements have been condensed or omitted. Accordingly, these unaudited interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and related notes included in VMware’s Annual Report on Form 10-K filed on March 26, 2021.

Effective September 7, 2016, Dell Technologies Inc. (“Dell”) (formerly Denali Holding Inc.) acquired EMC Corporation (“EMC”), VMware’s parent company, including EMC’s majority control of VMware. As of July 30, 2021, Dell controlled 80.6% of VMware’s outstanding common stock and 97.5% of the combined voting power of VMware’s outstanding common stock, including 31 million shares of VMware’s Class A common stock (“Class A Stock”) and all of VMware’s Class B common stock (“Class B Stock”).

As VMware is a majority-owned and controlled subsidiary of Dell, its results of operations and financial position are consolidated with Dell’s financial statements.

On April 14, 2021, VMware and Dell entered into a Separation and Distribution Agreement (the “Separation Agreement”), pursuant to which, subject to the satisfaction of all closing conditions, Dell will distribute the shares of Class A Stock and Class B Stock (collectively, the “Common Stock”) owned by its wholly owned subsidiaries, to the holders of shares of Dell as of a record date determined pursuant to the Separation Agreement on a pro rata basis (the “Spin-Off”). Immediately following, and automatically as a result of the Spin-Off, and prior to receipt thereof by Dell’s stockholders, each share of Class B Stock will automatically convert into one fully paid and non-assessable share of Class A Stock. Subject to the various conditions, VMware will also pay a cash dividend, pro rata, to each of the holders of Common Stock (including Dell) immediately prior to the Spin-Off in an aggregate amount equal to an amount to be mutually agreed by Dell and VMware between \$11.5 billion and \$12.0 billion (the “Special Dividend”). As a result of the Spin-Off, Michael Dell, chairman and chief executive officer of Dell, and Silver Lake Partners, of which Egon Durban, a VMware director, is a managing partner, will own direct interests in VMware. Dell would receive approximately \$9.3 billion to \$9.7 billion in cash based on Dell’s current 80.6% ownership in VMware as of July 30, 2021. VMware expects to fund the Special Dividend through its cash reserves and incremental indebtedness. Refer to Note N for more information regarding the Company’s incremental indebtedness, including its recent notes offering. The Spin-Off is expected to close during the fourth quarter of calendar 2021, subject to certain closing conditions, including receipt of a favorable Internal Revenue Service ruling that the distribution of shares to Dell and its stockholders will qualify as generally tax-free for United States (“U.S.”) federal income tax purposes.

Management believes the assumptions underlying the condensed consolidated financial statements are reasonable. However, the amounts recorded for VMware’s related party transactions with Dell and its consolidated subsidiaries may not be

**VMware, Inc.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
**(unaudited)**

considered arm's length with an unrelated third party. Therefore, the condensed consolidated financial statements included herein may not necessarily reflect the results of operations, financial position and cash flows had VMware engaged in such transactions with an unrelated third party during all periods presented. Accordingly, VMware's historical financial information is not necessarily indicative of what the Company's results of operations, financial position and cash flows will be in the future, if and when VMware contracts at arm's length with unrelated third parties for products and services the Company receives from and provides to Dell.

***Principles of Consolidation***

The unaudited condensed consolidated financial statements include the accounts of VMware and subsidiaries in which VMware has a controlling financial interest. All intercompany transactions and account balances between VMware and its subsidiaries have been eliminated in consolidation. Transactions with Dell and its consolidated subsidiaries are generally settled in cash and are classified on the condensed consolidated statements of cash flows based upon the nature of the underlying transaction.

***Use of Accounting Estimates***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the reported amounts of revenue and expenses during the reporting periods, and the disclosure of contingent liabilities at the date of the financial statements. Estimates are used for, but not limited to, trade receivable valuation, marketing development funds, expected period of benefit for deferred commissions, useful lives assigned to fixed assets and intangible assets, valuation of goodwill and definite-lived intangibles, income taxes, stock-based compensation and contingencies. Actual results could differ from those estimates. To the extent the Company's actual results differ materially from those estimates and assumptions, VMware's future financial statements could be affected.

***Recently Adopted Accounting Standards***

Effective January 30, 2021, VMware adopted, on a modified retrospective basis, Accounting Standards Update ("ASU") No. 2020-06, Accounting for Convertible Instruments and Contracts in an Entity's Own Equity. This update simplifies the accounting for convertible instruments and contracts in an entity's own equity and amends the diluted earnings per share guidance for greater consistency within the standard. The standard did not have an impact on the Company's condensed consolidated financial statements except for the calculation of the year-to-date weighted-average diluted share count, which did not have a material impact on the Company's diluted net income per share for the six months ended July 30, 2021.

Effective January 30, 2021, VMware adopted ASU No. 2019-12, Income Taxes (Topic 740), simplifying the accounting for income taxes. The standard did not have a material impact on the Company's condensed consolidated financial statements.

**B. Revenue, Unearned Revenue and Remaining Performance Obligations**

***Revenue***

***Contract Assets***

A contract asset is recognized when a conditional right to consideration exists and transfer of control has occurred. Contract assets include fixed fee professional services where transfer of services has occurred in advance of the Company's right to invoice. Contract assets are classified as accounts receivables upon invoicing. Contract assets are included in other current assets on the condensed consolidated balance sheets. Contract assets were \$45 million and \$43 million as of July 30, 2021 and January 29, 2021, respectively. Contract asset balances will fluctuate based upon the timing of the transfer of services, billings and customers' acceptance of contractual milestones.

***Contract Liabilities***

Contract liabilities consist of unearned revenue, which is generally recorded when VMware has the right to invoice or payments have been received for undelivered products or services.

***Customer Deposits***

Customer deposits include prepayments from customers related to amounts received for contracts that include certain cancellation rights. Purchased credits eligible for redemption of VMware's hosted services ("cloud credits") are included in customer deposits until the cloud credit is consumed or is contractually committed to a specific hosted service. Cloud credits are redeemable by the customer for the gross value of the hosted offering. Upon contractual commitment for a hosted service, the net value of the cloud credits that are expected to be recognized as revenue when the obligation is fulfilled will be classified as unearned revenue.

**VMware, Inc.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
**(unaudited)**

As of July 30, 2021, customer deposits related to customer prepayments and cloud credits of \$310 million were included in accrued expenses and other, and \$158 million were included in other liabilities on the condensed consolidated balance sheets. As of January 29, 2021, customer deposits related to customer prepayments and cloud credits of \$294 million were included in accrued expenses and other, and \$163 million were included in other liabilities on the condensed consolidated balance sheets.

***Deferred Commissions***

Deferred commissions are classified as current or non-current based on the duration of the expected period of benefit. Deferred commissions, including the employer portion of payroll taxes, included in other current assets as of July 30, 2021 and January 29, 2021 were \$15 million and \$31 million, respectively. Deferred commissions included in other assets were \$1.2 billion and \$1.1 billion as of July 30, 2021 and January 29, 2021, respectively.

Amortization expense for deferred commissions was included in sales and marketing on the condensed consolidated statements of income and was \$128 million and \$253 million during the three and six months ended July 30, 2021, respectively, and \$106 million and \$206 million during the three and six months ended July 31, 2020, respectively.

***Unearned Revenue***

Unearned revenue as of the periods presented consisted of the following (table in millions):

	July 30, 2021	January 29, 2021
Unearned license revenue	\$ 20	\$ 15
Unearned subscription and SaaS revenue	2,208	1,998
Unearned software maintenance revenue	6,916	7,092
Unearned professional services revenue	1,194	1,209
Total unearned revenue	<u>\$ 10,338</u>	<u>\$ 10,314</u>

Unearned subscription and SaaS revenue is generally recognized over time as customers consume the services or ratably over the term of the subscription, commencing upon provisioning of the service.

Unearned software maintenance revenue is attributable to VMware's maintenance contracts and is generally recognized ratably over the contract duration. The weighted-average remaining contractual term as of July 30, 2021 was approximately two years. Unearned professional services revenue results primarily from prepaid professional services and is generally recognized as the services are performed.

Total billings and revenue recognized during the three months ended July 30, 2021 were \$2.2 billion and \$2.0 billion, respectively, and did not include amounts for performance obligations that were fully satisfied upon delivery, such as on-premises licenses. Total billings and revenue recognized during the six months ended July 30, 2021 were \$4.1 billion and \$4.0 billion, respectively, and did not include amounts for performance obligations that were fully satisfied upon delivery, such as on-premises licenses.

Revenue recognized during the three and six months ended July 31, 2020 was \$1.8 billion and \$3.6 billion, respectively, and did not include amounts for performance obligations that were fully satisfied upon delivery, such as on-premises licenses.

***Remaining Performance Obligations***

Remaining performance obligations represent the aggregate amount of the transaction price in contracts allocated to performance obligations not delivered, or partially undelivered, as of the end of the reporting period. Remaining performance obligations include unearned revenue, multi-year contracts with future installment payments and certain unfulfilled orders against accepted non-cancellable customer contracts at the end of any given period.

As of July 30, 2021, the aggregate transaction price allocated to remaining performance obligations was \$11.2 billion, of which approximately 56% is expected to be recognized as revenue over the next twelve months and the remainder thereafter. As of January 29, 2021, the aggregate transaction price allocated to remaining performance obligations was \$11.3 billion, of which approximately 55% was expected to be recognized as revenue during fiscal 2022, and the remainder thereafter.

**C. Related Parties**

The information provided below includes a summary of transactions with Dell and Dell's consolidated subsidiaries (collectively, "Dell").

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**Transactions with Dell**

VMware and Dell engaged in the following ongoing related party transactions, which resulted in revenue and receipts, and unearned revenue for VMware:

- Pursuant to original equipment manufacturer (“OEM”) and reseller arrangements, Dell integrates or bundles VMware’s products and services with Dell’s products and sells them to end users. Dell also acts as a distributor, purchasing VMware’s standalone products and services for resale to end-user customers through VMware-authorized resellers. Revenue under these arrangements is presented net of related marketing development funds and rebates paid to Dell. In addition, VMware provides professional services to end users based upon contractual agreements with Dell.
- Dell purchases products and services from VMware for its internal use.
- From time to time, VMware and Dell enter into agreements to collaborate on technology projects, and Dell pays VMware for services or reimburses VMware for costs incurred by VMware, in connection with such projects.

During the three and six months ended July 30, 2021, revenue from Dell accounted for 37% and 36% of VMware’s consolidated revenue, respectively. During the three and six months ended July 30, 2021, revenue recognized on transactions where Dell acted as an OEM accounted for 12% and 13% of total revenue from Dell, respectively, or 5% and 5% of VMware’s consolidated revenue, respectively.

During the three and six months ended July 31, 2020, revenue from Dell accounted for 34% and 33% of VMware’s consolidated revenue, respectively. During the three and six months ended July 31, 2020, revenue recognized on transactions where Dell acted as an OEM accounted for 12% of total revenue from Dell, or 4% of VMware’s consolidated revenue.

Dell purchases VMware products and services directly from VMware, as well as through VMware’s channel partners. Information about VMware’s revenue and receipts, and unearned revenue from such arrangements, for the periods presented consisted of the following (table in millions):

	Revenue and Receipts				Unearned Revenue	
	Three Months Ended		Six Months Ended		As of	
	July 30, 2021	July 31, 2020	July 30, 2021	July 31, 2020	July 30, 2021	January 29, 2021
Reseller revenue	\$ 1,162	\$ 948	\$ 2,198	\$ 1,810	\$ 5,092	\$ 4,952
Internal-use revenue	13	16	25	35	34	45

Receipts from Dell for collaborative technology projects were not material during the three and six months ended July 30, 2021 and July 31, 2020.

Customer deposits resulting from transactions with Dell were \$221 million and \$214 million as of July 30, 2021 and January 29, 2021, respectively.

VMware and Dell engaged in the following ongoing related party transactions, which resulted in costs to VMware:

- VMware purchases and leases products and purchases services from Dell.
- From time to time, VMware and Dell enter into agreements to collaborate on technology projects, and VMware pays Dell for services provided to VMware by Dell related to such projects.
- In certain geographic regions where VMware does not have an established legal entity, VMware contracts with Dell subsidiaries for support services and support from Dell personnel who are managed by VMware. The costs incurred by Dell on VMware’s behalf related to these employees are charged to VMware with a mark-up intended to approximate costs that would have been incurred had VMware contracted for such services with an unrelated third party. These costs are included as expenses on VMware’s condensed consolidated statements of income and primarily include salaries, benefits, travel and occupancy expenses. Dell also incurs certain administrative costs on VMware’s behalf in the U.S. that are recorded as expenses on VMware’s condensed consolidated statements of income.
- In certain geographic regions, Dell files a consolidated indirect tax return, which includes value added taxes and other indirect taxes collected by VMware from its customers. VMware remits the indirect taxes to Dell, and Dell remits the tax payment to the foreign governments on VMware’s behalf.
- From time to time, VMware invoices end users on behalf of Dell for certain services rendered by Dell. Cash related to these services is collected from the end user by VMware and remitted to Dell.

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- From time to time, VMware enters into agency arrangements with Dell that enable VMware to sell its subscriptions and services, leveraging the Dell enterprise relationships and end customer contracts.

Information about VMware's payments for such arrangements during the periods presented consisted of the following (table in millions):

	Three Months Ended		Six Months Ended	
	July 30, 2021	July 31, 2020	July 30, 2021	July 31, 2020
Purchases and leases of products and purchases of services <sup>(1)</sup>	\$ 61	\$ 45	\$ 107	\$ 89
Dell subsidiary support and administrative costs	10	15	24	42

<sup>(1)</sup> Amount includes indirect taxes that were remitted to Dell during the periods presented.

VMware also purchases Dell products through Dell's channel partners. Purchases of Dell products through Dell's channel partners were not significant during the periods presented.

From time to time, VMware and Dell also enter into joint marketing, sales, branding and product development arrangements, for which both parties may incur costs.

In connection with and subject to the consummation of the Spin-Off, VMware and Dell have agreed to enter into a commercial agreement that is intended to preserve and enhance the Company's strategic partnership with Dell to deliver joint customer value and a transition services agreement to facilitate the transactions and the operation of the Company and Dell following the Spin-Off.

#### ***Dell Financial Services ("DFS")***

DFS provided financing to certain of VMware's end users at the end users' discretion. Upon acceptance of the financing arrangement by both VMware's end users and DFS, amounts classified as trade accounts receivable are reclassified to due from related parties, net on the condensed consolidated balance sheets. Revenue recognized on transactions financed through DFS was recorded net of financing fees. Financing fees on arrangements accepted by both parties were not significant during the three months ended July 30, 2021 and were \$15 million during the six months ended July 30, 2021. Financing fees on arrangements accepted by both parties were \$18 million and \$31 million during the three and six months ended July 31, 2020, respectively.

#### ***Tax Agreements with Dell***

In connection with the Spin-Off and concurrently with the execution of the Separation Agreement, effective as of April 14, 2021, VMware and Dell entered into a Tax Matters Agreement (the "Tax Matters Agreement") and agreed to terminate the tax sharing agreement as amended on December 30, 2019 (together, the "Tax Agreements"). The Tax Matters Agreement governs the Company's and Dell's respective rights and obligations, both for pre-Spin-Off periods and post-Spin-Off periods, regarding income and other taxes, and related matters, including tax liabilities and benefits, attributes and returns.

Payments made to Dell pursuant to the Tax Agreements were \$73 million and \$86 million during the three and six months ended July 30, 2021, respectively, and were \$142 million and \$167 million during the three and six months ended July 31, 2020, respectively. Refunds received from Dell pursuant to the Tax Agreement were \$45 million during the six months ended July 30, 2021.

Payments from VMware to Dell under the Tax Agreements relate to VMware's portion of federal income taxes on Dell's consolidated tax return as well as state tax payments for combined states. The timing of the tax payments due to and from related parties is governed by the Tax Agreements. VMware's portion of the mandatory one-time transition tax on accumulated earnings of foreign subsidiaries (the "Transition Tax") is governed by a letter agreement between Dell, EMC and VMware executed on April 1, 2019 (the "Letter Agreement"). VMware's portion of federal income taxes on Dell's consolidated tax return differ from the amounts VMware would owe on a separate tax return basis and VMware's payments to Dell generally are capped at the amount that VMware would have paid on a separate tax return basis. The difference between the amount of tax calculated on a separate tax return basis and the amount of tax calculated pursuant to the Tax Agreements that was recorded in additional paid-in capital was not significant during the three and six months ended July 30, 2021 and was \$45 million during the three and six months ended July 31, 2020.

As a result of the activity under the Tax Agreements with Dell, amounts due to Dell were \$415 million and \$451 million as of July 30, 2021 and January 29, 2021, respectively, primarily related to VMware's estimated tax obligation resulting from the

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Transition Tax. The 2017 Tax Act included a deferral election for an eight-year installment payment method on the Transition Tax. The Company expects to pay the remainder of its Transition Tax over a period of four years.

***Pivotal Tax Sharing Agreement with Dell***

During the fourth quarter of fiscal 2020, VMware completed the acquisition of Pivotal. Pivotal continues to file its separate tax return for U.S. federal income tax purposes as it left the Dell consolidated tax group at the time of Pivotal's IPO in April 2018. Pivotal continues to be included on Dell's unitary state tax returns. Pursuant to a tax sharing agreement, Pivotal historically received payments from Dell for tax benefits that Dell realized due to Pivotal's inclusion on such returns. There were no payments received from Dell during the three and six months ended July 30, 2021 and July 31, 2020.

***Due To/From Related Parties, Net***

Amounts due to and from related parties, net as of the periods presented consisted of the following (table in millions):

	July 30, 2021	January 29, 2021
Due from related parties, current	\$ 1,036	\$ 1,558
Due to related parties, current <sup>(1)</sup>	121	120
Due from related parties, net, current	\$ 915	\$ 1,438

<sup>(1)</sup> Includes an immaterial amount related to the Company's current operating lease liabilities due to related parties.

The Company also recognized an immaterial amount related to non-current operating lease liabilities due to related parties. This amount has been included in operating lease liabilities on the condensed consolidated balance sheets as of July 30, 2021 and January 29, 2021.

Amounts included in due from related parties, net, current, with the exception of DFS and tax obligations, are generally settled in cash within 60 days of each quarter-end.

***Notes Payable to Dell***

As of July 30, 2021 and January 29, 2021, VMware had an outstanding promissory note payable to Dell in the principal amount of \$270 million due December 1, 2022. The note may be prepaid without penalty or premium. Interest is payable quarterly in arrears at the annual rate of 1.75%. During the three and six months ended July 30, 2021 and July 31, 2020, interest expense on the notes payable to Dell was not significant.

**D. Commitments and Contingencies**

***Litigation***

On March 5, 2020, two purported Pivotal stockholders filed a petition for appraisal in the Delaware Court of Chancery (the "Court") seeking a judicial determination of the fair value of an aggregate total of 10,000,100 Pivotal shares (the "Appraisal Action"). Separately, on June 4, 2020, purported Pivotal stockholder Kenia Lopez filed a lawsuit in the Court against Dell, VMware, Michael Dell, Robert Mee, and Cynthia Gaylor (the "Lopez Action"), which alleges breach of fiduciary duty and aiding and abetting, all tied to VMware's acquisition of Pivotal. On July 16, 2020, purported Pivotal stockholder Stephanie Howarth filed a similar lawsuit against the same defendants asserting similar claims (the "Howarth Action"). On August 14, 2020, the Court entered an order consolidating the Appraisal Action, the Lopez Action, and the Howarth Action into a single action (the "Consolidated Action") for all purposes including pretrial discovery and trial. The Court has not yet issued a scheduling order for the Consolidated Action, but the parties have moved forward with pretrial discovery. On June 23, 2020, the Company made a payment of \$91 million to the petitioners in the Appraisal Action, which reduces the Company's exposure to accumulating interest. In addition, on September 23, 2020, the Company filed a motion to dismiss the claims asserted in the Lopez Action and the Howarth Action, a hearing on this motion occurred on April 27, 2021 and the Court denied the motion on June 29, 2021. The parties are now in the discovery stage of the lawsuit. The trial is scheduled to begin on July 6, 2022. The Company is unable at this time to assess whether or to what extent it may be found liable and, if found liable, what the damages may be, and believes a loss is not probable and reasonably estimable. The Company intends to vigorously defend itself in connection with this matter.

On April 25, 2019, Cirba Inc. and Cirba IP, Inc. (collectively, "Cirba") sued VMware in the United States District Court for the District of Delaware (the "Delaware Court") for allegedly infringing two patents and three trademarks ("First Action"). After an August 6, 2019 hearing, the Delaware Court denied Cirba's preliminary injunction motion. On August 20, 2019, VMware filed counterclaims against Cirba for infringing four VMware patents. The Delaware Court severed VMware's patent



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infringement counterclaims from Cirba's claims. On January 24, 2020, a jury returned a verdict that VMware had willfully infringed Cirba's two patents and awarded approximately \$237 million in damages. As to Cirba's trademark-related claims, the jury found that VMware was not liable. A total of \$237 million was accrued for the First Action as of January 31, 2020, which reflected the estimated losses that were considered both probable and reasonably estimable at that time. The amount accrued for this matter was included in accrued expenses and other on the consolidated balance sheet as of January 31, 2020 and the charge was included in general and administrative expense on the consolidated statement of income for the year ended January 31, 2020. On March 9, 2020, the parties filed post-trial motions in the First Action. On December 21, 2020, the Delaware Court granted VMware's request for a new trial based, in part, on Cirba Inc.'s lack of standing, set aside the verdict and damages award, and denied Cirba's post-trial motions (the "Post-Trial Order"). On October 22, 2019, VMware filed a separate lawsuit against Cirba Inc. in the United States District Court for the Eastern District of Virginia for infringing four additional VMware patents ("Second Action"). The Second Action was transferred to the Delaware Court on February 25, 2020. On March 23, 2020, Cirba filed a counterclaim against VMware in the Second Action alleging infringement of an additional Cirba patent. The Delaware Court consolidated the First and Second Actions and ordered a consolidated trial on all of the parties' patent infringement claims and counterclaims. On January 20, 2021, Cirba moved to certify the Post-Trial Order to enable an interlocutory appeal to the United States Court of Appeals for the Federal Circuit, and on May 3, 2021 the Court denied Cirba's motion. Also, on May 3, 2021, the Court granted Cirba's motion for leave to assert an additional patent against VMware. Separately, VMware has filed challenges with the U.S. Patent and Trademark Office against each of the four patents that are the subject of Cirba's allegations. To date, of the four challenges, two *ex parte* reexams have been granted and one *Inter Partes* Review has been instituted. As of January 29, 2021, the Company reassessed its estimated loss accrual for the First Action based on the Post-Trial Order and determined that a loss was no longer probable and reasonably estimable with respect to the consolidated First and Second Actions. Accordingly, the estimated loss accrual of \$237 million recorded on the consolidated balance sheet was derecognized, with the credit included in general and administrative expense on the consolidated income statement for the year ended January 29, 2021. The Company is unable at this time to assess whether, or to what extent, it may be found liable and, if found liable, what the damages may be. The Company intends to vigorously defend against this matter.

In December 2019, the staff of the Enforcement Division of the SEC requested documents and information related to VMware's backlog and associated accounting and disclosures. VMware is fully cooperating with the SEC's investigation and is unable to predict the outcome of this matter at this time.

While VMware believes that it has valid defenses against each of the above legal matters, given the unpredictable nature of legal proceedings, an unfavorable resolution of one or more legal proceedings, claims, or investigations could have a material adverse effect on VMware's consolidated financial statements.

VMware accrues for a liability when a determination has been made that a loss is both probable and the amount of the loss can be reasonably estimated. If only a range can be estimated and no amount within the range is a better estimate than any other amount, an accrual is recorded for the minimum amount in the range. Significant judgment is required in both the determination that the occurrence of a loss is probable and is reasonably estimable. In making such judgments, VMware considers the impact of negotiations, settlements, rulings, advice of legal counsel and other information and events pertaining to a particular matter. Legal costs are generally recognized as expense when incurred.

VMware is also subject to other legal, administrative and regulatory proceedings, claims, demands and investigations in the ordinary course of business or in connection with business mergers and acquisitions, including claims with respect to commercial, contracting and sales practices, product liability, intellectual property, employment, corporate and securities law, class action, whistleblower and other matters. From time to time, VMware also receives inquiries from and has discussions with government entities and stockholders on various matters. As of July 30, 2021, amounts accrued relating to these other matters arising as part of the ordinary course of business were considered not material. VMware does not believe that any liability from any reasonably possible disposition of such claims and litigation, individually or in the aggregate, would have a material adverse effect on its consolidated financial statements.

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**E. Definite-Lived Intangible Assets, Net**

As of the periods presented, definite-lived intangible assets consisted of the following (amounts in tables in millions):

<b>July 30, 2021</b>				
	<b>Weighted-Average Useful Lives (in years)</b>	<b>Gross Carrying Amount</b>	<b>Accumulated Amortization</b>	<b>Net Book Value</b>
Purchased technology	5.3	\$ 940	\$ (525)	\$ 415
Customer relationships and customer lists	11.5	725	(330)	395
Trademarks and tradenames	7.7	131	(87)	44
Other	2.0	21	(19)	2
Total definite-lived intangible assets		<u>\$ 1,817</u>	<u>\$ (961)</u>	<u>\$ 856</u>

  

<b>January 29, 2021</b>				
	<b>Weighted-Average Useful Lives (in years)</b>	<b>Gross Carrying Amount</b>	<b>Accumulated Amortization</b>	<b>Net Book Value</b>
Purchased technology	5.3	\$ 948	\$ (462)	\$ 486
Customer relationships and customer lists	11.4	727	(281)	446
Trademarks and tradenames	7.6	132	(78)	54
Other	2.0	21	(14)	7
Total definite-lived intangible assets		<u>\$ 1,828</u>	<u>\$ (835)</u>	<u>\$ 993</u>

Amortization expense on definite-lived intangible assets was \$77 million and \$154 million during the three and six months ended July 30, 2021, respectively, and \$81 million and \$161 million during the three and six months ended July 31, 2020, respectively.

Based on intangible assets recorded as of July 30, 2021 and assuming no subsequent additions, dispositions or impairment of underlying assets, the remaining estimated annual amortization expense over the next five fiscal years and thereafter is expected to be as follows (table in millions):

Remainder of 2022	\$ 149
2023	252
2024	200
2025	107
2026	67
Thereafter	81
Total	<u>\$ 856</u>

**F. Net Income Per Share**

Basic net income per share is computed by dividing net income by the weighted-average number of common stock outstanding during the period. Diluted net income per share is computed by dividing net income by the weighted-average number of common stock outstanding and potentially dilutive securities outstanding during the period, as calculated using the treasury stock method. Potentially dilutive securities primarily include unvested restricted stock units ("RSUs"), including performance stock unit ("PSU") awards, and stock options, including purchase options under VMware's employee stock purchase plan. Securities are excluded from the computation of diluted net income per share if their effect would be anti-dilutive. VMware uses the two-class method to calculate net income per share. Since both classes share the same rights in dividends, basic and diluted earnings per share are the same for both classes.



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The following table sets forth the computations of basic and diluted net income per share during the periods presented (table in millions, except per share amounts and shares in thousands):

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>July 30, 2021</b>	<b>July 31, 2020</b>	<b>July 30, 2021</b>	<b>July 31, 2020</b>
Net income	\$ 411	\$ 447	\$ 836	\$ 833
Weighted-average shares, basic for Classes A and B	419,355	420,031	419,235	419,208
Effect of other dilutive securities	3,447	3,019	3,184	3,220
Weighted-average shares, diluted for Classes A and B	422,802	423,050	422,419	422,428
Net income per weighted-average share, basic for Classes A and B	\$ 0.98	\$ 1.06	\$ 1.99	\$ 1.99
Net income per weighted-average share, diluted for Classes A and B	\$ 0.97	\$ 1.06	\$ 1.98	\$ 1.97

The following table sets forth the weighted-average common share equivalents of Class A common stock that were excluded from the diluted net income per share calculations during the periods presented because their effect would have been anti-dilutive (shares in thousands):

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>July 30, 2021</b>	<b>July 31, 2020</b>	<b>July 30, 2021</b>	<b>July 31, 2020</b>
Anti-dilutive securities:				
Employee stock options	3	170	22	233
Restricted stock units	237	5,727	375	4,664
Total	240	5,897	397	4,897

#### **G. Cash, Cash Equivalents, Restricted Cash and Short-Term Investments**

##### ***Cash and Cash Equivalents***

Cash and cash equivalents totaled \$5.9 billion and \$4.7 billion as of July 30, 2021 and January 29, 2021, respectively. Cash equivalents were \$4.9 billion as of July 30, 2021 and consisted of money-market funds of \$4.9 billion and time deposits of \$50 million. Cash equivalents were \$3.8 billion as of January 29, 2021 and consisted of money-market funds of \$3.7 billion and time deposits of \$102 million.

##### ***Restricted Cash***

The following table provides a reconciliation of the Company's cash and cash equivalents, and current and non-current portion of restricted cash reported on the condensed consolidated balance sheets that sum to the total cash, cash equivalents and restricted cash as of July 30, 2021 and January 29, 2021 (table in millions):

	<b>July 30, 2021</b>	<b>January 29, 2021</b>
Cash and cash equivalents	\$ 5,855	\$ 4,692
Restricted cash within other current assets	60	56
Restricted cash within other assets	7	22
Total cash, cash equivalents and restricted cash	\$ 5,922	\$ 4,770

Amounts included in restricted cash primarily relate to certain employee-related benefits, as well as amounts related to installment payments to certain employees as part of acquisitions, subject to the achievement of specified future employment conditions.

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### **Short-Term Investments**

Short-term investments totaled \$82 million and \$23 million as of July 30, 2021 and January 29, 2021, respectively, and consisted of marketable equity securities. Short-term investments as of July 30, 2021 consisted of marketable equity securities that were previously subject to a certain sale restriction and therefore were classified as other assets on the condensed consolidated balance sheet as of January 29, 2021. Refer to Note I for more information regarding the Company's marketable equity securities.

## **H. Debt**

### **Unsecured Senior Notes**

On April 7, 2020, VMware issued three series of unsecured senior notes pursuant to a public debt offering. The proceeds from the issuance were \$2.0 billion, net of debt discount of \$3 million and debt issuance costs of \$17 million. VMware also has three series of unsecured senior notes issued on August 21, 2017 (collectively with the notes issued April 7, 2020, the "Senior Notes").

The carrying value of the Senior Notes as of the periods presented was as follows (amounts in millions):

	July 30, 2021	January 29, 2021	Effective Interest Rate
Senior Notes issued August 21, 2017:			
2.95% Senior Note Due August 21, 2022	\$ 1,500	\$ 1,500	3.17%
3.90% Senior Note Due August 21, 2027	1,250	1,250	4.05%
Senior Notes issued April 7, 2020:			
4.50% Senior Note Due May 15, 2025	750	750	4.70%
4.65% Senior Note Due May 15, 2027	500	500	4.80%
4.70% Senior Note Due May 15, 2030	750	750	4.86%
Total principal amount	4,750	4,750	
Less: unamortized discount	(6)	(7)	
Less: unamortized debt issuance costs	(23)	(26)	
Net carrying amount included in long-term debt	\$ 4,721	\$ 4,717	

Interest on the Senior Notes issued on April 7, 2020 is payable semiannually in arrears, on May 15 and November 15 of each year, beginning November 15, 2020. The interest rate on each note issued on April 7, 2020 is subject to adjustment based on certain rating events. Interest on the Senior Notes issued on August 21, 2017 is payable semiannually in arrears, on February 21 and August 21 of each year. Interest expense was \$48 million and \$97 million during the three and six months ended July 30, 2021, respectively, and \$49 million and \$88 million during the three and six months ended July 31, 2020, respectively. Interest expense, which included amortization of discount and issuance costs, was recognized on the condensed consolidated statements of income. The discount and issuance costs are amortized over the term of the Senior Notes on a straight-line basis, which approximates the effective interest method.

The Senior Notes are redeemable in whole at any time or in part from time to time at VMware's option, subject to a make-whole premium. In addition, upon the occurrence of certain change-of-control triggering events and certain downgrades of the ratings on the Senior Notes, VMware may be required to repurchase the notes at a repurchase price equal to 101% of the aggregate principal plus any accrued and unpaid interest on the date of repurchase. The Senior Notes rank equally in right of payment with VMware's other unsecured and unsubordinated indebtedness. The Senior Notes contain restrictive covenants that, in certain circumstances, limit VMware's ability to create certain liens, to enter into certain sale and leaseback transactions and to consolidate, merge, sell or otherwise dispose of all or substantially all of VMware's assets.

### **Revolving Credit Facility**

On September 12, 2017, VMware entered into an unsecured credit agreement establishing a revolving credit facility with a syndicate of lenders that provides the Company with a borrowing capacity of up to \$1.0 billion for general corporate purposes. Commitments under the revolving credit facility are available for a period of five years, which may be extended, subject to the satisfaction of certain conditions, by up to two one-year periods. As of July 30, 2021 and January 29, 2021, there was no outstanding borrowing under the revolving credit facility. The credit agreement contains certain representations, warranties and covenants. Commitment fees, interest rates and other terms of borrowing under the revolving credit facility may vary based on

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VMware's external credit ratings. The amount paid in connection with the ongoing commitment fee, which is payable quarterly in arrears, was not significant during the three and six months ended July 30, 2021 and July 31, 2020.

Refer to Note C for disclosure regarding the note payable to Dell and Note N for information regarding the Company's incremental indebtedness entered into subsequent to the second quarter of fiscal 2022.

# **I. Fair Value Measurements**

## ***Assets and Liabilities Measured and Recorded at Fair Value on a Recurring Basis***

Certain financial assets and liabilities are measured at fair value on a recurring basis. VMware determines fair value using the following hierarchy:

- Level 1 - Quoted prices in active markets for identical assets or liabilities;
- Level 2 - Inputs other than Level 1 inputs that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities; and
- Level 3 - Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

VMware did not have any significant assets or liabilities that were classified as Level 3 of the fair value hierarchy for the periods presented, and there have been no transfers between fair value measurement levels during the periods presented.

The following tables set forth the fair value hierarchy of VMware's cash equivalents and short-term investments that were required to be measured at fair value as of the periods presented (tables in millions):

	July 30, 2021		
	Level 1	Level 2	Total
Cash equivalents:			
Money-market funds	\$ 4,871	\$ —	\$ 4,871
Time deposits <sup>(1)</sup>	—	50	50
Total cash equivalents	\$ 4,871	\$ 50	\$ 4,921
Short-term investments:			
Marketable equity securities	\$ 82	\$ —	\$ 82
Total short-term investments	\$ 82	\$ —	\$ 82

  

	January 29, 2021		
	Level 1	Level 2	Total
Cash equivalents:			
Money-market funds	\$ 3,738	\$ —	\$ 3,738
Time deposits <sup>(1)</sup>	—	102	102
Total cash equivalents	\$ 3,738	\$ 102	\$ 3,840
Short-term investments:			
Marketable equity securities	\$ 23	\$ —	\$ 23
Total short-term investments	\$ 23	\$ —	\$ 23

<sup>(1)</sup> Time deposits were valued at amortized cost, which approximated fair value.

The note payable to Dell and the Senior Notes were not adjusted to fair value. The fair value of the note payable to Dell was \$275 million and \$276 million as of July 30, 2021 and January 29, 2021, respectively. The fair value of the Senior Notes was approximately \$5.3 billion and \$5.3 billion as of July 30, 2021 and January 29, 2021, respectively. Fair value for the note payable to Dell and the Senior Notes was estimated primarily based on observable market interest rates (Level 2 inputs).

VMware offers a deferred compensation plan for eligible employees, which allows participants to defer payment for part or all of their compensation. There is no net impact to the condensed consolidated statements of income since changes in the fair value of the assets offset changes in the fair value of the liabilities. As such, assets and liabilities associated with this plan have

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not been included in the above tables. Assets associated with this plan were the same as the liabilities at \$172 million and \$140 million as of July 30, 2021 and January 29, 2021, respectively, and were included in other assets on the condensed consolidated balance sheets. Liabilities associated with this plan were included in accrued expenses and other of \$17 million and in other liabilities of \$155 million on the condensed consolidated balance sheet as of July 30, 2021. Liabilities associated with this plan of \$140 million were included in other liabilities on the condensed consolidated balance sheet as of January 29, 2021.

***Equity Securities With a Readily Determinable Fair Value***

VMware's equity securities include an investment in a company that completed its initial public offering during the third quarter of fiscal 2021. The fair value of the investment is based on quoted prices for identical assets in an active market (Level 1). As of January 29, 2021, this investment had a fair value of \$162 million, of which \$139 million was included in other assets on the condensed consolidated balance sheet due to a certain sale restriction and \$23 million was included in short-term investments as they were unrestricted and available for sale. The sale restriction lapsed for the remaining shares during the three months ended April 30, 2021. As of July 30, 2021, the fair value of the investment was \$82 million and was included in short-term investments on the condensed consolidated balance sheet. During the three and six months ended July 30, 2021, the Company sold \$28 million and \$37 million of the investment, respectively. During the three and six months ended July 30, 2021, VMware recognized unrealized losses of \$10 million and \$35 million, respectively, on the equity securities still held as of July 30, 2021. All gains and losses, whether realized or unrealized, are recognized in other income (expense), net on the condensed consolidated statements of income.

***Equity Securities Without a Readily Determinable Fair Value***

VMware's equity securities also include investments in privately held companies, which do not have a readily determinable fair value. As of July 30, 2021 and January 29, 2021, investments in privately held companies, which consisted primarily of equity securities, had a carrying value of \$144 million and \$129 million, respectively, and were included in other assets on the condensed consolidated balance sheets. Unrealized gains recognized on securities still held as of July 30, 2021 were \$11 million during the three and six months ended July 30, 2021. Unrealized gains and losses recognized during the three and six months ended July 31, 2020 were not significant. All gains and losses on these securities, whether realized or unrealized, are recognized in other income (expense), net on the condensed consolidated statements of income.

**J. Derivatives and Hedging Activities**

VMware conducts business on a global basis in multiple foreign currencies, subjecting the Company to foreign currency risk. To mitigate a portion of this risk, VMware utilizes hedging contracts as described below, which potentially expose the Company to credit risk to the extent that the counterparties may be unable to meet the terms of the agreements. VMware manages counterparty risk by seeking counterparties of high credit quality and by monitoring credit ratings, credit spreads and other relevant public information about its counterparties. VMware does not, and does not intend to, use derivative instruments for trading or speculative purposes.

***Cash Flow Hedges***

To mitigate its exposure to foreign currency fluctuations resulting from certain operating expenses denominated in certain foreign currencies, VMware enters into forward contracts that are designated as cash flow hedging instruments as the accounting criteria for such designation are met. Therefore, the effective portion of gains or losses resulting from changes in the fair value of these instruments is initially reported in accumulated other comprehensive loss on the condensed consolidated balance sheets and is subsequently reclassified to the related operating expense line item on the condensed consolidated statements of income in the same period that the underlying expenses are incurred. During the three and six months ended July 30, 2021 and July 31, 2020, the effective portion of gains or losses reclassified to the condensed consolidated statements of income was not significant. Interest charges or forward points on VMware's forward contracts were excluded from the assessment of hedge effectiveness and were recorded to the related operating expense line item on the condensed consolidated statements of income in the same period that the interest charges are incurred.

These forward contracts have contractual maturities of twelve months or less, and as of July 30, 2021 and January 29, 2021, outstanding forward contracts had a total notional value of \$257 million and \$486 million, respectively. The notional value represents the gross amount of foreign currency that will be bought or sold upon maturity of the forward contract. The fair value of these forward contracts was not significant as of July 30, 2021 and January 29, 2021.

During the three and six months ended July 30, 2021 and July 31, 2020, all cash flow hedges were considered effective.

**VMware, Inc.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
**(unaudited)**

***Forward Contracts Not Designated as Hedges***

VMware has established a program that utilizes forward contracts to offset the foreign currency risk associated with net outstanding monetary asset and liability positions. These forward contracts are not designated as hedging instruments under applicable accounting guidance, and therefore all changes in the fair value of the forward contracts are reported in other income (expense), net on the condensed consolidated statements of income.

These forward contracts generally have a contractual maturity of one month, and as of July 30, 2021 and January 29, 2021, outstanding forward contracts had a total notional value of \$903 million and \$1.2 billion, respectively. The notional value represents the gross amount of foreign currency that will be bought or sold upon maturity of the forward contract. The fair value of these forward contracts was not significant as of July 30, 2021 and January 29, 2021.

Gains related to the settlement of forward contracts were \$11 million and \$15 million during the three and six months ended July 30, 2021, respectively. Losses related to the settlement of forward contracts were \$48 million and \$33 million during the three and six months ended July 31, 2020, respectively. Gains and losses are recorded in other income (expense), net on the condensed consolidated statements of income.

The combined gains and losses related to the settlement of forward contracts and the underlying foreign currency denominated assets and liabilities were not significant during the three and six months ended July 30, 2021. The combined gains and losses related to the settlement of forward contracts and the underlying foreign currency denominated assets and liabilities resulted in net gains of \$12 million and \$13 million during the three and six months ended July 31, 2020, respectively. Net gains and losses are recorded in other income (expense), net on the condensed consolidated statements of income.

**K. Leases**

VMware has operating and finance leases primarily related to office facilities and equipment, which have remaining lease terms of one month to 25 years.

The components of lease expense during the periods presented were as follows (table in millions):

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>July 30, 2021</b>	<b>July 31, 2020</b>	<b>July 30, 2021</b>	<b>July 31, 2020</b>
Operating lease expense	\$ 48	\$ 44	\$ 96	\$ 90
Finance lease expense:				
Amortization of right-of-use ("ROU") assets	2	1	3	3
Interest on lease liabilities	—	1	1	1
Total finance lease expense	2	2	4	4
Short-term lease expense	—	—	1	1
Variable lease expense	8	7	15	15
Total lease expense	<u>\$ 58</u>	<u>\$ 53</u>	<u>\$ 116</u>	<u>\$ 110</u>

From time to time, VMware enters into lease arrangements with Dell. Lease expense incurred for arrangements with Dell was not significant during the periods presented.

The Company subleases certain leased office space to third parties when it determines there is excess leased capacity. Sublease income was not significant during the three months ended July 30, 2021 and was \$11 million during the six months ended July 30, 2021. Sublease income was not significant during the three and six months ended July 31, 2020.

**VMware, Inc.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
**(unaudited)**

Supplemental cash flow information related to operating and finance leases during the periods presented was as follows (table in millions):

	<b>Six Months Ended</b>	
	<b>July 30, 2021</b>	<b>July 31, 2020</b>
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 86	\$ 81
Operating cash flows from finance leases	1	1
Financing cash flows from finance leases	2	1
ROU assets obtained in exchange for lease liabilities:		
Operating leases	\$ 112	\$ 100
Finance leases	—	1

Supplemental balance sheet information related to operating and finance leases as of the periods presented was as follows (table in millions):

	<b>July 30, 2021</b>	
	<b>Operating Leases</b>	<b>Finance Leases</b>
ROU assets, non-current <sup>(1)</sup>	\$ 1,029	\$ 49
Lease liabilities, current <sup>(2)</sup>	\$ 126	\$ 5
Lease liabilities, non-current <sup>(3)</sup>	912	46
Total lease liabilities	<u>\$ 1,038</u>	<u>\$ 51</u>
	<b>January 29, 2021</b>	
	<b>Operating Leases</b>	<b>Finance Leases</b>
ROU assets, non-current <sup>(1)</sup>	\$ 997	\$ 53
Lease liabilities, current <sup>(2)</sup>	\$ 109	\$ 5
Lease liabilities, non-current <sup>(3)</sup>	891	50
Total lease liabilities	<u>\$ 1,000</u>	<u>\$ 55</u>

<sup>(1)</sup> ROU assets for operating leases are included in other assets and ROU assets for finance leases are included in property and equipment, net on the condensed consolidated balance sheets.

<sup>(2)</sup> Current lease liabilities are included primarily in accrued expenses and other on the condensed consolidated balance sheets. An insignificant amount is presented in due from related parties, net on the condensed consolidated balance sheets.

<sup>(3)</sup> Non-current operating lease liabilities are presented as operating lease liabilities on the condensed consolidated balance sheets. Non-current finance lease liabilities are included in other liabilities on the condensed consolidated balance sheets.

**VMware, Inc.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
**(unaudited)**

Lease term and discount rate related to operating and finance leases as of the periods presented were as follows:

	<b>July 30, 2021</b>	<b>January 29, 2021</b>
Weighted-average remaining lease term (in years)		
Operating leases	12.1	12.6
Finance leases	7.8	8.3
Weighted-average discount rate		
Operating leases	3.3 %	3.5 %
Finance leases	2.9 %	2.9 %

The following represents VMware's future minimum lease payments under non-cancellable operating and finance leases as of the period presented (table in millions):

	<b>July 30, 2021</b>	
	<b>Operating Leases</b>	<b>Finance Leases</b>
Remainder of 2022	\$ 73	\$ 3
2023	177	7
2024	152	7
2025	120	6
2026	106	7
Thereafter	686	27
Total future minimum lease payments	1,314	57
Less: Imputed interest	(276)	(6)
Total lease liabilities <sup>(1)</sup>	\$ 1,038	\$ 51

<sup>(1)</sup> Total lease liabilities as of July 30, 2021 excluded legally binding lease payments for leases signed but not yet commenced of \$71 million.

## **L. Stockholders' Equity**

### ***VMware Stock Repurchases***

VMware purchases stock from time to time in open market transactions, subject to market conditions. The timing of any repurchases and the actual number of shares repurchased will depend on a variety of factors, including VMware's stock price, cash requirements for operations and business combinations, corporate, legal and regulatory requirements and other market and economic conditions. VMware is not obligated to purchase any shares under its stock repurchase programs. Purchases may be discontinued at any time VMware believes additional purchases are not warranted. From time to time, VMware also purchases stock in private transactions, such as those with Dell. All shares repurchased under VMware's stock repurchase programs are retired.

During May 2019, VMware's board of directors authorized the repurchase of up to \$1.5 billion of Class A common stock through January 29, 2021. During July 2020, VMware's board of directors extended authorization of the existing stock repurchase program through January 28, 2022 and authorized the repurchase of up to an additional \$1.0 billion of Class A common stock through January 28, 2022. As of July 30, 2021, the cumulative authorized amount remaining for stock repurchases was \$326 million.

**VMware, Inc.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
**(unaudited)**

The following table summarizes stock repurchase activity during the periods presented (aggregate purchase price in millions, shares in thousands):

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>July 30, 2021</b>	<b>July 31, 2020</b>	<b>July 30, 2021</b>	<b>July 31, 2020</b>
Aggregate purchase price	\$ 358	\$ 130	\$ 729	\$ 311
Class A common stock repurchased	2,243	919	4,743	2,459
Weighted-average price per share	\$ 159.73	\$ 141.04	\$ 153.77	\$ 126.30

***VMware Restricted Stock***

VMware's restricted stock primarily consists of RSU awards granted to employees. The value of an RSU grant is based on VMware's stock price on the date of the grant. The shares underlying the RSU awards are not issued until the RSUs vest. Upon vesting, each RSU converts into one share of VMware's Class A common stock.

VMware's restricted stock also includes PSU awards granted to certain VMware executives and employees. PSU awards have performance conditions and, in certain cases, a time-based or market-based vesting component. Upon vesting, PSU awards convert into VMware's Class A common stock at various ratios ranging from 0.4 to 2.0 shares per PSU, depending upon the degree of achievement of the performance or market-based target designated by each award. If minimum performance thresholds are not achieved, then no shares are issued.

The following table summarizes restricted stock activity since January 29, 2021 (units in thousands):

	<b>VMware RSUs</b>	
	<b>Number of Units</b>	<b>Weighted-Average Grant Date Fair Value (per unit)</b>
Outstanding, January 29, 2021	17,790	\$ 147.46
Granted	7,996	149.89
Vested	(4,471)	130.66
Forfeited	(1,924)	147.60
Outstanding, July 30, 2021	19,391	149.70

The aggregate vesting date fair value of VMware's restricted stock that vested during the six months ended July 30, 2021 was \$703 million. As of July 30, 2021, restricted stock representing 19.4 million shares of VMware's Class A common stock were outstanding, with an aggregate intrinsic value of \$3.0 billion based on VMware's closing stock price as of July 30, 2021.

***Net Excess Tax Benefits***

Net excess tax benefits recognized in connection with stock-based awards are included in income tax provision (benefit) on the condensed consolidated statements of income. Net excess tax benefits recognized during the three and six months ended July 30, 2021 were \$13 million and \$17 million, respectively, and were \$16 million and \$29 million during the three and six months ended July 31, 2020, respectively.



**VMware, Inc.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
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***Accumulated Other Comprehensive Income (Loss)***

The changes in components of accumulated other comprehensive income (loss) during the periods presented were as follows (tables in millions):

	<b>Unrealized Gain (Loss) on Forward Contracts</b>	<b>Foreign Currency Translation Adjustments</b>	<b>Total</b>
Balance, January 29, 2021	\$ (1)	\$ (4)	\$ (5)
Unrealized gains (losses), net of tax provision (benefit) of \$—, \$—, and \$—	2	—	2
Other comprehensive income (loss), net	2	—	2
Balance, July 30, 2021	\$ 1	\$ (4)	\$ (3)

  

	<b>Unrealized Gain (Loss) on Forward Contracts</b>	<b>Foreign Currency Translation Adjustments</b>	<b>Total</b>
Balance, January 31, 2020	\$ —	\$ (4)	\$ (4)
Unrealized gains (losses), net of tax provision (benefit) of (\$1), \$—, and (\$1)	(5)	—	(5)
Other comprehensive income (loss), net	(5)	—	(5)
Balance, July 31, 2020	\$ (5)	\$ (4)	\$ (9)

The effective portion of gains or losses resulting from changes in the fair value of forward contracts designated as cash flow hedging instruments is reclassified to its related operating expense line item on the condensed consolidated statements of income in the same period that the underlying expenses are incurred. The amounts recorded to the related operating expense functional line items on the condensed consolidated statements of income were not significant to the individual functional line items during the periods presented.

**M. Segment Information**

VMware operates in one reportable operating segment; thus, all required financial segment information is included in the condensed consolidated financial statements. Operating segments are defined as components of an enterprise for which separate financial information is evaluated regularly by the chief operating decision maker in order to allocate resources and assess performance. VMware's chief operating decision maker allocates resources and assesses performance based upon discrete financial information at the consolidated level.

Revenue by type during the periods presented was as follows (table in millions):

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>July 30, 2021</b>	<b>July 31, 2020</b>	<b>July 30, 2021</b>	<b>July 31, 2020</b>
Revenue:				
License	\$ 738	\$ 719	\$ 1,384	\$ 1,379
Subscription and SaaS	776	631	1,516	1,204
Total license and subscription and SaaS	1,514	1,350	2,900	2,583
Services:				
Software maintenance	1,336	1,270	2,657	2,515
Professional services	288	255	575	511
Total services	1,624	1,525	3,232	3,026
Total revenue	\$ 3,138	\$ 2,875	\$ 6,132	\$ 5,609

**VMware, Inc.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
**(unaudited)**

Revenue by geographic area during the periods presented was as follows (table in millions):

	Three Months Ended		Six Months Ended	
	July 30, 2021	July 31, 2020	July 30, 2021	July 31, 2020
United States	\$ 1,539	\$ 1,439	\$ 3,005	\$ 2,802
International	1,599	1,436	3,127	2,807
Total	\$ 3,138	\$ 2,875	\$ 6,132	\$ 5,609

Revenue by geographic area is based on the ship-to addresses of VMware's customers. No individual country other than the U.S. accounted for 10% or more of revenue during the three and six months ended July 30, 2021 and July 31, 2020.

Long-lived assets by geographic area, which primarily include property and equipment, net, as of the periods presented were as follows (table in millions):

	July 30, 2021	January 29, 2021
United States	\$ 854	\$ 864
International	249	241
Total	\$ 1,103	\$ 1,105

As of July 30, 2021 and January 29, 2021, the U.S. and India accounted for approximately 80% and 10% of these assets, respectively.

#### N. Subsequent Events

On August 2, 2021, VMware issued five unsecured senior notes pursuant to a public debt offering in the aggregate amount of \$6.0 billion, consisting of outstanding principal due on the following dates: \$1.0 billion due August 15, 2023 (the "2023 Notes"), \$1.25 billion due August 15, 2024 (the "2024 Notes"), \$1.5 billion due August 15, 2026 (the "2026 Notes"), \$750 million due August 15, 2028 (the "2028 Notes") and \$1.5 billion due August 15, 2031 (the "2031 Notes" and, together with the 2023 Notes, the 2024 Notes, the 2026 Notes and the 2028 Notes, the "2021 Senior Notes"). The 2021 Senior Notes bear interest at annual rates of 0.60%, 1.00%, 1.40%, 1.80% and 2.20%, respectively, payable semi-annually on each February 15 and August 15 of each year, commencing on February 15, 2022. The 2021 Senior Notes are redeemable in whole at any time or in part from time to time at VMware's option and may be subject to a make-whole premium. In addition, upon the occurrence of certain change-of-control triggering events and certain downgrades of the ratings on the 2021 Senior Notes, VMware may be required to repurchase the notes at a repurchase price equal to 101% of the aggregate principal plus any accrued and unpaid interest on the date of repurchase. The 2021 Senior Notes rank equally in right of payment with VMware's other unsecured and unsubordinated indebtedness and contain restrictive covenants that, in certain circumstances, limit VMware's ability to create certain liens, to enter into certain sale and leaseback transactions and to consolidate, merge, sell or otherwise dispose of all or substantially all of VMware's assets.

The proceeds from the 2021 Senior Notes were \$5.9 billion, net of debt discount of \$11 million and debt issuance costs of \$47 million, and are expected to be used to fund a portion of the Special Dividend in connection with the Spin-Off pursuant to the terms of the Separation Agreement and, to the extent any proceeds remain, for general corporate purposes. If the Spin-Off is not consummated on or prior to the earlier of (i) (x) April 28, 2022 or (y) if the Separation Agreement is amended on or prior to April 28, 2022 to extend the date by which the Spin-Off must be consummated to a date later than April 28, 2022, the earlier of such extended date and July 28, 2022 and (ii) the date the Separation Agreement is terminated, VMware will be required to redeem all outstanding 2023 Notes, 2024 Notes, 2028 Notes and 2031 Notes at a special mandatory redemption price equal to 101% of the aggregate principal amount of notes being redeemed, plus accrued and unpaid interest, if any, to, but not including, the date of such special mandatory redemption (the "Special Mandatory Redemption Price"). In the event that special mandatory redemption is triggered, VMware will be required to deposit with a trustee funds sufficient to pay the Special Mandatory Redemption Price. The 2026 Notes are not subject to the special mandatory redemption, and, if the Spin-Off is not consummated, VMware expects to use the net proceeds thereof for general corporate purposes, which may include debt repayment.

On September 2, 2021, VMware entered into an unsecured credit agreement establishing a revolving credit facility with a syndicate of lenders that provides the Company with a borrowing capacity of up to \$1.5 billion for general corporate purposes

**VMware, Inc.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
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(the “2021 Revolving Credit Facility”). The 2021 Revolving Credit Facility replaced the Company’s existing \$1.0 billion revolving credit facility that was undrawn. Commitments under the 2021 Revolving Credit Facility are available for a period of five years, which may be extended, subject to the satisfaction of certain conditions, by up to two one-year periods. The credit agreement contains certain representations, warranties and covenants. Commitment fees, interest rates and other terms of borrowing under the 2021 Revolving Credit Facility may vary based on VMware’s external credit ratings.

Additionally, on September 2, 2021, VMware received commitments from financial institutions for a three-year senior unsecured term loan facility and a five-year senior unsecured term loan facility that would provide the Company with an aggregate borrowing capacity of up to \$4.0 billion, which, if funded, may be used to finance a portion of the Special Dividend and for general corporate purposes. The Company may borrow once up to the aggregate borrowing capacity of \$4.0 billion until the earlier of (x) April 28, 2022 and (y) the date on which the Separation Agreement is terminated. The term loans bear interest at the London interbank offered rate plus 0.625% to 1.00%, depending on VMware’s external credit ratings, or an alternate base rate. The initial funding of the Commitment is subject to various customary conditions, including execution and delivery of definitive loan agreement and related documentation.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following management's discussion and analysis is provided in addition to the accompanying condensed consolidated financial statements and notes to assist in understanding our results of operations and financial condition. Financial information as of July 30, 2021 should be read in conjunction with our consolidated financial statements for the year ended January 29, 2021 contained in our Annual Report on Form 10-K filed on March 26, 2021.

Period-over-period changes are calculated based upon the respective underlying non-rounded data. We refer to our fiscal years ended January 28, 2022 and January 29, 2021 as "fiscal 2022" and "fiscal 2021," respectively. Unless the context requires otherwise, we are referring to VMware, Inc. and its consolidated subsidiaries when we use the terms "VMware," the "Company," "we," "our" or "us."

### Overview

We originally pioneered the development and application of virtualization technologies with x86 server-based computing, separating application software from the underlying hardware. Information technology ("IT") driven innovation continues to disrupt markets and industries. Technologies emerge faster than organizations can absorb, creating increasingly complex environments. IT is working at an accelerated pace to harness new technologies, platforms and cloud models, ultimately guiding businesses through a digital transformation. To take on these challenges, we are working with customers in the areas of hybrid and multi-cloud, modern applications, networking, security and digital workspaces. Our software provides a flexible digital foundation to enable customers in their digital transformations.

Our portfolio supports and addresses the key priorities of our customers including accelerating their cloud journey, migrating and modernizing their applications, empowering digital workspaces, transforming networking and embracing intrinsic security. We enable customers to digitally transform their operations as they ready their applications, infrastructure and employees for constantly evolving business needs.

We sell our solutions using enterprise agreements ("EAs") or as part of our non-EA, or transactional, business. EAs are comprehensive offerings that may include license and subscription and SaaS, offered both directly by us and through certain channel partners that also provide for multi-year maintenance and support. We continue to experience strong renewals resulting in additional sales of both our existing and newer products and solutions.

Our vSphere and vRealize Cloud Management products form the foundation of our customers' private cloud environments and provide the capabilities for our customers to extend their private cloud to the public cloud and to help them run, manage, secure and connect all their applications across all clouds and devices.

During the six months ended July 30, 2021, revenue growth in our subscription and SaaS offerings was primarily driven by our VMware Cloud Provider Program ("VCP"), VMware Workspace ONE ("Workspace ONE"), VMware Carbon Black Cloud, VMware Tanzu and VMware Cloud on AWS. We expect revenue growth derived from our subscription and SaaS offerings to continue. In addition, we expect operating margin to be negatively impacted in fiscal 2022 as a result of our incremental investment in our subscription and SaaS portfolio.

During the six months ended July 30, 2021, we continued to see an increase in the portion of our sales occurring through our subscription and SaaS offerings compared to the portion of our on-premises solutions sold with perpetual licenses, which negatively impacted our operating margin. As this trend continues, a greater portion of our revenue will be recognized over time as subscription and SaaS revenue rather than license revenue, which is typically recognized in the fiscal period in which sales occur. As a result, the rate of growth in our license revenue, which has historically been viewed as a leading indicator of our business performance, may be less relevant on a stand-alone basis, and we believe that the overall growth rate of our combined license and subscription and SaaS revenue, as well as the growth in remaining performance obligations, will become better indicators of our future growth prospects.

### Dell Go-to-Market Initiatives

We continue joint marketing, sales, branding and product development efforts with Dell Technologies Inc. ("Dell") and its subsidiaries to enhance the collective value we deliver to our mutual customers. During the three and six months ended July 30, 2021, revenue from Dell, including purchases of products and services directly from us, as well as through our channel partners, accounted for 37% and 36% of our consolidated revenue, respectively. During the three and six months ended July 30, 2021, revenue recognized on transactions where Dell acted as an original equipment manufacturer ("OEM") accounted for 12% and 13% of total revenue from Dell, respectively, or 5% and 5% of our consolidated revenue, respectively. The remaining revenue from Dell consisted of Dell acting as a distributor to other non-Dell resellers, reselling products and services as a reseller or purchasing products and services for its own internal use. On certain transactions, Dell Financial Services ("DFS") also provided financing to our end users at our end users' discretion.

### COVID-19 Impact

The worldwide spread of COVID-19 resulted in a global slowdown of economic activity while also disrupting sales channels and marketing activities, and the COVID-19 pandemic may cause economic disruption and market volatility in future periods. While the COVID-19 pandemic has not had a material adverse financial impact on our operations to date, the future course of the pandemic, the ongoing economic impact and the degree and rate of economic recovery remain highly uncertain and continue to rapidly evolve. Although the pandemic has not had the level of financial impact on our business we initially expected, we did experience negative impacts on our sales and certain of our financial results and there continues to be uncertainty regarding the magnitude and duration of the economic effects of the COVID-19 pandemic and the extent to which it will have a negative impact on our sales and our financial results for the remainder of fiscal 2022.

We continue to closely monitor the impact of the pandemic on all aspects of our business.

### Spin-Off and Special Dividend

On April 14, 2021, we entered into a Separation and Distribution Agreement with Dell (the “Separation Agreement”), pursuant to which, subject to the satisfaction of all closing conditions, Dell will distribute the shares of Class A common stock (“Class A Stock”) and Class B common stock (“Class B Stock” and, collectively, the “Common Stock”) owned by its wholly owned subsidiaries, to the holders of shares of Dell as of a record date determined pursuant to the Separation Agreement on a pro rata basis (the “Spin-Off”). Subject to the various conditions, we will pay a cash dividend, pro rata, to each of the holders of Common Stock (including Dell) immediately prior to the Spin-Off in an aggregate amount equal to an amount to be mutually agreed by us and Dell between \$11.5 billion and \$12.0 billion (the “Special Dividend”). We expect to fund the Special Dividend through cash reserves and incremental indebtedness. Refer to Note N for more information regarding our incremental indebtedness, including our recent notes offering. The Spin-Off is expected to close during the fourth quarter of calendar 2021, subject to certain closing conditions, including receipt of a favorable Internal Revenue Service ruling that the distribution of shares to Dell and its stockholders will qualify as generally tax-free for U.S. federal income tax purposes.

### Results of Operations

Approximately 70% of our sales are denominated in the United States (“U.S.”) dollar. In certain countries, however, we also invoice and collect in various foreign currencies, principally euro, British pound, Japanese yen, Australian dollar, and Chinese renminbi. In addition, we incur and pay operating expenses in currencies other than the U.S. dollar. As a result, our financial statements, including our revenue, operating expenses, unearned revenue and the resulting cash flows derived from the U.S. dollar equivalent of foreign currency transactions, are affected by foreign exchange fluctuations.

### Revenue

Our revenue during the periods presented was as follows (dollars in millions):

	Three Months Ended				Six Months Ended			
	July 30, 2021	July 31, 2020	\$ Change	% Change	July 30, 2021	July 31, 2020	\$ Change	% Change
Revenue:								
License	\$ 738	\$ 719	\$ 19	3 %	\$ 1,384	\$ 1,379	\$ 4	— %
Subscription and SaaS	776	631	144	23	1,516	1,204	313	26
Total license and subscription and SaaS	1,514	1,350	163	12	2,900	2,583	317	12
Services:								
Software maintenance	1,336	1,270	66	5	2,657	2,515	141	6
Professional services	288	255	34	13	575	511	64	13
Total services	1,624	1,525	100	7	3,232	3,026	206	7
Total revenue	\$ 3,138	\$ 2,875	\$ 263	9	\$ 6,132	\$ 5,609	\$ 523	9
Revenue:								
United States	\$ 1,539	\$ 1,439	\$ 101	7 %	\$ 3,005	\$ 2,802	\$ 203	7 %
International	1,599	1,436	162	11	3,127	2,807	320	11
Total revenue	\$ 3,138	\$ 2,875	\$ 263	9	\$ 6,132	\$ 5,609	\$ 523	9

Revenue from our subscription offerings consisted primarily of our VCPP cloud-based offerings that are billed to customers on a consumption basis and revenue from VMware Tanzu and other offerings that are billed on a subscription basis. Revenue from our SaaS offerings consisted primarily of our Unified Endpoint Management mobile solution within Workspace ONE, VMware Cloud on AWS, CloudHealth by VMware, VMware SD-WAN by VeloCloud offerings and VMware Carbon Black Cloud.

License revenue relating to the sale of on-premises licenses that are part of a multi-year contract is generally recognized upon delivery of the underlying license, whereas revenue derived from our subscription and SaaS offerings is generally recognized over time as customers consume the services or ratably over the term of the subscription, commencing upon provisioning of the service.

#### ***License Revenue***

License revenue increased slightly during the three and six months ended July 30, 2021 compared to the three and six months ended July 31, 2020. As customers adopt our cloud-based offerings, license revenue may be lower and subject to greater fluctuation in the future, driven by a higher percentage of cloud-based offerings being sold as well as the variability of large deals between fiscal quarters, which deals historically have had a large license revenue impact.

#### ***Subscription and SaaS Revenue***

Subscription and SaaS revenue increased during the three and six months ended July 30, 2021 compared to the three and six months ended July 31, 2020. Revenue growth primarily from our VCPP, Workspace ONE, VMware Carbon Black Cloud, VMware Tanzu and VMware Cloud on AWS offerings continued to contribute to subscription and SaaS revenue growth during the three and six months ended July 30, 2021 compared to the three and six months ended July 31, 2020.

#### ***Services Revenue***

During the three and six months ended July 30, 2021, software maintenance revenue continued to benefit from maintenance contracts sold in previous periods. In each period presented, customers purchased, on a weighted-average basis, greater than two years of support and maintenance with each new license purchased.

Professional services revenue increased during the three and six months ended July 30, 2021 compared to the three and six months ended July 31, 2020. Services we provide through our technical account managers and our continued focus on solution deployments, including our networking, security, cloud management and digital workspace offerings, contributed to the increase in professional services revenue. We continue to also focus on enabling our partners to deliver professional services for our solutions, and as such, our professional services revenue may vary as we continue to leverage our partners. The timing of services rendered will also impact the amount of professional services revenue we recognize during a period.

#### ***Unearned Revenue***

Unearned revenue as of the periods presented consisted of the following (table in millions):

	July 30, 2021	January 29, 2021
Unearned license revenue	\$ 20	\$ 15
Unearned subscription and SaaS revenue	2,208	1,998
Unearned software maintenance revenue	6,916	7,092
Unearned professional services revenue	1,194	1,209
Total unearned revenue	<u>\$ 10,338</u>	<u>\$ 10,314</u>

Unearned subscription and SaaS revenue is generally recognized over time as customers consume the services or ratably over the term of the subscription, commencing upon provisioning of the service.

Unearned software maintenance revenue is attributable to our maintenance contracts and is generally recognized ratably over the contract duration. The weighted-average remaining contractual term as of July 30, 2021 was approximately two years. Unearned professional services revenue results primarily from prepaid professional services and is generally recognized as the services are performed.

#### ***Remaining Performance Obligations and Backlog***

##### ***Remaining Performance Obligations***

Remaining performance obligations represent the aggregate amount of the transaction price in contracts allocated to performance obligations not delivered, or partially undelivered, as of the end of the reporting period. Remaining performance

obligations include unearned revenue, multi-year contracts with future installment payments and certain unfulfilled orders against accepted non-cancellable customer contracts at the end of any given period.

As of July 30, 2021, the aggregate transaction price allocated to remaining performance obligations was \$11.2 billion, of which approximately 56% is expected to be recognized as revenue over the next twelve months and the remainder thereafter. As of January 29, 2021, the aggregate transaction price allocated to remaining performance obligations was \$11.3 billion, of which approximately 55% was expected to be recognized as revenue during fiscal 2022, and the remainder thereafter.

### **Backlog**

Backlog is comprised of unfulfilled purchase orders or unfulfilled executed agreements at the end of a given period and is net of related estimated rebates and marketing development funds. Backlog consists of licenses, subscription and SaaS, and services. As of July 30, 2021, our total backlog was \$66 million, and our backlog related to licenses was \$19 million. For our backlog related to licenses, we generally expect to deliver and recognize as revenue during the following quarter. Backlog totaling \$12 million as of July 30, 2021 was excluded from the remaining performance obligations because such contracts are subject to cancellation until fulfillment of the performance obligation occurs.

As of January 29, 2021, our total backlog was \$93 million, and our backlog related to licenses was \$23 million. The amount excluded from the remaining performance obligations because such contracts are subject to cancellation until fulfillment of the performance obligation occurs was \$18 million as of January 29, 2021.

The amount and composition of backlog will fluctuate period to period, and backlog is managed based upon multiple considerations, including product and geography. We do not believe the amount of backlog is indicative of future sales or revenue or that the mix of backlog at the end of any given period correlates with actual sales performance of a particular geography or particular products and services.

### **Cost of License Revenue, Cost of Subscription and SaaS Revenue, Cost of Services Revenue and Operating Expenses**

Collectively, our cost of license revenue, cost of subscription and SaaS revenue, cost of services revenue and operating expenses primarily reflected increasing cash-based employee-related expenses, driven by incremental growth in headcount and salaries across most of our income statement expense categories for the three and six months ended July 30, 2021.

#### **Cost of License Revenue**

Cost of license revenue primarily consists of the cost of fulfillment of our SD-WAN offerings, royalty costs in connection with technology licensed from third-party providers and amortization of intangible assets. The cost of fulfillment of our software and hardware SD-WAN offerings includes personnel costs and related overhead associated with delivery of our products.

Cost of license revenue during the periods presented was as follows (dollars in millions):

	Three Months Ended				Six Months Ended			
	July 30,	July 31,	\$	% Change	July 30,	July 31,	\$	% Change
	2021	2020			2021	2020		
Cost of license revenue	\$ 37	\$ 35	\$ 3	8 %	\$ 74	\$ 73	\$ —	— %
Stock-based compensation	—	—	—	(14)	1	1	—	3
Total expenses	\$ 37	\$ 35	\$ 3	7	\$ 75	\$ 74	\$ —	—
% of License revenue	5 %	5 %			5 %	5 %		

Cost of license revenue remained relatively consistent during the three and six months ended July 30, 2021 compared to the three and six months ended July 31, 2020.

### Cost of Subscription and SaaS Revenue

Cost of subscription and SaaS revenue primarily includes personnel costs and related overhead associated with hosted services supporting our SaaS offerings. Additionally, cost of subscription and SaaS revenue also includes depreciation of equipment supporting our subscription and SaaS offerings.

Cost of subscription and SaaS revenue during the periods presented was as follows (dollars in millions):

	Three Months Ended				Six Months Ended			
	July 30, 2021	July 31, 2020			July 30, 2021	July 31, 2020		
Cost of subscription and SaaS revenue	\$ 165	\$ 127	\$ 37	30 %	\$ 316	\$ 249	\$ 67	27 %
Stock-based compensation	5	5	1	14	11	9	2	27
Total expenses	<u>\$ 170</u>	<u>\$ 132</u>	<u>\$ 38</u>	<u>29</u>	<u>\$ 327</u>	<u>\$ 258</u>	<u>\$ 69</u>	<u>27</u>
% of Subscription and SaaS revenue	22 %	21 %			22 %	21 %		

Cost of subscription and SaaS revenue increased during the three months ended July 30, 2021 compared to the three months ended July 31, 2020. The increase was primarily driven by growth in costs associated with hosted services to support our SaaS offerings of \$17 million and growth in cash-based employee-related cost of \$13 million, which was primarily driven by incremental growth in headcount. The increase was also driven by increased equipment and depreciation of \$12 million.

Cost of subscription and SaaS revenue increased during the six months ended July 30, 2021 compared to the six months ended July 31, 2020. The increase was primarily driven by growth in costs associated with hosted services to support our SaaS offerings of \$25 million and growth in cash-based employee-related cost of \$24 million, which was primarily driven by incremental growth in headcount. The increase was also driven by increased equipment and depreciation of \$23 million.

### Cost of Services Revenue

Cost of services revenue primarily includes the costs of personnel and related overhead to deliver technical support for our products and costs to deliver professional services. Additionally, cost of services revenue includes depreciation of equipment supporting our service offerings.

Cost of services revenue during the periods presented was as follows (dollars in millions):

	Three Months Ended				Six Months Ended			
	July 30, 2021	July 31, 2020			July 30, 2021	July 31, 2020		
Cost of services revenue	\$ 328	\$ 295	\$ 33	11 %	\$ 640	\$ 591	\$ 49	8 %
Stock-based compensation	24	26	(2)	(8)	49	48	1	1
Total expenses	<u>\$ 352</u>	<u>\$ 321</u>	<u>\$ 31</u>	<u>10</u>	<u>\$ 689</u>	<u>\$ 639</u>	<u>\$ 50</u>	<u>8</u>
% of Services revenue	22 %	21 %			21 %	21 %		

Cost of services revenue increased during the three months ended July 30, 2021 compared to the three months ended July 31, 2020. The increase was primarily driven by growth in cash-based employee-related cost of \$35 million, which was primarily driven by incremental growth in headcount and salaries.

Cost of services revenue increased during the six months ended July 30, 2021 compared to the six months ended July 31, 2020. The increase was primarily due to growth in cash-based employee-related expenses of \$53 million, primarily driven by incremental growth in headcount and salaries. The increase was also driven by increased third-party professional services costs of \$11 million. These increases were partially offset by decreased equipment and depreciation of \$14 million.

### Research and Development Expenses

Research and development expenses include the personnel and related overhead associated with the development of our product software and service offerings. We continue to invest in and focus on expanding our subscription and SaaS offerings.



Research and development expenses during the periods presented were as follows (dollars in millions):

	Three Months Ended				Six Months Ended			
	July 30, 2021	July 31, 2020	\$ Change	% Change	July 30, 2021	July 31, 2020	\$ Change	% Change
Research and development	\$ 625	\$ 547	\$ 78	14 %	\$ 1,206	\$ 1,087	\$ 118	11 %
Stock-based compensation	150	132	18	14	277	257	21	8
Total expenses	\$ 775	\$ 679	\$ 96	14	\$ 1,483	\$ 1,344	\$ 138	10
% of Total revenue	25 %	24 %			24 %	24 %		

Research and development expenses increased during the three months ended July 30, 2021 compared to the three months ended July 31, 2020. The increase was primarily due to growth in cash-based employee-related expenses of \$76 million, primarily driven by incremental growth in headcount and salaries, as well as increased stock-based compensation of \$18 million, primarily driven by increased restricted stock unit awards granted to our employees. The increase was also driven by increased equipment and depreciation of \$11 million. These increases were partially offset by increased capitalized internal-use software development costs of \$15 million.

Research and development expenses increased during the six months ended July 30, 2021 compared to the six months ended July 31, 2020. The increase was primarily due to growth in cash-based employee-related expenses of \$118 million, primarily driven by incremental growth in headcount and salaries, as well as increased stock-based compensation of \$21 million, primarily driven by increased restricted stock unit awards granted to our employees. The increase was also driven by increased equipment and depreciation of \$20 million. These increases were partially offset by increased capitalized internal-use software development costs of \$28 million.

### **Sales and Marketing Expenses**

Sales and marketing expenses include personnel costs, sales commissions and related overhead associated with the sale and marketing of our license, subscription and SaaS and services offerings, as well as the cost of product launches and marketing initiatives. A significant portion of our sales commissions are deferred and recognized over the expected period of benefit.

Sales and marketing expenses during the periods presented were as follows (dollars in millions):

	Three Months Ended				Six Months Ended			
	July 30, 2021	July 31, 2020	\$ Change	% Change	July 30, 2021	July 31, 2020	\$ Change	% Change
Sales and marketing	\$ 942	\$ 809	\$ 135	17 %	\$ 1,828	\$ 1,655	\$ 174	11 %
Stock-based compensation	81	88	(8)	(9)	153	159	(7)	(4)
Total expenses	\$ 1,023	\$ 897	\$ 127	14	\$ 1,981	\$ 1,814	\$ 167	9
% of Total revenue	33 %	31 %			32 %	32 %		

Sales and marketing expenses increased during the three months ended July 30, 2021 compared to the three months ended July 31, 2020. The increase was primarily due to growth in cash-based employee-related expenses of \$81 million, primarily driven by incremental growth in headcount and salaries, as well as higher commission costs of \$32 million resulting from increased sales volume.

Sales and marketing expenses increased during the six months ended July 30, 2021 compared to the six months ended July 31, 2020. The increase was primarily due to growth in cash-based employee-related expenses of \$139 million, primarily driven by incremental growth in headcount and salaries, as well as higher commission costs of \$63 million resulting from increased sales volume. The increase was partially offset by decreased costs incurred for sales enablement-based initiatives of \$21 million, as well as decreased travel-related costs of \$10 million resulting from travel restrictions imposed in response to the COVID-19 pandemic.

### General and Administrative Expenses

General and administrative expenses include personnel and related overhead costs to support the business. These expenses include the costs associated with finance, human resources, IT infrastructure and legal, as well as expenses related to corporate costs and initiatives.

General and administrative expenses during the periods presented were as follows (dollars in millions):

	Three Months Ended				Six Months Ended			
	July 30, 2021	July 31, 2020	\$ Change	% Change	July 30, 2021	July 31, 2020	\$ Change	% Change
General and administrative	\$ 223	\$ 235	\$ (12)	(5) %	\$ 428	\$ 432	\$ (4)	(1) %
Stock-based compensation	33	42	(9)	(22)	64	91	(27)	(30)
Total expenses	\$ 256	\$ 277	\$ (21)	(8)	\$ 492	\$ 523	\$ (31)	(6)
% of Total revenue	8 %	10 %			8 %	9 %		

General and administrative expenses decreased during the three months ended July 30, 2021 compared to the three months ended July 31, 2020. The decrease was primarily driven by decreased acquisition-related costs of \$14 million, as well as decreased third-party professional services costs of \$11 million.

General and administrative expenses decreased during the six months ended July 30, 2021 compared to the six months ended July 31, 2020. The decrease was primarily driven by decreased acquisition-related costs of \$32 million, as well as decreased stock-based compensation of \$27 million, which was primarily due to the vesting of awards associated with prior acquisitions. The decrease was also driven by decreased third-party professional services costs of \$21 million. These decreases were partially offset by an increase in cash-based employee-related expenses of \$35 million, primarily driven by incremental growth in headcount and salaries.

### Other Income (Expense), net

Other income (expense), net during the periods presented was as follows (dollars in millions):

	Three Months Ended				Six Months Ended			
	July 30, 2021	July 31, 2020	\$ Change	% Change	July 30, 2021	July 31, 2020	\$ Change	% Change
Other income (expense), net	\$ 3	\$ 15	\$ (10)	(70) %	\$ (19)	\$ 8	\$ (28)	(326) %
% of Total revenue	— %	1 %			— %	— %		

Other income (expense), net decreased during the three and six months ended July 30, 2021 compared to the three and six months ended July 31, 2020, primarily driven by gains and losses, whether realized or unrealized, on our investments in equity securities. During the six months ended July 30, 2021, net losses on our investments in equity securities increased by \$43 million, primarily driven by a loss of \$45 million recognized on one of our investments in equity securities, which completed its initial public offering during the third quarter of fiscal 2021. The fair value of the publicly traded investment is determined primarily using the quoted market price of its common stock. As a result, any volatility in its publicly traded common stock introduces a degree of variability to our consolidated statements of income. The change during the three months ended July 30, 2021 compared to the three months ended July 31, 2020 was not material.

### Income Tax Provision

The following table summarizes our income tax provision during the periods presented (dollars in millions):

	Three Months Ended				Six Months Ended			
	July 30, 2021	July 31, 2020			July 30, 2021	July 31, 2020		
Income tax provision	\$ 69	\$ 48			\$ 131	\$ 31		
Effective income tax rate	14.4 %	9.8 %			13.5 %	3.5 %		

Our quarterly effective income tax rate is based on our estimated annual income tax rate forecast and discrete tax items recognized in the period. The increase in our effective income tax rate for the six months ended July 30, 2021 compared to the six months ended July 31, 2020 was primarily driven by a discrete tax benefit of \$59 million recognized as a deferred tax asset due to an intra-group transfer of Pivotal's intellectual property rights to our Irish subsidiary during the six months ended

July 31, 2020. The increase in our effective income tax rate for the three months ended July 30, 2021 compared to the three months ended July 31, 2020 was mainly driven by a higher estimated annual effective income tax rate for fiscal 2022 due to a decrease in certain estimated U.S. tax credits.

We are included in Dell's consolidated tax group for U.S. federal income tax purposes and will continue to be included in Dell's consolidated tax group for periods in which Dell beneficially owns at least 80% of the total voting power and value of our combined outstanding Class A and Class B common stock as calculated for U.S. federal income tax purposes. The percentage of voting power and value calculated for U.S. federal income tax purposes may differ from the percentage of outstanding shares beneficially owned by Dell due to the greater voting power of our Class B common stock as compared to our Class A common stock and other factors. Each member of a consolidated tax group during any part of a consolidated return year is jointly and severally liable for tax on the consolidated return of such year and for any subsequently determined deficiency thereon. Should Dell's ownership fall below 80% of the total voting power or value of our outstanding stock in any period, then we would no longer be included in the Dell consolidated tax group for U.S. federal income tax purposes, and our U.S. federal income tax would be reported separately from that of the Dell consolidated tax group.

Although our results are included in the Dell consolidated return for U.S. federal income tax purposes, our income tax provision or benefit is calculated primarily as though we were a separate taxpayer. However, under certain circumstances, transactions between us and Dell are assessed using consolidated tax return rules.

Our effective tax rate in the future will depend upon the proportion of our income before provision for income taxes earned in the U.S. and in jurisdictions with a tax rate lower than the U.S. statutory rate. Our non-U.S. earnings are primarily earned by our subsidiary organized in Ireland, where the rate of taxation is lower than our U.S. tax rate, and as such, our annual effective tax rate can be significantly affected by the composition of our earnings in the U.S. and non-U.S. jurisdictions. Our future effective tax rate may be affected by such factors as changes in tax laws, changes in our business or statutory rates, changing interpretation of existing laws or regulations, the impact of accounting for stock-based compensation and the recognition of excess tax benefits or tax deficiencies within the income tax provision or benefit in the period in which they occur, the impact of accounting for business combinations, our acquisition of Pivotal, which was accounted for as a common control transaction, shifts in the amount of earnings in the U.S. compared with other regions in the world and overall levels of income before tax, changes in our international organization, as well as the expiration of statute of limitations and settlements of audits.

### **Our Relationship with Dell**

The information provided below includes a summary of transactions with Dell and Dell's consolidated subsidiaries (collectively, "Dell").

#### ***Transactions with Dell***

We engaged with Dell in the following ongoing related party transactions, which resulted in revenue and receipts, and unearned revenue for us:

- Pursuant to OEM and reseller arrangements, Dell integrates or bundles our products and services with Dell's products and sells them to end users. Dell also acts as a distributor, purchasing our standalone products and services for resale to end-user customers through VMware-authorized resellers. Revenue under these arrangements is presented net of related marketing development funds and rebates paid to Dell. In addition, we provide professional services to end users based upon contractual agreements with Dell.
- Dell purchases products and services from us for its internal use.
- From time to time, we and Dell enter into agreements to collaborate on technology projects, and Dell pays us for services or reimburses us for costs incurred by us, in connection with such projects.

During the three and six months ended July 30, 2021, revenue from Dell accounted for 37% and 36% of our consolidated revenue, respectively. During the three and six months ended July 30, 2021, revenue recognized on transactions where Dell acted as an OEM accounted for 12% and 13% of total revenue from Dell, respectively, or 5% and 5% of our consolidated revenue, respectively.

During the three and six months ended July 31, 2020, revenue from Dell accounted for 34% and 33% of our consolidated revenue, respectively. During the three and six months ended July 31, 2020, revenue recognized on transactions where Dell acted as an OEM accounted for 12% of total revenue from Dell, or 4% of our consolidated revenue.

Dell purchases our products and services directly from us, as well as through our channel partners. Information about our revenue and receipts, and unearned revenue from such arrangements, for the periods presented consisted of the following (table in millions):

	Revenue and Receipts				Unearned Revenue	
	Three Months Ended		Six Months Ended		As of	
	July 30, 2021	July 31, 2020	July 30, 2021	July 31, 2020	July 30, 2021	January 29, 2021
Reseller revenue	\$ 1,162	\$ 948	\$ 2,198	\$ 1,810	\$ 5,092	\$ 4,952
Internal-use revenue	13	16	25	35	34	45

Sales through Dell as a distributor, which is included in reseller revenue, continues to grow rapidly.

Receipts from Dell for collaborative technology projects were not material during the three and six months ended July 30, 2021 and July 31, 2020.

Customer deposits resulting from transactions with Dell were \$221 million and \$214 million as of July 30, 2021 and January 29, 2021, respectively.

We engaged with Dell in the following ongoing related party transactions, which resulted in costs to us:

- We purchase and lease products and purchase services from Dell.
- From time to time, we and Dell enter into agreements to collaborate on technology projects, and we pay Dell for services provided to us by Dell related to such projects.
- In certain geographic regions where we do not have an established legal entity, we contract with Dell subsidiaries for support services and support from Dell personnel who are managed by us. The costs incurred by Dell on our behalf related to these employees are charged to us with a mark-up intended to approximate costs that would have been incurred had we contracted for such services with an unrelated third party. These costs are included as expenses on our condensed consolidated statements of income and primarily include salaries, benefits, travel and occupancy expenses. Dell also incurs certain administrative costs on our behalf in the U.S. that are recorded as expenses on our condensed consolidated statements of income.
- In certain geographic regions, Dell files a consolidated indirect tax return, which includes value added taxes and other indirect taxes collected by us from our customers. We remit the indirect taxes to Dell, and Dell remits the tax payment to the foreign governments on our behalf.
- From time to time, we invoice end users on behalf of Dell for certain services rendered by Dell. Cash related to these services is collected from the end user by us and remitted to Dell.
- From time to time, we enter into agency arrangements with Dell that enable us to sell our subscriptions and services, leveraging the Dell enterprise relationships and end customer contracts.

Information about our payments for such arrangements during the periods presented consisted of the following (table in millions):

	Three Months Ended		Six Months Ended	
	July 30, 2021	July 31, 2020	July 30, 2021	July 31, 2020
Purchases and leases of products and purchases of services <sup>(1)</sup>	\$ 61	\$ 45	\$ 107	\$ 89
Dell subsidiary support and administrative costs	10	15	24	42

<sup>(1)</sup> Amount includes indirect taxes that were remitted to Dell during the periods presented.

We also purchase Dell products through Dell's channel partners. Purchases of Dell products through Dell's channel partners were not significant during the periods presented.

From time to time, we and Dell also enter into joint marketing, sales, branding and product development arrangements, for which both parties may incur costs.

In connection with and subject to the consummation of the Spin-Off, we and Dell have agreed to enter into a commercial agreement that is intended to preserve and enhance our strategic partnership with Dell to deliver joint customer value and a transition services agreement to facilitate the transactions and the operation of us and Dell following the Spin-Off.

## ***Dell Financial Services***

DFS provided financing to certain of our end users at our end users' discretion. Upon acceptance of the financing arrangement by both our end users and DFS, amounts classified as trade accounts receivable are reclassified to due from related parties, net on the condensed consolidated balance sheets. Revenue recognized on transactions financed through DFS was recorded net of financing fees. Financing fees on arrangements accepted by both parties were not significant during the three months ended July 30, 2021 and were \$15 million during the six months ended July 30, 2021. Financing fees on arrangements accepted by both parties were \$18 million and \$31 million during the three and six months ended July 31, 2020, respectively.

## ***Tax Agreements with Dell***

In connection with the Spin-Off and concurrently with the execution of the Separation Agreement, effective as of April 14, 2021, we and Dell entered into a Tax Matters Agreement (the "Tax Matters Agreement") and agreed to terminate the tax sharing agreement as amended on December 30, 2019 (together, the "Tax Agreements"). The Tax Matters Agreement governs our and Dell's respective rights and obligations, both for pre-Spin-Off periods and post-Spin-Off periods, regarding income and other taxes, and related matters, including tax liabilities and benefits, attributes and returns.

Payments made to Dell pursuant to the Tax Agreements were \$73 million and \$86 million during the three and six months ended July 30, 2021, respectively, and were \$142 million and \$167 million during the three and six months ended July 31, 2020, respectively. Refunds received from Dell pursuant to the Tax Agreement were \$45 million during the six months ended July 30, 2021.

Payments from us to Dell under the Tax Agreements relate to our portion of federal income taxes on Dell's consolidated tax return as well as state tax payments for combined states. The timing of the tax payments due to and from related parties is governed by the Tax Agreements. Our portion of the mandatory one-time transition tax on accumulated earnings of foreign subsidiaries (the "Transition Tax") is governed by a letter agreement between Dell, EMC and us executed on April 1, 2019 (the "Letter Agreement"). Our portion of federal income taxes on Dell's consolidated tax return differ from the amounts we would owe on a separate tax return basis and our payments to Dell generally are capped at the amount that we would have paid on a separate tax return basis. The difference between the amount of tax calculated on a separate tax return basis and the amount of tax calculated pursuant to the Tax Agreements that was recorded in additional paid-in capital was not significant during the three and six months ended July 30, 2021 and was \$45 million during the three and six months ended July 31, 2020.

As a result of the activity under the Tax Agreements with Dell, amounts due to Dell were \$415 million and \$451 million as of July 30, 2021 and January 29, 2021, respectively, primarily related to our estimated tax obligation resulting from the Transition Tax. The 2017 Tax Act included a deferral election for an eight-year installment payment method on the Transition Tax. We expect to pay the remainder of our Transition Tax over a period of four years.

## ***Pivotal Tax Sharing Agreement with Dell***

During the fourth quarter of fiscal 2020, we completed the acquisition of Pivotal. Pivotal continues to file its separate tax return for U.S. federal income tax purposes as it left the Dell consolidated tax group at the time of Pivotal's IPO in April 2018. Pivotal continues to be included on Dell's unitary state tax returns. Pursuant to a tax sharing agreement, Pivotal historically received payments from Dell for tax benefits that Dell realized due to Pivotal's inclusion on such returns. There were no payments received from Dell during the three and six months ended July 30, 2021 and July 31, 2020.

## ***Due To/From Related Parties, Net***

Amounts due to and from related parties, net as of the periods presented consisted of the following (table in millions):

	July 30, 2021	January 29, 2021
Due from related parties, current	\$ 1,036	\$ 1,558
Due to related parties, current <sup>(1)</sup>	121	120
Due from related parties, net, current	<u>\$ 915</u>	<u>\$ 1,438</u>

<sup>(1)</sup> Includes an immaterial amount related to our current operating lease liabilities due to related parties.

We also recognized an immaterial amount related to non-current operating lease liabilities due to related parties. This amount has been included in operating lease liabilities on the condensed consolidated balance sheets as of July 30, 2021 and January 29, 2021.

Amounts included in due from related parties, net, current, with the exception of DFS and tax obligations, are generally settled in cash within 60 days of each quarter-end.

**Notes Payable to Dell**

As of July 30, 2021 and January 29, 2021, we had an outstanding promissory note payable to Dell in the principal amount of \$270 million due December 1, 2022. The note may be prepaid without penalty or premium. Interest is payable quarterly in arrears at the annual rate of 1.75%. During the three and six months ended July 30, 2021 and July 31, 2020, interest expense on the notes payable to Dell was not significant.

In connection with the Spin-Off, we plan to repay the outstanding \$270 million note payable to Dell.

**Liquidity and Capital Resources**

As of the periods presented, we held cash, cash equivalents and short-term investments as follows (table in millions):

	July 30, 2021	January 29, 2021
Cash and cash equivalents	\$ 5,855	\$ 4,692
Short-term investments	82	23
Total cash, cash equivalents and short-term investments	<u>\$ 5,937</u>	<u>\$ 4,715</u>

Cash equivalents primarily consisted of amounts invested in money market funds. We limit the amount of our investments with any single issuer and monitor the diversity of the portfolio and the amount of investments held at any single financial institution, thereby diversifying our credit risk. Short-term investments consisted of marketable equity securities in a company that completed its initial public offering during the third quarter of fiscal 2021.

In the event that conditions for payment of the Special Dividend are satisfied and the Special Dividend is paid, we expect to fund the Special Dividend through cash reserves and incremental indebtedness. As a result, if conditions for the Special Dividend are met, we expect our cash and cash equivalents balance to decline. We continue to expect that cash generated by operations will be our primary source of liquidity. We also continue to believe that, despite this potential decline in cash and cash equivalents, existing cash, cash equivalents and our borrowing capacity, together with any cash generated from operations, will be sufficient to fund our operations for at least the next twelve months. While we believe these cash sources will be sufficient to fund our operations, our overall level of cash needs may be affected by capital allocation decisions that may include the number and size of acquisitions and stock repurchases, among other things. We remain committed to maintaining an investment grade profile and credit rating. Following our planned Spin-Off from Dell, we expect to use free cash flow primarily to de-lever debt. In addition, we plan to continue with our balanced capital allocation policy through investing in our product and solution offerings, acquisitions and returning capital to stockholders through share repurchases. Additionally, given the unpredictable nature of our outstanding legal proceedings, an unfavorable resolution of one or more legal proceedings, claims, or investigations could have a negative impact on our overall liquidity.

On August 2, 2021, we issued five unsecured senior notes pursuant to a public debt offering in an aggregate amount of \$6.0 billion. The proceeds are expected to be used to fund a portion of the Special Dividend and, to the extent any proceeds remain, for general corporate purpose. Additionally, on September 2, 2021, we obtained \$1.5 billion in commitments from lenders for a new five-year revolving credit facility, which replaced our existing \$1.0 billion revolving credit facility that was undrawn. We also obtained \$4.0 billion in commitments for term loans with maturities of up to five years. Refer to Note N to the condensed consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for more information regarding our incremental indebtedness, including our recent notes offering.

The 2017 Tax Act imposed a Transition Tax and eliminated U.S. Federal taxes on foreign subsidiary distributions. The Transition Tax was calculated on a separate tax return basis. Our liabilities related to the Transition Tax as of July 30, 2021 was \$504 million, which we expect to pay over the next four years pursuant to a letter agreement between Dell, EMC and us executed during the first quarter of fiscal 2020. Actual tax payments made to Dell pursuant to the tax sharing agreement may differ materially from our total estimated tax liability calculated on a separate tax return basis. The difference between our estimated liability and the amount paid to Dell is recognized as a component of additional paid-in capital, generally in the period in which the consolidated tax return is filed.

Our cash flows summarized for the periods presented were as follows (table in millions):

	Six Months Ended	
	July 30, 2021	July 31, 2020
Net cash provided by (used in):		
Operating activities	\$ 2,130	\$ 2,094
Investing activities	(144)	(488)
Financing activities	(834)	185
Net increase in cash, cash equivalents and restricted cash	<u>\$ 1,152</u>	<u>\$ 1,791</u>

### ***Operating Activities***

Cash provided by operating activities increased by \$37 million during the six months ended July 30, 2021 compared to the six months ended July 31, 2020, primarily driven by increased cash collections due to increased sales, as well as decreased tax payments. This activity was partially offset by an increase in cash payments for employee-related expenses, including salaries, bonuses and commissions, resulting primarily from growth in headcount and salaries during the six months ended July 30, 2021.

### ***Investing Activities***

Cash used in investing activities decreased by \$343 million during the six months ended July 30, 2021 compared to the six months ended July 31, 2020, primarily driven by a decrease in cash used in business combinations, as well as an increase in proceeds from sales of our investments in equity securities.

### ***Financing Activities***

Cash used in financing activities changed by \$1.0 billion during the six months ended July 30, 2021 compared to the six months ended July 31, 2020, primarily due to the absence of the net cash proceeds received from the issuance of long-term debt of \$2.0 billion and the redemption of the \$1.3 billion unsecured senior note due August 21, 2020. The change was also driven by an increase of \$419 million in repurchases of shares of our Class A common stock during the six months ended July 30, 2021.

### ***Unsecured Senior Notes***

The following table summarizes the principal on our two series of unsecured senior notes issued August 21, 2017 and our three series of unsecured senior notes issued April 7, 2020 (collectively, the “Senior Notes”) as of July 30, 2021 (amounts in millions):

Senior Notes issued August 21, 2017:	
2.95% Senior Note Due August 21, 2022	\$ 1,500
3.90% Senior Note Due August 21, 2027	1,250
Senior Notes issued April 7, 2020:	
4.50% Senior Note Due May 15, 2025	750
4.65% Senior Note Due May 15, 2027	500
4.70% Senior Note Due May 15, 2030	750
Total principal amount	<u>\$ 4,750</u>

Interest on the Senior Notes issued on April 7, 2020 is payable semiannually in arrears, on May 15 and November 15 of each year, beginning November 15, 2020. The interest rate on each note issued on April 7, 2020 is subject to adjustment based on certain rating events. Interest on the Senior Notes issued on August 21, 2017 is payable semiannually in arrears, on February 21 and August 21 of each year. During the six months ended July 30, 2021 and July 31, 2020, \$93 million and \$61 million, respectively, was paid for interest related to the Senior Notes.

The Senior Notes also contain restrictive covenants that, in certain circumstances, limit our ability to create certain liens, to enter into certain sale and leaseback transactions and to consolidate, merge, sell or otherwise dispose of all or substantially all of our assets.

On May 11, 2020, we exercised a make-whole call and redeemed the \$1.3 billion unsecured senior note due August 21, 2020 at a premium. We intend to use the net proceeds of the Senior Notes for general corporate purposes, including mergers and acquisitions, repayment of other indebtedness or stock repurchases.



### ***Revolving Credit Facility***

On September 12, 2017, we entered into an unsecured credit agreement establishing a revolving credit facility with a syndicate of lenders that provides us with a borrowing capacity of up to \$1.0 billion, for general corporate purposes. The credit agreement contains certain representations, warranties and covenants. Commitments under the revolving credit facility are available for a period of five years, which may be extended, subject to the satisfaction of certain conditions, by up to two one-year periods. As of July 30, 2021 and January 29, 2021, there was no outstanding borrowing under the revolving credit facility.

### ***Note Payable to Dell***

Refer to “Our Relationship with Dell” in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Part I, Item 2 for disclosure regarding our note payable to Dell.

### ***Stock Repurchase Program***

From time to time, we repurchase stock pursuant to authorized stock repurchase programs in open market transactions as permitted by securities laws and other legal requirements. We are not obligated to purchase any shares under our stock repurchase programs. The timing of any repurchases and the actual number of shares repurchased depends on a variety of factors, including our stock price, cash requirements for operations and business combinations, corporate and regulatory requirements and other market and economic conditions. Purchases may be discontinued at any time we believe additional purchases are not warranted. From time to time, we also purchase stock in private transactions, such as with Dell. All shares repurchased under our stock repurchase programs are retired.

Refer to Note L to the condensed consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for stock repurchase authorizations approved by our board of directors for the periods presented.

### ***Critical Accounting Policies and Estimates***

In preparing our condensed consolidated financial statements in accordance with accounting principles generally accepted in the United States of America (“GAAP”), we are required to make estimates, assumptions and judgments that affect the amounts reported on our financial statements and the accompanying disclosures. Estimates and assumptions about future events and their effects cannot be determined with certainty and therefore require the exercise of judgment. We base our estimates, assumptions and judgments on historical experience and various other factors that we believe to be reasonable under the circumstances. These estimates may change in future periods and will be recognized in the condensed consolidated financial statements as new events occur and additional information becomes known. Actual results could differ from those estimates and any such differences may be material to our financial statements. We believe that the critical accounting policies and estimates set forth within Part II, Item 7, “Critical Accounting Policies and Estimates” of our Annual Report on Form 10-K filed on March 26, 2021 involve a higher degree of judgment and complexity in their application than our other significant accounting policies. Our senior management has reviewed our critical accounting policies and related disclosures with the Audit Committee of the Board of Directors. Historically, our assumptions, judgments and estimates relative to our critical accounting policies have not differed materially from actual results.

### ***Forward-Looking Statements***

This Quarterly Report on Form 10-Q contains forward-looking statements. All statements other than statements of historical fact could be deemed forward-looking statements, and words such as “expect,” “anticipate,” “target,” “goal,” “project,” “intent,” “plan,” “believe,” “momentum,” “seek,” “estimate,” “continue,” “potential,” “future,” “endeavor,” “will,” “may,” “should,” “could,” “depend,” “predict,” and variations or the negative expression of such words and similar expressions are intended to identify forward-looking statements. Forward-looking statements in this report include, but are not limited to, statements relating to expected industry trends and conditions; future financial performance, trends or plans; anticipated impacts of developments in accounting rules and tax laws and rates; our expectations regarding the timing of tax payments and the impacts of changes in our corporate structure and alignment; plans for and anticipated benefits of VMware products, services and solutions and partner and alliance relationships; plans for, timing of and anticipated impacts and benefits of corporate transactions, capital-raising activities, acquisitions, stock repurchases and investment activities; the outcome or impact of pending litigation, claims or disputes; the continuing impact of the COVID-19 pandemic on the global economy as well as any related effects on our business operations, financial performance, results of operations and stock price; future plans with respect to Dell’s ownership interest in us, including the proposed Spin-Off of its ownership to Dell stockholders and the related Special Dividend to be paid by us and the sources of funding for such Special Dividend and the commercial framework for our future relationship with Dell; our commitment and ability to maintain an investment-grade credit rating; the sufficiency of our cash sources to fund our operations; and any statements of assumptions underlying any of the foregoing. These statements are based on current expectations about the industries in which VMware operates and the beliefs and assumptions of management. These forward-looking statements involve risks and uncertainties and the cautionary statements set forth above and those contained in the section of this report entitled “Risk Factors” identify important factors that could cause actual results to differ materially from those predicted in any such forward-looking statements. All forward-looking statements in this document are made as of



the date hereof, based on information available to us as of the date hereof. We assume no obligation to, and do not currently intend to, update these forward-looking statements.

#### **Available Information**

Our website is located at [www.vmware.com](http://www.vmware.com), and our investor relations website is located at <http://ir.vmware.com>. Our goal is to maintain the investor relations website as a portal through which investors can easily find or navigate to pertinent information about us, all of which is made available free of charge, including:

- our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, current reports on Form 8-K, and any amendments to those reports, as soon as reasonably practicable after we electronically file that material with or furnish it to the Securities and Exchange Commission (“SEC”);
- announcements of investor conferences, speeches and events at which our executives discuss our products, services and competitive strategies;
- webcasts of our quarterly earnings calls and links to webcasts of investor conferences at which our executives appear (archives of these events are also available for a limited time);
- additional information on financial metrics, including reconciliations of non-GAAP financial measures discussed in our presentations to the nearest comparable GAAP measure;
- press releases on quarterly earnings, product and service announcements, legal developments and international news;
- corporate governance information including our certificate of incorporation, bylaws, corporate governance guidelines, board committee charters, business conduct guidelines (which constitutes our code of business conduct and ethics) and other governance-related policies;
- other news, blogs and announcements that we may post from time to time that investors might find useful or interesting; and
- opportunities to sign up for email alerts and RSS feeds to have information pushed in real time.

The information found on our website is not part of, and is not incorporated by reference into, this or any other report we file with, or furnish to, the SEC. The SEC also maintains a website at [www.sec.gov](http://www.sec.gov) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC.

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

There were no material changes to our market risk exposures during the six months ended July 30, 2021. See Part II, Item 7A, “Quantitative and Qualitative Disclosures About Market Risk” of our Annual Report on Form 10-K filed on March 26, 2021 for a detailed discussion of our market risk exposures.

### **ITEM 4. CONTROLS AND PROCEDURES**

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

We carried out an evaluation required by the Securities Exchange Act of 1934, amended (the “Exchange Act”), under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rule 13a-15(e) of the Exchange Act, as of the end of the period covered by this report. Based on this evaluation, our principal executive officer and principal financial officer concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosures.

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

There were no changes in our internal control over financial reporting during the most recent fiscal quarter ended July 30, 2021 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

#### **Limitations on Controls**

Our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives as specified above. Our management, including our principal executive officer and principal financial officer, conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in Internal Control—Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Management does not expect, however, that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all errors and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

## **PART II OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

Refer to Note D to the condensed consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for a description of legal proceedings. See also the risk factor entitled “We are involved in litigation, investigations and regulatory inquiries and proceedings that could negatively affect us” in Part II, Item 1A of this Quarterly Report on Form 10-Q for a discussion of potential risks to our results of operations and financial condition that may arise from legal proceedings.

### **ITEM 1A. RISK FACTORS**

The risk factors that appear below could materially affect our business, financial condition and operating results. The risks and uncertainties described below are not the only risks and uncertainties we face. Our business is also subject to general risks and uncertainties that affect many other companies. Specific risk factors related to our status as a controlled subsidiary of Dell Technologies Inc. (“Dell”) including with respect to the proposed Spin-Off and associated special cash dividend, overlapping business opportunities, Dell’s ability to control certain transactions and resource allocations and related persons transactions with Dell and its other affiliated companies are set forth below under the heading “Risks Related to Our Relationship with Dell.”

#### ***Operation of Business and Strategic Risks***

##### **A significant decrease in demand for our server virtualization products would adversely affect our operating results.**

A significant portion of our revenue is derived, and will for the foreseeable future continue to be derived, from our server virtualization products. As more businesses achieve high levels of virtualization in their data centers, the market for our vSphere product continues to mature. Additionally, as businesses increasingly utilize public cloud and SaaS-based offerings, they are building more of their new compute workloads off-premises and are increasingly shifting some of their existing and many of their new workloads to public cloud providers, thereby limiting growth, and potentially reducing the market for on-premises deployments of vSphere. Although sales of vSphere have declined as a portion of our overall business, and we expect this trend to continue, vSphere remains key to our future growth as it serves as the foundation for our newer SDDC, network virtualization and our newer subscription and SaaS offerings. Although we have launched, and are continuing to develop, products to extend our vSphere-based SDDC offerings to the public cloud, due to our product concentration, a significant decrease in demand for our server virtualization products would adversely affect our operating results.

##### **Our subscription and SaaS offerings, which constitute a growing portion of our business, and our initiatives to extend our data center virtualization and container platforms into the public cloud, involve various risks, including, among others, reliance on third-party providers for data center space and colocation services and on public cloud providers to prevent service disruptions.**

As we continue to develop and offer subscription and SaaS versions of our products, we must continue to evolve our processes to meet various intellectual property, regulatory, contractual and service compliance challenges, including compliance with licenses for open source and third-party software embedded in our offerings, compliance with export control and privacy regulations, protecting our services from external threats or inappropriate use, maintaining the continuous service levels and data security expected by our customers and adapting our go-to-market efforts. The expansion of our subscription and SaaS offerings also requires significant investments, and our operating margins, results of operations and operating cash flows may be adversely affected if our new offerings are not widely adopted by customers.

Additionally, our subscription and SaaS offerings rely upon third-party providers to supply data center space, equipment maintenance and other colocation services and our initiatives to extend our virtualization and container platforms into the public cloud rely upon the ability of our public cloud and VCPP partners to maintain continuous service availability and protect customer data on their services. Although we have entered into various agreements for the lease of data center space, equipment maintenance and other services, third parties could fail to live up to their contractual obligations. The failure of a third-party provider to prevent service disruptions, data losses or security breaches may require us to issue credits or refunds or indemnify or otherwise be liable to customers or third parties for damages that may occur, and contractual provisions with our third-party providers and public cloud partners may limit our recourse against the third-party provider or public cloud partner responsible for such failure. Additionally, if these third-party providers fail to deliver on their obligations, our reputation could be damaged, our customers could lose confidence in us, and our ability to maintain and expand our subscription and SaaS offerings would be impaired.

**Our success depends upon our ability to adapt our business and pricing models to a subscription and SaaS model appropriately.**

Certain of our product initiatives, such as our VCPP and SaaS offerings, have a subscription model. As we increase our adoption of subscription-based pricing models for our products, we may fail to set pricing at levels appropriate to maintain our revenue streams or our customers may choose to deploy products from our competitors that they believe are priced more favorably. In addition, we may fail to accurately predict subscription renewal rates or their impact on operating results, and because revenue from subscriptions is recognized for our services over the term of the subscription, downturns or upturns in sales may not be immediately reflected in our results. Additionally, as customers transition to our subscription and SaaS products and services, our revenue and license revenue growth rate may be adversely impacted during the period of transition as we will recognize less revenue up front than we would otherwise recognize as part of the multi-year license contracts through which we typically sell our established offerings. For example, effective with the fourth quarter of fiscal 2020, we commenced reporting revenue from our subscription and SaaS as a separate revenue line item, breaking out components that had previously been included in our license revenue and services revenue and prior period amounts were reclassified to conform with this presentation. As a result, the rate of growth in our license revenue, which has been viewed as a leading indicator of our business performance may appear to be negatively impacted while the growth in subscription and SaaS revenue may not appear as robust because such revenue is recognized ratably over time as customers consume our subscription-based products. Finally, as we offer more services that depend on converting users of free services to users of premium services and purchasers of our on-premises products to our SaaS offerings, our ability to maintain or improve and to predict conversion rates will become more important.

**We face intense competition that could adversely affect our operating results.**

The virtualization, container, cloud computing, end-user computing, security and software-defined data center industries are interrelated and rapidly evolving, and we face intense competition across all the markets for our products and services. Many of our current or potential competitors have longer operating histories, greater name recognition, larger customer bases and significantly greater financial, technical, sales, marketing and other resources than we do. Additionally, the adoption of public and distributed cloud, micro-services, containers, and open source technologies has the potential to erode our profitability.

We face competition from, among others:

*Providers of public cloud infrastructure and SaaS-based offerings.* As businesses increasingly utilize public cloud and SaaS-based offerings, they are building more of their new compute workloads off-premises and may also shift some of their existing workloads. A significant percentage of new application development is happening in the public cloud, and these new applications are often deployed on public cloud infrastructure. As a result, the demand for on-premises information technology (“IT”) resources is expected to slow, and our products and services will need to increasingly compete for customers’ IT workloads with off-premises public cloud and SaaS-based offerings. If our private, hybrid and multi-cloud products and services fail to address evolving customer requirements, the demand for VMware’s virtualization products and services may decline, and we could experience lower growth. Additionally, VMware Cloud Provider Program (“VCP”) offerings from our partners may compete directly with infrastructure-as-a-service (“IaaS”) offerings from various public cloud providers such as Amazon Web Services (“AWS”) and Microsoft, which are increasingly integrated with on-premises solutions. In fiscal 2018, we entered into a strategic alliance with AWS to deliver a vSphere-based cloud service, VMware Cloud on AWS, running in AWS data centers available in certain geographies, and, in fiscal 2019, we extended our collaboration with AWS to include AWS Outposts. In fiscal 2020, we also announced partnerships with Microsoft (Azure VMware Solution by CloudSimple), Google (Google Cloud VMware Solution by CloudSimple), and Oracle (Oracle Cloud VMware Solution) under the framework of our VCPP that enable customers to run native VMware-based workloads on Azure, Google Cloud, and Oracle Cloud. Our partnerships with these public cloud providers may be seen as competitive with each other, with other VCPP partners and with AWS, while some partners may elect to include solutions such as VMware Cloud on AWS as part of their managed services provider offerings. In addition, many of these public cloud providers are delivering hybrid cloud hardware solutions with their distributed cloud management. To the extent customers choose to operate native cloud environments (or similar non-VMware environments, such as Azure Stack) in their data centers in lieu of purchasing VMware’s on-premises and hybrid and multi-cloud products, our operating results could be materially adversely affected.

*Providers of enterprise security offerings.* With the close of VMware’s acquisition of Carbon Black in October 2019, we launched a new set of enterprise security solutions that includes the Carbon Black endpoint security platform and the intrinsic security elements of our existing NSX virtual networking, Workspace ONE end user and our compute offerings. The cybersecurity market is large, highly competitive, fragmented and subject to rapidly evolving technology, shifting customer needs and the frequent introductions of new solutions. Competitors in the endpoint security space include legacy antivirus solution providers such as McAfee and NortonLifeLock, established software and infrastructure providers such as BlackBerry Limited (after purchasing Cylance, Inc.) and Microsoft as well as next-generation endpoint security providers such as

CrowdStrike. In addition, new startup companies and established companies have entered or are currently attempting to enter the next-generation endpoint security market. While we believe that the intrinsic security elements in our existing offerings coupled with our Carbon Black endpoint security offerings and new combined offerings we expect to develop and introduce in the future will enable us to provide an integrated security offering with significant advantages over our competitors' current offerings, our ability to gain traction and market share as a new entrant into this well-established market segment is uncertain. New trends, such as Secure Access Service Edge (SASE) and Zero Trust Network Access, represent the coalescence of formerly distinct markets, such as identity management, secure web gateway, SD-WAN, network firewall, and cloud access security brokers. These trends may bring existing partners such as Zscaler and Okta into a more competitive position with Carbon Black, VeloCloud and other distributed network security offerings from VMware. If we are unable to successfully adapt our product and service offerings to meet these opportunities and rapidly evolving trends our operating results could be adversely affected.

*Large, diversified enterprise software and hardware companies.* These competitors supply a wide variety of products and services to, and have well-established relationships with, our current and prospective end users. For example, small- to medium-sized businesses and companies in emerging markets that are evaluating the adoption of virtualization-based technologies and solutions may be inclined to consider Microsoft solutions because of their existing use of Windows and Office products. Some of these competitors have in the past and may in the future take advantage of their existing relationships to engage in business practices that make our products and services less attractive or more expensive to our end users. For example, in August 2019, Microsoft modified its on-premises licensing terms to require end users who wish to deploy Microsoft software on certain dedicated hosted cloud services other than Microsoft's Azure cloud service, including VMware Cloud on AWS, to purchase additional rights from Microsoft. Other competitors have limited or denied support for their applications running in VMware virtualization environments. In addition, these competitors could integrate competitive capabilities into their existing products and services and make them available without additional charge. For example, Oracle provides free server virtualization software intended to support Oracle and non-Oracle applications, Microsoft offers its own server, network, and storage virtualization software packaged with its Windows Server product as well as built-in virtualization in the client version of Windows and Cisco includes network virtualization technology in many of their data center networking platforms. As a result, existing and prospective VMware customers may elect to use products that are perceived to be "free" or "very low cost" instead of purchasing VMware products and services for certain applications where they do not believe that more advanced and robust capabilities are required.

*Companies offering competing platforms based on open source technologies.* Open source technologies for virtualization, containerization and cloud platforms, such as Xen, KVM, Docker, rkt, OpenShift, Mesos, Kubernetes and OpenStack, and other open source software-based products, solutions and services developed by enterprise IT vendors that target data center virtualization and private cloud, such as Red Hat (now a part of IBM) and Nutanix, may reduce the demand for our solutions, put pricing pressure on our offerings and enable competing vendors to leverage open source technologies to compete directly with us. In addition, one of the characteristics of open source software is that, subject to specified restrictions, anyone may modify and redistribute existing open source software and use it to compete in the marketplace. Such competition can develop with a smaller degree of overhead and lead time than traditional proprietary software companies require. New platform technologies and standards based on open source software are consistently being developed and can gain popularity quickly. Improvements in open source software could cause customers to replace software purchased from us with open-source software. VMware is delivering container technologies and Cloud Native Application technologies portfolio with VMware Tanzu. We have also increased our level of commitment to open source projects and communities like the Cloud Native Computing Foundation that are designed to increase the rate at which customers adopt micro-services architectures. The adoption of distributed micro-service application architectures, and their alignment with container technologies, represents an emerging area of competition. As we continue to invest in these areas, we will experience increasing competitive overlap with other cloud native vendors like Red Hat and the large providers of public cloud infrastructure. Such competitive pressure or the availability of new open source software may result in reduced sales, increasing pricing pressure, increased sales and marketing expenses and lower operating margins, any one of which may adversely affect our operating results.

*Other industry alliances.* Many of our competitors have entered into or extended partnerships or other strategic relationships to offer more comprehensive virtualization and cloud computing solutions than they individually had offered. We expect these trends to continue as companies attempt to strengthen or maintain their positions in the evolving virtualization infrastructure and enterprise IT solutions industry. These alliances may result in more compelling product and service offerings than we offer.

*Our partners and members of our developer and technology partner ecosystem.* We face competition from our partners. For example, third parties currently selling our products and services could build and market their own competing products and services or market competing products and services of other vendors. Additionally, as formerly distinct sectors of enterprise IT such as software-based virtualization and hardware-based server, networking and storage solutions converge, we also increasingly compete with companies who are members of our developer and technology partner ecosystem. For example, in

July 2019, one of our important partners and customers, IBM, closed its acquisition of Red Hat, one of our competitors in the cloud native applications space. Consequently, we may find it more difficult to continue to work together productively on other projects, and the advantages we derive from our ecosystem could diminish.

This competition could result in increased pricing pressure and sales and marketing expenses, thereby materially reducing our operating margins, and could also prevent our new products and services from gaining market acceptance, thereby harming our ability to increase, or causing us to lose, market share.

**Our success depends increasingly on customer acceptance of our newer products and services.**

Our products and services are primarily based on server virtualization and related compute technologies used for virtualizing on-premises data center servers, which form the foundation for private cloud computing. As the market for server virtualization continues to mature, the rate of growth in license sales of VMware vSphere (“vSphere”) has declined. We are increasingly directing our product development and marketing efforts toward products and services that enable businesses to utilize virtualization as the foundation for private, public, hybrid and multi-cloud-based computing and mobile computing, including our vSphere-based SDDC products such as vRealize management, vSAN storage virtualization, NSX virtual networking, as well as our Horizon client virtualization, Unified Endpoint Management mobile device management, and our managed subscription services, such as VMware Cloud on AWS, VMware Cloud on AWS Outposts and our VMware Cloud on Dell EMC. In October 2019, we completed the acquisition of Carbon Black, Inc. (“Carbon Black”), which now forms the nucleus of VMware’s new set of enterprise security solutions focused on helping to provide advanced cybersecurity protection to customers. We have also been introducing SaaS versions of our on-premises products, including VMware Workspace ONE (“Workspace ONE”) offerings, and investing in a range of SaaS and cloud-native technologies and products, including those acquired through our Heptio Inc., CloudHealth Technologies, Inc., VeloCloud Networks, Inc. and Pivotal Software, Inc. (“Pivotal”) acquisitions. These cloud and SaaS initiatives present new and difficult technological, operational and compliance challenges, and significant investments continue to be required to develop or acquire solutions to address those challenges. Our success depends on our current and future customers perceiving technological and operational benefits and cost savings associated with adopting our private, public, hybrid and multi-cloud solutions and our client virtualization and mobile device management solutions. As the market for our server virtualization products continues to mature, and the scale of our business continues to increase, our rate of revenue growth increasingly depends upon the success of our newer product and service offerings. To the extent that adoption rates for our newer products and services are not sufficient to offset declines in revenue growth for our established server virtualization offerings, our overall revenue growth rates may slow materially or our revenue may decline substantially. Additionally, we may fail to realize returns on our investments in new initiatives and our operating results could be materially adversely affected.

**Competition for our highly skilled employees is intense and costly, and our business and growth prospects may suffer if we cannot attract and retain them.**

We must continue to attract and retain highly qualified personnel, particularly software and cloud engineers and sales and customer experience personnel, for which competition, particularly against companies with greater resources, startups and emerging growth companies is intense. Research and development personnel are also aggressively recruited by startup and emerging growth companies, which are especially active in many of the technical areas and geographic regions in which we conduct product and service development. This competition results in increased costs in the form of cash and stock-based compensation and can have a dilutive impact on our stock. We have experienced, and we expect to continue to experience, difficulty in hiring and retaining highly skilled employees with appropriate qualifications, and, if we fail to attract new personnel or fail to retain and motivate our current personnel, our business and future growth prospects could suffer.

**The loss of key management personnel could harm our business.**

We depend on the continued services of key management personnel. We generally do not have employment or non-compete agreements with our employees, and, therefore, they could terminate their employment with us at any time without penalty and could pursue employment opportunities with any of our competitors. In addition, we do not maintain any key-person life insurance policies. The loss of key management personnel could harm our business.

**Our current research and development efforts may not produce significant revenue for several years, if at all.**

Developing our products and services is expensive, and developing and launching disruptive technologies requires significant investment often entailing greater risk than incremental investments in existing products and services. Our research and development expenses were approximately 24% of our total revenue during the six months ended July 30, 2021. We plan to continue to significantly invest in our research and development efforts to maintain our competitive position. Our investments in research and development may result in products or services that generate less revenue than we anticipate or may not result in marketable products and services for several years or at all.

**Acquisitions and divestitures could materially harm our business and operating results.**

We have acquired in the past, and plan to acquire in the future, other businesses, products or technologies. We also sell or divest businesses, products and technologies from time-to-time. Acquisitions and divestitures involve significant risks and uncertainties, including:

- disruptions to our ongoing operations and diverting management from day-to-day responsibilities due to, for example, the need to provide transition services in connection with a disposition or difficulty integrating the operations, technologies, products, customers and personnel of acquired businesses effectively;
- adverse impacts to our business and financial results resulting from increases to our expenses due to, among other things, integrating business operations and on-boarding personnel and the incurrence of amortization expense related to identifiable intangible assets acquired and other accounting consequences of acquisitions;
- reductions to our cash available for operations, stock repurchase programs and other uses, potentially dilutive issuances of equity securities or the incurrence of additional debt;
- uncertainties in achieving the expected benefits of an acquisition or disposition, including with respect to our business strategy, revenue, technology, human resources, cost and operating efficiencies and other synergies, due to, among other things, a lack of experience in new markets, products or technologies; or an initial dependence on unfamiliar distribution partners or vendors;
- unidentified issues that were not discovered during the diligence process, including issues with the acquired or divested business's intellectual property, product quality, security, privacy and accounting practices, regulatory compliance or legal contingencies;
- lawsuits resulting from an acquisition or disposition;
- maintenance or establishment of acceptable standards, controls, procedures or policies with respect to an acquired business; and
- the need to later divest acquired assets at a loss if an acquisition does not meet our expectations.

**Disruptions to our distribution channels, including our various routes to market through Dell, could harm our business.**

Our future success is highly dependent on our relationships with channel partners, including distributors, resellers, system vendors and systems integrators, which contribute to a significant portion of our revenue. Recruiting and retaining qualified channel partners and training them in the use of our technology and product offerings requires significant time and resources. Our failure to maintain good relationships with channel partners would likely lead to a loss of end users of our products and services, which would adversely affect our revenue. We generally do not have long-term contracts or minimum purchase commitments with our channel partners, and the contracts that we do have with these channel partners do not prohibit them from offering products or services that compete with ours.

One of our distributors accounted for 10% or more of our consolidated revenue during the six months ended July 30, 2021. Although we believe that we have in place, or would have in place by the date of any such termination, agreements with replacement distributors sufficient to maintain our revenue from distribution, if we were to lose the distribution services of a significant distributor, such loss could have a negative impact on our operating results until such time as we arrange to replace these distribution services with the services of existing or new distributors.

Additionally, sales via our various route-to-market relationships with Dell accounted for 36% of our consolidated revenue during the six months ended July 30, 2021 and transactions where Dell acted as an original equipment manufacturer ("OEM") accounted for 13% of the revenue from Dell, or 5% of our consolidated revenue. Such routes to market include Dell selling joint solutions as an OEM, acting as a distributor to other non-Dell resellers, reselling products and services as a reseller or purchasing products and services for its own internal use. Any disruption or significant change to our relationship with Dell or the terms upon which they sell and distribute our products and services could have a negative impact on our operating results until such time as we arrange to replace these distribution services with the services of existing or new distributors.

**The evolution of our business requires more complex go-to-market strategies, which involve significant risk.**

Our increasing focus on developing and marketing IT management and automation and IaaS offerings (including software-defined networking, VCPP-integrated virtual desktop and mobile device, cloud and SaaS) that enable customers to transform their IT systems requires a greater focus on marketing and selling product suites and more holistic solutions, rather than selling on a product-by-product basis. Consequently, we have developed, and must continue to develop, new strategies for marketing and selling our offerings. In addition, marketing and selling new technologies to enterprises requires us to invest significant time and resources to educate customers on the benefits of our offerings. These investments can be costly and educating our sales force can distract from their efforts to sell existing products and services. Additionally, from time to time, we reorganize



our go-to-market teams to increase efficiencies and improve customer coverage, but these reorganizations can cause short-term disruptions that may negatively impact sales over one or more fiscal periods. Further, upon entering into new industry segments, we may choose to go to market with third-party manufactured hardware appliances that are integrated with our software—as we did when we entered into the SD-WAN space through our acquisitions of VeloCloud Networks, Inc. and Nyansa, Inc.—which requires us to rapidly develop, deploy and scale new hardware procurement, supply chain and inventory management processes and product support services and integrate them into our ongoing business systems and controls. Similarly, our launches of managed subscription services, such as VMware Cloud on AWS and VMware Cloud on Dell EMC, require us to implement new methods to deliver and monitor end user services and adjust our model for releasing product upgrades. As our customers increasingly shift from one-time purchases of perpetual software licenses to purchasing our software via more subscription and SaaS-based programs, our go-to-market teams will need to alter their outreach to customers to support ongoing consumption of our offerings, and we will need to appropriately adjust the variable compensation programs we use to incentivize our sales teams. If we fail to successfully adjust, develop and implement effective go-to-market strategies, our financial results may be materially adversely impacted.

**We may not be able to respond to rapid technological changes with new solutions and services offerings.**

The industries in which we compete are characterized by rapid, complex and disruptive changes in technology, customer demands and industry standards that could make it difficult for us to effectively compete and cause our existing and future software solutions to become obsolete and unmarketable. Our ability to react quickly to new technology trends—such as cloud computing, which is disrupting the ways businesses consume, manage and provide physical IT resources, applications, data and IT services—and customer requirements is negatively impacted by the length of our development cycle for new and enhanced products and services, which has frequently been longer than we originally anticipated. This is due in part to the increasing complexity of our product offerings as we increase their interoperability and maintain their compatibility with IT resources, such as public clouds, utilized by our customers while sustaining and enhancing product quality. When we release significant new versions of our existing offerings, the complexity of our products may require existing customers to remove and replace prior versions to take full advantage of substantial new capabilities, which may subdue initial demand for the new versions or depress demand for existing versions until the customer is ready to purchase and install the newest release. If we are unable to evolve our solutions and offerings in time to respond to and remain ahead of new technological developments—in applications, networking or security, for example—or in ways that are compelling to customers, our ability to retain or increase market share and revenue could be materially adversely affected. We may also fail to adequately anticipate the commercialization of emerging technologies, such as blockchain, and the development of new markets and applications for our technology, such as edge computing, and thereby fail to take advantage of new market opportunities or fall behind early movers in those markets.

**We operate a global business that exposes us to additional risks.**

A significant portion of our employees, customers and channel partners are located outside the U.S. Our international activities account for a substantial portion of our revenue and profits, and our investment portfolio includes investments in non-U.S. financial instruments and holdings in non-U.S. financial institutions. In addition to the risks described elsewhere in these risk factors, our international operations subject us to a variety of risks, including:

- difficulties in delivering support, training and documentation; enforcing contracts; collecting accounts receivable; transferring funds; maintaining appropriate controls relating to revenue recognition practices; and longer payment cycles in certain countries and especially in emerging markets;
- network security and privacy concerns, which could make foreign customers reluctant to purchase products and services from U.S.-based technology companies;
- tariffs and trade barriers, and other regulatory or contractual limitations on our ability to sell or develop our products and services in certain foreign markets, such as in China, whose government has adopted a range of laws and regulations relating to the procurement of key network equipment and security products and the storage and processing of data that might cause our business in China to suffer and expose us to civil and criminal penalties;
- localized impacts of the COVID-19 pandemic that persist or flare up in particular regions, such as in India where several of our global support services as well as research and development personnel are located, have in the past and in the future could cause delays or disruptions in certain of our business operations and product development;
- economic or political instability and uncertainty about or changes in government and trade relationships, policies, and treaties that could adversely affect the ability of U.S.-based companies to conduct business in non-U.S. markets, such as in the U.K. where considerable regulatory uncertainty remains regarding compliance post-Brexit; and
- legal risks, particularly in emerging markets, relating to compliance with U.S. exchange control requirements and international and U.S. anti-corruption laws and associated exposure to significant fines, penalties and reputational harm.



Our failure to manage any of these risks successfully could negatively affect our reputation and materially adversely affect our operating results.

**Our success depends on the interoperability of our products and services with those of other companies.**

The success of our products depends upon the cooperation of hardware and software vendors to ensure interoperability with our products and offer compatible products and services to end users. In addition, we extend the functionality of various products to work with native public cloud applications, which in some cases requires the cooperation of public cloud vendors. To the extent that hardware, software and public cloud vendors perceive that their products and services compete with ours or those of our controlling stockholder, Dell, they may have an incentive to withhold their cooperation, decline to share access or sell to us their proprietary APIs, protocols or formats, or engage in practices to actively limit the functionality, compatibility and certification of our products. In addition, vendors may fail to certify or support or continue to certify or support our products for their systems. If any of the foregoing occurs, our product development efforts may be delayed or foreclosed and it may be difficult and more costly for us to achieve functionality and service levels that would make our services attractive to end users, any of which could negatively impact our business and operating results.

**Failure to effectively manage our product and service lifecycles could harm our business.**

As part of the natural lifecycle of our products and services, we periodically inform customers that products or services will be reaching their end of life or end of availability and will no longer be supported or receive updates and security patches. To the extent these products or services remain subject to a service contract with the customer, we offer to transition the customer to alternative products or services. Failure to effectively manage our product and service lifecycles could lead to customer dissatisfaction and contractual liabilities, which could adversely affect our business and operating results.

***Financial Risks***

**Our operating results may fluctuate significantly.**

Our operating results may fluctuate due to a variety of factors, many of which are outside of our control. As a result, comparing our operating results on a period-to-period basis may not be meaningful, and our past results should not be relied upon as an indication of our future performance. In addition, a significant portion of our quarterly sales typically occurs during the last two weeks of the quarter, which generally reflects customer buying patterns for enterprise technology. As a result, our quarterly operating results are difficult to predict even in the near term. If our revenue or operating results fall below the expectations of investors or securities analysts or below any guidance we may provide to the market, the price of our Class A common stock would likely decline substantially.

Factors that may cause fluctuations in our operating results include, among others, the factors described elsewhere in this risk factors section and the following:

- fluctuations in demand, adoption and renewal rates, sales cycles and pricing levels for our products and services;
- variations in customer choices among our on-premises and subscription and SaaS offerings, which can impact our rates of total revenue and license revenue growth;
- the timing of announcements or releases of new or upgraded products and services by us, our partners or competitors;
- the timing of sales orders processing, which can cause fluctuations in our backlog and impact our bookings and timing of revenue recognition;
- our ability to maintain scalable internal systems for reporting, order processing, license fulfillment, product delivery, purchasing, billing and general accounting, among other functions;
- our ability to control costs, including our operating expenses, and the timing and amount of internal use software development costs that may be capitalized;
- the credit risks associated with our distributors, who account for a significant portion of our product revenue and accounts receivable, and our customers;
- the timing and size of realignment plans and restructuring charges;
- seasonal factors such as end of fiscal period expenditures by our customers and the timing of holiday and vacation periods;
- unplanned events that could affect market perception of the quality or cost-effectiveness of our products and solutions; and
- fluctuations in the severity and duration of the COVID-19 pandemic and resulting restrictions on business activity which may vary significantly by region.

**Adverse economic conditions may harm our business.**

Our business success depends in part on worldwide economic conditions. The overall demand for and spend on IT may be viewed by our current and prospective customers as discretionary and, in times of economic uncertainty, customers may delay, decrease, reduce the value and duration, or cancel purchases and upgrades of our products and services. Weak economic conditions or significant uncertainty regarding the stability of financial markets related to stock market volatility, inflation, recession, changes in tariffs, trade agreements or governmental fiscal, monetary and tax policies, among others, could adversely impact our business, financial condition and operating results. General and ongoing tightening in the credit market, lower levels of liquidity, increases in rates of default and bankruptcy and significant volatility in equity and fixed-income markets could all negatively impact our customers' purchasing decisions. Increases in interest rates on credit and debt that would increase the cost of our borrowing could impact our ability to access the capital markets and adversely affect our ability to repay or refinance our outstanding indebtedness, fund future product development and acquisitions or conduct stock buybacks.

For example, the COVID-19 pandemic has depressed economic activity worldwide, and the timing and strength of an economic recovery is highly uncertain and likely to vary significantly by region. While the COVID-19 pandemic has not had a material adverse financial impact on our operations to date, the future course of the pandemic and any resulting economic impact remain highly uncertain and continue to rapidly evolve. We have observed negative impacts on our sales and our financial results from and there continues to be significant uncertainty regarding the economic effects of the COVID-19 pandemic. For example, during much of fiscal 2021, we saw delays in customers' large transformative on-premises projects that we believe were largely due to COVID-19, which negatively impacted our product sales. There remains considerable uncertainty regarding the progress of vaccination programs, the dangers posed by COVID-19 variants and when a return to pre-pandemic conditions can occur. Accordingly, should the pandemic persist for a long period of time, economic conditions globally or in particular regions may fail to recover or even worsen, which could cause material adverse impacts to our earnings and other results of operations. Additionally, concerns over the economic impact of COVID-19 have caused volatility in financial and other capital markets, which has and may continue to adversely impact our stock price and our ability to access the equity or debt capital markets on attractive terms or at all for a period of time, which could have an adverse effect on our liquidity position.

Additionally, trade tensions between the U.S. and its trading partners, like China, have caused and may continue to cause significant volatility in global financial markets. Amidst sustained economic uncertainty, many national and local governments that are current or prospective customers, including the U.S. federal government, may need to make significant changes in their spending priorities, which could reduce the amount of government spending on IT and the potential demand for our products and services from the government sector.

These adverse economic conditions can arise suddenly, have unpredictable impacts and materially adversely affect our future sales and operating results.

**We have outstanding indebtedness in the form of unsecured notes, and we may incur other debt in the future, which may adversely affect our financial condition and future financial results.**

We have outstanding indebtedness that we have undertaken in the normal course of business and in connection with the planned Spin-Off. On April 13, 2021, in connection with the planned Spin-Off, our Board of Directors declared a conditional special cash dividend, pro rata, to holders of Common Stock in an aggregate amount to be mutually agreed by VMware and Dell between \$11.5 billion and \$12.0 billion (the "Special Dividend"), the payment of which is subject to various conditions. As previously disclosed, we expect to fund \$2.5 billion to \$3.5 billion of the Special Dividend through our cash reserves and the balance through incremental indebtedness.

As of July 30, 2021, we had \$4.8 billion in unsecured notes outstanding, an additional unsecured promissory note with an outstanding principal amount of \$270 million owed to Dell (the "Dell Note"), and an undrawn \$1.0 billion unsecured revolving credit facility (the "Existing Revolving Credit Facility"). Additionally, in connection with the planned Spin-Off and Special Dividend, we issued \$6.0 billion in unsecured notes on August 2, 2021, and, on September 2, 2021, we entered into two unsecured term loan facilities enabling an aggregate borrowing capacity of up to \$4.0 billion (the "Term Loan") and a \$1.5 billion unsecured revolving credit facility that replaced the Existing Revolving Credit Facility (the "2021 Revolving Credit Facility"). The terms of our unsecured notes, Dell Note, Term Loan, Existing Revolving Credit Facility and 2021 Revolving Credit Facility impose restrictions on us, including in specified and customary covenants, our compliance with which may be affected by events beyond our control, including prevailing economic, financial and industry conditions and whether the Spin-Off and Special Dividend are consummated. If we fail to satisfy any of the terms or breach any of the covenants and do not obtain a waiver from the lenders or note holders, then, subject to applicable cure periods, any outstanding indebtedness may be declared immediately due and payable or, with respect to the unsecured notes, we may be required to repurchase our unsecured notes at a price equal to 101% of the aggregate principal plus any accrued and unpaid interest.

Our current and any future debt may adversely affect our financial condition and future financial results by, among other things, increasing our vulnerability to adverse changes in general economic and industry conditions, necessitating use or dedication of our expected cash flow from operations to service our indebtedness instead of for other purposes, such as capital expenditures and acquisitions, and limiting our flexibility in planning for, or reacting to, business changes.

In addition, any actual or anticipated changes to our credit ratings, including any announcement that our credit ratings are under review by any rating agency, may:

- negatively impact the value and liquidity of our debt and equity securities;
- result in an increase in the interest rate payable by us and the cost of borrowing under our 2021 Revolving Credit Facility;
- negatively affect the terms of and restrict our ability to obtain financing in the future; and
- upon the occurrence of certain downgrades of the ratings of our unsecured notes, require us to repurchase our unsecured notes at a price equal to 101% of the aggregate principal plus any accrued and unpaid interest.

Additionally, our parent company, Dell, has a significant level of debt financing, and any negative changes to Dell's credit rating could also negatively impact our credit rating and the value and liquidity of any future debt we might raise. Refer to "Liquidity and Capital Resources" in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part I, Item 2 of this Quarterly Report on Form 10-Q for more information on our outstanding indebtedness.

**Our operating results may be adversely impacted by exposure to additional tax liabilities and higher than expected tax rates.**

We are subject to income taxes as well as non-income-based taxes, such as payroll, sales and property taxes, in many of the jurisdictions in which we operate. Our tax liabilities are dependent on the allocation of revenue and expenses in different jurisdictions and the timing of recognizing revenue and expenses. Significant judgment is required to determine our worldwide provision for income taxes and other tax liabilities. For example, in the ordinary course of our global business, we execute intercompany transactions, including intellectual property transfers, that require us to make tax estimates because the ultimate tax determination is uncertain. We are subject to income and indirect tax examinations and are undergoing audits in various jurisdictions. For instance, the Internal Revenue Service ("IRS") has started its examination of fiscal years 2015 through 2019 for the Dell consolidated group, of which VMware was part beginning in Dell's fiscal year 2017. While we believe we have complied with all applicable income tax laws and made reasonable tax estimates, a governing tax authority could have a different legal interpretation and a final determination of tax audits or disputes may differ from what is reflected in our historical income tax provisions or benefits and accruals and we may be assessed with additional taxes. In addition, regulatory guidance is still forthcoming with respect to the 2017 Tax Cuts and Jobs Act ("2017 Tax Act") and such guidance may adversely impact our tax provision. Any assessment of additional taxes could materially affect our financial condition and operating results.

Our future effective tax rate may be affected by such factors as:

- the expiration of legal statutes of limitation and settlements of audits;
- the impact of accounting for stock-based compensation and for business combinations, such as our acquisition of Pivotal, which was accounted for as a common control transaction;
- the recognition of excess tax benefits or deficiencies within the income tax provision or benefit in the period in which they occur;
- the overall levels and proportion of our income before provision for income taxes earned in the U.S. and in jurisdictions with a tax rate lower than the U.S. statutory rate; and
- changes in tax laws or their interpretations, in our business or statutory rates, and in our corporate structure.

For example, in October 2014, Ireland announced revisions to its tax regulations, that, among other things, would raise tax rates on the foreign earnings of our Ireland-organized subsidiary by which our non-U.S. earnings are primarily earned. For this and other reasons, we proactively made structural changes to mitigate the impact of the changing Irish tax regulations to our future tax rates. Numerous other countries have also recently enacted or are considering enacting changes to tax laws, administrative interpretations, decisions, policies and positions. These and any other significant changes to U.S., Irish or international tax laws could materially adversely affect our effective tax rate, the timing and amount of our tax liabilities and payments, our financial condition and operating results.

## **Security Risks**

### **Cybersecurity breaches of our systems or the systems of our vendors, partners and suppliers could materially harm our business.**

Cyber risks represent a large and growing risk to our business, as we depend upon our IT systems, proprietary software and services, as well as the systems of SaaS providers, to conduct virtually all of our business operations. Some of the factors that contribute to significant cyber risks include:

- We increasingly develop and maintain large data sets and rely on machine learning, artificial intelligence and analytics to provide services to our customers and partners.
- Customers conduct purchase and service transactions online, and we store increasing amounts of customer data and host or manage parts of customers' businesses in cloud-based IT environments.
- Due to the COVID-19 pandemic and the rollout of our "Future of Work" program to work from anywhere, greater numbers of our employees work remotely, making them and us more vulnerable to cyber-attacks, including email phishing and social engineering.
- We rely on third parties and their systems for a number of our business functions and to sell our products and services as distributors, resellers, system vendors and systems integrators.
- Sophisticated hardware, software and applications that we produce or procure from third parties have in the past and will in the future contain defects or vulnerabilities that could interfere with our systems and processes.
- Our leadership position in the enterprise security industry makes us and our products a target of computer hackers seeking to compromise product security.
- We are considered an essential supplier in the digital supply chain for the United States government and others, which makes us and our products a target for those seeking to threaten the confidentiality, availability and integrity of critical infrastructure globally.

Cyber-attacks, which are increasing in number and technical sophistication, threaten to misappropriate our proprietary information, cause interruptions of our IT services, introduce vulnerabilities, extract financial gain and commit fraud. We may not be able to anticipate the techniques used in such attacks, as they change frequently and may not be recognized until launched. If unauthorized access or sabotage remains undetected for an extended period of time, the effects of any such breach could be exacerbated.

Unauthorized parties (which may have included nation states and individuals sponsored by them) have penetrated our network security and our website in the past and may do so in the future. In addition, employees or contractors have introduced vulnerabilities in, and enabled the exploitation of, our IT environments, our software products (and correspondingly our customers' environments), and our subscription and SaaS offerings in the past and may do so in the future. These vulnerabilities have and will continue to have a corresponding impact on our customers' environments that use our affected software products, and delays by customers in taking appropriate security measures in their environments increase the potential severity of the impact. We are increasingly targeted for financial gain and fraud by criminal persons and groups that seek to extort or steal funds from companies and employees. Significant and increasing investments of time, resources and management's attention have been, and will continue to be, required to anticipate and address cyber-related challenges. Accordingly, if our cybersecurity systems and those of our contractors, partners and vendors fail to protect against breaches, our ability to conduct our business could be damaged in a number of ways, including:

- sensitive data regarding our business, including intellectual property and other proprietary data, could be stolen;
- our electronic communications systems, including email and other methods, could be disrupted, and our ability to conduct our business operations could be seriously damaged until they are restored and secured;
- our ability to process and electronically deliver customer orders could be degraded, and our distribution channels could be disrupted, resulting in delays in revenue recognition;
- defects and security vulnerabilities could be exploited or introduced into our software products or our subscription and SaaS offerings and impair or disrupt them, thereby damaging the reputation and perceived reliability and security of our products and services and potentially making the data systems of our customers and partners vulnerable to further data loss and cyber incidents; and
- personally identifiable information or confidential data of our customers, employees and business partners could be stolen or lost.

Should any of the above events occur, or are perceived to have occurred, we could be subject to significant claims for liability from our customers, partners, vendors, or employees (among others); we could face regulatory actions and sanctions

from governmental agencies under privacy, data protection or other laws; our ability to protect our intellectual property rights could be compromised; our reputation and competitive position could be materially harmed; we could face material losses as the result of successful financial cyber-fraud schemes; and we could incur significant costs in order to upgrade our cybersecurity systems, remediate damages and defend the Company in any legal, regulatory or legislative proceedings. Consequently, our business, financial condition and operating results could be materially adversely affected.

**Our products and services are highly technical and may contain, or be subject to other suppliers', errors, defects or security vulnerabilities.**

Our products and services are highly technical and complex and, when deployed, have contained and may contain errors, defects or security vulnerabilities, some of which may only be discovered after a product or service has been installed and used by customers. Security vulnerabilities in user environments, installation errors or misuse can also lead to unintended access to or exploitation of our products. Accordingly, from time to time we have issued security alerts and provided software updates to customers when such issues have been identified. Undiscovered vulnerabilities in our products or services could expose our customers to hackers or other unscrupulous third parties who develop and deploy viruses, worms and other malicious software programs that could attack our products or services. Further, our use of open-source software in our offerings can make our products and services vulnerable to additional security risks not posed by proprietary products. In the past, VMware has been made aware of public postings by hackers of portions of our source code. It is possible that the released source code could expose unknown security vulnerabilities in our products and services that could be exploited by hackers or others. VMware products and services are also subject to known and unknown security vulnerabilities resulting from integration with products or services of other companies (such as applications, operating systems or semiconductors). Actual or perceived errors, defects or security vulnerabilities in our products or services could harm our reputation, result in litigation or regulatory actions or lead some customers to return products or services, reduce or delay future purchases or use competitive products or services, any of which could materially negatively impact our business, operating results and stock price.

**Problems with our information systems could interfere with our business and could adversely impact our operations.**

We rely on our information systems and those of third parties for fulfilling contractual obligations, including processing customer orders, delivering products and providing services, performing accounting operations and otherwise running our business. If our systems fail, our disaster and data recovery planning and capacity may prove insufficient to enable timely recovery of important functions and business records. Additionally, our information systems may not efficiently support new business models and initiatives, and significant investments could be required in order to upgrade existing or implement new systems. Business requirements may require additional capabilities including implementation of a new information system. For example, during the first quarter of fiscal 2020 we implemented a new lease accounting software to facilitate the preparation of financial information related to the adoption of accounting standard updates. Further, we continuously work to enhance our information systems, such as our enterprise resource planning software, and the implementation of such enhancements is frequently disruptive to the underlying enterprise, which may especially be the case for us due to the size and complexity of our business, and may disrupt internal controls and business processes that could introduce unintended vulnerability to error. Any such disruption to our information systems and those of the third parties upon whom we rely could have a material impact on our business.

***Legal and Compliance Risks***

**We are involved in litigation, investigations and regulatory inquiries and proceedings that could negatively affect us.**

As described in Note D (Litigation) to the condensed consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q, we are, and may become, involved in various legal and regulatory proceedings, and investigations relating to our business, including with respect to antitrust and competition, breach of contract, class action, commercial, corporate governance, cybersecurity, employment, intellectual property, privacy, securities, and whistleblower matters. Matters such as these may impact our business in different ways. Intellectual property infringement claims, for example, may seek injunctive relief or other court orders that could prevent us from offering our products. As a result, we might be required to seek a license for the use of such intellectual property, which may not be available on commercially reasonable terms or at all, or we may be required to develop non-infringing technology, which could require significant effort and expense and may ultimately not be successful. Because we generally indemnify our customers and partners from intellectual property infringement claims in connection with the use of our products, we may be called on to defend these customers and partners in litigation. From time to time, we also receive inquiries from and have discussions with government entities regarding our compliance with laws and regulations. Such litigation, investigations, regulatory inquiries, and proceedings can be unpredictable and time-consuming, divert management's attention and resources, and cause us to incur significant expenses. Allegations made in connection with these matters may harm our reputation, regardless of their merit and could have a material adverse impact on our business, financial condition, cash flows or results of operations if decided adversely to or settled by us.

**We may not be able to adequately protect our intellectual property rights.**

We depend on our ability to protect our proprietary technology. We rely on trade secret, patent, copyright and trademark laws and confidentiality agreements with employees and third parties, all of which offer only limited protection. As such, despite our efforts, the steps we have taken to protect our proprietary rights may not be adequate to prevent misappropriation of our proprietary information or infringement of our intellectual property rights, and our ability to police such misappropriation or infringement is uncertain, particularly in countries outside of the U.S. In addition, we rely on confidentiality and license agreements with third parties in connection with their use of our products and technology. There is no guarantee that such parties will abide by the terms of such agreements or that we will be able to adequately enforce our rights, in part because we rely on “click-wrap” and “shrink-wrap” licenses in some instances.

Detecting and protecting against the unauthorized use of our products, technology proprietary rights and intellectual property rights is expensive, difficult, uncertain and, in some cases, impossible. Litigation is necessary from time to time to enforce or defend our intellectual property rights, to protect our trade secrets or to determine the validity and scope of the proprietary rights of others. Despite our efforts, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property, which could result in a substantial loss of our market share.

**Actual or perceived non-compliance with privacy and data protection laws, regulations and standards could adversely impact our business.**

Our business is subject to laws and regulations by various federal, state and international legislative and governmental agencies responsible for legislating, monitoring and enforcing privacy and data protection laws (“Data Privacy Laws”). The regulatory framework regarding the collection, protection, use, transfer and disclosure of personal information is rapidly evolving, and Data Privacy Laws are subject to new and changing interpretations and amendments, creating uncertainty and additional legal obligations for ourselves, our partners, vendors and customers. We expect that there will continue to be newly proposed or changes to interpretations of existing Data Privacy Laws and industry standards, including self-regulatory standards advocated by industry groups, in various jurisdictions globally, and we may not be able to appropriately anticipate or timely respond to the impacts such and similar developments may have on our business or the businesses of our partners, vendors and customers.

We continue to regularly enhance our policies and controls across our business relating to how we and our business partners collect, protect and use customer and employee personal information. Ongoing changes to the regulatory landscape will likely increase the cost and complexity of our business relationships, internal operations and the delivery of our products and services. In addition, this may affect our ability to run promotions and effectively market our offerings and could subsequently impact the demand for our products and services.

Any actual or perceived failure by us or our business partners to comply with Data Privacy Laws, the privacy commitments contained in our contracts, or the privacy notices we have posted on our website could subject us to investigations, sanctions, enforcement actions, negative financial consequences, civil and criminal liability or injunctions. For example, failure to comply with the EU’s General Data Protection Regulation requirements may lead to fines of up to €20 million or 4% of the annual global revenues of the infringer, whichever is greater. Additionally, as a technology provider, our customers expect us to demonstrate compliance with current Data Privacy Laws and further make contractual commitments and implement processes to enable the customer to comply with their own obligations under Data Protection Laws, and our actual or perceived inability to do so may adversely impact sales of our products and services, particularly to customers in highly regulated industries. As a result, our reputation and brand may be harmed, we could incur significant costs, and our financial and operating results could be materially adversely affected.

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

Many of our products and services incorporate so-called “open source” software, and we may incorporate open source software into other products and services in the future. Open source software is generally licensed by its authors or other third parties under open source licenses. Open source licensors generally do not provide warranties or assurance of title or controls on origin of the software, which exposes us to potential liability if the software fails to work or infringes the intellectual property of a third party.

We monitor our use of open source software in an effort to avoid subjecting our products to conditions we do not intend and avoid exposing us to unacceptable financial risk. However, the processes we follow to monitor our use of open source software could fail to achieve their intended result. In addition, although we believe that we have complied with our obligations under the various applicable licenses for open source software that we use, there is little or no legal precedent governing the interpretation of terms in most of these licenses, which increases the risk that a court could interpret the licenses differently than we do.



From time to time, we receive inquiries or claims from authors or distributors of open source software included in our products regarding our compliance with the conditions of one or more open source licenses. An adverse outcome to a claim could require us to:

- pay significant damages;
- stop distributing our products that contain the open source software;
- revise or modify our product code to remove alleged infringing code;
- release the source code of our proprietary software; or
- take other steps to avoid or remedy an alleged infringement.

We have faced and successfully defended against allegations of copyright infringement and failing to comply with the terms of the open source General Public License v.2, but we can provide no assurances that we will not face similar lawsuits with respect to our use of open source software in the future, nor what the outcome of any such lawsuits may be.

**If we fail to comply with government contracting regulations, our business could be adversely affected.**

Our contracts with federal, state, local and non-U.S. governmental customers and our arrangements with distributors and resellers who may sell directly to governmental customers are subject to various procurement regulations, contract provisions and other requirements relating to their formation, administration and performance. Any failure by us to comply with government contracting regulations (including cybersecurity-related requirements) could result in the imposition of various civil and criminal penalties, which may include termination of contracts, forfeiture of profits, suspension of payments, fines and suspension from future government contracting, any of which could adversely affect our business, operating results or financial condition. Further, any negative publicity related to our government contracts or any proceedings surrounding them, regardless of accuracy, may damage our business and affect our ability to compete for new contracts.

***Risks Related to Our Relationship with Dell***

**The proposed Spin-Off and associated special dividend are subject to various conditions and may not occur.**

On April 14, 2021, we and Dell entered into a separation and distribution agreement, pursuant to which, subject to the satisfaction of all conditions to the consummation of the transactions contemplated thereby, Dell will distribute the shares of Class A Stock and Class B Stock owned by its wholly owned subsidiaries, to the holders of shares of Dell as of a record date determined pursuant to the separation and distribution agreement on a pro rata basis (the “Spin-Off”). Immediately following, and automatically as a result of the Spin-Off, and prior to receipt thereof by Dell’s stockholders, each share of Class B Stock will automatically convert into one fully paid and non-assessable share of Class A Stock. Subject to the satisfaction of the conditions to payment described in the separation and distribution agreement, we will also pay a cash dividend, pro rata, to each of the holders of Common Stock (including Dell) immediately prior to the Spin-Off in an aggregate amount equal to an amount to be mutually agreed by VMware and Dell between \$11.5 billion and \$12.0 billion (the “Special Dividend” and, together with the Spin-Off and related transactions, the “Transactions”).

The obligation of each of Dell and VMware to complete the Transactions is subject to a number of conditions, including, among other things: receipt of opinions from independent firms regarding surplus and solvency matters, receipt of certain opinions by Dell concerning the federal income tax treatment of the Transactions, receipt by Dell of a private letter ruling from the Internal Revenue Service (“IRS”) concerning the federal tax treatment of the Transactions, absence of legal restraints that prohibit, enjoin or make illegal the consummation of the Transactions, absence of pending litigation that would reasonably be expected to prohibit, impair or materially delay the ability of VMware or Dell to consummate the Transactions on the terms contemplated by the separation and distribution agreement or that seeks material damages or another material remedy in connection with the separation and distribution agreement or the Transactions, satisfaction of the Additional Dividend Payment Conditions (as defined below), NYSE listing approval, and accuracy of representations and warranties and compliance with covenants, subject to certain materiality standards.

In addition to each of the conditions stated above, the payment of the Special Dividend is further conditioned upon (i) the absence of a VMware Material Adverse Effect (as defined in the separation and distribution agreement) prior to declaration of the Special Dividend, (ii) the Company having an investment grade rating (as further described in the separation and distribution agreement), (iii) the Company’s receipt of an opinion from a nationally recognized and independent firm that as of the date of payment, (x) the Company (on a consolidated basis) has sufficient surplus under Delaware law for the payment of the Special Dividend and (y) following the payment of the Special Dividend, the Company (on a consolidated basis) will be solvent under Delaware law and (iv) such other conditions as are further described in the separation and distribution agreement (together, the “Additional Dividend Payment Conditions”). If any of the conditions to the consummation of the Transactions are not met, such condition(s) may be waived, to the extent permitted by law, by the party or parties in whose favor the condition(s)

exist (and, in the event of a waiver by VMware, the VMware special committee of independent and disinterested directors consents to the waiver), and the Transactions may proceed.

We may not be able to complete the proposed Transactions on the terms described above or on other acceptable terms or at all because of a number of factors, including (1) the occurrence of any event, change or other circumstances that could give rise to the termination of the separation and distribution agreement, (2) the failure to obtain adequate financing sources for the Special Dividend, (3) any other failure of VMware or Dell to meet the conditions described above or otherwise waive such conditions, (4) the failure of VMware to satisfy certain rating agency criteria, (5) the effect of the announcement of the Transactions on the ability of the Company to retain and hire key personnel and maintain relationships with its customers, suppliers, operating results and business generally and (6) the other factors described in this “Risk Factors” section.

**Our relationship with Dell may adversely impact our business and stock price.**

As of July 30, 2021, Dell beneficially owned 30,678,605 shares of our Class A common stock and all 307,221,836 shares of our Class B common stock, representing 80.6% of the total outstanding shares of common stock or 97.5% of the voting power of outstanding common stock held by EMC, and we are considered a “controlled” company under the rules of the New York Stock Exchange (“NYSE”). Accordingly, strategic and business decisions made by Dell can impact our strategic and business decisions and relationships, and public speculation regarding Dell’s strategic direction and prospects, as well as our relationship with Dell, can cause our stock price to fluctuate.

For example, in July 2020, Dell announced that it was exploring its strategic alternatives with respect to its ownership interest in us, including a possible spin-off of its ownership interest to Dell stockholders. Prior to the announcement of the Spin-Off, the stock price of our Class A common stock experienced periods of significant volatility related to public speculation regarding the outcome of Dell’s strategic review and the likelihood of its success. If the Spin-Off fails to occur for any reason, we expect that speculation regarding Dell’s future plans with respect to VMware will lead to continued volatility.

A number of other factors relating to our relationship with Dell could adversely affect our business or our stock price in the future, including:

- Dell is able to control matters requiring our stockholders’ approval, including the election of a majority of our directors as described in the risk factors below.
- Dell could implement changes to our business, including changing our commercial relationship with Dell or taking other corporate actions, such as participating in business combinations, that our other stockholders may not view as beneficial.
- We have arrangements with a number of companies that compete with Dell, and our relationship with Dell could adversely affect our relationships with these companies or other customers, suppliers and partners.
- Since the Dell Acquisition, the portion of our bookings that are realized through Dell sales channels has grown more rapidly than our sales through non-Dell resellers and distributors, and we expect this trend to continue. To the extent that we find ourselves relying more heavily upon Dell for our channel sales, Dell’s leverage over our sales and marketing efforts may increase and our ability to negotiate favorable go-to-market arrangements with Dell and with other channel partners may decline. During the six months ended July 30, 2021, revenue from Dell, including purchases of products and services directly from us, as well as through our channel partners, accounted for 36% of our consolidated revenue, which included revenue from Dell selling joint solutions as an OEM, acting as a distributor to other non-Dell resellers, reselling products and services as a reseller or purchasing products and services for its own internal use. On certain transactions, Dell Financial Services also provided financing to our end users at our end users’ discretion.
- Dell has a right to approve certain matters under our certificate of incorporation, including acquisitions or investments in excess of \$100 million, and Dell may choose not to consent to matters that our board of directors believes are in the best interests of VMware. If the Spin-Off is consummated, these consent rights will terminate.
- Dell is highly leveraged and commits a substantial portion of its cash flows to servicing its indebtedness. Dell’s significant debt could create the perception that Dell may exercise its control over us to limit our growth in favor of its other businesses or cause us to transfer cash to Dell and incur additional indebtedness. In addition, if Dell defaults, or appears in danger of defaulting, on its indebtedness, uncertainty as to the impact of such a default on VMware could disrupt our business.
- Investor perceptions of Dell’s performance, future plans and prospects could contribute to volatility in the price of our Class A common stock.
- Some of our products compete directly with products sold or distributed by Dell, which could result in reduced sales.



**If the Spin-Off is consummated, we will be subject to a variety of risks.**

If the Spin-Off is consummated, we will be subject to a variety of risks, including:

- We expect to incur significant indebtedness to fund the Special Dividend. Although retaining an investment grade credit rating is a condition of paying the Special Dividend, the VMware special committee may agree to waive this condition, and, in any case, we may be unable to retain an investment grade rating in the future. In addition, we expect to dedicate a significant portion of our operating cash flows during the next few fiscal years to reducing indebtedness, which will limit our uses of cash, such as cash acquisitions and stock repurchases. See “Financial Risks—We have outstanding indebtedness in the form of unsecured notes and may incur other debt in the future, which may adversely affect our financial condition and future financial results.”
- We expect that sales via our various route-to-market relationships with Dell will continue to constitute a significant percentage of our revenues for the foreseeable future. Although we and Dell have agreed to enter into a commercial agreement that is intended to preserve and enhance our strategic partnership with Dell, our relationship with Dell as a standalone company will be fundamentally different than our current relationship as a majority-owned subsidiary. Following the Spin-Off, Dell will no longer consolidate VMware’s revenues, and Dell may not have the same incentives to drive VMware business. If sales through Dell are negatively impacted following the Spin-Off and VMware is unable to shift business to suitable alternative channel partners, our business and operating results would be negatively affected. See “Operation of Business and Strategic Risks—Disruptions to our distribution channels, including our various routes to market through Dell, could harm our business.”
- As a result of the Spin-Off, entities affiliated with Michael Dell (the “MSD Stockholders”) and entities affiliated with Silver Lake Partners (the “SLP Stockholders”), of which Egon Durban, a VMware director, is a managing partner, will own direct interests in VMware representing 40.5% and 10.1%, respectively, of our outstanding stock, based on the shares outstanding as of August 27, 2021. Through their stock ownership, the MSD Stockholders and the SLP Stockholders will have significant influence over all matters requiring stockholder approval, including the election of directors and significant corporate transactions, such as a merger or other sale of our company or our assets, for the foreseeable future. We have also entered into an agreement pursuant to which the MSD Stockholders will have the right to nominate up to two members of our Board and the SLP Stockholders will have the right to nominate one member of our Board, subject to maintaining certain ownership thresholds. This concentrated control will negatively impact other stockholders’ ability to influence corporate matters. The MSD Stockholders and SLP Stockholders collectively beneficially own 62.7% of Dell’s outstanding stock as of August 27, 2021. Accordingly, their interests may not be aligned with other VMware stockholders with respect to actions involving or impacting Dell.

**Holders of our Class A common stock have limited ability to influence matters requiring stockholder approval.**

As of July 30, 2021, Dell controlled 80.6% of the total outstanding shares of common stock, including all of our outstanding Class B common stock, representing 97.5% of the voting power of our total outstanding common stock. Through its control of the Class B common stock, which is generally entitled to 10 votes per share, Dell controls the vote to elect all of our directors and to approve or disapprove all other matters submitted to a stockholder vote.

Prior to the Spin-Off or, if the Spin-Off fails to close, a subsequent distribution by Dell to its stockholders under Section 355 of the Internal Revenue Code of 1986, as amended (a “355 Distribution”), shares of Class B common stock transferred to any party other than a successor-in-interest or a subsidiary of EMC automatically convert into Class A common stock. Dell’s voting control over VMware will continue so long as the shares of Class B common stock it controls continue to represent at least 20% of our outstanding stock. If its ownership falls below 20% of the outstanding shares of our common stock, all outstanding shares of Class B common stock will automatically convert to Class A common stock. If Dell effects a 355 Distribution at a time when it holds shares of Class B common stock, its stockholders will receive Class B common stock. These shares will remain entitled to 10 votes per share, holders of these shares will remain entitled to elect 80% of the total number of directors on our board of directors and the holders of our Class A common stock will continue to have limited ability to influence matters requiring stockholder approval and have limited ability to elect members of our board of directors. Following a 355 Distribution, shares of Class B common stock may convert to Class A common stock if such conversion is approved by VMware stockholders after the 355 Distribution and we have obtained a private letter ruling from the IRS.

**Dell has the ability to prevent us from taking actions that might be in our best interest.**

Under our certificate of incorporation and the master transaction agreement we entered into with EMC, we must (subject to certain exceptions) obtain the consent of EMC (which is controlled by Dell) or its successor-in-interest, as the holder of our Class B common stock, prior to taking specified actions, such as acquiring other companies for consideration in excess of \$100 million, issuing stock or other VMware securities, except pursuant to employee benefit plans (provided that we obtain Class B common stockholder approval of the aggregate annual number of shares to be granted under such plans), paying dividends, entering into any exclusive or exclusionary arrangement with a third party involving, in whole or in part, products or

services that are similar to EMC's or amending certain provisions of our charter documents. In addition, we have agreed that for so long as EMC or its successor-in-interest continues to own greater than 50% of the voting control of our outstanding common stock, we will not knowingly take or fail to take any action that could reasonably be expected to preclude the ability of EMC or its successor-in-interest (including Dell) to undertake a tax-free spin-off. If Dell does not provide any requisite consent allowing us to conduct such activities when requested, we will not be able to conduct such activities. As a result, we may have to forgo capital raising or acquisition opportunities that would otherwise be available to us, and we may be precluded from pursuing certain growth initiatives.

By becoming a stockholder in our company, holders of our Class A common stock are deemed to have notice of and have consented to the provisions of our certificate of incorporation and the master transaction agreement with respect to the limitations that are described above.

**Dell has the ability to prevent a change-in-control transaction and may sell control of VMware without benefiting other stockholders.**

Dell's voting control and its additional rights described above give Dell the ability to prevent transactions that would result in a change of control of VMware, including transactions in which holders of our Class A common stock might otherwise receive a premium for their shares over the then-current market price. In addition, Dell is not prohibited from selling a controlling interest in us to a third party and may do so without the approval of the holders of our Class A common stock and without providing for a purchase of any shares of Class A common stock held by persons other than Dell. Accordingly, shares of Class A common stock may be worth less than they would be if Dell did not maintain voting control over us or if Dell did not have the additional rights described above.

**If Dell's level of ownership significantly increases, Dell could unilaterally effect a merger of VMware into Dell without a vote of VMware stockholders or the VMware Board of Directors at a price per share that might not reflect a premium to then-current market prices.**

As of July 30, 2021, Dell controlled 80.6% of VMware's outstanding common stock, and Dell's percentage ownership of VMware common stock could increase as a result of repurchases by VMware of its Class A common stock or purchases by Dell. Section 253 of the Delaware General Corporation Law permits a parent company, when it owns 90% or more of each class of a subsidiary's stock that generally would be entitled to vote on a merger of that subsidiary with the parent, to unilaterally effect a merger of the subsidiary into the parent without a vote of the subsidiary's board or stockholders. Accordingly, if Dell becomes the holder of at least 90% of VMware's outstanding stock, neither VMware's board of directors nor VMware's stockholders would be entitled to vote on a merger of VMware into Dell (the "short-form merger"). Moreover, a short-form merger is not subject to the stringent "entire fairness" standard and the parent company is not required to negotiate with a special committee of disinterested directors that would serve to approximate arm's length negotiations designed to ensure that a fair price is paid. Rather, a minority stockholder's sole remedy in the context of a short-form merger is to exercise appraisal rights under Delaware law. In such a proceeding, petitioning stockholders may be awarded more or less than the merger price or the amount they would have received in a merger negotiated between the parent and a disinterested special committee advised by independent financial and legal advisors. Pursuant to a letter agreement entered into by VMware and Dell on July 1, 2018, until the ten-year anniversary of the agreement, Dell may not purchase or otherwise acquire any shares of common stock of VMware if such acquisition would cause the common stock of VMware to no longer be publicly traded on a U.S. securities exchange or VMware to no longer be required to file reports under Sections 13 and 15(d) of the Exchange Act, in each case, unless such transaction has been approved in advance by a special committee of the VMware Board of Directors comprised solely of independent and disinterested directors or such acquisition of VMware common stock is required in order for VMware to continue to be a member of the affiliated group of corporations filing a consolidated tax return with Dell.

**We engage in related persons transactions with Dell that may divert our resources, create opportunity costs and prove to be unsuccessful.**

We currently engage in a number of related persons transactions with Dell that include joint product development, go-to-market, branding, sales, customer service activities, real estate and various support services, and we expect to engage in additional related persons transactions with Dell to leverage the benefits of our strategic alignment. For example, in December 2019, we acquired Pivotal, a then majority owned subsidiary of Dell and a company in which we held a significant ownership interest. Following the Spin-Off, transactions with Dell will continue to be considered related persons transactions due to the share ownership in both Dell and VMware of the MSD Stockholders and the SLP Stockholders.

We believe that these related persons transactions provide us a unique opportunity to leverage the respective technical expertise, product strengths and market presence of Dell and its subsidiaries for the benefit of our customers and stockholders while enabling us to compete more effectively with competitors who are much larger than us. However, these transactions may prove not to be successful and may divert our resources or the attention of our management from other opportunities. Negotiating and implementing these arrangements can be time consuming and cause delays in the introduction of joint product

and service offerings and disruptions to VMware's business. We cannot predict whether our stockholders and industry or securities analysts who cover us will react positively to announcements of new related persons transactions with Dell, and such announcements could have a negative impact on our stock price. Our participation in these transactions may also cause certain of our other vendors and ecosystem partners who compete with Dell and its subsidiaries to also view us as their competitors.

**Our business and Dell's businesses overlap, and Dell may compete with us, which could reduce our market share.**

We and Dell are IT infrastructure companies providing products and services that overlap in various areas, including software-based storage, management, hyperconverged infrastructure and cloud computing. Dell competes with us in these areas now and may engage in increased competition with us in the future. In addition, the intellectual property agreement that we have entered into with EMC (which is controlled by Dell) provides EMC the ability to use our source code and intellectual property, which, subject to limitations, it may use to produce certain products that compete with ours. EMC's rights in this regard extend to its majority-owned subsidiaries, which could include joint ventures where EMC holds a majority position and one or more of our competitors hold minority positions.

Dell could assert control over us in a manner that could impede our growth or our ability to enter new markets or otherwise adversely affect our business. Further, Dell could utilize its control over us to cause us to take or refrain from taking certain actions, including entering into relationships with channel, technology and other marketing partners, enforcing our intellectual property rights or pursuing business combinations, other corporate opportunities (which EMC is expressly permitted to pursue under the circumstances set forth in our certificate of incorporation) or product development initiatives that could adversely affect our competitive position, including our competitive position relative to that of Dell in markets where we compete with Dell. In addition, Dell maintains significant partnerships with certain of our competitors, including Microsoft.

**Dell's competition in certain markets may affect our ability to build and maintain partnerships.**

Our existing and potential partner relationships may be negatively affected by our relationship with Dell. We partner with a number of companies that compete with Dell in certain markets in which Dell participates. Dell's control of EMC's majority ownership in us may affect our ability to effectively partner with these companies. These companies may favor our competitors because of our relationship with Dell.

Dell competes with certain of our significant channel, technology and other marketing partners, including IBM and Hewlett-Packard. Pursuant to our certificate of incorporation and other agreements that we have with EMC, EMC and Dell may have the ability to impact our relationship with those of our partners that compete with EMC or Dell, which could have a material adverse effect on our operating results and our ability to pursue opportunities that may otherwise be available to us.

**We could be held liable for the tax liabilities of other members of Dell's consolidated tax group, and compared to our historical results as a member of the EMC consolidated tax group, our tax liabilities may increase, fluctuate more widely and be less predictable.**

We have historically been included in EMC's consolidated group for U.S. federal income tax purposes, as well as in certain consolidated, combined or unitary groups that include EMC or certain of its subsidiaries for state and local income tax purposes, and since the Dell Acquisition, we have been included in Dell's consolidated tax group. Following the Spin-Off, we will no longer be a member of Dell's consolidated tax group. Effective as of the close of the Dell Acquisition, we amended our tax sharing agreement with EMC to include Dell. Although our tax sharing agreement provides that our tax liability is calculated primarily as though VMware were a separate taxpayer, certain tax attributes and transactions are assessed using consolidated tax return rules as applied to the Dell consolidated tax group and are subject to other specialized terms under the tax sharing agreement. Concurrent with the signing of the separation and distribution agreement, we and Dell terminated the existing tax sharing agreement and entered into a new tax matters agreement. Pursuant to our agreement, we and Dell generally will make payments to each other such that, with respect to tax returns for any taxable period in which we or any of our subsidiaries are included in Dell's consolidated group for U.S. federal income tax purposes or any other consolidated, combined or unitary group of Dell or its subsidiaries, the amount of taxes to be paid by us will be determined, subject to certain consolidated return adjustments, as if we and each of our subsidiaries included in such consolidated, combined or unitary group filed our own consolidated, combined or unitary tax return. Consequently, compared to our historical results as a member of the EMC consolidated tax group, the amount of our tax sharing payment compared to our separate return basis liability may increase, vary more widely from period to period and be less predictable. Additionally, the impact of the 2017 Tax Act upon consolidated groups is highly complex and uncertain and its impact must be further interpreted in the context of the tax sharing agreement to determine VMware's tax sharing payment. In April 2019, VMware, Dell and EMC entered into a letter agreement that governs our portion of the one-time transition tax imposed by the 2017 Tax Act on accumulated earnings of foreign subsidiaries.

When we become subject to federal income tax audits as a member of Dell's consolidated group, the tax sharing agreement provides that Dell has authority to control the audit and represent Dell and our interests to the IRS. Accordingly, if we and Dell or its successor-in-interest differ on appropriate responses and positions to take with respect to tax questions that may arise in

the course of an audit, our ability to affect the outcome of such audits may be impaired. In addition, if Dell effects a 355 Distribution or other transaction that is subsequently determined to be taxable, we could be liable for all or a portion of the tax liability, which could have a material adverse effect on our operating results and financial condition.

We have been included in the EMC consolidated group for U.S. federal income tax purposes since our acquisition by EMC in 2004 and will continue to be included in Dell's consolidated group for periods in which Dell or its successor-in-interest beneficially owns at least 80% of the total voting power and value of our outstanding stock. Each member of a consolidated group during any part of a consolidated return year is jointly and severally liable for tax on the consolidated return of such year and for any subsequently determined deficiency thereon. Similarly, in some jurisdictions, each member of a consolidated, combined or unitary group for state, local or foreign income tax purposes is jointly and severally liable for the state, local or foreign income tax liability of each other member of the consolidated, combined or unitary group. Accordingly, for any period in which we are included in the Dell consolidated group for U.S. federal income tax purposes or any other consolidated, combined or unitary group of Dell and its subsidiaries, we could be liable in the event that any income tax liability was incurred, but not discharged, by any other member of any such group.

During the fourth quarter of fiscal 2020, we completed the acquisition of Pivotal. Pivotal will continue to file its separate tax return for U.S. federal income tax purposes as it left the Dell consolidated tax group at the time of Pivotal's initial public offering ("IPO") in April 2018. Pivotal continues to be included on Dell's unitary state tax returns. Pursuant to a tax sharing agreement, Pivotal may receive or owe payments from or to Dell for tax benefits or expenses that Dell realized due to Pivotal's inclusion on such returns.

In December 2019, VMware amended the tax sharing agreement with Dell in connection with, and effective as of, the Pivotal acquisition. The tax sharing agreement with Dell, as amended and subject to certain exceptions, generally limits VMware's maximum annual tax liability to Dell to the amount VMware would owe on a separate tax return basis.

Also, under the tax sharing agreement, if it is subsequently determined that the tracking stock issued in connection with the Dell Acquisition and which Dell subsequently eliminated through a share exchange constitutes a taxable distribution, we could be liable for all or a portion of the tax liability, which could have a material adverse effect on our operating results and financial condition.

**We have limited ability to resolve favorably any disputes that arise between us and Dell.**

Disputes may arise between Dell and us in a number of areas relating to our ongoing relationships, including our reseller, technology and other business agreements with Dell, areas of competitive overlap, strategic initiatives, requests for consent to activities specified in our certificate of incorporation and the terms of our intercompany agreements. We may not be able to resolve any potential conflicts with Dell, and even if we do, the resolution may be less favorable than if we were dealing with an unaffiliated party.

While we are controlled by Dell, we may not have the leverage to negotiate renewals or amendments to these agreements, if required, on terms as favorable to us as those we would negotiate with an unaffiliated third party, if at all.

**Some of our directors have potential conflicts of interest with Dell.**

The Chairman of our Board of Directors, Michael Dell, is also Chairman and CEO of Dell and is a significant stockholder of Dell, and one of our directors, Egon Durbin, is member of the Dell board of directors and managing partner of Silver Lake Partners, which is a significant stockholder of Dell. Another of our directors also holds shares of Dell common stock. Dell, through its controlling voting interest in our outstanding common stock, is entitled to elect 8 of our 10 directors and possesses sufficient voting control to elect the remaining directors. Ownership of Dell common stock by our directors and the presence of executive officers or directors of Dell on our board of directors could create, or appear to create, conflicts of interest with respect to matters involving both us and Dell that could have different implications for Dell than they do for us. Our Board has approved resolutions that address corporate opportunities that are presented to our directors that are also directors or officers of Dell. These provisions may not adequately address potential conflicts of interest or ensure that potential conflicts of interest will be resolved in our favor. As a result, we may not be able to take advantage of corporate opportunities presented to individuals who are directors of both us and Dell and we may be precluded from pursuing certain growth initiatives.

**We are a "controlled company" within the meaning of the New York Stock Exchange rules and, as a result, are relying on exemptions from certain corporate governance requirements that provide protection to stockholders of companies that are not "controlled companies."**

Dell owns more than 50% of the total voting power of our common stock and, as a result, we are a "controlled company" under the NYSE corporate governance standards. As a controlled company, we are exempt under the NYSE standards from the obligation to comply with certain NYSE corporate governance requirements, including the requirements:

- that a majority of our board of directors consists of independent directors;

- that we have a corporate governance and nominating committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities;
- that we have a compensation committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities; and
- for an annual performance evaluation of the nominating and governance committee and compensation committee.

While we have voluntarily caused our Compensation and Corporate Governance Committee to currently be composed entirely of independent directors, reflecting the requirements of the NYSE, we are not required to maintain the independent composition of the committee. As a result of our use of the "controlled company" exemptions, holders of our Class A common stock will not have the same protection afforded to stockholders of companies that are subject to all of the NYSE corporate governance requirements. Following the Spin-Off, we will no longer be a "controlled company" under the NYSE corporate governance standards.

**Dell's ability to control our board of directors may make it difficult for us to recruit independent directors.**

So long as Dell beneficially owns shares of our common stock representing at least a majority of the votes entitled to be cast by the holders of outstanding voting stock, Dell can effectively control and direct our board of directors. Further, the interests of Dell and our other stockholders may diverge. Under these circumstances, it may become difficult for us to recruit independent directors.

**Our historical financial information as a majority-owned subsidiary may not be representative of the results of a completely independent public company.**

The financial information covering the periods included in this report does not necessarily reflect what our financial condition, operating results or cash flows would have been had we been a completely independent entity during those periods. In certain geographic regions where we do not have an established legal entity, we contract with Dell subsidiaries for support services and Dell personnel who are managed by us. The costs incurred by Dell on our behalf related to these employees are passed on to us and we are charged a mark-up intended to approximate costs that would have been charged had we contracted for such services with an unrelated third party. These costs are included as expenses on our condensed consolidated statements of income. Additionally, we engage with Dell in related party transactions, including agreements regarding the use of Dell's and our intellectual property and real estate, agreements regarding the sale of goods and services to one another, and agreements for Dell to resell and distribute our products and services to third party customers. If Dell were to distribute its shares of our common stock to its stockholders or otherwise divest itself of all or a significant portion of its VMware shares, there would be numerous implications to us, including the fact that we could lose the benefit of these arrangements with Dell. There can be no assurance that we would be able to renegotiate these arrangements with Dell or replace them on the same or similar terms. Additionally, our business could face significant disruption and uncertainty as we transition from these arrangements with Dell. Moreover, our historical financial information is not necessarily indicative of what our financial condition, operating results or cash flows would be in the future if and when we contract at arm's length with independent third parties for the services we have received and currently receive from Dell. During the six months ended July 30, 2021, we recognized revenue of \$2.2 billion and as of July 30, 2021, \$5.1 billion of sales were included in unearned revenue from such transactions with Dell. For additional information, refer to "Our Relationship with Dell" in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part I, Item 2 and Note C to the condensed consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q.

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

**The price of our Class A common stock has fluctuated significantly in recent years and may fluctuate significantly in the future.**

The trading price of our Class A common stock has fluctuated significantly in the past and could fluctuate substantially in the future due to the factors discussed in this Risk Factors section and elsewhere in this report.

Dell, which beneficially owned 80.6% of our outstanding stock as of July 30, 2021, is not restricted from selling its shares and is entitled to certain registration rights. If a significant number of shares enters the public trading markets in a short period of time, the market price of our Class A common stock may decline. In addition, if our Class B common stock is distributed to Dell stockholders and remains outstanding, it would trade separately from and potentially at a premium to our Class A common stock, and could thereby contribute additional volatility to the price of our Class A common stock.

Broad market and industry factors may also decrease the market price of our Class A common stock, regardless of our actual operating performance. The stock market in general and technology companies in particular have often experienced extreme price and volume fluctuations. Our public float is also relatively small due to Dell's holdings, which can result in greater volatility in our stock compared to that of other companies with a market capitalization similar to ours. In addition, in

the past, following periods of volatility in the overall market and the market price of a company's securities, securities class action litigation has often been instituted, including against us, and, if not resolved swiftly, can result in substantial costs and a diversion of management's attention and resources.

**Anti-takeover provisions in Delaware law and our charter documents could discourage takeover attempts.**

As our controlling stockholder, Dell has the ability to prevent a change in control of VMware. Provisions in our certificate of incorporation and bylaws may also have the effect of delaying or preventing a change of control or changes in our management. These provisions include the following:

- the division of our board of directors into three classes, with each class serving for a staggered three-year term, which prevents stockholders from electing an entirely new board of directors at any annual meeting;
- the right of the board of directors to elect a director to fill a vacancy created by the expansion of the board of directors;
- following a 355 Distribution of Class B common stock by Dell to its stockholders, the restriction that a beneficial owner of 10% or more of our Class B common stock may not vote in any election of directors unless such person or group also owns at least an equivalent percentage of Class A common stock or obtains approval of our board of directors prior to acquiring beneficial ownership of at least 5% of Class B common stock;
- the prohibition of cumulative voting in the election of directors or any other matters, which would otherwise allow less than a majority of stockholders to elect director candidates;
- the requirement for advance notice for nominations for election to the board of directors or for proposing matters that can be acted upon at a stockholders' meeting;
- the ability of the board of directors to issue, without stockholder approval, up to 100,000,000 shares of preferred stock with terms set by the board of directors, which rights could be senior to those of common stock; and
- in the event that Dell or its successor-in-interest no longer owns shares of our common stock representing at least a majority of the votes entitled to be cast in the election of directors, stockholders may not act by written consent and may not call special meetings of the stockholders.

In addition, we have elected to apply the provisions of Section 203 of the Delaware General Corporation Law. These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding voting stock, from merging or combining with us. These provisions in our certificate of incorporation and bylaws and under Delaware law could discourage potential takeover attempts and could reduce the price that investors might be willing to pay for shares of our common stock.

**General Risks**

**We are exposed to foreign exchange risks.**

We conduct a meaningful portion of our business in currencies other than the U.S. dollar, but report our operating results in U.S. dollars. Accordingly, our operating results are subject to fluctuations in currency exchange rates. The realized gain or loss on foreign currency transactions is dependent upon the types of foreign currency transactions into which we enter, the exchange rates associated with these transactions and changes in those rates, the net realized gain or loss on our foreign currency forward contracts, among other factors. Although we hedge a portion of our foreign currency exposure, significant fluctuations in exchange rates between the U.S. dollar and foreign currencies have adversely affected, and may adversely affect in the future, our operating results. For example, the economic uncertainty introduced by Brexit resulted in significant volatility in the value of the British pound and other currencies, and the COVID-19 pandemic may make it more difficult for us to accurately forecast future transactions in foreign currencies and cause us to have to modify hedging positions, thereby adversely impacting the efficacy of our foreign currency hedging strategy and our operating results. Any future weakening of foreign currency exchange rates against the U.S. dollar would likely result in additional adverse impacts on our revenue.

**If our goodwill or amortizable intangible assets become impaired, we may be required to record a significant charge to earnings.**

We may not realize all the economic benefit from our business acquisitions, which could result in an impairment of goodwill or intangibles. As of July 30, 2021, goodwill and amortizable intangible assets were \$9.6 billion and \$856 million, respectively. We review our goodwill and amortizable intangible assets for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. We test goodwill for impairment at least annually. Factors that may lead to impairment include a substantial decline in stock price and market capitalization or cash flows, reduced future cash flow estimates related to the assets and slower growth rates in our industry. We may be required to record a significant charge in our financial statements during the period in which any impairment of our goodwill or amortizable intangible assets is determined, which would negatively impact our operating results.



**If securities or industry analysts change their recommendations regarding our stock adversely, our stock price and trading volume could decline.**

The trading market for our Class A common stock is influenced by the research and reports that industry or securities analysts publish about us, our business, our market or our competitors. If any of the analysts who cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, our stock price would likely decline.

**Changes in accounting principles and guidance could result in unfavorable accounting charges or effects.**

We prepare our condensed consolidated financial statements in accordance with accounting principles generally accepted in the U.S. These principles are subject to interpretation by the Securities and Exchange Commission and various bodies formed to create and interpret appropriate accounting principles and guidance. A change in these principles or guidance, or in their interpretations, may have a material effect on our reported results, as well as our processes and related controls, and may retroactively affect previously reported results.

**Natural disasters, catastrophic events or geo-political conditions could disrupt our business.**

A significant natural disaster, such as an earthquake, fire, flood or other act of God, catastrophic event or pandemic, abrupt political change, terrorist activity and armed conflict, and any similar disruption, as well as any derivative disruption, such as those to services provided through localized physical infrastructure, including utility or telecommunication outages, or any to the continuity of our, our partners' and our customers' workforce, could have a material adverse impact on our business and operating results. Our worldwide operations are dependent on our network infrastructure, internal technology systems and website, as well as our intellectual property and personnel, significant portions of which, including our corporate headquarters, are located in California, a region known for seismic activity, fires and floods. Disruption to these dependencies may negatively impact our ability to respond to customer requests, process orders, provide services and maintain local and global business continuity. Delays or cancellations of customer orders or the deployment or availability of our products and services, for example, could materially impact our revenue. Furthermore, some of our newer product initiatives, offerings and business functions are hosted or carried out by third parties that may be vulnerable to these same types of disruptions, the response to or resolution of which may be beyond our control. Additionally, any such disruption could cause us to incur significant costs to repair damages to our facilities, equipment, infrastructure and business relationships.

**Climate change may have a long-term negative impact on our business.**

Risks related to rapid climate change may have an increasingly adverse impact on our business and those of our customers, partners and vendors in the longer term. While we seek to mitigate the business risks associated with climate change for our operations, there are inherent climate-related risks wherever business is conducted. Access to clean water and reliable energy in the communities where we conduct our business, whether for our offices, data centers, vendors, customers or other stakeholders, is a priority. Any of our primary locations may be vulnerable to the adverse effects of climate change and the impacts of extreme weather events, which have caused regional short-term systemic failures in the U.S. and elsewhere. For example, our California headquarters are projected to be vulnerable to future water scarcity due to climate change. While this danger has a low-assessed risk of disrupting normal business operations, it has the potential to impact employees' abilities to commute to work or to work from home and stay connected effectively. Climate-related events, including the increasing frequency of extreme weather events, their impact on critical infrastructure in the U.S. and internationally and their potential to increase political instability in regions where we, our customers, partners and our vendors do business, have the potential to disrupt our business, our third-party suppliers, or the business of our customers and partners, and may cause us to experience higher attrition, losses and additional costs to maintain or resume operations.

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

(a) Sales of Unregistered Securities

None.

(b) Use of Proceeds from Public Offering of Common Stock

None.

(c) Purchases of Equity Securities by the Issuer and Affiliated Purchaser

From time to time, we repurchase stock pursuant to authorized stock repurchase programs in open market transactions as permitted by securities laws and other legal requirements. We are not obligated to purchase any shares under our stock repurchase programs. The timing of any repurchases and the actual number of shares repurchased depends on a variety of factors, including our stock price, cash requirements for operations and business combinations, corporate and regulatory requirements and other market and economic conditions. Purchases may be discontinued at any time we believe additional

purchases are not warranted. From time to time, we also purchase stock in private transactions, such as with Dell. All shares repurchased under our stock repurchase programs are retired.

Purchases of Class A common stock during the three months ended July 30, 2021 were as follows:

	Total Number of Shares Purchased	Average Price Paid Per Share <sup>(1)</sup>	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares That May Yet Be Purchased Under the Publicly Announced Plans or Programs <sup>(2)</sup>
May 1 - May 28, 2021	810,000	\$ 161.70	810,000	\$ 553,243,616
May 29 - June 25, 2021	855,000	159.93	855,000	416,502,553
June 26 - July 30, 2021	578,000	156.62	578,000	325,979,012
	<u>2,243,000</u>	<u>\$ 159.71</u>	<u>2,243,000</u>	<u>325,979,012</u>

<sup>(1)</sup> The average price paid per share excludes commissions.

<sup>(2)</sup> Represents the cumulative amount remaining for stock repurchases under the July 2020 authorization, which expires at the end of fiscal 2022. Amounts remaining exclude commissions. Refer to Note L to the condensed consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for more information.

## ITEM 5. OTHER INFORMATION

### *Term Loan Facility*

On September 2, 2021, VMware entered into a term loan credit agreement (the “Term Loan”) with the lenders named therein and JPMorgan Chase Bank, N.A., as administrative agent. The Term Loan provides for term loans in an aggregate principal amount of up to \$4 billion, including three-year term loans in an aggregate amount of up to \$2 billion (the “Three-Year Term Loans”) and five-year term loans in an aggregate amount of up to \$2 billion (the “Five-Year Term Loans”). The Three-Year Term Loans and the Five-Year Term Loans may be borrowed in U.S. dollars and will be used to finance a portion of the Special Dividend, to pay other amounts in connection with the planned Spin-Off (including fees and expenses) and for general corporate purposes.

Loan commitments under the Term Loan will be available for a period ending on the earlier of (x) April 28, 2022 and (y) the date on which the Separation Agreement entered into with Dell in connection with the Spin-Off is terminated, and will be made on a single funding date (the “Term Loan Funding Date”), subject to certain conditions. Once borrowed, the Three-Year Term Loans will be due and payable in full three years after the Term Loan Funding Date and the Five-Year Term Loans will be due and payable in full five years after the Term Loan Funding Date. In addition, in connection with the Five-Year Term Loans, quarterly amortization payments will be due commencing on the last day of the Company’s fifth full fiscal quarter commencing after the Term Loan Funding Date in amounts that are equal to 1.25% of the aggregate principal amount of the Five-Year Term Loans made on the Term Loan Funding Date.

Borrowings made in U.S. dollars under the Term Loan will bear interest at rates per annum determined, at the Company’s option, by reference either to an alternate base rate (“ABR”) or to LIBOR. ABR borrowings will bear interest at the highest of (i) the prime rate, (ii) the NYFRB rate plus one-half of 1%, and (iii) one-month LIBOR plus 1%. LIBOR borrowings will bear interest at (a) LIBOR for the relevant interest period plus (b) in the case of the Three-Year Term Loans, a margin of between 62.5 and 87.5 basis points, and in the case of the Five-Year Term Loans, a margin of between 75 and 100 basis points, in each case depending on the rating of the Company’s long-term senior unsecured debt. The Company is required to pay certain commitment fees to the lenders under the Term Loan. In addition, if the Term Loan Funding Date does not occur within 90 days after the date of the Term Loan, the Company will be required to pay certain additional fees with respect to undrawn commitments.

The Term Loan contains various customary covenants that limit, among other things, the incurrence of indebtedness by subsidiaries of the Company, the grant or incurrence of liens by the Company and its subsidiaries, and the entry into certain fundamental change transactions by the Company and certain of the Company’s subsidiaries that are borrowing or significant subsidiaries. The Term Loan contains a covenant pursuant to which the Company will not, from and after the Term Loan Funding Date, permit the ratio of consolidated EBITDA to consolidated net interest expense for any period of four consecutive fiscal quarters to be less than 3.0 to 1.0.

The Term Loan includes customary events of default, and, if an event of default occurs, lenders holding a majority of the term loans outstanding under such agreement will have the right to accelerate the maturity of outstanding term loans.

The foregoing description does not purport to be complete and is qualified in its entirety by reference to the full text of the Term Loan, which is attached hereto as Exhibit 10.3 and incorporated herein by reference.



In the ordinary course of their respective financial services businesses, the lenders party to the Term Loan, or their respective affiliates, have provided, and may in the future provide, to the Company, and persons and entities with relationships with the Company, a variety of services, including cash management, investment research and management, commercial banking, hedging, brokerage, and advisory or other financial and non-financial activities and services, for which they received or will receive customary fees and expenses.

*Disclosure pursuant to Section 13(r) of the Securities Exchange Act of 1934*

VMware's affiliate, Dell Technologies Inc. and its subsidiaries, included the following disclosure in their quarterly report for the period ended July 30, 2021:

“Set forth below is a description of matters reported by us pursuant to Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012 and Section 13(r) of the Exchange Act. Concurrently with the filing of this quarterly report, we are filing a notice pursuant to Section 13(r) of the Exchange Act that such matters have been disclosed in this quarterly report.

On March 2, 2021, the U.S. government designated the Russian Federal Security Service (the “FSB”) as a blocked party under Executive Order 13382. On the same day, the U.S. Department of the Treasury's Office of Foreign Assets Control issued General License No. 1B (the “OFAC General License”), which generally authorizes U.S. companies to engage in certain licensing, permitting, certification, notification and related transactions with the FSB to the extent such activities are required for the importation, distribution or use of information technology products in the Russian Federation.

As permitted under the OFAC General License, our subsidiary Dell LLC and other subsidiaries periodically file notifications with the FSB in connection with the importation and distribution of our products in the Russian Federation. During our fiscal quarter ended July 30, 2021, Dell LLC filed notifications with the FSB. No payments were issued or received, and no gross revenue or net profits were generated, in connection with these filing activities. Dell Technologies and its subsidiaries do not sell products or provide services to the FSB. To the extent permitted by applicable law, including by the OFAC General License, we expect to continue to file notifications with the FSB to qualify our products for importation and distribution in the Russian Federation.”

**ITEM 6. EXHIBITS**

The Company hereby files, furnishes or incorporates by reference the exhibits listed below:

Exhibit Number	Exhibit Description	Incorporated by Reference			
		Form	File No.	Exhibit	Filing Date
3.1	<a href="#">Amended and Restated Certificate of Incorporation</a>	10-Q	001-33622	3.1	6/9/17
3.2	<a href="#">Amended and Restated Bylaws</a>	8-K	001-33622	3.1	2/23/17
10.1+	<a href="#">Letter Agreement between VMware, Inc. and Rangarajan (Raghu) Raghuram dated May 11, 2021</a>	8-K	001-33622	10.1	5/12/21
10.2+	<a href="#">Letter Agreement between VMware, Inc. and Sumit Dhawan dated May 11, 2021</a>	8-K	001-33622	10.2	5/12/21
10.3*	<a href="#">Term Loan Credit Agreement, dated as of September 2, 2021, among VMware, Inc., the lenders party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent, J.P. Morgan Securities LLC, BofA Securities, Inc., Barclays Bank PLC and Citibank, N.A., as Joint Lead Arrangers and Joint Bookrunners, Bank of America, N.A., as Syndication Agent and Barclays Bank PLC and Citibank, N.A., as Co-Documentation Agents</a>				
10.6*+	<a href="#">Amended and Restated 2007 Equity and Incentive Plan, as amended July 23, 2021</a>				
10.11*+	<a href="#">Amended and Restated 2007 Employee Stock Purchase Plan, as amended July 23, 2021</a>				
31.1*	<a href="#">Certification of Principal Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>				
31.2*	<a href="#">Certification of Principal Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>				
32.1†	<a href="#">Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>				
32.2†	<a href="#">Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>				
101.INS*	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.				
101.SCH*	Inline XBRL Taxonomy Extension Schema				
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase				
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase				
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase				
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase				
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document (included in Exhibit 101)				

+ Indicates management contract or compensatory plan or arrangement

\* Filed herewith

† Furnished herewith

**SIGNATURE**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: September 3, 2021

**VMWARE, INC.**

By: /s/ J. Andrew Munk  
**J. Andrew Munk**  
**Chief Accounting Officer**  
**(Principal Accounting Officer)**

TERM LOAN CREDIT AGREEMENT

dated as of September 2, 2021

among

VMWARE, INC.

The Lenders Party Hereto

and

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

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J.P. MORGAN SECURITIES LLC, BOFA SECURITIES, INC.,  
BARCLAYS BANK PLC and CITIBANK, N.A.,  
as Joint Lead Arrangers and Joint Bookrunners

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BANK OF AMERICA, N.A.  
as Syndication Agent

BARCLAYS BANK PLC and CITIBANK, N.A.,  
as Co-Documentation Agents

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CREDIT AGREEMENT dated as of September 2, 2021 (this “Agreement”), among VMWARE, INC., the LENDERS party hereto and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

The parties hereto agree as follows:

## **ARTICLE I DEFINITIONS**

**SECTION 1.1      Defined Terms.** As used in this Agreement, the following terms have the meanings specified below:

“ABR”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bears interest at a rate determined by reference to the Alternate Base Rate.

“Accretive Acquisition” means any transaction or series of related transactions, consummated on or after the Effective Date, by which the Borrower or any Subsidiary thereof (i) acquires all or substantially all of the assets of any Person or any going business, division thereof or line of business, whether through purchase of assets, merger or otherwise, or (ii) acquires Equity Interests of any Person having at least a majority of combined voting power of the then outstanding Equity Interests of such Person; provided that the Consolidated EBITDA of the Borrower and its Subsidiaries for the relevant period prior to the closing of such Accretive Acquisition, after giving effect to such Accretive Acquisition on a pro forma basis, is greater than the Consolidated EBITDA of the Borrower and its Subsidiaries for such period without giving effect to such Accretive Acquisition on a pro forma basis, as determined in good faith by the Borrower.

“Adjusted LIBO Rate” means, with respect to any Eurocurrency Borrowing denominated in Dollars for any Interest Period (or, solely for purposes of clause (c) of the defined term “Alternate Base Rate”, for purposes of determining the Alternate Base Rate as of any date), an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (a) the LIBO Rate for such Interest Period (or such date, as applicable) multiplied by (b) the Statutory Reserve Rate.

“Adjustment” has the meaning assigned to such term in Section 2.13.

“Administrative Agent” means JPMorgan Chase Bank, N.A. or (any of its designated branch offices or affiliates) in its capacity as administrative agent for the Lenders or any successor thereto appointed in accordance with Article VIII.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agent-Related Person” has the meaning assigned to it in Section 9.3(e).

“Agent Parties” has the meaning assigned to such term in Section 9.1(e).

“Agreement” has the meaning assigned to such term in the preamble.

“Agreement Currency” has the meaning assigned to such term in Section 9.15(b).

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus  $\frac{1}{2}$  of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%, provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the LIBO Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.13, then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. If the Alternate Base Rate as determined pursuant to the foregoing would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Ancillary Document” has the meaning assigned to such term in Section 9.6(b).

“Applicable Creditor” has the meaning assigned to such term in Section 9.15(b).

“Applicable Funding Account” means an account of the Borrower (or any paying agent or similar agent in connection with the Special Dividend) that is specified in a written notice from a Financial Officer of the Borrower delivered to and approved by the Administrative Agent for the funding of the proceeds of Loans hereunder.

“Applicable Percentage” means, with respect to any Lender and any Class of Loans or Commitments, the percentage of the Commitments of such Class represented by such Lender’s Commitments of such Class; provided that in the case of Section 2.19 when a Defaulting Lender shall exist, “Applicable Percentage” shall mean the percentage of the total Commitments (disregarding any Defaulting Lender’s Commitment) represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments of the relevant Class most recently in effect, giving effect to any assignments and to any Lender’s status as a Defaulting Lender at the time of determination.

“Applicable Rate” means, for any day with respect to any ABR Loan or Eurocurrency Loan, the applicable rate per annum set forth below in basis points per annum under the caption “Interest Rate Spread for ABR Loans – 5-Year Facility,” “Interest Rate Spread for LIBOR Loans –

5-Year Facility,” “Interest Rate Spread for ABR Loans – 3-Year Facility” or “Interest Rate Spread for LIBOR Loans – 3-Year Facility,” as the case may be, based upon the Ratings of S&P, Moody’s and Fitch, respectively, applicable on such date to the Index Debt:

LEVEL	RATING (S&P, Moody’s, Fitch)	Interest Rate Spread for ABR Loans – 5-Year Facility	Interest Rate Spread for LIBOR Loans – 5-Year Facility	Interest Rate Spread for ABR Loans – 3-Year Facility	Interest Rate Spread for LIBOR Loans – 3-Year Facility
1	BBB/Baa2/ BBB	0	75	0	62.5
2	BBB- /Baa3/BBB-	0	87.5	0	75.0
3	<BB+/Ba1/ BB+	0	100.0	0	87.5

“Approved Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.4), and accepted by the Administrative Agent, in the form of Exhibit A hereto or any other form (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

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

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

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

“Bankruptcy Event” means, with respect to any Person, such Person becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business publicly appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof; provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of

any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permits such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation, substantially similar in form to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities.

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

“Beneficiary” has the meaning assigned to such term in Section 2.5(i).

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“BHC Act Affiliate” has the meaning assigned to such term in Section 9.18(b).

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” means VMware, Inc., a Delaware corporation

“Borrowing” means a group of Loans of the same Type, made, converted or continued on the same date and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.3.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, when used in connection with a Eurocurrency Loan and in relation to the calculation or computation of LIBOR, the term “Business Day” shall also exclude any day on which banks are not open for business in London.

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

GAAP at the time it was entered into that later becomes a capital lease or finance lease as a result of a change in GAAP during the life of such lease, including any renewals, and (b) any other lease, whether entered into before or after the date of this Agreement, that would have been considered an operating lease under the provisions of GAAP in effect as of December 31, 2016, in each case, shall be treated as an operating lease for all purposes under this Agreement.

“Cash Pooling Arrangements” means any agreement entered into in the ordinary course of business to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements, in a pooling agreement among one or more Subsidiaries of the Borrower and a financial institution (or an in-house bank).

“Category” means a category of Index Debt Ratings set forth in the table included in the definition of Applicable Rate in this Section 1.1.

“Change in Law” means (a) the adoption of any law, rule, regulation or treaty after the date of this Agreement, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority after the date of this Agreement, or (c) compliance by any Lender (or, for purposes of Section 2.14(b), by any lending office of such Lender or by such Lender’s direct or indirect holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a Change in Law, regardless of the date enacted, adopted, issued or implemented.

“Change of Control” means

(1) prior to the consummation of the Separation, (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group, other than any Permitted Parent, of shares representing more than 40.0% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the Borrower, or (b) Dell, together with its Parent Entities and subsidiaries, becomes the beneficial owner, directly or indirectly, of 90.0% or more of each class of the Borrower’s then outstanding capital stock; and

(2) on and after consummation of the Separation, the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group of shares representing more than 50.0% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the Borrower.

For purposes of this definition, including other defined terms used herein in connection with this definition, (i) “beneficial ownership” shall be as defined in Rules 13(d)-3 and 13(d)-5

under the Exchange Act as in effect on the date hereof and (ii) the phrase Person or group is within the meaning of Section 13(d) or 14(d) of the Exchange Act, but excluding any employee benefit plan of such Person or group or its subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan.

Notwithstanding anything to the contrary in this definition or any provision of Section 13d-3 of the Exchange Act, (A) if any group includes one or more Permitted Parents, the issued and outstanding Equity Interests of the Borrower, directly or indirectly owned by the Permitted Parent that are part of such group shall not be treated as being beneficially owned by such group or any other member of such group for purposes of clause (1)(a) or (2) of this definition, (B) a Person or group shall not be deemed to beneficially own Equity Interests to be acquired by such Person or group pursuant to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Equity Interests in connection with the transactions contemplated by such agreement and (C) a Person or group will not be deemed to beneficially own the Equity Interests of another Person as a result of its ownership of Equity Interests or other securities of such other Person's parent (or related contractual rights) unless it owns 50% or more of the total voting power of the Equity Interests entitled to vote for the election of directors of such Person's parent having a majority of the aggregate votes on the board of directors of such Person's parent.

In addition, notwithstanding the foregoing, (A) a transaction will not be considered to be a Change of Control under clause (1)(a) or (2) above if (x) the Borrower becomes a direct or indirect wholly owned subsidiary of a holding company and (y) immediately following that transaction, the direct or indirect holders of the voting capital stock of the holding company are substantially the same as the holders of the Borrower's voting capital stock immediately prior to that transaction, (B) any change in the Persons who are the direct or indirect beneficial owners of Dell will not be considered a Change of Control and (C) Dell's distribution or transfer of the Borrower's shares as part of the Separation or otherwise in a transaction intended to qualify as a tax-free distribution or transfer under Section 355 of the Code will not be considered a Change of Control.

"Change of Control Default Event" means the occurrence of both a Change of Control and a Ratings Event.

"Class" when used in reference to any Loan or Borrowing (or respective Commitment), refers to whether such Loan, or the Loans comprising such Borrowing, are Three Year Loans or Five Year Loans.

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

"Commitment" means a Three Year Commitment or a Five Year Commitment.

"Commitment Termination Date" means the earlier of (x) April 28, 2022 and (y) the date on which the Separation and Distribution Agreement is terminated.

"Communications" has the meaning assigned to such term in Section 5.1.

“Consolidated Current Liabilities” means, on any date, the consolidated current liabilities (other than the short-term portion of any long-term Indebtedness of the Borrower or any Subsidiary) of the Borrower and the Subsidiaries, as such amounts would appear on a consolidated balance sheet of the Borrower prepared as of such date in accordance with GAAP.

“Consolidated EBITDA” means, for any period, the net income (loss) of the Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, plus (or minus, in the case of clauses below representing a net positive), without duplication and to the extent already deducted (or included, in the case of a positive item) in arriving at such net income, the following amounts for such period:

(i) interest expense, net of investment income, in each case as reported in the Borrower’s consolidated financial statements in accordance with GAAP, and, if elected by the Borrower in its discretion, to the extent not reflected in such interest expense or interest income, any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk (net of gains on such hedging obligations or such derivative instruments), and bank and letter of credit fees and costs of surety bonds in connection with financing activities, and any items excluded from the definition of “Consolidated Interest Expense” pursuant to clauses (i) through (xi) thereof,

(ii) other income (expense), net, as reported in the Borrower’s consolidated financial statements in accordance with GAAP, including gain (loss) on strategic investments, gain (loss) related to deferred compensation, foreign exchange gain (loss) net of gain (loss) from hedging contracts, bank fees, fees related to the credit facilities and loans, gain (loss) on debt extinguishment, finance lease interest expense, interest income from enterprise license agreements, late fee income, other interest expense such as interest expense related to litigations, and, in an aggregate amount in any four fiscal quarter period not to exceed \$10,000,000, other miscellaneous items included in other income (expense), net, on such financial statements,

(iii) income tax provision as reported in the Borrower’s consolidated financial statements in accordance with GAAP, and, if elected by the Borrower in its discretion, to the extent not included in the foregoing, any other provision for taxes based on income, profits, revenue or capital, including federal, foreign and state income, franchise, excise, value added and similar taxes based on income, profits, revenue or capital and foreign withholding taxes paid or accrued during such period (including in respect of repatriated funds) including penalties and interest related to such taxes or arising from any tax examinations and (without duplication) any distributions to a direct or indirect parent company of the Borrower in respect of taxes and any payments to a direct or indirect parent company or other Affiliate in respect of taxes pursuant to any tax sharing or similar agreement,

(iv) depreciation and amortization, as reported in the Borrower’s consolidated financial statements in accordance with GAAP,

(v) non-cash stock-based compensation,



(vi) employer payroll taxes on employee stock transactions,

(vii) non-recurring, unusual or extraordinary losses and charges, including related to acquisitions, dispositions and other related transactions, litigations and other contingencies and realignment charges, and

(viii) other non-recurring, unusual, or extraordinary charges, net of gains, for the quarter then ended as presented in the reconciliation of GAAP to Non-GAAP data to the extent published on the investor relations page on the Borrower's website.

"Consolidated Intangible Assets" means, on any date, the consolidated intangible assets of the Borrower and the Subsidiaries, as such amounts would appear on a consolidated balance sheet of the Borrower prepared in accordance with GAAP. As used herein, "intangible assets" means the value (net of any applicable reserves) as shown on such balance sheet of (i) all patents, patent rights, trademarks, trademark registrations, servicemarks, trade names, business names, brand names, copyrights, designs (and all reissues, divisions, continuations and extensions thereof), or any right to any of the foregoing, (ii) goodwill, and (iii) all other intangible assets.

"Consolidated Interest Expense" means, for any period, interest expense, net of investment income, each as reported in the Borrower's financial statements in accordance with GAAP, but excluding, to the extent otherwise included in interest expense and to the extent the Borrower elects to exclude such items in its discretion, (i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest (including as a result of the effects of acquisition method accounting or pushdown accounting), (ii) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under hedging agreements or other derivative instruments pursuant to FASB Accounting Standards Codification No. 815-Derivatives and Hedging, (iii) any one-time cash costs associated with breakage in respect of hedging agreements for interest rates, (iv) commissions, discounts, yield and other fees and charges (including any interest expense) incurred in connection with any Securitization Transaction, (v) all nonrecurring cash interest expense or "additional interest" for failure to timely comply with registration rights obligations, (vi) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto and with respect to any acquisition or other investment, all as calculated on a consolidated basis in accordance with GAAP, (vii) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, (viii) penalties and interest relating to taxes, (ix) accretion or accrual of discounted liabilities not constituting Indebtedness, (x) any interest expense attributable to a direct or indirect parent entity resulting from push down accounting and (xi) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting.

"Consolidated Net Assets" means, on any date, the excess of Consolidated Total Assets over Consolidated Current Liabilities.

"Consolidated Net Tangible Assets" means, on any date, the excess of Consolidated Total Assets over the sum of (i) Consolidated Current Liabilities and (ii) Consolidated Intangible Assets.

“Consolidated Total Assets” means, on any date, the consolidated total assets of the Borrower and the Subsidiaries, as such amounts would appear on a consolidated balance sheet of the Borrower prepared as of such date in accordance with GAAP.

“Consolidated Total Revenues” means, for any period, the consolidated total revenues of the Borrower and the Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlled” has a meaning correlative thereto.

“Covered Entity” has the meaning assigned to such term in Section 9.18(b).

“Covered Party” has the meaning assigned to such term in Section 9.18(a).

“Credit Party” means the Administrative Agent and each Lender.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Right” has the meaning assigned to such term in Section 9.18(b).

“Defaulting Lender” means any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, (i) to fund any portion of its Loans or (ii) to pay to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified in such writing, including, if applicable, by reference to a specific Default) has not been satisfied, (b) has notified the Borrower or any Credit Party in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good-faith determination that a condition precedent (specifically identified in such writing, including, if applicable, by reference to a specific Default) to funding a Loan cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by a Credit Party made in good faith to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations as of the date of certification) to fund prospective Loans; provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party’s receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has, or whose direct or indirect parent company has, (i) become the subject of a Bankruptcy Event, (ii) had publicly appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as

such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Borrower and each other Lender.

“Dell” means Dell Technologies Inc.

“Disqualified Lenders” means (i) those Persons who are competitors of the Borrower and its Subsidiaries or banks, financial institutions or other institutional lenders, in each case, that are separately identified in writing by the Borrower and posted to the Lenders on the Platform or another similar electronic system from time to time and (ii) in the case of clause (i) above, any of such Person’s Affiliates (other than bona fide debt fund affiliates) that are either (y) identified in writing (including by email) by the Borrower and posted to the Lenders on the Platform or another similar electronic system from time to time or (z) clearly identifiable solely on the basis of the similarity of such Affiliate’s name. The list of Disqualified Lenders shall be made available to the Lenders on the Platform or another similar electronic system.

“Disregarded Acquisition” has the meaning specified in the definition of Consolidated EBITDA.

“Disregarded Entity” means an entity disregarded from its owner for federal income tax purposes under Section 301.7701-3 of the United States Treasury Regulations.

“Dividing Person” has the meaning assigned to it in the definition of “Division”.

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

“Division Successor” means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

“Dollars,” “US\$” or “\$” refers to lawful money of the United States of America.

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

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the date on which the conditions specified in Section 4.1 are satisfied (or waived in accordance with Section 9.2).

“Electronic Signature” means an electronic sound, symbol or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to (i) the environment, (ii) preservation or reclamation of natural resources, (iii) the generation, use, handling, transportation, storage, treatment, disposal, release or threatened release of any Hazardous Material, or (iv) to the extent related to exposure to, or to the sale, distribution or marketing of products containing, Hazardous Material, health and safety matters.

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

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in any Person, or any obligations convertible into or exchangeable for, or giving any Person a right, option or warrant to acquire such equity interests or such convertible or exchangeable obligations.

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or Section 4001(14) of ERISA or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived), (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived, (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the

minimum funding standard with respect to any Plan, (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan, (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal of the Borrower or any of its ERISA Affiliates from any Plan or Multiemployer Plan, (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition upon the Borrower or any of its ERISA Affiliates of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA, (h) the occurrence of a “prohibited transaction” with respect to which the Borrower or any of the Subsidiaries is a “disqualified person” (within the meaning of Section 4975 of the Code) or with respect to which the Borrower or any such Subsidiary could otherwise be liable, or (i) any other event or condition with respect to a Plan or Multiemployer Plan that could result in liability of the Borrower or any Subsidiary under Title IV of ERISA.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Eurocurrency”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Adjusted LIBO Rate or the LIBO Rate (but no ABR Loan or ABR Borrowing will in any event be deemed to be a Eurocurrency Loan or Eurocurrency Borrowing hereunder).

“Event of Default” has the meaning assigned to such term in Article VII.

“Exchange Rate” means on any day, for purposes of determining the US Dollar Equivalent of any other currency, the rate of exchange for the purchase of Dollars with such other Currency in the London foreign exchange market at or about 11:00 a.m. London time (or New York time, as applicable) on a particular day as displayed by ICE Data Services as the “ask price”, or as displayed on such other information service which publishes that rate of exchange from time to time in place of ICE Data Services (or if such service ceases to be available, the rate of exchange as agreed by the Administrative Agent and the Borrower).

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by such Recipient’s net income (however denominated) and franchise Taxes, in each case (i) imposed by a jurisdiction as a result of such Recipient being organized in or having its principal office located or, in the case of any Lender, its applicable lending office located in such jurisdiction or (ii) that are Other Connection Taxes, (b) any branch profits Taxes or any similar Tax imposed by any jurisdiction described in clause (a) above, (c) any withholding Taxes, imposed under FATCA, (d) in the case of a Lender, any US federal withholding Tax imposed on amounts payable to such Lender with respect to an applicable interest in a Loan or Commitment pursuant to any laws in effect at the time such Lender acquired such interest in the applicable Commitment or, to the extent a Lender acquires an interest in a Loan not funded pursuant to a prior Commitment, acquires such interest in such Loan (other than pursuant to an assignment request

by the Borrower under Section 2.18(b)) or designates a new lending office, except to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Taxes pursuant to Section 2.16(a) and (e) any Taxes attributable to such Recipient's failure to comply with Section 2.16.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code, as such Code section exists as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any applicable intergovernmental agreements with respect thereto and any fiscal or regulatory legislation, rules or official administrative guidance adopted pursuant to any of the foregoing.

“FCPA” has the meaning assigned to such term in Section 3.8(b).

“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate, provided that if the Federal Funds Effective Rate shall as so determined be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Financial Officer” means, with respect to any Person, the chief financial officer, principal accounting officer, treasurer or controller of such Person.

“Fitch” means Fitch Ratings, Inc., or any successor to its rating agency business.

“Five Year Loan” means a Loan made pursuant to Section 2.1(a)(i).

“Five Year Commitment” means, with respect to each Five Year Lender, the commitment, if any, of such Five Year Lender to make a Five Year Loan hereunder on the Funding Date. The initial amount of each Lender's Five-Year Commitment as of the Effective Date is set forth on Schedule 2.1. The initial aggregate amount of the Five Year Lenders' Commitments is \$2,000,000,000.

“Five Year Lender” means a Lender with a Five Year Commitment or Five Year Loan.

“Five Year Maturity Date” means the date that is five years following the Funding Date or, if such date is not a Business Day, the first Business Day thereafter (unless such next Business Day is not in the same calendar month, in which case the next preceding Business Day).

“Foreign Lender” means any Lender that is not a US Person.

“Foreign Subsidiary” means any Subsidiary that is organized or incorporated (as applicable) under the laws of a jurisdiction other than the United States of America or any state thereof or the District of Columbia.

“Funding Date” means the date when all the conditions set forth in Section 4.2 have been satisfied for the making of the Loans hereunder and the Loans are funded by the Lenders.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state, local or otherwise, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national body exercising such powers or functions, such as the European Union or the European Central Bank).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business.

“Hazardous Materials” means all explosive, radioactive, hazardous, or toxic substances, wastes or materials, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, and all other substances or wastes regulated pursuant to any Environmental Law.

“Hedging Agreement” means any interest rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

“Impacted LIBO Interest Period” has the meaning assigned to such term in the definition of “LIBO Rate.”

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (i) trade or accounts payable or similar obligations incurred in the ordinary course of business, (ii) any earn-out

obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and not paid within 60 days after being due and payable and (iii) customary post-closing purchase price adjustments), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed (but if such Indebtedness has not been assumed by and is otherwise non-recourse to such Person, only to the extent of the lesser of the fair market value of the property subject to such Lien and the amount of such Indebtedness), (f) all Guarantees by such Person of Indebtedness of others, (g) all Capitalized Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, and (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances; provided that the term "Indebtedness" shall not include (i) deferred or prepaid revenue, (ii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the seller, (iii) any obligations attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, (iv) Indebtedness of any direct or indirect parent of the Borrower appearing on the balance sheet of the Borrower solely by reason of push down accounting under GAAP, (v) accrued expenses and royalties and (vi) asset retirement obligations and other pension related obligations (including pensions and retiree medical care) that are not overdue by more than 60 days. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. For all purposes hereof, the Indebtedness of the Borrower and any of its Subsidiaries shall exclude intercompany liabilities arising from their cash management and accounting operations and intercompany loans, advances or Indebtedness having a term not exceeding 364 days (inclusive of any rollover or extensions of terms) and made in the ordinary course of business.

"Indemnified Taxes" means all Taxes imposed on or with respect to any payment made by or on account of any obligation of the Borrower hereunder or under any other Loan Document other than (i) Excluded Taxes and (ii) Other Taxes.

"Indemnatee" has the meaning assigned to such term in Section 9.3(a).

"Index Debt" means senior unsecured long-term indebtedness for borrowed money of the Borrower that is not guaranteed by any other Person or subject to any other credit enhancement.

"Information" has the meaning assigned to such term in Section 9.12.

"Interest Coverage Ratio" means, as of the last day of any fiscal quarter of the Borrower, the ratio of (a) Consolidated EBITDA to (b) Consolidated Interest Expense, in each case for the period of four consecutive fiscal quarters ended on such date.

"Interest Election Request" means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.7.



“Interest Payment Date” means (a) with respect to any ABR Loan, the last day of each March, June, September and December and the applicable Maturity Date and (b) with respect to any Eurocurrency Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurocurrency Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period and the applicable Maturity Date.

“Interest Period” means, with respect to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months (or, with the consent of each Lender, any period less than 12 months) thereafter, as the Borrower may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurocurrency Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interpolated LIBO Rate” means, at any time, with respect to any Eurocurrency Borrowing and for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available for the applicable currency) that is shorter than the Impacted LIBO Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available for the applicable currency) that exceeds the Impacted LIBO Interest Period, in each case, at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if any Interpolated LIBO Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Investment Grade” means a rating of BBB- or better by Fitch (or its equivalent under any successor rating categories of Fitch), Baa3 or better by Moody’s (or its equivalent under any successor rating categories of Moody’s) and a rating of BBB- or better by S&P (or its equivalent under any successor rating categories of S&P) or the equivalent investment grade credit rating from any additional rating agency or rating agencies selected by the Borrower in consultation with the Administrative Agent.

“Joint Lead Arranger” means each of the institutions identified as Joint Lead Arrangers and Joint Bookrunners on the cover page of this Agreement, each in its capacity as such.

“Judgment Currency” has the meaning assigned to such term in Section 9.15(b).

“Lender Related Person” has the meaning assigned to it in Section 9.3(b).

“Lender Parent” means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

“Lenders” means the Persons listed on Schedule 2.1 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Liabilities” means any losses, claims (including intraparty claims), demands, damages or liabilities of any kind.

“LIBO Rate” means, with respect to any Eurocurrency Borrowing for any applicable currency and for any Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “Impacted LIBO Interest Period”) with respect to the applicable currency, then the LIBO Rate shall be the Interpolated LIBO Rate.

“LIBO Screen Rate” means, for any day and time, with respect to any Eurocurrency Borrowing for any applicable currency and for any Interest Period, the London interbank offered rate (“LIBOR”) as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for the relevant currency for a period equal in length to such Interest Period as displayed on such day and time on the applicable Bloomberg screen or page that displays such rate (or, in the event such rate does not appear on a Bloomberg page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion); provided that if the LIBO Screen Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“LIBOR Successor Rate” has the meaning assigned to such term in Section 2.13(b).

“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Alternate Base Rate, Interest Period and LIBO Rate, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines with the consent of the Borrower (such consent not to be unreasonably withheld)).

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, finance lease or title retention

agreement (or any financing lease having substantially the same economic effect as any of the foregoing but excluding any operating leases) relating to such asset.

“Loan Documents” means this Agreement, including without limitation, schedules and exhibits hereto) and any agreements entered into by the Borrower with or in favor of the Administrative Agent and/or the Lenders in connection with this Agreement, including any promissory notes delivered pursuant to Section 2.9(e) and any amendments, modifications or supplements thereto or waivers thereof.

“Loans” means the loans made by the Lenders to the Borrower pursuant to this Agreement.

“Local Time” means California time.

“Margin Stock” means “margin stock” within the meaning of Regulations T, U and X, as applicable.

“Material Adverse Effect” means a material adverse effect on (a) the actual business, assets, operations and financial condition of the Borrower and the Subsidiaries, taken as a whole, (b) the ability of the Borrower to perform any of its material obligations under this Agreement, or (c) the rights of or benefits available to the Lenders under this Agreement.

“Material Indebtedness” means Indebtedness (other than the Loans and other obligations outstanding hereunder and other than intercompany Indebtedness between the Borrower and a Subsidiary or between Subsidiaries), or obligations in respect of one or more Hedging Agreements, of any one or more of the Borrower and the Subsidiaries in an aggregate principal amount exceeding \$500,000,000 (or its equivalent in any currency). For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Hedging Agreement were terminated at such time.

“Material Subsidiary” means each Significant Subsidiary or any two or more Subsidiaries (which may but need not include a Significant Subsidiary), each of which has become the subject of any event or circumstance referred to in clause (h), (i) or (j) of Article VII, and which, if considered together as a single consolidated Subsidiary, would collectively constitute a “Significant Subsidiary” within the meaning of the definition of such term herein.

“Maturity Date” means (i) with respect to the Three Year Loans, the Three Year Maturity Date and (ii) with respect to the Five Year Loans, the Five Year Maturity Date.

“Moody’s” means Moody’s Investors Service, Inc., or any successor thereto.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m., New York City time, on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided further that the NYFRB Rate shall in no event be less than 0.00%.

“NYFRB’s Website” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, the Borrower arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the Borrower or any Affiliate thereof of any proceeding under any debtor relief laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed or allowable claims in such proceeding. Without limiting the foregoing, the Obligations include (a) the obligation to pay principal, interest, Letter of Credit commissions, charges, expenses, fees, indemnities and other amounts payable by the Borrower under any Loan Document and (b) the obligation of the Borrower to reimburse any amount in respect of any of the foregoing that the Administrative Agent or any Lender, in each case in its sole discretion, may elect to pay or advance on behalf of the Borrower.

“OFAC” has the meaning assigned to such term in Section 3.8(c).

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

“Other Taxes” means all present or future recording, stamp, court or documentary, intangible, filing or similar Taxes arising from any payment made under any Loan Document or from the execution, delivery, registration, performance or enforcement of, the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to the sale of a participation interest or an assignment (other than an assignment made pursuant to Section 2.18(b)).

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings denominated in Dollars by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Parent Entity” means any Person that, with respect to another Person, owns 50% or more of the total voting power of the voting stock of such other Person.

“Participant” has the meaning assigned to such term in Section 9.4(e).

“Participant Register” has the meaning assigned to such term in Section 9.4(e).

“Participating Member State” means any member state of the European Union that has the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

“Patriot Act” has the meaning assigned to such term in Section 9.14.

“Payment” has the meaning assigned to it in Article VIII.

“Payment Notice” has the meaning assigned to it in Article VIII.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Accretive Acquisition Debt” means Indebtedness assumed or otherwise incurred by a Foreign Subsidiary of the Borrower in connection with an Accretive Acquisition (including such Indebtedness of any Person that becomes a Foreign Subsidiary of the Borrower as a result of such Accretive Acquisition).

“Permitted Encumbrances” means

(i) Liens imposed by law for Taxes that are not yet delinquent or are being contested in good faith and by appropriate proceedings diligently conducted and for which the Borrower or a Subsidiary has set aside on its books adequate reserves in accordance with GAAP,

(ii) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in good faith and by appropriate proceedings diligently conducted and for which the Borrower or a Subsidiary has set aside on its books adequate reserves in accordance with GAAP,

(iii) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations,

(iv) Liens arising from leases, licenses, subleases or sublicenses which do not (A) interfere in any material respect with the business of the Borrower or any Subsidiary or (B) secure any Indebtedness;

(v) Liens arising under repurchase agreements, reverse repurchase agreements, securities lending and borrowing agreements and similar transactions;

- (vi) Liens arising from precautionary filings in respect of operating leases;
- (vii) margin deposits posted to secure obligations in respect of Hedging Agreements entered into in the ordinary course of business;
- (viii) pledges and deposits to secure the performance of bids, trade and commercial contracts (including ordinary course accounts payable), leases, statutory obligations, appeal bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (ix) deposits and pledges securing obligations under surety and performance bonds;
- (x) judgment liens (and pledges and deposits securing surety and appeal bonds) in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII;
- (xi) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary; and
- (xii) Liens under commercial contracts entered into in the ordinary course of business, including securing trade payables covering goods purchased (and proceeds and products thereof), pending payment, provided that the term “Permitted Encumbrances” shall not include any Lien securing Indebtedness for borrowed money.

“Permitted Parent” means (a) Dell, any Parent Entity of Dell or any Subsidiary of Dell and (b) any Parent Entity that at the time it became a Parent Entity of the Borrower was not formed in connection with, or in contemplation of, a transaction that would otherwise constitute a Change of Control and that beneficially owns 100% of the voting stock of the Borrower; provided that the stockholders of the Borrower prior to such transaction beneficially own all of the voting stock of such Permitted Parent upon completion of such transaction.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Plan Asset Regulations” means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

“Plan of Reorganization” has the meaning assigned to such term in Section 9.4(j).

“Platform” has the meaning assigned to such term in Section 5.1(e).

“Prime Rate” means the rate of interest last quoted by *The Wall Street Journal* as the “Prime Rate” in the U.S. or, if *The Wall Street Journal* ceases to quote such rate, the highest per annum interest rate published by the Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public-Sider” means a Lender or any representative of such Lender that does not want to receive material non-public information within the meaning of the federal and state securities laws.

“QFC” has the meaning assigned to such term in Section 9.18.

“QFC Credit Support” has the meaning assigned to such term in Section 9.18(b).

“Ratings” means, as of any date of determination, the Index Debt ratings of the Borrower that have been most recently assigned by S&P, Moody’s or Fitch. For purposes of the foregoing, (a) if the Ratings established or deemed to have been established by S&P, Moody’s and Fitch for the Index Debt shall fall within different Categories, (i) if two of the Ratings fall within the same Category and the other Rating is one Category higher or one Category lower than the two same Ratings, the Applicable Rate shall be based on the two Ratings within the same Category, (ii) if two of the Ratings fall within the same Category and the other Rating is two or more Categories above the two same Ratings, the Applicable Rate shall be determined by reference to the Category next above that of the two same Ratings, (iii) if two of the Ratings are in the same Category and the other Rating is two or more Categories below the two same Ratings, the Applicable Rate shall be determined by reference to the Category next below that of the two same Ratings, and (iv) if each of the three Ratings fall within different Categories, then the Applicable Rate shall be based on the assigned Rating that is in between the highest and the lowest of such Ratings, (b) if Ratings are available from only two of S&P, Moody’s and Fitch, and there is a split in such Ratings, the higher rating will apply, unless the split in such Ratings is more than one level apart, in which case the Rating that is one level lower than the higher rating will apply, (c) if a Rating is available from only one of S&P, Moody’s and Fitch, the level that is one level lower than that indicated by such Rating shall apply, and (d) if the Borrower does not have any Rating, Category 3 shall apply. Notwithstanding the foregoing, if the Ratings established or deemed to have been established by S&P, Moody’s and Fitch for the Index Debt shall be changed (other than as a result of a change in the rating system of S&P, Moody’s or Fitch), such change shall be effective as of the date on which it is first announced by the applicable rating agency. Each change in the Applicable Rate shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change. If the rating system of S&P, Moody’s or Fitch shall change, if any such rating agency shall cease to be in the business of rating corporate debt obligations or if any such rating agency shall cease to rate any Index Debt of the Borrower (and such decision is not based directly or indirectly on any action taken by the

Borrower, or the failure by the Borrower to take any action, in each case with respect to such rating agency or otherwise), the Borrower and the Lenders shall negotiate in good faith to amend the definition of Applicable Rate to reflect such changed rating system or the unavailability of Ratings from such rating agency and, pending the effectiveness of any such amendment, the Applicable Rate shall be determined by reference to the Rating most recently in effect prior to such change or cessation.

“Rating Agency” means any of S&P, Moody’s or Fitch.

“Ratings Event” means, with respect to the Index Debt, the Ratings on the Index Debt are lowered by each of the Rating Agencies within 60 days from the earlier of (1) the date of the first public notice of an arrangement that could result in a Change of Control or (2) the occurrence of a Change of Control (which period shall be extended so long as the Ratings on the Index Debt are under publicly announced consideration for possible downgrade by any of the Rating Agencies); provided, however, that a ratings event otherwise arising by virtue of a particular reduction in rating will not be deemed to have occurred in respect of a particular change of control (and thus will not be deemed a Ratings Event for purposes of the definition of Change of Control Triggering Event) unless each of the Rating Agencies making the reduction in rating to which this definition would otherwise apply announces or publicly confirms that the reduction was the result, in whole or in part, of any event or circumstance comprised of or arising as a result of, or in respect of, the applicable Change of Control (whether or not the applicable Change of Control has occurred at the time of the Ratings Event); provided, further, that notwithstanding the foregoing, a Ratings Event shall not be deemed to have occurred so long as the Index Debt is rated Investment Grade by any of the Rating Agencies.

“Recipient” means (a) the Administrative Agent and (b) any Lender, as applicable.

“Register” has the meaning assigned to such term in Section 9.4(c).

“Regulation D” means Regulation D of the Board from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation T” means Regulation T of the Board from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation U” means Regulation U of the Board from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Board from time to time in effect and all official rulings and interpretations thereunder or thereof.

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

“Relevant Governmental Body” means the Board and/or the NYFRB, or a committee officially endorsed or convened by the Board and/or the NYFRB or, in each case, any successor thereto.



“Required Lenders” means, at any time, Lenders having unused Commitments and outstanding Loans representing more than 50% of the sum, without duplication, of the total Commitments at such time or Loans outstanding at such time; provided that, whenever there is one or more Defaulting Lenders, the unused Commitment of, each Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Revolving Facility” means the Five-Year Credit Agreement, dated as of September 2, 2021 (as amended, restated, supplemented or otherwise modified from time to time, or as replaced or refinanced from time to time), among the Borrower, the other borrowers party thereto, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent.

“Sale Leaseback” means any transaction or series of related transactions pursuant to which (a) the Borrower or any Subsidiary sells, transfers or otherwise disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) the Borrower or any Subsidiary thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or disposed of.

“Sanctions” means economic sanctions administered or enforced by the United States Government (including without limitation, sanctions enforced by OFAC), the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“SEC” means the United States Securities and Exchange Commission.

“Securitization Assets” means any accounts receivable owed to or payable to the Borrower or any Subsidiary thereof (whether now existing or arising or acquired in the future) arising in the ordinary course of business of the Borrower or such Subsidiary, all collateral securing such accounts receivable, all contracts and contract rights and all guarantees or other obligations in respect of such accounts receivable, and all proceeds of such accounts receivable and other assets (including contract rights) which are of the type customarily transferred in connection with securitizations of accounts receivable.

“Securitization Transaction” means any securitization or other financing transaction (including any factoring program) entered into by the Borrower or any of its Subsidiaries pursuant to which the Borrower or such Subsidiaries sell, pledge convey or otherwise transfer Securitization Assets, in each case in a manner that does not result in the incurrence by the Borrower or its Subsidiaries of any Indebtedness, including in respect of Guarantees, with recourse to the Borrower or such Subsidiaries or their assets, other than recourse solely against the assets of the applicable special purpose entity securitization vehicle or vehicles and/or the Borrower’s or such Subsidiaries’ retained interest in the applicable securitization vehicle or vehicles, and other than Standard Securitization Undertakings.

“Separation” means the consummation of the transactions pursuant to the Separation and Distribution Agreement.

“Separation and Distribution Agreement” means that certain Separation and Distribution Agreement between Dell Technologies, Inc. and VMware, Inc., dated as of April 14, 2021, as amended, modified or supplemented from time to time.

“Significant Subsidiary” means any Subsidiary of the Borrower (i) the net assets of which were greater than 5% of Consolidated Net Assets as of the last day of the most recent fiscal period for which financial statements have been delivered pursuant to Section 5.1(a) or (b) (or, prior to the first delivery of such financial statements, greater than 5% of Consolidated Net Assets as of the date of the most recent financial statements referred to in Section 3.4(a)) or (ii) the total revenues of which were greater than 10% of Consolidated Total Revenues for the four-fiscal-quarter period ending on the last day of the most recent fiscal period for which financial statements have been delivered pursuant to Section 5.1(a) or (b) (or, prior to the first delivery of such financial statements, greater than 10% of Consolidated Total Revenues for the four-fiscal-quarter period ending on the last day of the most recent fiscal period set forth in the most recent financial statements referred to in Section 3.4(a)). For purposes of making the determinations required by this definition, total revenues and net assets of Foreign Subsidiaries shall be converted into Dollars at the rates used in preparing the financial statements of the Borrower to be delivered pursuant to Section 5.1(a) or (b) (or, prior to the first delivery of such financial statements, at the rates used in preparing the Borrower’s most recent financial statements referred to in Section 3.4(a)).

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the NYFRB’s Website, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR-Based Rate” means SOFR or Term SOFR.

“Solvent” means, as to any Person as of any date of determination, that on such date (a) the assets of such Person (on a consolidated basis), at a Fair Valuation, exceed its Debts (on a consolidated basis) (including contingent liabilities), (b) such Person (on a consolidated basis) will be able to pay its Debts (on a consolidated basis) (including contingent liabilities) as they become due and (c) such Person (on a consolidated basis) will not have an unreasonably small amount of assets (or capital) for the businesses in which it is engaged or in which it intends to engage. For purposes of this definition, (i) “Fair Valuation” means the aggregate amount for which assets of a Person would change hands between a willing buyer and a willing seller, within a commercially reasonable period of time, in an arm’s-length transaction, where both parties are aware of all relevant facts and neither party is under any compulsion to act and (ii) “Debt” means a liability on a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

“Special Dividend” has the meaning ascribed to the term “VMware Special Dividend” in the Separation and Distribution Agreement.

“Specified Representations” means the representations and warranties of the Borrower set forth in Section 3.1 (solely as it relates to due organization and good standing), and set forth in Sections 3.2 (with the “Transactions” as used therein limited to the execution, delivery and performance of this Agreement by the Borrower), 3.3(b)(ii) (solely with respect the execution, delivery and performance of this Agreement by the Borrower), 3.6, 3.7, 3.8(a), 3.8(b) and 3.13.

“Specified Event of Default” means an Event of Default under Section 7.1(a) (solely as it relates to non-payment of fees), (h) (solely as it relates to the Borrower) and (i) (solely as it relates to the Borrower).

“S&P” means Standard & Poor’s Ratings Services LLC, a Standard & Poor’s Financial Services LLC business.

“Standard Securitization Undertakings” means any obligations and undertakings of the Borrower or any Subsidiary which facilitate, or are not inconsistent with, the treatment of at least one step of the transfer of receivables and related assets as a legal “true sale” and otherwise consistent with customary securitization undertakings in accordance with the laws of the applicable jurisdiction, including obligations relating to the sale and servicing of the receivables and other assets of a special purpose securitization vehicle, and including customary obligations of a seller of receivables or other securitized assets with respect to the repurchase thereof arising as a result of a breach of a representation, warranty or covenant or otherwise. For the avoidance of doubt, “Standard Securitization Undertakings” shall not include any guaranty or other obligation of the Borrower and its Subsidiaries with respect to any receivable that is not collected, not paid or is otherwise uncollectible solely on account of the insolvency, bankruptcy, creditworthiness or financial inability to pay of the applicable account debtor.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate for eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D) or any other reserve ratio or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Loans. Such reserve percentage shall include those imposed pursuant to Regulation D. Eurocurrency Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity (a) the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, (b) of which

securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (c) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any direct or indirect subsidiary of the Borrower from time to time.

“Supported QFC” has the meaning assigned to such term in Section 9.18(a).

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges in the nature of taxes imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term SOFR” means the forward-looking term rate for any period that is approximately (as reasonably determined by the Administrative Agent) as long as any of the Interest Period options set forth in the definition of “Interest Period,” that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion.

“Three Year Loan” means a Loan made pursuant to Section 2.1(a)(ii).

“Three Year Commitment” means, with respect to each Three Year Lender, the commitment, if any, of such Three Year Lender to make a Three Year Loan hereunder on the Funding Date. The initial amount of each Lender’s Three Year Commitment as of the Effective Date is set forth on Schedule 2.1. The initial aggregate amount of the Three Year Lenders’ Commitments is \$2,000,000,000.

“Three Year Lender” means a Lender with a Three Year Commitment or Three Year Loan.

“Three Year Maturity Date” means the date that is three years following the Funding Date or, if such date is not a Business Day, the first Business Day thereafter (unless such next Business Day is not in the same calendar month, in which case the next preceding Business Day).

“Trade Date” has the meaning assigned to such term in Section 9.4(h).

“Transactions” means the execution, delivery and performance by the Borrower of this Agreement and the borrowing of Loans and the use of the proceeds thereof.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the LIBO Rate (including the Adjusted LIBO Rate) or the Alternate Base Rate.

“UK Financial Institutions” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook

(as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“USA Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended from time to time.

“US Dollar Equivalent” means, on any date of determination, (a) with respect to any amount in Dollars, such amount, and (b) with respect to any amount in any foreign currency, the equivalent in Dollars of such amount, determined by the Administrative Agent using the Exchange Rate with respect to such foreign currency at the time in effect for such amount.

“US Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“US Special Resolution Regimes” has the meaning assigned to such term in Section 9.18(a).

“US Tax Compliance Certificate” has the meaning assigned to such term in Section 2.16(f)(ii)(b)(iii).

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Write-Down and Conversion Powers” means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

**SECTION 1.2 Classification of Loans and Borrowings.** For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Term Loan”) or by Type (e.g., a “Eurocurrency Loan”) or by Class and Type (e.g., a “Eurocurrency Term Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Term Borrowing”) or by Type (e.g., a “Eurocurrency Borrowing”) or by Class and Type (e.g., a “Eurocurrency Term Borrowing”).

**SECTION 1.3 Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference to any statute, regulation or other law shall be construed (i) as referring to such statute, regulation or other law as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor statutes, regulations or other laws) and (ii) to include all official rulings and interpretations thereunder, (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (d) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (f) the phrase “to the best of the knowledge” shall mean the belief of the officers of the Borrower and the Subsidiaries directly participating in or associated with the due diligence and negotiations in connection with the Transactions, and (g) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

**SECTION 1.4 Accounting Terms; GAAP.** Except as otherwise expressly provided herein, including in the definition of “Capitalized Lease Obligations”, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

**SECTION 1.5 [Intentionally Omitted].**

**SECTION 1.6 [Intentionally Omitted].**

**SECTION 1.7 [Intentionally Omitted].**

**SECTION 1.8 Financial Covenant Calculations.** Notwithstanding anything to the contrary in the definitions of Consolidated EBITDA, Consolidated Interest Expense or Interest Coverage Ratio in Section 1.1, for the avoidance of doubt, the Borrower shall always be permitted to not make any addback or adjustment in the calculation of Consolidated EBITDA or Consolidated Interest Expense that would have had the effect of increasing the Interest Coverage

Ratio for any period if included, and no Default shall occur as a result of the Borrower failing to make any such favorable addback or adjustment in the calculation of the Interest Coverage Ratio for any period. For the avoidance of doubt, in the event that Consolidated Interest Expense is less than zero for any relevant date of determination, there shall be no breach of the covenant set forth in Section 6.4 hereof due to the ratio being less than zero.

**SECTION 1.9 Interest Rates.** The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “LIBO Rate” or with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, without limitation, any LIBOR Successor Rate) or the effect of any of the foregoing, or of any LIBOR Successor Rate Conforming Changes.

**SECTION 1.10 Divisions.** For all purposes under this Agreement, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

## **ARTICLE II THE CREDITS**

### **SECTION 2.1 Commitments.**

(a) Subject to the terms and conditions and relying on the representations and warranties set forth herein, each Three Year Lender agrees, severally and not jointly, to make Three Year Loans denominated in Dollars to the Borrower on the Funding Date in an aggregate principal amount equal to such Three Year Lender’s Three Year Commitment as of the Effective Date. Any Three Year Loans that are prepaid or repaid may not be reborrowed.

(b) Subject to the terms and conditions and relying on the representations and warranties set forth herein, each Five Year Lender agrees, severally and not jointly, to make Five Year Loans denominated in Dollars to the Borrower on the Funding Date in an aggregate principal amount equal to such Five Year Lender’s Five Year Commitment as of the Effective Date. Any Five Year Loans that are prepaid or repaid may not be reborrowed.

### **SECTION 2.2 Loans and Borrowings.**

(a) Each Loan shall be made as part of a Borrowing consisting of Three Year Loans or Five Year Loans, as applicable of the same Type and denominated in Dollars made by the Lenders ratably in accordance with their individual Three Year Commitments or Five Year Commitments, as applicable. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder;

provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.13, each Borrowing shall be comprised entirely of (A) Eurocurrency Loans or (B) ABR Loans, as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurocurrency Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of 10 Eurocurrency Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the applicable Maturity Date.

**SECTION 2.3 Requests for Borrowings.** To request a Borrowing on the Funding Date, the Borrower shall notify the Administrative Agent of such request, (a) in the case of a Eurocurrency Borrowing, by a written Borrowing Request not later than 12:00 noon, Local Time, two Business Days before the Funding Date or (b) in the case of an ABR Borrowing, by telephone or by telecopy or by electronic mail not later than 12:00 noon, Local Time, on the Funding Date. Each such Borrowing Request shall be irrevocable and, if telephonic, shall be confirmed promptly by hand delivery or telecopy or electronic mail to the Administrative Agent of a written Borrowing Request in a form agreed to by the Administrative Agent and the Borrower and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.2:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) the Type of the requested Borrowing;
- (iv) the Class of the requested Borrowing;
- (v) in the case of a Eurocurrency Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (vi) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.6.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurocurrency Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Any Borrowing Request that shall fail to specify any of the information required by



clause (i), (ii), (iv) or (vi) of the immediately preceding paragraph may be rejected by the Administrative Agent if such failure is not corrected promptly after the Administrative Agent shall give written or telephonic notice thereof to the Borrower and, if so rejected, will be of no force or effect. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

**SECTION 2.4**           **[Intentionally Omitted].**

**SECTION 2.5**           **[Intentionally Omitted].**

**SECTION 2.6**           **Funding of Borrowings.**

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds in Dollars, in the case of a Eurocurrency Loan by 12:00 noon, Local Time, and in the case of an ABR Loan by 2:00 p.m., Local Time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to the Applicable Funding Account.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed time of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of (A) the NYFRB Rate and (B) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to an ABR Loan. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

**SECTION 2.7**           **Interest Elections.**

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurocurrency Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably

among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.3 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election; provided that any notice of election to convert a Eurocurrency Borrowing into an ABR Borrowing at the end of its then-current Interest Period must be made by the time that a Borrowing Request for a Eurocurrency Borrowing would be required under Section 2.3. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy or electronic mail to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.2:

(i) the principal amount of the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing; and

(iv) if the resulting Borrowing is a Eurocurrency Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period."

If any such Interest Election Request requests a Eurocurrency Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a one-month Eurocurrency Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so

notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurocurrency Borrowing and (ii) unless repaid, each Eurocurrency Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

## **SECTION 2.8 Termination and Reduction of Commitments.**

(a) Unless previously terminated, the Commitments of each Lender shall terminate on the earlier of (i) the Funding Date (after the funding of the Loans of such Lender to be made on such date in accordance with and subject to the terms and conditions hereof) and (ii) 5:00 p.m., New York City time, on the Commitment Termination Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments of either Class without premium or penalty; provided that each reduction of the Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$10,000,000.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce Commitments under Section 2.8(b) at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.8 shall be irrevocable; provided that a notice of termination of Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or other events, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders of the relevant Class in accordance with their individual Applicable Percentages.

## **SECTION 2.9 Repayment of Loans; Evidence of Debt.**

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Three Year Lender the then unpaid principal amount of the Three Year Loans on the Three Year Maturity Date. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Five Year Lender (i) on the last Business Day of each fiscal quarter of the Borrower, commencing on the last day of the fifth full fiscal quarter of the Borrower commencing after the Funding Date, an amount in respect of the principal of the Five Year Loans equal to 1.25% of the aggregate principal amount of the Five Year Loans made on the Funding Date (as such installment amount may be reduced from time to time as a result of the application of prepayments in accordance with Section 2.10) and (ii) the then unpaid principal amount of the Five Year Loans on the Five Year Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from

each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

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

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement (including, for the avoidance of doubt, Section 9.4(c); provided, further, that in the event of a conflict or inconsistency between the information maintained pursuant to this Section 2.9 and the Register with respect to the holder of any obligation, the information in the Register shall control for all purposes).

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.4) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

#### **SECTION 2.10      Prepayment of Loans.**

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty, subject to prior notice in accordance with paragraph (d) of this Section and payment of any amounts required under Section 2.15; provided that each prepayment of any Borrowing shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$10,000,000.

(b) Any prepayment by the Borrower of a Borrowing of Five Year Loans shall be applied to reduce the subsequent scheduled repayments of the Five Year Loans to be made pursuant to clause (i) of the second sentence of Section 2.9(a) as directed in writing by the Borrower.

(c) Prior to any prepayment of Borrowings, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (d) below.

(d) The Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy or electronic mail) or by telecopy or electronic mail of any prepayment hereunder (i) in the case of prepayment of a Eurocurrency Borrowing, not later than 12:00 noon, Local Time, three Business Days before the date of prepayment and (ii) in the case of prepayment of an ABR Borrowing, not later than 12:00 noon, Local Time, on the Business Day of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof, to be prepaid. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of a Borrowing of the same Type as provided in Section 2.2. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.12 and any break funding payments required by Section 2.15.

#### **SECTION 2.11 Fees.**

(a) The Borrower agrees to pay to the Administrative Agent a commitment fee, for the account of the Lenders, ratably in accordance with their respective Three Year Commitments and Five Year Commitments (as applicable), (i) on the Effective Date, in an amount equal to (x) in the case of Three Year Commitments, 0.05% of the amount of the aggregate Three Year Commitments at such date and (y) in the case of the Five Year Commitments, 0.075% of the amount of the aggregate Five Year Commitments at such date and (ii) on the Funding Date, in an amount equal to (x) in the case of Three Year Commitments, 0.05% of the amount of the aggregate Three Year Loans funded on such date and (y) in the case of the Five Year Commitments, 0.075% of the amount of the aggregate Five Year Loans funded on such date.

(b) The Borrower agrees to pay the Administrative Agent, for its own account, the fees in the amounts and at the times previously agreed upon by the Borrower and the Administrative Agent.

(c) Commencing on December 1, 2021 (such date, the “Ticking Fee Start Date”), the Borrower shall pay to the Administrative Agent a non-refundable ticking fee for the account of the Lenders, ratably in accordance with their respective Three Year Commitments and Five Year Commitments (as applicable), at a rate per annum equal to (i) in the case of Three Year Commitments, 0.15% of the amount of the unfunded Three Year Commitments and (ii) in the case of Five Year Commitments, 0.175% of the amount of the unfunded Five Year Commitments, in each case hereunder during the period from and after the Ticking Fee Start Date through and including the earlier of (i) the date of termination of the unfunded Commitments in full and (ii) the Funding Date, which fee shall be earned and shall be due and payable quarterly in arrears on the last Business Day of each fiscal quarter of the Borrower, calculated based upon the actual number of days elapsed over a 360 day year and shall be distributed to the Lenders pro rata in accordance with the amount of each such Lender’s Commitments.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, in the case of commitment and ticking fees, to the Lenders.

**SECTION 2.12 Interest.**

(a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurocurrency Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest from the date on which such amount became due until such amount is paid in full, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) in the event of any conversion of any Eurocurrency Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion. All interest shall be payable in the currency in which the applicable Loan is denominated.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

**SECTION 2.13 Alternate Rate of Interest.**

(a) Other than as set forth in clause (b) below:

if prior to the commencement of any Interest Period for a Eurocurrency Borrowing, the Administrative Agent determines (which determination shall be conclusive

absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

prior to the commencement of any Interest Period for a Eurocurrency Borrowing, the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurocurrency Borrowing of the affected type shall be ineffective, and such Borrowing shall be converted to or continued on the last day of the Interest Period applicable thereto as an ABR Borrowing and (ii) if any Borrowing Request requests a Eurocurrency Borrowing, such Borrowing shall be made as an ABR Borrowing (or such Borrowing shall not be made if the Borrower revokes (and in such circumstances, such Borrowing Request may be revoked notwithstanding any other provision of this Agreement) such Borrowing Request by telephonic notice, confirmed promptly in writing, not later than one Business Day prior to the proposed date of such Borrowing); provided that if the circumstances giving rise to such notice affect only one type of Borrowings (for example, Loans having certain Interest Periods), then the other types of Borrowing shall be permitted.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower notifies the Administrative Agent that the Borrower has determined, that:

(i) adequate and reasonable means do not exist for ascertaining the LIBO Rate for any requested Interest Period, including, without limitation, because the LIBO Screen Rate is not available or published on a current basis, and such circumstances are unlikely to be temporary; or

(ii) the administrator of the LIBO Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate or the LIBO Screen Rate shall no longer be made available, or used for determining the interest rate of loans; provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent and the Borrower that will continue to provide the LIBO Rate after such specific date (such specific date, the “Scheduled Unavailability Date”), or

(iii) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the LIBO Rate,

then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrower may amend this Agreement in accordance with this Section 2.13 to replace the LIBO Rate with one or more alternate benchmark rates, which may be one or more SOFR-Based Rates giving due consideration to any evolving or then existing convention for similar dollar denominated syndicated credit facilities for such alternate benchmark rates (any such proposed rate, a “LIBOR Successor Rate”) and including any mathematical or other adjustments to any such benchmark or any method for calculating such adjustment, giving due consideration to any evolving or then existing convention for similar dollar denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion (in consultation with the Borrower) and may be periodically updated (the “Adjustment”), and any such amendment shall become effective at 5:00 p.m. (New York time) on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders in the case of an amendment to replace the LIBO Rate with any alternate benchmark rate other than one or more SOFR-Based Rates object to such amendment on the basis that such benchmark rate is not a prevailing or evolving reference rate for similar dollar denominated syndicated credit facilities; provided that, for the avoidance of doubt, the Required Lenders shall not be entitled to object to any SOFR-Based Rate contained in any such amendment. Unless otherwise agreed by the Administrative Agent and the Borrower, no replacement of the LIBO Rate with a LIBOR Successor Rate will occur prior to the date that is 90 days prior to the applicable Scheduled Unavailability Date.

If no LIBOR Successor Rate has been determined and the circumstances under clause (b)(i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make, continue or convert into Eurocurrency Loans shall be suspended (to the extent of the affected Eurocurrency Loans or Interest Periods), and (y) in the case of circumstances under clause (i) above existing with respect to the LIBO Rate or the occurrence of the Scheduled Unavailability Date with respect to the LIBO Rate or the LIBO Screen Rate, the Adjusted LIBO Rate component shall no longer be utilized in determining the Alternate Base Rate. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Loans (to the extent of the affected Eurocurrency Loans or Interest Periods), or in the case of Eurocurrency Loans, failing that, will be deemed to have converted such request into a request for a Borrowing of ABR Loans (subject to the foregoing clause (y)) in the amount specified therein.

Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero for purposes of this Agreement.

In connection with the implementation of a LIBOR Successor Rate, the Administrative Agent and the Borrower will have the right to make LIBOR Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such LIBOR Successor Rate Conforming Changes will



become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such LIBOR Successor Conforming Changes to the Lenders reasonably promptly after such amendment becomes effective.

In addition to the foregoing, if any LIBOR Successor Rate implemented pursuant to the foregoing provisions of this Section 2.13(b) is a term rate, the Administrative Agent and the Borrower may subsequently amend this Agreement in accordance with this Section 2.13(b) to implement any additional interest tenors for such successor rate which have become broadly available which are not provided for (other than with consent of all Lenders) in the definition of “Interest Period” or in a previously implemented amendment providing for such successor rate, and any such amendment shall become effective at 5:00 p.m. (New York time) on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

#### **SECTION 2.14      Increased Costs.**

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve or other requirement reflected in the Adjusted LIBO Rate);

(ii) subject any Lender to any Taxes (except for Indemnified Taxes or Excluded Taxes); or

(iii) impose on any Lender or the London interbank market or the Euro interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurocurrency Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, issuing, continuing, converting to or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender’s holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender’s capital or on the capital of such Lender’s direct or indirect holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender’s direct or indirect holding company could have achieved but for such Change in Law (taking into consideration such Lender’s policies and the policies of such Lender’s direct or indirect holding company with respect

to capital or liquidity adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's direct or indirect holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or its direct or indirect holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 120 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 120-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) Notwithstanding any other provision of this Section 2.14, no Lender shall demand compensation for any increased costs or reduction referred to above if it shall not be the general policy or practice of such Lender to demand such compensation in similar circumstances and unless such demand is generally consistent with such Lender's treatment of comparable borrowers of such Lender in the United States with respect to similarly affected commitments or loans under agreements with such borrowers having provisions similar to this Section 2.14 (it being understood that this sentence shall not limit the discretion of any Lender to waive the right to demand such compensation in any given case).

(f) If any Lender shall subsequently recoup any costs (other than from the Borrower) for which such Lender has previously been compensated by the Borrower under this Section 2.14, such Lender shall remit to the Borrower an amount equal to the amount of such recoupment.

**SECTION 2.15 Break Funding Payments.** In the event of (a) the payment of any principal of any Eurocurrency Loan prior to the last day of an Interest Period applicable thereto (including as a result of an Event of Default or an optional prepayment of Loans), (b) the conversion of any Eurocurrency Loan prior to the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurocurrency Loan on the date specified in any notice delivered pursuant hereto (except in the case when such notice may be revoked under Section 2.10(d) or Section 2.13 and is revoked in accordance therewith), or (d) the assignment of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.18, then, in any such event, the Borrower shall compensate each Lender for the loss (excluding loss of margin), cost and expense it may reasonably incur as a result of such event; provided, however, that the Borrower shall not

compensate any Lender for any cost of terminating or liquidating any hedge or related trading position (such as a rate swap, basis swap, forward rate transaction, interest rate option, cap, collar or floor transaction, swaption or any other similar transaction). Such compensable loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the Eurocurrency market, whether or not such Loan was in fact funded. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

#### **SECTION 2.16      Taxes.**

(a) All payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Taxes; provided that if the applicable withholding agent shall be required to deduct or withhold any Taxes from such payments, then (i) if such Taxes are Indemnified Taxes, the sum payable by the Borrower shall be increased as necessary so that after all such required deductions and withholding have been made (including deductions and withholding applicable to additional sums payable under this Section 2.16) the applicable Lender (or, in the case of a payment made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such deductions or withholding been made, (ii) the applicable withholding agent shall make such deduction or withholdings, and (iii) the applicable withholding agent shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower shall pay all Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify the Administrative Agent and each Lender, within 30 days after written demand therefor, for the full amount of any Indemnified Taxes and any Other Taxes paid or payable by the Administrative Agent or such Lender, as the case may be, (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.16), whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the amount of such payment or liability delivered to the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

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

(e) If the Administrative Agent or a Lender determines, in its good-faith judgment, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.16, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.16 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Administrative Agent or such Lender, shall repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 2.16(e) shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrower or any other Person.

(f) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(ii) Without limiting the generality of the foregoing:

a) any Lender that is a US Person (including any Person that is a US Person and that is treated for income tax purposes as the owner of the assets of a Lender that is a Disregarded Entity) shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two executed originals of IRS Form W-9 certifying that such Lender is exempt from US federal backup withholding tax;

b) any Foreign Lender (including any Person that is not a US Person and that is treated for income tax purposes as the owner of the assets of a Lender that is a Disregarded Entity) shall, to the extent it is legally eligible to do so, deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party two executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable;

ii) two executed originals of IRS Form W-8ECI;

iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) or 871(h) of the Code, (x) a certificate substantially in the form of Exhibit C-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code, and that no payments under any Loan Documents are effectively connected with a Foreign Lender’s conduct of a U.S. trade or business (a “US Tax Compliance Certificate”) and (y) two executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable; or

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

c) any Foreign Lender shall, to the extent it is legally eligible to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement

(and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other documentation prescribed by applicable law as a basis for claiming exemption from or a reduction in US federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

d) If a payment made to a Lender under any Loan Document would be subject to US Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by applicable law and at such time or times reasonably requested by the Administrative Agent or the Borrower, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Administrative Agent or the Borrower as may be necessary for the Administrative Agent or the Borrower, as the case may be, to comply with its obligations under FATCA, to determine that such Lender has or has not complied with such Lender's obligations under FATCA and, as necessary, to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.16(f)(ii)(d), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any documentation it previously delivered pursuant to this Section 2.16(f) expires or becomes obsolete or inaccurate in any respect, it shall update such documentation or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so. Notwithstanding any other provision of this Section 2.16(f), a Lender shall not be required to deliver any documentation that such Lender is not legally eligible to deliver.

Each Lender hereby authorizes the Administrative Agent to deliver to the Borrower and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 2.16(f).

(g) On or before the date the Administrative Agent becomes a party to this Agreement, the Administrative Agent shall provide to the Borrower two duly-signed, properly completed copies of the documentation prescribed in clause (i) or (ii) below, as applicable (together with all required attachments thereto): (i) IRS Form W-9 or any successor thereto, or (ii) (A) with respect to payments received for its own account, IRS Form W-8ECI or any successor thereto, and (B) with respect to payments received on account of any Lender, a U.S. branch withholding certificate on IRS Form W-8IMY or any successor thereto evidencing its agreement to be treated as a US Person for U.S. federal withholding tax purposes. If any documentation the Administrative Agent previously delivered pursuant to this Section 2.16(g) expires or becomes obsolete or inaccurate in any

respect, the Administrative Agent shall update such documentation or promptly notify the Borrower in writing of its legal ineligibility to do so. Notwithstanding anything to the contrary in this Section 2.16(g), the Administrative Agent shall not be required to provide any documentation that the Administrative Agent is not legally eligible to deliver as a result of a Change in Law after the Effective Date.

- (h) For purposes of this Section 2.16, the term “applicable law” includes FATCA.

#### **SECTION 2.17 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.**

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or of amounts payable under Sections 2.14, 2.15 or 2.16, or otherwise) prior to 2:00 p.m., Local Time, on the date when due, in immediately available funds, without setoff, recoupment or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to such account as may be specified by the Administrative Agent for the account of the applicable Lenders, except that payments pursuant to Sections 2.14, 2.15, 2.16 and 9.3 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension (but in no case shall any payment so extended be due after the applicable Maturity Date). All payments hereunder and under each other Loan Document shall be made in Dollars, except as otherwise expressly provided. Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans of the relevant Class and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for



cash at face value) participations in the Loans of other Lenders of such Class to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans of such Class; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or Participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received written notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the NYFRB Rate.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.6(a) or 2.17(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as Collateral for, and to be applied to, any future funding obligations of such Lender under any such Section.

#### **SECTION 2.18 Mitigation Obligations; Replacement of Lenders.**

(a) If any Lender requests compensation under Section 2.14, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.14 or 2.16, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender.



(b) If (i) any Lender requests compensation under Section 2.14, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, (iii) any Lender becomes a Defaulting Lender, or (iv) if any Lender does not consent to any proposed amendment, supplement, modification, consent or waiver of any provision of this Agreement or any other Loan Document that requires the consent of each of the Lenders or each of the Lenders affected thereby (so long as the consent of the Required Lenders has been obtained), upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 9.4), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) to the extent required by Section 9.4, the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.14 or payments required to be made pursuant to Section 2.16, such assignment will result in a material reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that (i) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, each other Borrower, if any, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to the Platform as to which the Administrative Agent and such parties are participants), and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender; provided that any such documents shall be without recourse to or warranty by the parties thereto.

#### **SECTION 2.19      Defaulting Lenders.**

Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the Commitment and Loans of such Defaulting Lender shall not be included in determining whether the Required Lenders or any other requisite Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.2) for so long as such Lender is a Defaulting Lender; provided, that the provisions of this sentence shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of all Lenders or each Lender affected thereby.

In the event that the Administrative Agent and the Borrower agree that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; provided, further, that, except as otherwise expressly agreed by the affected parties, no change hereunder of a Lender's status from a Defaulting Lender to a non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Lenders that:

**SECTION 3.1      Organization; Powers.** Each of the Borrower and the Significant Subsidiaries is duly organized or incorporated, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or incorporation (as applicable), has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business and in good standing (if applicable) in every jurisdiction where such qualification is required.

**SECTION 3.2      Authorization; Enforceability.** The Transactions are within the Borrower's corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action. This Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

**SECTION 3.3      Governmental Approvals; No Conflicts.** The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate (i) any applicable law or regulation or (ii) the charter, by-laws, constitution or other organizational documents of the Borrower or any of the Significant Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any of the Significant Subsidiaries or its assets, and (d) will not result in the creation or imposition of any Lien on any material amount of assets of the Borrower or any of the Significant Subsidiaries, except (in the case of each of clauses (a), (b)(i) and (c)) to the extent that the failure to obtain or make such consent, approval, registration, filing or action, or such violation, default or right as the case may be, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect and except, in the case of clause (d), Liens permitted under this Agreement.

#### **SECTION 3.4 Financial Condition; No Material Adverse Change.**

(a) The Borrower has heretofore furnished to the Administrative Agent for delivery to the Lenders (i) an audited balance sheet and statements of income, stockholders' equity and cash flows for the Borrower as of and for the fiscal year ended January 29, 2021, reported on by PricewaterhouseCoopers LLP, independent registered public accounting firm, and (ii) an unaudited balance sheet and statements of income, stockholders' equity and cash flows as of and for the period ending April 30, 2021. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and the Subsidiaries as of such date and for such period in accordance with GAAP.

(b) Since January 29, 2021, there has been no material adverse change in the actual business, assets, operations or financial condition of the Borrower and its Subsidiaries, taken as a whole (it being agreed that the Separation, including the Special Dividend, does not constitute such a material adverse change).

#### **SECTION 3.5 Litigation and Environmental Matters.**

(a) Except as disclosed in the Borrower's Annual Report on Form 10-K for the fiscal year ended January 29, 2021 and the quarterly report on Form 10-Q or current reports on Form 8-K filed subsequent thereto but prior to the Effective Date, or any amendments thereof filed subsequent thereto but prior to the Effective Date, and except as set forth on Schedule 3.5, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending or, to the knowledge of the Borrower, threatened against the Borrower or any of the Significant Subsidiaries (i) that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that would reasonably be expected to adversely affect the validity, legality, or enforceability of this Agreement.

(b) Except as disclosed in the Borrower's Annual Report on Form 10-K for the fiscal year ended January 29, 2021 and the quarterly report on Form 10-Q or current reports on Form 8-K filed subsequent thereto but prior to the Effective Date, except as set forth on Schedule 3.5 and except with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of the Significant Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, or (iii) has received notice of any claim with respect to any Environmental Liability.

**SECTION 3.6 Investment Company Status.** The Borrower is not required to register as an "investment company" under the Investment Company Act of 1940.

### **SECTION 3.7 Federal Reserve Regulations.**

(a) The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of the provisions of the Regulations of the Board, including Regulation T, Regulation U and Regulation X. If required by law and requested by the Administrative Agent or any Lender, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1 referred to in Regulation U.

### **SECTION 3.8 PATRIOT Act, OFAC and FCPA.**

(a) The Borrower will not, directly or indirectly, use the proceeds of the transaction, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, for the purpose of funding (i) any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or (ii) any other transaction that will result in a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions.

(b) The Borrower and its Subsidiaries will not use the proceeds of the Loans directly, or, to the knowledge of the Borrower, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”).

(c) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, to the knowledge of the Borrower, none of the Borrower or its Subsidiaries has, in the past three years, committed a violation of applicable regulations of the United States Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), Title III of the USA Patriot Act or the FCPA.

(d) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, none of the Borrower, its Subsidiaries, or, to the knowledge of the Borrower, any director, officer, employee or agent thereof is an individual or entity currently on OFAC’s list of Specially Designated Nationals and Blocked Persons, nor is the Borrower or any of its Subsidiaries located, organized or resident in a country or territory that is the subject of Sanctions.

**SECTION 3.9 Compliance with Laws and Agreements.** None of the Borrower or any of the Significant Subsidiaries is in violation of any law, rule or regulation or indenture, agreement or other instrument, or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority or indenture, agreement or other instrument, where such violation or default would reasonably be expected to result in a Material Adverse Effect.

**SECTION 3.10 Payment of Taxes.** Each of the Borrower and the Significant Subsidiaries has timely filed or caused to be filed all Tax returns and reports required by law to have been filed, and has paid or caused to be paid all Taxes due and payable (including in its capacity as a withholding agent), except (a) any Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (b) to the extent that the failure to make such filing or make such payment would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

**SECTION 3.11 Properties.**

(a) Except as, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, each of the Borrower and its Subsidiaries has good title to, or valid leasehold interests in or rights to use, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) Each of the Borrower and its Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower and its Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

**SECTION 3.12 ERISA.** No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect.

**SECTION 3.13 Solvency.** The Borrower and its Subsidiaries taken as a whole are Solvent as of the Funding Date on a pro forma basis after giving effect to the Borrowings on such Date.

**ARTICLE IV  
CONDITIONS**

**SECTION 4.1 Effective Date.** The occurrence of the Effective Date is subject to the satisfaction or waiver by the Lenders of the following conditions:

(a) The Administrative Agent (or its counsel) shall have received from the Borrower, each Lender and the Administrative Agent either (i) a counterpart of this Agreement (which may include telecopy or electronic transmission of a signed signature page of this Agreement) signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) from Gibson, Dunn & Crutcher LLP, special New York counsel to the Borrower, covering such

matters relating to the Borrower, this Agreement or the Transactions as the Lenders shall reasonably request.

(c) The Administrative Agent shall have received customary secretary's certificates, organizational documents, and customary evidence of authorization of the Transactions, this Agreement and the other Loan Documents of the Borrower and a good standing certificate of the Borrower in its jurisdiction of organization.

(d) The Administrative Agent shall have received a certificate dated the Effective Date signed by a Vice President or a Financial Officer of the Borrower stating that the representations and warranties of the Borrower set forth in this Agreement are true and correct in all material respects (or if qualified as to materiality or Material Adverse Effect, in all respects) on and as of the Effective Date.

(e) The Lenders shall have received at least three Business Days prior to the Effective Date (i) all documentation and other information required by bank regulatory authorities under applicable "know your customer", and anti-money laundering rules and regulations, including the USA PATRIOT Act and (ii) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to the Borrower, in each case, for clauses (i) and (ii), to the extent requested by the Administrative Agent or the relevant Lender at least eight Business Days prior to the Effective Date.

(f) All fees, cost reimbursements and out-of-pocket expenses required to be paid or reimbursed on or prior to the Effective Date pursuant hereto or pursuant to any other fee arrangements among the Borrower and the Joint Lead Arrangers, to the extent invoiced prior to (or, in the case of cost reimbursement and out-of-pocket expenses, not fewer than three Business Days prior to) the Effective Date, shall have been paid or will be paid on the Effective Date substantially concurrently with the effectiveness of this Agreement.

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

**SECTION 4.2 Conditions to the Funding Date.** The obligation of each Lender to make a Loan on the Funding Date is subject to the satisfaction or waiver of the following conditions:

(a) The Borrower shall have timely delivered a Borrowing Request.

(b) The Administrative Agent shall have received (i) audited consolidated balance sheets of the Borrower and its consolidated Subsidiaries as of the end of, and related statements of income and cash flows of the Borrower and its consolidated Subsidiaries for, the three most recently completed fiscal years ended at least 90 days prior to the Funding Date and (ii) an unaudited consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at the end of, and related statements of income and cash flows of the Borrower and its consolidated Subsidiaries for, each subsequent fiscal quarter (other than the fourth fiscal quarter of a fiscal year) of the Borrower and its consolidated

Subsidiaries, subsequent to the last fiscal year for which financial statements were prepared pursuant to the preceding clause (i) and ended at least 45 days before the Funding Date together with the consolidated balance sheet and related statements of income and cash flows for the corresponding portion of the previous year (subject, in the case of this clause (ii), to normal year-end adjustments and the absence of footnotes). Reports required to be delivered pursuant to this clause (b) of this Section 4.2 shall be deemed to have been delivered on the date on which the Borrower posts such reports on its website at www.vmware.com or when such reports are posted on the SEC's website at www.sec.gov.

(c) The Specified Representations shall be true and correct in all material respects (except Specified Representations that are qualified by materiality, which shall be true and correct (after giving effect to any qualification therein) in all respects).

(d) At the time of and immediately after giving effect to such Borrowing, no Specified Event of Default shall have occurred and be continuing.

(e) Execution and delivery by the Borrower of a solvency certificate of the Borrower's chief financial officer substantially in the form of Exhibit B hereto.

(f) All fees, cost reimbursements and out-of-pocket expenses required to be paid or reimbursed on or prior to the Funding Date pursuant hereto shall have been paid or will be paid on the Funding Date (it being agreed that such amounts may be netted from the proceeds of the Loans funded on the Funding Date).

(g) The Effective Date shall have occurred or shall occur substantially concurrently with the Funding Date.

(h) The Funding Date shall occur on, or not more than two Business Days prior to, the scheduled payment date of the Special Dividend.

## **ARTICLE V**

### **AFFIRMATIVE COVENANTS**

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full the Borrower covenants and agrees with the Lenders that:

**SECTION 5.1 Financial Statements and Other Information.** The Borrower will furnish to the Administrative Agent for delivery to each Lender:

(a) on or before the earlier of (i) the date by which the Annual Report on Form 10-K of the Borrower (after giving effect to any extension thereof) for each fiscal year is required to be filed under the rules and regulations of the SEC and (ii) 90 days after the end of such fiscal year, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by PricewaterhouseCoopers LLP or other independent registered public accounting firm of recognized national standing (without a "going concern" or like qualification or

exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and the Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) on or before the earlier of (i) the date by which the Quarterly Report on Form 10-Q of the Borrower for each of the first three fiscal quarters of each fiscal year is required to be filed under the rules and regulations of the SEC (after giving effect to any extension thereof) and (ii) 45 days after the end of each of the first three fiscal quarters of such fiscal year, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and the Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) not later than the date by which financial statements are required to be delivered under clause (a) or (b) above, a certificate of a Financial Officer of the Borrower (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto and (ii) to the extent such compliance is required as of the relevant test date, setting forth reasonably detailed calculations demonstrating compliance with Section 6.4 (including reasonable identification of any addbacks or other adjustments favorable to the Borrower available in the applicable financial definitions that it has elected not to utilize as permitted by this Agreement (without any requirement for identification or quantification of the specific charges or other items it has not added back or adjusted for));

(d) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary (excluding any budget or forecast or comparable item), or compliance with the terms of this Agreement or with the requirements of the Patriot Act or any other "know your customer" or similar laws or regulations, as the Administrative Agent or, through the Administrative Agent, any Lender may reasonably request (it being understood that the Borrower shall not be required to provide any information which is subject to confidentiality restrictions, the nature of which prohibit such disclosure notwithstanding the provisions of Section 9.12 hereof); and

(e) all information, documents and other materials that the Borrower is obligated to deliver to the Administrative Agent under this Agreement, including all notices, requests, and other reports, certificates and other information materials, but excluding any such information that (i) is required to be delivered pursuant to clauses (a) and (b) of this Section 5.1, (ii) relates to a request for a new, or a conversion of an existing, Borrowing or other extension of credit (including any Interest Election Request or Interest Period relating thereto), (iii) relates to the payment of any principal or other amount due



under this Agreement prior to the scheduled date therefor, (iv) provides notice of any Default or Event of Default, or (v) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any Borrowing or other extension of credit hereunder (all such non-excluded information being referred to herein collectively as “Communications”), by transmitting the Communications in an electronic/soft medium in a format acceptable to the Administrative Agent. In addition, the Borrower agrees to continue to provide the Communications to the Administrative Agent in the manner specified in this Agreement, but only to the extent requested by the Administrative Agent. The Borrower further agrees that the Administrative Agent may make the Communications available to the Lenders by posting the Communications on Intralinks or a substantially similar electronic transmission system, access to which is controlled by the Administrative Agent (the “Platform”).

Reports required to be delivered pursuant to clauses (a) and (b) of this Section 5.1 shall be deemed to have been delivered on the date on which the Borrower posts such reports on its website at [www.vmware.com](http://www.vmware.com) or when such reports are posted on the SEC’s website at [www.sec.gov](http://www.sec.gov); provided that the Borrower shall deliver to the Administrative Agent, not later than the date on which financial statements are required to be delivered under clause (b) above, the certification of a Financial Officer, as required by clause (b).

**SECTION 5.2      Notices of Material Events.** The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the following:

- (a) the occurrence of any Default or Event of Default;
- (b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Affiliate thereof that, if adversely determined, would reasonably be expected to result in a Material Adverse Effect; and
- (c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect.

Each notice delivered under this Section 5.2 shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

**SECTION 5.3      Existence; Conduct of Business.** The Borrower will, and will cause each of the Significant Subsidiaries to, do or cause to be done all things reasonably necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; provided that the foregoing shall not prohibit any merger, consolidation, Division, liquidation, dissolution or asset disposition permitted under Section 6.3; provided further that neither the Borrower nor any of the Significant Subsidiaries shall be required to preserve any rights, licenses, permits, privileges or franchises or any Significant Subsidiary’s existence if the Borrower or such Subsidiary determines

that the preservation thereof is no longer desirable in the conduct of the business of the Borrower or such Subsidiary, as the case may be, and that the loss thereof would not materially adversely affect the Borrower, such Subsidiary or the Lenders with respect to any Commitments or Borrowing hereunder.

**SECTION 5.4      Payment of Taxes.** The Borrower will, and will cause each of the Subsidiaries to, pay and discharge as the same shall become due and payable, all Taxes imposed upon it or its properties or assets that, if not paid, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, unless such Taxes are being contested in good faith by appropriate proceedings diligently conducted and the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP.

**SECTION 5.5      Maintenance of Properties.** The Borrower will, and will cause each of the Subsidiaries to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, except where the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**SECTION 5.6      Books and Records; Inspection Rights.** The Borrower will, and will cause each of the Subsidiaries to, (a) keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities sufficient to permit the preparation of the consolidated financial statements of the Borrower and the Subsidiaries in accordance with GAAP, and (b) permit any representatives designated by the Administrative Agent (or, during the continuance of an Event of Default, any Lender), upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and (unless an Event of Default has occurred and is continuing) no more than once per fiscal year of the Borrower; provided that (i) the Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants and (ii) the representatives of the Administrative Agent or any Lender shall agree to any reasonable confidentiality obligations proposed by the Borrower, including, but not limited to, confidentiality obligations agreed to by the Lenders under or in connection with this Agreement.

**SECTION 5.7      Compliance with Laws.** The Borrower will, and will cause each of the Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, including all Environmental Laws, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

**SECTION 5.8      Use of Proceeds.** The proceeds of the Loans will be used to finance a portion of the Special Dividend, to pay other amounts in connection with the Transactions and the Separation (including fees and expenses), and for general corporate purposes. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulation T, Regulation U and Regulation X.

## ARTICLE VI NEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full the Borrower covenants and agrees with the Lenders that:

**SECTION 6.1      Subsidiary Indebtedness.** The Borrower will not permit any Subsidiary to create, incur, assume or permit to exist any Indebtedness, except:

(a) Indebtedness, including Guarantees and obligations in respect of letters of credit and letters of guaranty, existing on the Effective Date and, if outstanding in a principal amount for any individual item greater than \$100,000,000, listed on Schedule 6.1;

(b) Guarantees of Indebtedness of any Subsidiary to the extent such Indebtedness is otherwise permitted under this Agreement;

(c) Indebtedness of any Subsidiary to the Borrower or any other Subsidiary;

(d) Indebtedness of any Person that becomes a Subsidiary (or of any Person not previously a Subsidiary that is merged or consolidated with or into a Subsidiary in a transaction permitted hereunder) after the date hereof (other than as a result of a Division); or Indebtedness of any Person that is assumed by any Subsidiary in connection with an acquisition of assets by such Subsidiary; provided that (i) such Indebtedness exists at the time such Person becomes a Subsidiary (or is so merged or consolidated) or such assets are acquired and is not created in contemplation of or in connection with such Person becoming a Subsidiary (or such merger or consolidation) or such assets being acquired and (ii) no other Subsidiary (other than a Subsidiary into which the acquired Person is merged or any Subsidiary of the acquired Person) shall Guarantee or otherwise become liable for the payment of such Indebtedness, except to the extent that such Guarantee is incurred pursuant to Section 6.1(g);

(e) Indebtedness incurred to finance the purchase price, construction cost or improvement cost incurred in connection with the acquisition, construction or improvement of assets, including Capitalized Lease Obligations; provided that (i) such Indebtedness is incurred prior to or within one year after, the date of acquisition, construction or improvement of such assets, (ii) such Indebtedness does not exceed the amount of such purchase price or cost of the asset and (iii) any Lien securing such Indebtedness is permitted under Section 6.2(f);

(f) Indebtedness of Subsidiaries that are limited purpose financing vehicles in respect of Securitization Transactions and, to the extent constituting Indebtedness, Standard Securitization Undertakings of other Subsidiaries in connection with Securitization Transactions; provided in each case that such Securitization Transactions otherwise comply with the provisions hereof;

(g) Indebtedness in respect of Cash Pooling Arrangements or arising in connection with other customary cash management services, including treasury, depository,

overdraft, credit or debit card, electronic funds transfer and other cash management arrangements and Indebtedness from the honoring by a bank or financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(h) Permitted Accretive Acquisition Debt of any Foreign Subsidiary in an aggregate principal amount not to exceed \$1,000,000,000 at any one time outstanding; provided that (x) both immediately prior and after giving effect to such Foreign Subsidiary becoming liable in respect thereof, no Default or Event of Default shall exist or result therefrom, (y) the principal amount of any Indebtedness that any Foreign Subsidiary shall become liable for under this Section 6.1(h) shall not be greater than the fair market value of the assets or Equity Interests (as determined in good faith by the Borrower) acquired by the Borrower and/or its Subsidiaries in the Accretive Acquisition related to such Permitted Accretive Acquisition Debt and (z) such Indebtedness shall not be guaranteed by, or otherwise become a liability of, any other Subsidiary of the Borrower;

(i) Indebtedness of any Subsidiary under the Revolving Facility that is guaranteed by the Borrower;

(j) Indebtedness as an account party in respect of trade or standby letters of credit, bank guarantees or bankers' acceptances, in each case obtained in the ordinary course of business;

(k) other Indebtedness of Subsidiaries, including Capitalized Lease Obligations in respect of Sale Leasebacks; provided that the sum, without duplication, of (i) the aggregate outstanding principal amount of Indebtedness permitted by this clause (k), plus (ii) the aggregate outstanding principal amount of Indebtedness and other obligations secured by Liens permitted by Section 6.2(i) shall not exceed at any time of incurrence of any principal amount of Indebtedness under this clause, the greater of \$2,000,000,000 (or its equivalent in any other currency, determined in accordance with the Exchange Rate, at the time of any such incurrence) and 15.0% of Consolidated Net Tangible Assets as of the most recent fiscal quarter end for which financial statements of the Borrower have been delivered pursuant to Section 5.1(a) or (b);

(l) Indebtedness of any Subsidiary that Guarantees the Indebtedness of the Borrower under this Agreement; and

(m) Indebtedness incurred in connection with the extension of maturity of, or refunding or refinancing of, in whole or in part, any Indebtedness outstanding pursuant to Section 6.1(a),(d), (e), (h) or (k); provided that (i) such extension of, or refunding or refinancing shall not increase the principal amount of the Indebtedness being extended, or refunded or refinanced by more than the amount of accrued interest thereon and fees, expenses and premiums paid in connection with such extension, refunding or refinancing and (ii) any such refinancing Indebtedness in respect of Indebtedness incurred under Section 6.1(k) will be deemed to utilize the basket referred to in Section 6.1(k), but such Indebtedness shall be permitted even if such Indebtedness is incurred at a time when such Indebtedness would not otherwise be permitted to be incurred under such clause.

**SECTION 6.2**      **Liens.** The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, except:

- (a) Permitted Encumbrances;
- (b) Liens on any property or asset of a Subsidiary securing obligations of such Subsidiary to the Borrower or to another Subsidiary;
- (c) any Lien on any property or asset of the Borrower or any Subsidiary existing on the Effective Date; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary other than extensions and accessions thereto and (ii) such Lien shall secure only those obligations which it secures on the Effective Date and extensions, renewals and replacements thereof permitted by Section 6.1(g);
- (d) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary other than extensions and accessions thereto and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be, and extensions, renewals, refinancings and replacements thereof that do not increase the outstanding principal amount thereof by more than the amount of accrued interest thereon and fees, expenses and premiums paid in connection with such refinancing;
- (e) Liens arising under Securitization Transactions on Securitization Assets sold or transferred pursuant to such Securitization Transactions or on interests retained by the Borrower or any Subsidiary in any securitization vehicle utilized to effect such a Securitization Transaction or on the assets of any such securitization vehicle; provided that the aggregate value of all such Securitization Assets shall not exceed the greater of (x) \$1,000,000,000 and (y) 7.5% of Consolidated Net Tangible Assets at such time;
- (f) any Lien given to secure Indebtedness or other obligations (including, in the case of Subsidiaries, Indebtedness incurred pursuant to Section 6.1(e)) incurred to finance the payment of the purchase price, construction cost or improvement cost of the acquisition, construction or improvement of assets; provided that (i) such Lien shall attach solely to the assets acquired, constructed or improved (including any assets which are attached or otherwise adjoining such assets), (ii) such Lien has been created or incurred by the Borrower or a Subsidiary simultaneously with, or within one year after, the date of acquisition, construction or improvement of such assets, (iii) the Indebtedness or other obligations secured thereby shall not exceed the amount of such purchase price or cost of the asset and (iv) such Lien shall secure only those obligations which it secures on the date of such acquisition, construction or improvement of assets, as the case may be, and extensions, renewals and replacements thereof that do not increase the outstanding

principal amount thereof by more than the amount of accrued interest thereon and fees, expenses and premiums paid in connection with such refinancing;

(g) (i) customary Liens (x) relating to the establishment of custody, depository, brokerage and clearing accounts and services and other cash management relationships in the ordinary course of business of the Borrower or any Subsidiary or (y) relating to pooled deposit or sweep accounts (including, without limitation, Liens on deposit accounts subject to Cash Pooling Arrangements in favor of the financial institutions providing such Cash Pooling Arrangements) of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and the Subsidiaries and (ii) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, bankers' rights of set-off or similar rights;

(h) Liens in respect of any Sale Leasebacks; provided that such Liens do not at any time extend to or cover any assets other than the assets subject to such Sale Leasebacks (and accessions to or proceeds of such assets);

(i) other Liens securing Indebtedness or other obligations of the Borrower or any Subsidiary; provided that the sum, without duplication, at any time of (i) the aggregate outstanding principal amount of Indebtedness and other obligations secured by Liens permitted by this clause (i) plus (ii) the aggregate outstanding principal amount of Indebtedness of Subsidiaries permitted by Section 6.1(k) shall not exceed at the time of incurrence of any principal amount of secured obligations under this clause the greater of \$2,000,000,000 (or its equivalent in another other currency, determined in accordance with the Exchange Rate, at the time of such incurrence) and 15.0% of Consolidated Net Tangible Assets as of the most recent fiscal quarter end for which financial statements of the Borrower have been delivered pursuant to Section 5.1(a) or (b); and

(j) Liens in respect of Indebtedness incurred in connection with the extension of maturity of, or refunding or refinancing of, in whole or in part, any secured Indebtedness incurred under Section 6.2(i), provided that (i) such extension of, or refunding or refinancing shall not increase the principal amount of the secured Indebtedness being extended, or refunded or refinanced by more than the amount of accrued interest thereon and fees, expenses and premiums paid in connection with such extension, refunding or refinancing and (ii) any such secured Indebtedness will be deemed to utilize the basket referred to in Section 6.2(i), but such secured Indebtedness (and the Liens in respect thereof) shall be permitted even if such secured Indebtedness is incurred at a time when such secured Indebtedness would not otherwise be permitted to be incurred under such clause.

**SECTION 6.3 Fundamental Changes.** The Borrower will not, and will not permit any Significant Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, consummate a Division as the Dividing Person or sell, transfer, lease or otherwise dispose of (directly or indirectly, in one transaction or in a series of transactions) all or substantially all of the assets of the Borrower and its Subsidiaries taken as a whole (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have

occurred and be continuing, (i) any Subsidiary or other Person may merge into or consolidate with the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) [reserved], (iii) the Borrower or any Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the Borrower or to another Subsidiary, (iv) so long as no Change of Control would result therefrom and the surviving entity is organized under the laws of the United States, any state thereof or the District of Columbia and agrees in writing in a manner and pursuant to documentation reasonably acceptable to the Administrative Agent to assume the obligations of the Borrower under the Loan Documents (and provides customary certificates and legal opinions in connection therewith consistent with such relevant certifications and legal opinions delivered on the Effective Date and otherwise reasonably acceptable to the Administrative Agent), the Borrower may merge into or consolidate with any other Person; provided that the Borrower agrees to use commercially reasonable efforts to provide any documentation and other information required by bank regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act, with respect to such other Person that is reasonably requested by the Administrative Agent or a Lender, (v) any Subsidiary may merge into or consolidate with any other Person in a transaction in which the surviving entity is a Subsidiary, (vi) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders, and (vii) any Subsidiary may merge with any other Person in a transaction in which the surviving entity is not a Subsidiary; provided that such transaction does not constitute the disposition of all or substantially all assets of the Borrower and its subsidiaries taken as a whole.

**SECTION 6.4 Financial Covenant.** From and after the Funding Date, the Borrower will not permit the Interest Coverage Ratio as of the last day of any fiscal quarter of the Borrower to be less than 3.0 to 1.0.

## **ARTICLE VII EVENTS OF DEFAULT**

### **SECTION 7.1 Events of Default**

If any of the following events (“Events of Default”) shall occur:

- (a) the Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable;
- (b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five Business Days;
- (c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, shall prove to have been false or misleading in any material respect when made or deemed made, and such incorrect

representation or warranty (if curable, including by a restatement of any relevant financial statements) shall remain incorrect for a period of 30 days after notice thereof from the Administrative Agent to the Borrower;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.2(a), 5.3 (with respect to the Borrower's existence), 5.8 or Article VI;

(e) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender);

(f) the Borrower or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness when and as the same shall become due and payable and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Material Indebtedness;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that requires the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to (i) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (ii) any conversion, repurchase or redemption of any Material Indebtedness scheduled by the terms thereof to occur on a particular date and not subject to any contingent event or condition related to the creditworthiness, financial performance or financial condition of the Borrower or the applicable Subsidiaries, (iii) any repurchase or redemption of any Material Indebtedness pursuant to any put option exercised by the holder of such Material Indebtedness; provided that such put option is exercisable at times specified in the terms of the Material Indebtedness and is not subject to any contingent event or condition related to the creditworthiness, financial performance or financial condition of the Borrower or the applicable Subsidiaries (iv) any termination event or similar event occurring under any Hedging Agreement that constitutes Material Indebtedness (it being understood that this paragraph (g) of this Section will apply to any failure to make any payment required as a result of such termination or similar event), (v) any breach or default that is (I) remedied by the Borrower or the applicable Subsidiary or (II) waived (including in the form of amendment) by the required holders of the applicable item of Indebtedness, in either case, prior to the acceleration of Loans and Commitments pursuant to this Section 7.1 or (vi) any mandatory redemption, repayment or repurchase event not in the nature of a default (x) that is triggered by receipt of proceeds of a debt incurrence, equity issuance, asset sale, casualty or other proceeds-generating event and is only to the extent of proceeds received or (y) constituting a "special mandatory redemption" or similar requirement applicable to debt securities incurred to finance one or more transactions if such transaction(s) will not be consummated or are not consummated within a specified timeframe;



(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Material Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, examinership, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, examiner, custodian, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for a substantial part of its assets (other than in connection with a solvent liquidation of any Foreign Subsidiary), and, in any such case referred to in (i) or (ii) above, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, examinership or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Section 7.1(h), (iii) apply for or consent to the appointment of a receiver, trustee, examiner, custodian, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for a substantial part of its assets (other than in connection with a solvent liquidation of any Foreign Subsidiary), (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or (v) make a general assignment for the benefit of creditors;

(j) the Borrower or any Material Subsidiary shall admit in writing its inability, or fail generally, to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$500,000,000 shall be rendered by a court of competent jurisdiction against the Borrower, any Subsidiary or any combination thereof, and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Subsidiary to enforce any such judgment;

(l) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect; or

(m) a Change of Control Default Event shall occur;

then, and in every such event (other than an event with respect to the Borrower described in Section 7.1(h) or (i)), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable so long as, at the time of such later declaration, an Event of

Default is continuing), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately and (iii) exercise on behalf of itself, the Lenders all rights and remedies available to it and the Lenders under the Loan Documents and applicable law, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in Section 7.1(h) or (i), the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

**SECTION 7.2 Limited Conditionality Period.** During the period from and including the Effective Date to and including the earlier of (x) the termination of all Commitments and (y) the funding of the Loans on the Funding Date (the “Limited Conditionality Period”), and notwithstanding (i) that any representation made on the Effective Date was incorrect, (ii) any failure by the Borrower to comply with any provision of Article V and VI, (iii) any provision to the contrary herein or in any other Loan Document or otherwise or (iv) that any condition to the occurrence of the Effective Date set forth in Section 4.1 may subsequently be determined not to have been satisfied, unless a Specified Event of Default shall have occurred and is continuing, neither the Administrative Agent nor any Lender shall be entitled to (1) rescind, terminate or cancel any of its Commitments, (2) rescind, terminate or cancel the Loan Documents or exercise any right or remedy or make or enforce any claim under the Loan Documents or otherwise it may have to the extent to do so would prevent, limit or delay the making of its Loan, (3) refuse to participate in making its Loan; provided that the applicable conditions precedent to the making of the Loans set forth in Section 4.2 have been satisfied or (4) exercise any right of set-off or counterclaim in respect of its Loan to the extent to do so would prevent, limit or delay the making of its Loan. For the avoidance of doubt, (A) the rights and remedies of the Lenders and the Administrative Agent shall not be limited in the event that any applicable condition precedent set forth in Section 4.2 is not satisfied on the Funding Date and (B) immediately after the expiration of the Limited Conditionality Period, all of the rights, remedies and entitlements of the Administrative Agent and the Lenders shall be available notwithstanding that such rights were not available prior to such time as a result of the foregoing.

## **ARTICLE VIII THE ADMINISTRATIVE AGENT**

Each of the Lenders hereby irrevocably appoints the Administrative Agent as its agent, and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof, together with such actions and powers as are reasonably incidental thereto.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.2); provided that the Administrative Agent shall not be required to take any action that, in its opinion, could expose the Administrative Agent to liability or be contrary to applicable law, and (c) except as expressly set forth herein, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of the Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.2) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement, (ii) the contents of any certificate, report or other document delivered hereunder or in connection herewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent. In addition, for the avoidance of doubt, the Lenders hereby acknowledge that none of the Joint Lead Arrangers, Joint Bookrunners, Co-Documentation Agents or Syndication Agent set forth on the cover page of this Agreement shall have any powers, duties or responsibilities under this Agreement, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed or sent by the proper Person (whether or not such Person in fact meets the requirements set forth herein for being the signatory, sender or authenticator thereof). The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person (whether or not such Person in fact meets the requirements set forth herein for being the signatory, sender or authenticator thereof), and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent selected by the Administrative Agent with reasonable care and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. If the Person serving as the Administrative Agent becomes a Defaulting Lender under clause (d) of the definition of such term, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person, remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment by the 30th day following the date of such notice (or such earlier day as shall be agreed by the Required Lenders), then such removal shall nonetheless become effective in accordance with such notice on such 30th day (or agreed earlier date). Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.3 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

Each Lender represents that it is engaged in making, acquiring and holding commercial loans in the ordinary course of its business and that it has, independently and without reliance upon the Administrative Agent, any Joint Lead Arranger or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender and to make, acquire and hold Loans hereunder. Each Lender shall, independently and without reliance upon the Administrative Agent, any Joint Lead Arranger or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any related agreement or any document furnished hereunder or thereunder and in deciding whether or to the

extent to which it will continue as a Lender or assign or otherwise transfer its rights, interests and obligations hereunder.

Each Lender, by delivering its signature page to this Agreement, or delivering its signature page to an Assignment and Assumption pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date.

Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a “Payment”) were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on “discharge for value” or any similar doctrine. A notice of the Administrative Agent to any Lender under this Article shall be conclusive, absent manifest error.

Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a “Payment Notice”) or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

Each Borrower hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower.

Each party's obligations under this Article VIII with respect to Payments shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

Each Lender acknowledges and agrees that the extensions of credit made hereunder are commercial loans and not investments in a business enterprise or securities.

To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall, within 15 days after written demand therefor, indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower pursuant to Section 2.16 and without limiting or expanding the obligation of the Borrower to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all reasonable expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement, any other Loan Document or otherwise against any amount due the Administrative Agent under this Article VIII. The agreements in this paragraph shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption

for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

## **ARTICLE IX MISCELLANEOUS**

### **SECTION 9.1       Notices.**

(a) Except in the case of notices and other Communications expressly permitted to be given by telephone and as otherwise set forth in subsection (b), all notices and other Communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed or by certified or registered mail or sent by telecopy (or, to the extent expressly provided below, by e-mail), as follows:

(i) if to the Borrower, to it at VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, Attention of Chief Financial Officer, with a copy to [treasury\\_ops@vmware.com](mailto:treasury_ops@vmware.com), with a copy to the General Counsel at the same address and by e-mail to [corpsec@vmware.com](mailto:corpsec@vmware.com);

(ii) if to the Administrative Agent, to it at JPMorgan Chase Bank, N.A., 500 Stanton Christiana Rd., NCC5 / 1st Floor, Newark, DE 19713, Attention: Loan & Agency Services Group (e-mail: [suzanna.l.gallagher@jpmchase.com](mailto:suzanna.l.gallagher@jpmchase.com)); and

(iii) if to any other Lender, to it at its address (or e-mail) set forth on Schedule 2.1 or in its Administrative Questionnaire.

(b) Notices and other Communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other Communications sent by electronic transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient).

(c) Communications to the Lenders may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including the Platform) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other Communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or Communications.

(d) The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of this Agreement. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of this Agreement. Each Lender agrees (A) to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and (B) that the foregoing notice may be sent to such e-mail address.

(e) The Platform is provided "as is" and "as available". The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Communications or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by the Agent Parties in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Affiliates or any of their respective officers, directors, employees, agents, advisors or representatives (collectively, "Agent Parties") have any liability to the Borrower, any Lender or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's



transmission of Communications through the Internet, except to the extent the liability of any Agent Party is found in a final, nonappealable judgment by a court of competent jurisdiction to have resulted primarily from the gross negligence or willful misconduct of, or material breach of this Agreement by, such Agent Party.

Any party hereto may change its address, telecopy number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

## **SECTION 9.2       Waivers; Amendments.**

(a) No failure or delay by the Borrower, the Administrative Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Borrower, the Administrative Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Subject to Section 2.13, neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower, and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase or extend the Commitment of any Lender without the written consent of such Lender, (ii) decrease the principal amount of any Loan or decrease the rate of interest thereon, or decrease any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan, or any interest thereon, or any fees payable hereunder or decrease the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.17(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, or (vi) change any provisions of this Agreement in a manner that by its terms adversely affects the rights in respect of payments due to Lenders holding Loans of any Class differently than those holding Loans of any other Class, without the written consent of Lenders holding a majority in interest of the

outstanding Loans and unused Commitments of each affected Class; and provided further that (A) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent and (B) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of the Lenders may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time. Notwithstanding the foregoing, any provision of this Agreement may be amended by an agreement in writing entered into by the Borrower, the Required Lenders and the Administrative Agent if (i) by the terms of such agreement the Commitment of each Lender not consenting to the amendment provided for therein shall terminate upon the effectiveness of such amendment and (ii) at the time such amendment becomes effective, each Lender not consenting thereto receives payment in full of the principal of and interest accrued on each Loan made by it and all other amounts owing to it or accrued for its account under this Agreement. Notwithstanding the foregoing, (1) any provision of this Agreement may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent to cure any ambiguity, omission, mistake, defect or inconsistency so long as, in each case, the Lenders shall have received at least five Business Days prior written notice thereof and the Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment and (2) the Commitments of any Lender that is at the time a Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to this Section 9.2); provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender differently than other affected Lenders shall require the consent of such Defaulting Lender.

**SECTION 9.3 Expenses; Indemnity; Damage Waiver.**

(a) Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Joint Lead Arrangers and their Affiliates, including the reasonable and documented fees, charges and disbursements of counsel for the Administrative Agent and the Joint Lead Arrangers, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of this Agreement or any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated); provided, however, that only one outside counsel may act on behalf of the Administrative Agent, the Joint Lead Arrangers and the Lenders in connection with the preparation and negotiation of this Agreement, and (ii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, any Joint Lead Arranger or any Lender, including the reasonable and documented fees, charges and disbursements of any counsel for the Administrative Agent, any Joint Lead Arranger or any Lender (such fees, charges and disbursements not to include allocated costs of internal counsel), in connection with the enforcement or protection of its rights in connection with this Agreement,

including its rights under this Section, or in connection with the Loans made hereunder, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Limitation of Liability. To the extent permitted by applicable law (i) the Borrower shall not assert, and the Borrower hereby waives, any claim against the Administrative Agent, any Joint Lead Arranger and any Lender, and any Related Party of any of the foregoing Persons (each such Person being called a “Lender-Related Person”) for any Liabilities arising from the use by others of information or other materials (including, without limitation, any personal data) obtained through telecommunications, electronic or other information transmission systems (including the Internet), except to the extent the liability of any Lender-Related Person is found, in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of, or material breach of this Agreement, by such Lender-Related Person and (ii) no party hereto shall assert, and each such party hereby waives, any Liabilities against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that, nothing in this Section 9.3(b) shall relieve the Borrower of any obligation they may have to indemnify an Indemnitee, as provided in Section 9.3(c), against any special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(c) Indemnity. The Borrower shall indemnify the Administrative Agent, each Joint Lead Arranger and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all Liabilities and related expenses, including the reasonable and documented fees, charges and disbursements of any counsel for any Indemnitee (not to include allocated costs of internal counsel), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of the Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of the Subsidiaries; provided that any such losses, claims, damages, liabilities and expenses arise out of or in connection with such Indemnitee’s acting as Administrative Agent or a Lender under this Agreement, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any Subsidiary and regardless of whether any Indemnitee is a party thereto; provided that such indemnity set forth in the foregoing clauses (i), (ii), (iii) and (iv) shall not, as to any Indemnitee, be available to the extent that such Liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to (x) have resulted from (A) the willful

misconduct or gross negligence of such Indemnatee or (B) a material breach of the funding obligation of such Indemnatee or any of such Indemnatee's Affiliates hereunder, or (y) have not resulted from an act or omission by the Borrower or any of its Affiliates and have been brought by an Indemnatee against any other Indemnatee (other than any claims against the Administrative Agent or the Joint Lead Arrangers in their capacities or in fulfilling their roles as a Joint Lead Arranger or the Administrative Agent hereunder). The Borrower will not be liable under this Agreement for any amount paid by an Indemnatee to settle any claims or actions if the settlement is entered into without the Borrower's consent, which consent may not be withheld unless such settlement is unreasonable in light of such claims or actions against, and defenses available to, such Indemnatee. Anything in this Section 9.3(c) to the contrary notwithstanding, the Borrower shall not be liable for the fees and expenses of more than one primary outside counsel for all Indemnitees in connection with the defense of any action for which indemnification is sought hereunder (provided that if there is an actual or perceived conflict of interest among the Indemnitees, the Borrower shall be liable for the fees and expenses of one additional counsel and if necessary, a single firm of local counsel to the Indemnitees in each appropriate jurisdiction). The Borrower shall have no obligation to any Indemnatee under this Section 9.3(b) for matters for which such Indemnatee has been fully compensated pursuant to any other provision of this Agreement. This Section 9.3(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(d) Lender Reimbursement. Each Lender severally agrees to pay any amount required to be paid by the Borrower under paragraphs (a), (b) or (c) of this Section 9.3 to the Administrative Agent and each Related Party of the Administrative Agent (each, an "Agent-Related Person") (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Applicable Percentage in effect on the date on which such payment is sought under this Section (or, if such payment is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Applicable Percentage immediately prior to such date), and agrees to indemnify and hold each Agent-Related Person harmless from and against any and all Liabilities and related expenses, including the fees, charges and disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent-Related Person in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent-Related Person under or in connection with any of the foregoing; provided that the unreimbursed expense or Liability or related expense, as the case may be, was incurred by or asserted against such Agent-Related Person in its capacity as such; provided, further, that no Lender shall be liable for the payment of any portion of such Liabilities, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted primarily from such Agent-Related Party's gross negligence or willful misconduct. The agreements in this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

(f) The provisions of this Section 9.3 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any investigation made by or on behalf of the Administrative Agent or any Lender.

#### **SECTION 9.4 Successors and Assigns.**

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more assignees (other than any Defaulting Lender, Disqualified Lender, natural person or investment vehicle or trust for the primary benefit of a natural person or relatives of a natural person, Borrower or any of its Affiliates), all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (i) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund, each of the Borrower and the Administrative Agent must give their prior written consent to such assignment (each such consent not to be unreasonably withheld or delayed); provided that after the funding of the Loans on the Funding Date, the Borrower shall be deemed to have consented to an assignment of all or a portion of the Loans unless it shall have objected thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof, (ii) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment, the amount of the Commitment of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$10,000,000 and shall be an integral multiple of \$10,000,000 unless each of the Borrower and the Administrative Agent otherwise consents, (iii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, except that this clause (iii) shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Loans, (iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (payable by the assignor or

assignee), and (v) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and provided further that any consent of the Borrower otherwise required under this paragraph, other than as required pursuant to the immediately succeeding proviso in this sentence, shall not be required if an Event of Default under Sections 7.1(a), (b), (h) or (i) has occurred and is continuing; and provided further, notwithstanding anything to the contrary above, prior to the funding of the Loans on the Funding Date, no Lender may assign any Commitment (including to another Lender, an Affiliate of a Lender or an Approved Fund) without the prior written consent of the Borrower (to be provided or withheld in its sole discretion) except that a Lender may assign all or a portion of its Commitment to an Affiliate of such Lender that is a commercial or investment bank having total assets in excess of \$500,000,000 (calculated in accordance with the accounting principles prescribed by the regulatory authority applicable to such bank in its jurisdiction of organization) and whose senior unsecured long-term indebtedness has an Investment Grade Rating by both S&P and Moody's. Subject to acceptance and recording thereof pursuant to paragraph (d) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, shall have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be (i) entitled to the benefits of Sections 2.14, 2.15, 2.16 and 9.3 with respect to facts and circumstances occurring prior to the effective date of such assignment, and (ii) subject to the confidentiality provisions hereof). Any purported sale, assignment, delegation or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be null and void and instead be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (e) of this Section.

(c) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in The City of New York a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and related interest amounts) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding anything to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept

such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Sections 2.6(b), 2.17(d) or 9.3(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(e) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities other than the Borrower or any of its Subsidiaries (each, a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.2(b) that affects such Participant. Subject to paragraph (f) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.14, 2.15 and 2.16 (subject to the requirements and limitations therein, including the requirements under Section 2.16(f) (it being understood that the documentation required under Section 2.16(f) shall be delivered solely to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant shall be subject to the provisions of Section 2.18 as if it were an assignee under paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.8 as though it were a Lender; provided such Participant shall be subject to Section 2.17(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and interest amounts) of each Participant’s interest in the Loans or other obligations under this Agreement (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant’s interest in any Commitments, Loans or its other obligations under this Agreement) except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations or to comply with other requirements under applicable Tax law. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person

whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding anything to the contrary.

(f) A Participant shall not be entitled to receive any greater payment under Sections 2.14 or 2.16 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or central bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Notwithstanding anything to the contrary herein, no assignment or participation shall be made to any Person that was a Disqualified Lender as of the date (the “Trade Date”) on which the assigning Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Lender for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Lender after the applicable Trade Date, (x) such assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Assumption with respect to such assignee prior to such assignee becoming a Disqualified Lender will not by itself result in such assignee no longer being considered a Disqualified Lender. The designation of a Disqualified Lender shall not become effective until three Business Days after such designation is provided (it being understood that no such subsequent designation shall apply to any entity that is currently a Lender or party to a pending trade). Any assignment in violation of this clause (h) shall not be void, but the other provisions of this clause (h) and Sections 9.4(i) and 9.4(j) shall apply.

(i) If any assignment is made to any Disqualified Lender without the Borrower’s prior written consent in violation of Section 9.4(h) or if any Person becomes a Disqualified Lender after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Lender and the Administrative Agent, (A) terminate any Commitment of such Disqualified Lender and repay all obligations of the Borrower owing to such Disqualified Lender in connection with such Commitment, and/or (B) require such Disqualified Lender to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 9.4), all of its interest, rights and obligations under this Agreement to one or more persons eligible under Section 9.4(b) at the lower of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.



(j) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Lenders (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Lender will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Lenders consented to such matter, and (y) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws (a “Plan of Reorganization”), each Disqualified Lender party hereto hereby agrees (1) not to vote on such Plan of Reorganization, (2) if such Disqualified Lender does vote on such Plan of Reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be (x) deemed not to be in good faith and (y) “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) such that the vote is not counted in determining whether the applicable class has accepted or rejected such Plan of Reorganization in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(k) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender.

**SECTION 9.5 Survival.** All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement (provided, however, that such representations and warranties shall be made or deemed made only as of the Effective Date, the times of any Borrowings hereunder, or such other dates on or as of which such representations and warranties are specifically required to be made pursuant to the provisions hereof) and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The

provisions of Sections 2.14, 2.15, 2.16 and 9.3 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.

#### **SECTION 9.6 Counterparts; Integration; Effectiveness.**

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.1), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an “Ancillary Document”) that is an Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (x) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (y) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, each Borrower hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and the Borrower, Electronic Signatures transmitted by telecopy, emailed .pdf or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images

of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (ii) agrees the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (iii) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (iv) waives any claim against any Lender-Related Person for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed .pdf or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of the Borrower to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

**SECTION 9.7 Severability.** Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

**SECTION 9.8 Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held (but not including money market funds or other assets credited to any securities account) and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. Each Lender shall promptly notify the Borrower and the Administrative Agent after any such setoff and application made by such Lender; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

**SECTION 9.9 Governing Law; Jurisdiction; Consent to Service of Process.**

- (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.
- (b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or

proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.1. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

**SECTION 9.10 WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL SUIT, ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**SECTION 9.11 Headings.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

**SECTION 9.12 Confidentiality.** Each of the Administrative Agent, the Joint Lead Arrangers, the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors on a need-to-know basis (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, excluding any Disqualified Lender, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement

of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, excluding any Disqualified Lender or (ii) any credit risk protection providers (or insurers, re-insurers and insurance brokers) or actual or prospective counterparty (or its advisors) to any securitization, swap or derivative transaction, in each case, relating to the Borrower, any Subsidiary, and the obligations hereunder, (g) on a confidential basis to the CUSIP Bureau or any rating agency in connection with rating the Borrower or the credit facilities provided for herein, (h) with the consent of the Borrower, or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Joint Lead Arranger or any Lender on a nonconfidential basis from a source other than the Borrower. If any Joint Lead Arranger, any Lender or the Administrative Agent is required by any Governmental Authority or any other Person to disclose Information or otherwise intends to disclose any Information pursuant to clause (c) of this Section (except with respect to any routine or ordinary course audit or examination conducted by bank examiners or any governmental bank regulatory authority exercising examination or regulatory authority), unless prohibited by law such Joint Lead Arranger, such Lender or the Administrative Agent, as the case may be, shall promptly notify the Borrower in writing so as to provide the Borrower with the opportunity to seek a protective order or take such other actions that are deemed appropriate by the Borrower to protect the confidentiality of the Information. For the purposes of this Section, “Information” means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to the Administrative Agent, any Joint Lead Arranger or any Lender on a nonconfidential basis prior to disclosure by the Borrower and other than information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. The Administrative Agent, each Joint Lead Arranger and each Lender confirms that it maintains internal policies and procedures, including “ethical wall” procedures, intended to protect against the unlawful use of confidential information and such procedures apply to the Information. In addition, the Administrative Agent, the Joint Lead Arrangers and the Lenders may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Administrative Agent, the Joint Lead Arrangers and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents.

**SECTION 9.13      Authorization to Distribute Certain Materials to Public-Siders; Material Non-Public Information.**

(a) EACH LENDER ACKNOWLEDGES THAT INFORMATION FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS SUBSIDIARIES OR SECURITIES THEREOF AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH

MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(b) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER AND ITS SUBSIDIARIES OR SECURITIES THEREOF. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

(c) If the Borrower does not file this Agreement with the SEC, then the Borrower hereby authorizes the Administrative Agent to distribute the execution version of this Agreement and the Loan Documents to all Lenders, including their Public-Siders. The Borrower acknowledges its understanding that Public-Siders and their firms may be trading in any of the other parties' hereto respective securities while in possession of the Loan Documents

(d) The Borrower represents and warrants that none of the information in the Loan Documents constitutes or contains material non-public information within the meaning of the federal and state securities laws. To the extent that any of the executed Loan Documents constitutes at any time a material non-public information within the meaning of the federal and state securities laws after the date hereof, the Borrower agrees that it will promptly make such information publicly available by press release or public filing with the SEC.

**SECTION 9.14 Patriot Act and Beneficial Ownership Regulation.** Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act") and/or the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act and/or the Beneficial Ownership Regulation.

**SECTION 9.15 Conversion of Currencies.**

(a) If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum owing hereunder in one currency into another currency, each party hereto agrees, to the fullest extent that it may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures in the relevant jurisdiction the first currency could be purchased with such other currency on the Business Day immediately preceding the day on which final judgment is given.

(b) The obligations of the Borrower in respect of any sum due to any party hereto or any holder of the obligations owing hereunder (the “Applicable Creditor”) shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than the currency in which such sum is stated to be due hereunder (the “Agreement Currency”), be discharged only to the extent that, on the Business Day following receipt by the Applicable Creditor of any sum adjudged to be so due in the Judgment Currency, the Applicable Creditor may in accordance with normal banking procedures in the relevant jurisdiction purchase the Agreement Currency with the Judgment Currency; if the amount of the Agreement Currency so purchased is less than the sum originally due to the Applicable Creditor in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Applicable Creditor against such loss. The obligations of the Borrower contained in this Section 9.15 shall survive the termination of this Agreement and the payment of all other amounts owing hereunder.

**SECTION 9.16 No Fiduciary Duty.** The Borrower acknowledges that the Administrative Agent, each Joint Lead Arranger, each Lender and the Affiliates of each of the foregoing, may have economic interests that conflict with those of the Borrower, the Subsidiaries and their Affiliates. The Borrower, on behalf of itself and the Subsidiaries, agrees that in connection with all aspects of the Transactions and any communications in connection therewith, the Borrower, the Subsidiaries and their Affiliates, on the one hand, and the Administrative Agent, each Joint Lead Arranger, each Lender and the Affiliates of each of them, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of the Administrative Agent, each Joint Lead Arranger, the Lenders or any Affiliate of any of them, and no such duty will be deemed to have arisen in connection with any such transactions or communications. The Borrower waives and releases any claims that it may have against the Administrative Agent, each Joint Lead Arranger, the Lenders or any Affiliate of any of them (as the case may be) (in their capacity as such) with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of the Transactions and any communications in connection therewith.

**SECTION 9.17 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (i) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (ii) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (a) a reduction in full or in part or cancellation of any such liability;



(b) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(c) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

**SECTION 9.18 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Hedging Agreements or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “US Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a US Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the US Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a US Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the US Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 9.18, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.



“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

VMWARE, INC.

By: /s/ Len Rosenduft

Name: Len Rosenduft

Title: VP & Treasurer

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JPMORGAN CHASE BANK, N.A., as Administrative Agent and a Lender

By: /s/ Zachary Quan

Name: Zachary Quan

Title: Vice President

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BANK OF AMERICA, N.A., as a Lender

By: /s/ Ravi Patel

Name: Ravi Patel

Title: Vice President

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Wells Fargo N.A., as a Lender

By: /s/ Sid Khanolkar

Name: Sid Khanolkar

Title: Director

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Truist Bank, as a Lender

By: /s/ Alfonso Brigham

Name: Alfonso Brigham

Title: Vice President

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The Toronto-Dominion Bank, New York Branch, as a Lender

By: /s/ Brian MacFarlane

Name: Brian MacFarlane

Title: Authorized Signatory

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SOCIETE GENERALE, as a Lender

By: /s/ Jonathan Weinberger

Name: Jonathan Weinberger

Title: Managing Director

---



The Bank of Nova Scotia, as a Lender

By: /s/ Khrystyna Manko

Name: Khrystyna Manko

Title: Director

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Royal Bank of Canada, as a Lender

By: /s/ Mark Gronich

Name: Mark Gronich

Title: Authorized Signatory

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PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Karl Thoma

Name: Karl Thoma

Title: SVP

---

MUFG BANK, LTD., as a Lender

By: /s/ Marlon Mathews

Name: Marlon Mathews

Title: Director

---

Mizuho Bank, Ltd., as a Lender

By: /s/ John Davies

Name: John Davies

Title: Authorized Signatory

---

ING Bank N.V., Dublin Branch, as a Lender

By: /s/ Ciaran Dunne

Name: Ciaran Dunne

Title: Director

By: /s/ Sean Hassett

Name: Sean Hassett

Title: Director

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HSBC BANK USA, N.A., as a Lender

By: /s/ Sam Stockwin

Name: Sam Stockwin

Title: Director

---

GOLDMAN SACHS BANK USA, as a Lender

By: /s/ Thomas Manning  
Name: Thomas Manning  
Title: Authorized Signatory

---



DEUTSCHE BANK AG NEW YORK BRANCH, as a Lender

By: /s/ Ming K. Chu

Name: Ming K. Chu

Title: Director

By: /s/ Annie Chung

Name: Annie Chung

Title: Director

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Citibank, N.A., as a Lender

By: /s/ Susan Olsen

Name: Susan Olsen

Title: Vice President

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BNP Paribas, as a Lender

By: /s/ Brendan Heneghan

Name: Brendan Heneghan

Title: Director

By: /s/ Nicholas Doche

Name: Nicholas Doche

Title: Vice President

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BARCLAYS BANK PLC, as a Lender

By: /s/ Sean Duggan

Name: Sean Duggan

Title: Vice President

**VMWARE, INC.**  
**AMENDED AND RESTATED 2007 EQUITY AND INCENTIVE PLAN**

**1. PURPOSE; TYPES OF AWARDS; CONSTRUCTION.**

The purpose of the VMware, Inc. Amended and Restated 2007 Equity and Incentive Plan is to attract, motivate and retain employees and independent contractors of the Company and any Subsidiary and Affiliate and non-employee directors of the Company, any Subsidiary or any Affiliate. The Plan is also designed to encourage stock ownership by such persons, thereby aligning their interest with those of the Company's shareholders. Pursuant to the provisions hereof, there may be granted Options (including "incentive stock options" and "non-qualified stock options"), and Other Stock-Based Awards, including but not limited to Restricted Stock, Restricted Stock Units, Stock Appreciation Rights (payable in shares) and Other Cash-Based Awards.

**2. DEFINITIONS.** For purposes of the Plan, the following terms are defined as set forth below:

- (a) "Adoption Date" means June 5, 2017, the date approved by the Board as the adoption date of the Plan, including the extension of its term as set forth in Section 7(f) below.
- (b) "Affiliate" means an affiliate of the Company, as defined in Rule 12b-2 promulgated under Section 12 of the Exchange Act.
- (c) "Award" means individually or collectively, a grant under the Plan of Options, Restricted Stock, Restricted Stock Units, Stock Appreciation Rights or Other Stock-Based Awards or Other Cash-Based Awards.
- (d) "Award Terms" means any written agreement, contract, notice or other instrument or document evidencing an Award.
- (e) "Beneficial Owner" has the meaning ascribed to such term in Rule 13d-3 of the Exchange Act.
- (f) "Board" means the Board of Directors of the Company.
- (g) "Cause," unless otherwise defined in the Award Terms for a particular Award or in any employment or other agreement between the Grantee and the Company, any Subsidiary or any Affiliate, means:
  - (i) willful neglect, failure or refusal by the Grantee to perform his or her employment duties (except resulting from the Grantee's incapacity due to illness) as reasonably directed by his or her employer;
  - (ii) willful misconduct by the Grantee in the performance of his or her employment duties;
  - (iii) the Grantee's indictment for a felony (other than traffic related offense) or a misdemeanor involving moral turpitude; or
  - (iv) the Grantee's commission of an act involving personal dishonesty that results in financial, reputational, or other harm to the Company, any Affiliate or any Subsidiary, including, but not limited to, an act constituting misappropriation or embezzlement of property.
- (h) "Code" means the Internal Revenue Code of 1986, as amended from time to time.

(i) “Committee” means the Compensation and Corporate Governance Committee of the Board or such other Board committee delegated authority by the Board to administer and oversee this Plan. Unless otherwise determined by the Board, the Committee will be comprised solely of directors who (a) are “non-employee directors” under Rule 16b-3 of the Exchange Act, and (b) otherwise meet the definition of “independent directors” pursuant to the applicable requirements of any national stock exchange upon which the Stock is listed. Any director appointed to the Committee who does not meet the foregoing requirements should recuse himself or herself from all determinations pertaining to Rule 16b-3 of the Exchange Act.

(j) “Company” means VMware, Inc., a corporation organized under the laws of the State of Delaware, or any successor corporation.

(k) “Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and as now or hereafter construed, interpreted and applied by regulations, rulings and cases.

(l) “Fair Market Value” means the closing sales price per share of Stock on the principal securities exchange on which the Stock is traded (i) on the date of grant or (ii) on such other date on which the fair market value of Stock is required to be calculated pursuant to the terms of an Award, provided that if there is no such sale on the relevant date, then on the last previous day on which a sale was reported; if the Stock is not listed for trading on a national securities exchange, the fair market value of Stock will be determined in good faith by the Committee.

(m) “Grantee” means a person who, as an employee, independent contractor or non-employee director of the Company, a Subsidiary or an Affiliate, has been granted an Award under the Plan.

(n) “ISO” means any Option designated as and intended to be and which qualifies as an incentive stock option within the meaning of Section 422 of the Code.

(o) “NQSO” means any Option that is designated as a nonqualified stock option or which does not qualify as an ISO.

(p) “Option” means a right, granted to a Grantee under Section 6(b)(i), to purchase shares of Stock. An Option may be either an ISO or an NQSO.

(q) “Other Cash-Based Award” means a cash-based Award granted to a Grantee under Section 6(b)(iv) hereof, including cash awarded as a bonus or upon the attainment of Performance Goals or otherwise as permitted under the Plan.

(r) “Other Stock-Based Award” means an Award granted to a Grantee pursuant to Section 6(b)(iv) hereof, that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Stock, each of which may be subject to the attainment of Performance Goals or a period of continued employment or other terms and conditions as permitted under the Plan.

(s) “Parent” means Dell Technologies Inc., a Delaware corporation.

(t) “Performance Goals” means an objective formula or standard determined by the Committee with respect to each performance period which may utilize one or more of the following factors and any objectively verifiable adjustment(s) thereto: (i) (A) earnings including operating income, (B) earnings before or after (1) taxes, (2) interest, (3) depreciation, (4) amortization, or (5) special items or book value per share (which may exclude nonrecurring items), or (C) growth in earnings before interest, tax, depreciation or amortization; (ii) pre-tax income or after-tax income; (iii) earnings per common share (basic or diluted); (iv) operating profit; (v) revenue, revenue growth or rate of revenue growth; (vi) return on assets (gross or net), return on investment, return on capital, return on invested capital or return on equity; (vii) returns on sales or revenues; (viii) operating expenses; (ix) stock price appreciation; (x) cash flow, free cash flow, cash flow from operations, cash flow return on investment (discounted or otherwise), net cash provided by operations, or cash flow in excess of cost of capital; (xi)

implementation or completion of critical projects or processes; (xii) economic value created; (xiii) cumulative earnings per share growth; (xiv) operating margin or profit margin; (xv) common stock price or total stockholder return; (xvi) cost targets, reductions, savings, productivity or efficiencies; (xvii) strategic business criteria, consisting of one or more objectives based on meeting specified market penetration, geographic business expansion, customer satisfaction, employee satisfaction, human resources management, supervision of litigation, information technology, goals relating to acquisitions, divestitures, joint ventures or similar transactions, research or development collaborations or budget comparisons; (xviii) personal professional objectives, including any of the foregoing performance goals, the implementation of policies and plans, the negotiation of transactions and the development of long term business goals; and (xix) any combination of, subset or component of, or a specified increase in, any of the foregoing. Where applicable, the Performance Goals may be expressed in terms of attaining a specified level of the particular criteria or the attainment of a percentage increase or decrease in the particular criteria, and may be applied to one or more of the Company, a Subsidiary or Affiliate, or a division or strategic business unit of the Company, or may be applied to the performance of the Company relative to a market index, a group of other companies or a combination thereof, all as determined by the Committee. The Performance Goals may include a threshold level of performance below which no payment will be made (or no vesting will occur), levels of performance at which specified payments will be made (or specified vesting will occur), and a maximum level of performance above which no additional payment will be made (or at which full vesting will occur). Objectively verifiable adjustment(s) to Performance Goals can include but are not limited to adjustment(s) to reflect: (1) the impact of specific corporate transactions; (2) accounting or tax law changes; (3) asset write-downs; (4) significant litigation or claim adjustment; (5) foreign exchange gains and losses; (6) disposal of a segment of a business; (7) discontinued operations; (8) refinancing or repurchase of bank loans or debt securities; or (9) unbudgeted capital expenditures. Each of the foregoing Performance Goals will be subject to certification by the Committee.

(u) “Plan” means this Amended and Restated VMware, Inc. 2007 Equity and Incentive Plan, as amended from time to time.

(v) “Restricted Stock” means an Award of shares of Stock to a Grantee under Section 6(b)(ii) that is subject to certain restrictions and to a risk of forfeiture.

(w) “Restricted Stock Unit” means a right granted to a Grantee under Section 6(b)(iii) of the Plan to receive shares of Stock subject to certain restrictions and to a risk of forfeiture.

(x) “Rule 16b-3” means Rule 16b-3, as from time to time in effect promulgated by the Securities and Exchange Commission under Section 16 of the Exchange Act, including any successor to such Rule.

(y) “Stock” means shares of Class A common stock, par value \$0.01 per share, of the Company.

(z) “Stock Appreciation Right” means an Award that entitles a Grantee upon exercise to the excess of the Fair Market Value of the Stock underlying the Award over the base price established in respect of such Stock.

(aa) “Subsidiary” means any entity in an unbroken chain of entities beginning with the Company if, at the time of granting of an Award, each of the entities (other than the last entity in the unbroken chain) owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other entities in the chain.

### 3. ADMINISTRATION.

(a) The Plan will be administered by the Committee or, at the discretion of the Board, the Board. In the event the Board is the administrator of the Plan, references herein to the Committee will be deemed to include the Board. The Board may from time to time appoint a member or members of the Committee in substitution for or in addition to the member or members then in office and may fill vacancies on the Committee however caused. Subject to applicable law, the Board or the Committee may delegate to a sub-committee or

individual the ability to grant Awards to employees who are not subject to potential liability under Section 16(b) of the Exchange Act with respect to transactions involving equity securities of the Company at the time any such delegated authority is exercised.

(b) The decision of the Committee as to all questions of interpretation and application of the Plan will be final, binding and conclusive on all persons. The Committee has the authority in its discretion, subject to and not inconsistent with the express provisions of the Plan, to administer the Plan and to exercise all the power and authority either specifically granted to it under the Plan or necessary or advisable in the administration of the Plan, including without limitation, the authority to grant Awards; determine the persons to whom and the time or times at which Awards will be granted; determine the type and number of Awards to be granted, the number of shares of Stock to which an Award may relate and the terms, conditions, restrictions and Performance Goals relating to any Award; determine whether, to what extent, and under what circumstances an Award may be settled, canceled, forfeited, accelerated, exchanged, or surrendered (including upon a “change in control” or similar transaction); to make adjustments in the terms and conditions (including Performance Goals) applicable to Awards; construe and interpret the Plan and any Award; prescribe, amend and rescind rules and regulations relating to the Plan; to determine the terms and provisions of the Award Terms (which need not be identical for each Grantee); and make all other determinations deemed necessary or advisable for the administration of the Plan. The Committee may correct any defect or supply any omission or reconcile any inconsistency in the Plan or in any Award Terms granted hereunder in the manner and to the extent it deems expedient to carry the Plan into effect and will be the sole and final judge of such expediency. No Committee member will be liable for any action or determination made with respect to the Plan or any Award.

#### 4. ELIGIBILITY.

(a) Awards may be granted to officers, employees, independent contractors and non-employee directors of the Company or of any of the Subsidiaries and Affiliates; *provided*, that (i) ISOs may be granted only to employees (including officers and directors who are also employees) of the Company or any of its “related corporations” (as defined in the applicable regulations promulgated under the Code) and (ii) Awards may be granted only to eligible persons who are not employed by the Company or a Subsidiary if such persons perform substantial services for the Company or a Subsidiary.

(b) No ISO may be granted to any employee of the Company or any of its Subsidiaries if such employee owns, immediately prior to the grant of the ISO, stock representing more than 10% of the voting power or more than 10% of the value of all classes of stock of the Company or Parent or a Subsidiary, unless the purchase price for the stock under such ISO is at least 110% of its Fair Market Value at the time such ISO is granted and the ISO, by its terms, will not be exercisable more than five years from the date it is granted. In determining the stock ownership under this paragraph, the provisions of Section 424(d) of the Code will control.

(c) No Award, except for Restricted Stock, may be granted to any employee or independent contractor who is subject to Section 409A of the Code if such person is an employee or independent contractor of an Affiliate that is not a Subsidiary, unless such Award conforms to the requirements of Section 409A.

#### 5. STOCK SUBJECT TO THE PLAN.

(a) The maximum number of shares of Stock reserved for the grant or settlement of Awards under the Plan (the “Share Limit”) is 160,167,881, subject to adjustment as provided herein, not including shares of stock added to the Share Limit pursuant to Section 5(c).

(b) Shares issued pursuant to Awards under the Plan may, in whole or in part, be authorized but unissued shares or shares that have been or may be reacquired by the Company in the open market, in private transactions or otherwise. If any shares subject to an Award (other than Awards substituted or assumed pursuant to Section 5(c) herein) are forfeited, canceled, exchanged or surrendered or if an Award otherwise terminates or expires without a distribution of shares to the Grantee, the shares of stock with respect to such Award will, to the extent of



any such forfeiture, cancellation, exchange, surrender, termination or expiration, again be available for Awards under the Plan.

(c) The Company may substitute or assume equity awards of acquired entities in connection with mergers, reorganizations, separations, or other transactions to which Section 424(a) of the Code applies. The number of shares of Stock reserved pursuant to Section 5 will be increased by the corresponding number of equity awards assumed and, in the case of a substitution, by the net increase in the number of shares of Stock subject to equity awards before and after the substitution.

(d) Subject to the Share Limit and Section 5(g), the aggregate maximum number of shares of Stock that may be issued pursuant to the exercise of ISOs will be 160,167,881 shares of Stock.

(e) Subject to the Share Limit and Section 5(g), the aggregate number of shares of Stock that may be issued pursuant to Awards granted during any fiscal year to any single individual may not exceed 3,611,400 shares of Stock.

(f) The maximum value of Awards granted during a single fiscal year under this Plan or under any other equity plan maintained by the Company, taken together with any cash fees paid during such fiscal year for services on the Board, will not exceed \$1,000,000 in total value for any non-employee director, except that such limit will be \$1,250,000 for any non-employee director serving as the lead director of the Board or chair of the Board. Such applicable limit will include the value of any stock awards that are received in lieu of all or a portion of any annual committee cash retainers or other similar cash based payments.

(g) Except as provided in an Award Term or as otherwise provided in the Plan, in the event of any extraordinary dividend or other extraordinary distribution (whether in the form of cash, Stock, or other property), recapitalization, stock split, reverse split, reorganization, merger, consolidation, spin-off, recapitalization, combination, repurchase, or share exchange, or other similar corporate transaction or event, the Committee will make such equitable changes or adjustments as it deems necessary or appropriate to any or all of (i) the number and kind of shares of Stock or other property (including cash) that may thereafter be issued in connection with Awards (including, but not limited to changes or adjustments to the limits specified in Sections 5(d) and (e)) or the total number of Awards issuable under the Plan, (ii) the number and kind of shares of Stock or other property issued or issuable in respect of outstanding Awards, (iii) the exercise price, grant price or purchase price relating to any Award, (iv) the Performance Goals, and (v) the individual limitations applicable to Awards; provided that, with respect to ISOs, any adjustment will be made in accordance with the provisions of Section 424(h) of the Code and any regulations or guidance promulgated thereunder, and provided further that no such adjustment will cause any Award hereunder which is or becomes subject to Section 409A of the Code to fail to comply with the requirements of such section.

## 6. **SPECIFIC TERMS OF AWARDS.**

(a) *General.* Subject to the terms of the Plan and any applicable Award Terms, (i) the term of each Award will be for such period as may be determined by the Committee, and (ii) payments to be made by the Company or a Subsidiary or Affiliate upon the grant, maturation, or exercise of an Award may be made in such forms as the Committee determines at the date of grant or thereafter, including, without limitation, cash, Stock or other property, and may be made in a single payment or transfer, in installments, or, subject to the requirements of Section 409A of the Code on a deferred basis.

(b) *Awards.* The Committee is authorized to grant to Grantees the following Awards, as deemed by the Committee to be consistent with the purposes of the Plan. The Committee will determine the terms and conditions of such Awards, consistent with the terms of the Plan. Options and Stock Appreciation Rights ("SARs") are subject to a minimum one-year vesting period following grant, with the exception that up to 5% of the available shares of Stock reserved for grant may be subject to such Awards without such minimum vesting period. Subject to compliance with the requirements of Section 409A of the Code, an Award may provide the Grantee with the right to receive dividend or dividend equivalent payments with respect to Stock actually or notionally subject to

the Award, which payments will be credited to an account for the Grantee, and may be settled in cash or Stock, as determined by the Committee. Any such dividend or dividend equivalents will be settled in cash or Stock to the Grantee only if, when and to the extent the related Award vests. The value of dividend or dividend equivalent payments payable with respect to any Award that does not vest will be forfeited.

(i) *Options.* The Committee is authorized to grant Options to Grantees on the following terms and conditions:

(A) The Award Terms evidencing the grant of an Option under the Plan will designate the Option as an ISO or an NQSO.

(B) The exercise price per share of Stock purchasable under an Option will be determined by the Committee, but in no event may the exercise price of an Option per share of Stock be less than the Fair Market Value of a share of Stock as of the date of grant of such Option. The purchase price of Stock as to which an Option is exercised must be paid in full at the time of exercise; payment may be made in cash, which may be paid by check, or other instrument acceptable to the Company, or, with the consent of the Committee, in shares of Stock, valued at the Fair Market Value on the date of exercise (including shares of Stock that otherwise would be distributed to the Grantee upon exercise of the Option), or if there were no sales on such date, on the next preceding day on which there were sales or (if permitted by the Committee and subject to such terms and conditions as it may determine) by surrender of outstanding Awards under the Plan, or the Committee may permit such payment of exercise price by any other method it deems satisfactory in its discretion. In addition, subject to applicable law and pursuant to procedures approved by the Committee, payment of the exercise price may be made pursuant to a broker-assisted cashless exercise procedure. Any amount necessary to satisfy applicable federal, state or local tax withholding requirements must be paid promptly upon notification of the amount due. The Committee may permit the amount of tax withholding to be paid in shares of Stock previously owned by the employee, or a portion of the shares of Stock that otherwise would be distributed to such employee upon exercise of the Option, or a combination of shares of such Stock and other property, except that the amount of tax withholding to be satisfied by withholding shares of Stock and other property will be limited to the extent necessary to avoid adverse accounting consequences, including but not limited to the Award being classified as a liability award.

(C) Options will be exercisable over the exercise period (which may not exceed ten years from the date of grant), at such times and upon such conditions as the Committee may determine, as reflected in the Award Terms; provided that, the Committee has the authority to accelerate the exercisability of any outstanding Option at such time and under such circumstances as it, in its sole discretion, deems appropriate.

(D) Upon the termination of a Grantee's employment or service with the Company and its Subsidiaries or Affiliates, the Options granted to such Grantee, to the extent that they are exercisable at the time of such termination, will remain exercisable for such period as may be provided in the applicable Award Terms, but in no event following the expiration of their term. The treatment of any Option that is unexercisable as of the date of such termination will be as set forth in the applicable Award Terms.

(E) Options may be subject to such other conditions, as the Committee may prescribe in its discretion or as may be required by applicable law.

(ii) *Restricted Stock.*

(A) The Committee may grant Awards of Restricted Stock under the Plan, subject to such restrictions, terms and conditions, as the Committee may determine in its sole discretion and as evidenced by the applicable Award Terms (provided that any such Award is subject to the vesting requirements described herein). The vesting of a Restricted Stock Award granted under the Plan may be conditioned upon the completion of a specified period of employment or service with the Company, any Subsidiary or an Affiliate, upon the attainment of specified Performance Goals or upon such other criteria as the Committee may determine in its sole discretion.

(B) The Committee will determine the purchase price, which, to the extent required by law, may not be less than par value of the Stock, to be paid by the Grantee for each share of Restricted Stock or unrestricted Stock or stock units subject to the Award. The Award Terms with respect to such Award will set forth the amount (if any) to be paid by the Grantee with respect to such Award and when and under what circumstances such payment is required to be made.

(C) Except as provided in the applicable Award Terms, no shares of Stock underlying a Restricted Stock Award may be assigned, transferred, or otherwise encumbered or disposed of by the Grantee until such shares of Stock have vested in accordance with the terms of such Award.

(D) Upon the termination of a Grantee's employment or service with the Company and its Subsidiaries or Affiliates, the Restricted Stock granted to such Grantee will be subject to the terms and conditions specified in the applicable Award Terms.

(iii) *Restricted Stock Units.* The Committee is authorized to grant Restricted Stock Units to Grantees, subject to the following terms and conditions:

(A) At the time of the grant of Restricted Stock Units, the Committee may impose such restrictions or conditions to the vesting of such Awards as it, in its discretion, deems appropriate, including, but not limited to, the achievement of Performance Goals. The Committee has the authority to accelerate the settlement of any outstanding award of Restricted Stock Units at such time and under such circumstances as it, in its sole discretion, deems appropriate, subject compliance with the requirements of Section 409A of the Code.

(B) Unless otherwise provided in the applicable Award Terms or except as otherwise provided in the Plan, upon the vesting of a Restricted Stock Unit there will be delivered to the Grantee, as soon as practicable following the date on which such Award (or any portion thereof) vests, that number of shares of Stock equal to the number of Restricted Stock Units becoming so vested.

(C) Upon the termination of a Grantee's employment or service with the Company and its Subsidiaries or Affiliates, the Restricted Stock Units granted to such Grantee will be subject to the terms and conditions specified in the applicable Award Terms.

(iv) *Other Stock-Based or Cash-Based Awards.*

(A) The Committee is authorized to grant Awards to Grantees in the form of Other Stock-Based Awards or Other Cash-Based Awards, as deemed by the Committee to be consistent with the purposes of the Plan. The Committee will determine the terms and conditions of such Awards, consistent with the terms of the Plan, at the date of grant or thereafter, including the Performance Goals and performance periods. Stock or other securities or property delivered pursuant to an Award in the nature of a purchase right granted under Section 6(iv) may be purchased for such consideration, paid for at such times, by such methods, and in such forms, including, without limitation, Stock, other Awards, notes or other property, as the Committee will determine, subject to any required corporate action.

(B) The maximum value of the aggregate payment that any Grantee may receive with respect to Other Cash-Based Awards pursuant to this Section 6(b)(iv) in respect of any annual performance period is \$5,000,000 and for any other performance period in excess of one year, such amount multiplied by a fraction, the numerator of which is the number of months in the performance period and the denominator of which is twelve. The Committee may establish other rules applicable to the Other Stock- or Cash-Based Awards.

(C) Payments earned in respect of any Cash-Based Award may be decreased or increased in the sole discretion of the Committee based on such factors as it deems appropriate.

## 7. GENERAL PROVISIONS.

(a) *Nontransferability, Deferrals and Settlements.* Unless otherwise determined by the Committee or provided in an Award Term or set forth below, but in accordance with the Code and any applicable laws, Awards will not be transferable by a Grantee except by will or the laws of descent and distribution and will be exercisable during the lifetime of a Grantee only by such Grantee or his guardian or legal representative. Any attempted assignment or transfer of an Award will be null and void and without effect, except as herein provided, including without limitation any purported assignment, whether voluntary or by operation of law, pledge, hypothecation or other disposition, attachment, divorce, trustee process or similar process, whether legal or equitable, upon such Award. The Committee may permit Grantees to elect to defer the issuance of shares of Stock or the settlement of Awards in cash under such rules and procedures as established under the Plan to the extent that such deferral complies with Section 409A of the Code and any regulations or guidance promulgated thereunder.

(b) *Leave of Absence; Reduction in Service Level.* The Committee may determine, in its discretion (i) whether, and the extent to which, an Award will vest during a leave of absence, (ii) whether, and the extent to which, a reduction in service level (for example, from full-time to part-time employment), will cause a reduction, or other change, in an Award, and (iii) whether a leave of absence or reduction in service will be deemed a termination of employment or service for the purpose of the Plan and the Award Terms. The Committee will also determine all other matters relating to whether the employment or service of a recipient of an Award is continuous for purposes of the Plan and the Award Terms.

(c) *No Right to Continued Employment, etc.* Nothing in the Plan or in any Award granted or any Award Terms, promissory note or other agreement entered into pursuant hereto confers upon any Grantee the right to continue in the employ or service of the Company, any Subsidiary or any Affiliate or to be entitled to any remuneration or benefits not set forth in the Plan or the applicable Award Terms or to interfere with or limit in any way the right of the Company or any such Subsidiary or Affiliate to terminate such Grantee's employment or service.

### (d) *Clawback/Recoupment*

(i) All Awards granted under the Plan will be subject to recoupment in accordance with any clawback policy that the Company determines to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. In addition, the Committee may impose additional clawback, recovery or recoupment provisions in an Award agreement as the Committee determines necessary or appropriate, including but not limited to a reacquisition right in respect of previously acquired shares of Stock or other cash or property upon the occurrence of Cause as determined by the Committee.

(ii) In the event of a restatement of incorrect financial results, the Committee will review all Awards held by executive officers (within the meaning of Rule 3b-7 of the Exchange Act) of the Company that (i) were earned based on performance or were vesting during the course of the financial period subject to such restatement or (ii) were granted during or within one year following such financial period. If any Award would have been lower or would not have vested, been earned or been granted based on such restated financial results, the Committee will, if it determines appropriate in its sole discretion and to the extent permitted by governing law, (a) cancel such Award, in whole or in part, whether or not vested, earned or payable or (b) require the Grantee to repay to the Company an amount equal to all or any portion of the value of any gains from the grant, vesting or payment of the Award that would not have been realized had the restatement not occurred.

(iii) If a Grantee's employment or service is terminated for Cause, all unvested (and, to the extent applicable, unexercised) portions of Awards will terminate and be forfeited immediately without consideration. In addition, the Committee may in its sole discretion and to the extent permitted by applicable law cause the cancellation of all or a portion of any outstanding vested Awards held by such Grantee or payable to such Grantee or require such Grantee to reimburse the Company for all or a portion of the gains from the exercise of, settlement or payment of any of the Grantee's Awards realized after the event giving rise to Cause first occurred.

(e) *Taxes.* The Company, any Subsidiary and any Affiliate is authorized to withhold from any Award granted, any payment relating to an Award under the Plan, including from a distribution of Stock, or any other payment to a Grantee, amounts of withholding and other taxes due in connection with any transaction involving an Award, and to take such other action as the Committee may deem advisable to enable the Company and Grantees to satisfy obligations for the payment of withholding taxes and other tax obligations relating to any Award. This authority includes authority to withhold or receive Stock or other property and to make cash payments in respect thereof in satisfaction of a Grantee's tax obligations; provided, however, that the amount of tax withholding to be satisfied by withholding Stock or other property will be limited to the extent necessary to avoid adverse accounting consequences, including but not limited to the Award being classified as a liability award.

(f) *Stockholder Approval; Amendment and Termination.* The Board may amend, alter or discontinue the Plan and outstanding Awards thereunder, but no amendment, alteration, or discontinuation may be made that would impair the rights of a Grantee under any Award theretofore granted without such Grantee's consent, or that without the approval of the stockholders (as described below) would, except in the case of an adjustment as provided in Section 5, increase the total number of shares of Stock reserved for the purpose of the Plan. In addition, stockholder approval will be required with respect to any amendment with respect to which shareholder approval is required under the Code, the rules of any stock exchange on which Stock is then listed or any other applicable law. Unless earlier terminated by the Board pursuant to the provisions of the Plan, the Plan will terminate on the tenth anniversary of the Adoption Date. No Awards may be granted under the Plan after such termination date.

(g) *No Rights to Awards; No Stockholder Rights.* No Grantee has any claim to be granted any Award under the Plan, and there is no obligation for uniformity of treatment of Grantees. No Grantee has any right to payment or settlement under any Award unless and until the Committee or its designee determines that payment or settlement is to be made. Except as provided specifically herein, a Grantee or a transferee of an Award has no rights as a stockholder with respect to any shares covered by the Award until the date of the issuance of such shares.

(h) *Unfunded Status of Awards.* The Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payments not yet made to a Grantee pursuant to an Award, nothing contained in the Plan or any Award will give any such Grantee any rights that are greater than those of a general creditor of the Company.

(i) *No Fractional Shares.* No fractional shares of Stock will be issued or delivered pursuant to the Plan or any Award. The Committee will determine whether cash, other Awards, or other property will be issued or paid in lieu of such fractional shares or whether such fractional shares or any rights thereto will be forfeited or otherwise eliminated.

(j) *Regulations and Other Approvals.*

(i) The obligation of the Company to sell or deliver Stock or pay cash with respect to any Award granted under the Plan is subject to all applicable laws, rules and regulations, including all applicable federal and state securities laws, and the obtaining of all such approvals by governmental agencies as may be deemed necessary or appropriate by the Committee.

(ii) Each Award is subject to the requirement that, if at any time the Committee determines, in its absolute discretion, that the listing, registration or qualification of Stock issuable pursuant to the Plan is required by any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the grant of an Award or the issuance of Stock, no such Award may be granted or payment made or Stock issued, in whole or in part, unless listing, registration, qualification, consent or approval has been effected or obtained free of any conditions not acceptable to the Committee.

(iii) In the event that the disposition of Stock acquired pursuant to the Plan is not covered by a then current registration statement under the Securities Act of 1933, as amended (the “Securities Act”), and is not otherwise exempt from such registration, such Stock will be restricted against transfer to the extent required by the Securities Act or regulations thereunder, and the Committee may require a Grantee receiving Stock pursuant to the Plan, as a condition precedent to receipt of such Stock, to represent to the Company in writing that the Stock acquired by such Grantee is acquired for investment only and not with a view to distribution.

(iv) *Section 409A.* This Plan is intended to comply and will be administered in a manner that is intended to comply with Section 409A of the Code and will be construed and interpreted in accordance with such intent. To the extent that an Award, issuance or payment is subject to Section 409A of the Code, it will be awarded or issued or paid in a manner that will comply with Section 409A of the Code, including proposed, temporary or final regulations or any other guidance issued by the Secretary of the Treasury and the Internal Revenue Service with respect thereto. Any provision of this Plan that would cause an Award, issuance or payment to fail to satisfy Section 409A of the Code will have no force and effect until amended to comply with Section 409A of the Code (which amendment may be retroactive to the extent permitted by applicable law). Notwithstanding anything to the contrary in this Plan (and unless the Award Terms specifically provides otherwise), if the shares of Stock are publicly traded and a Grantee is a “specified employee” for purposes of Section 409A of the Code and holds an Award that provides for “deferred compensation” under Section 409A of the Code, no distribution or payment of any amount shall be made upon a “separation from service” before a date that is six months following the date of such Grantee’s “separation from service” (as defined in Section 409A of the Code without regard to alternative definitions thereunder) except that in case of the Grantee’s death, such distribution or payment will be made as soon as practicable following the Grantee’s death or as otherwise set forth in an agreement with the Grantee.

(k) *Governing Law.* The Plan and all determinations made and actions taken pursuant hereto is governed by the laws of the State of Delaware without giving effect to the conflict of laws principles thereof. Notwithstanding anything to the contrary herein, the Committee, in order to conform with provisions of local laws and regulations in foreign countries in which the Company or its Subsidiaries operate, has sole discretion to (i) modify the terms and conditions of Awards made to Grantees employed outside the United States, (ii) establish sub-plans with modified exercise procedures and such other modifications as may be necessary or advisable under the circumstances presented by local laws and regulations, and (iii) take any action which it deems advisable to obtain, comply with or otherwise reflect any necessary governmental regulatory procedures, exemptions or approvals with respect to the Plan or any sub-plan established hereunder.

(l) *Merger or Consolidation.* If the Company is the surviving corporation in any merger or consolidation (other than a merger or consolidation in which the Company survives but in which a majority of its outstanding shares are converted into securities of another corporation or are exchanged for other consideration), any Award granted hereunder will pertain and apply to the securities which a holder of the number of shares of stock of the Company then subject to the Award is entitled to receive. In the event of a (i) dissolution or liquidation of the Company, (ii) sale or transfer of all or substantially all of the Company’s assets or (iii) merger or consolidation in which the Company is not the surviving corporation or in which a majority of its outstanding shares are converted into securities of another corporation or are exchanged for other consideration, the Company must, contingent upon consummation of such transaction, either (a) arrange for any corporation succeeding to the business and assets of the Company to (x) assume each outstanding Award, or (y) issue to the Grantees replacement Awards (which, in the case of Incentive Stock Options, satisfy, in the determination of the Committee, the requirements of Section 424 of the Code), for such corporation’s stock that will preserve the value, liquidity and material terms and conditions of the outstanding Awards; or (b) make the outstanding Awards fully exercisable or cause all of the applicable restrictions to which outstanding Stock Awards are subject to lapse, in each case, on a basis that gives the holder of the Award a reasonable opportunity, as determined by the Committee, following the exercise of the Award or the issuance of shares of Common Stock, as the case may be, to participate as a stockholder in any such dissolution, liquidation, asset sale or transfer, merger or consolidation, and the Award will terminate immediately following consummation of any such transaction. The existence of the Plan will not prevent any such change or other transaction, and no Participant hereunder has any right except as herein expressly set forth. Notwithstanding the

foregoing provisions of this Section 7(l), Awards subject to and intended to satisfy the requirements of Section 409A of the Code will be construed and administered consistent with such intent.

**VMWARE, INC.**  
**AMENDED AND RESTATED 2007 EMPLOYEE STOCK PURCHASE PLAN**

**Section 1. Purpose of Plan**

The VMware, Inc. Amended and Restated 2007 Employee Stock Purchase Plan (the “Plan”) is intended to provide a method by which eligible employees of VMware, Inc. (“VMware”) and its subsidiaries (collectively, the “Company”) may use voluntary, systematic payroll deductions or other contributions (as described in Section 5 below) to purchase VMware’s class A common stock, \$.01 par value, (“stock”) and thereby acquire an interest in the future of VMware. For purposes of the Plan, a subsidiary is any corporation in which VMware owns, directly or indirectly, stock possessing 50% or more of the total combined voting power of all classes of stock unless the Board of Directors of VMware (the “Board of Directors”) or the Committee (as defined below) determines that employees of a particular subsidiary shall not be eligible.

The Plan is intended qualify as an “employee stock purchase plan” under Section 423 of the Internal Revenue Code of 1986, as amended (the “Code”). Notwithstanding the foregoing, the Board of Directors may establish comparable offerings under the Plan that are not intended to qualify under Code Section 423. Such offerings will be designated as being made under the non-423 component of this Plan.

For purposes of this Plan, if the Board of Directors so determines, the employees of VMware and/or of any designated subsidiary will be deemed to participate in a separate offering under the 423 component of the Plan, even if the dates of the applicable offering period of each such offering are identical, provided that the terms of participation are the same within each separate offering as determined under Code Section 423.

**Section 2. Options to Purchase Stock**

Under the Plan, no more than 37,300,000 shares of stock are available for purchase (subject to adjustment as provided in Section 16) pursuant to the exercise of options (“options”) granted under the Plan to employees of the Company (“employees”). All of the shares of stock are available for purchase under the Plan may be used for offerings under the 423 component of the Plan. The stock to be delivered upon exercise of options under the Plan may be either shares of VMware’s authorized but unissued stock, or shares of reacquired stock, as the Board of Directors shall determine.

**Section 3. Eligible Employees**

Except as otherwise provided in Section 20, each employee who has completed three months or more of continuous service in the employ of the Company, or any lesser number of months established by the Committee (if required under local law), shall be eligible to participate in the Plan provided such inclusion is consistent with requirements under Code Section 423 or offered under the non-423 component. For the avoidance of doubt, individuals who are not employees of VMware or an eligible subsidiary are not considered to be eligible employees and shall not be eligible to participate in the Plan.

**Section 4. Method of Participation**

Option periods of any duration up to 27 months in length shall be determined by the Committee. In the event no period is designated by the Committee, the option periods shall have a duration of six months commencing on the first day following termination of the prior period. For example, if an option period ends on July 31, the following option period would be August 1 through January 31 unless the Committee determines otherwise prior to commencement of such following option period. Each person who will be an eligible employee on the first day of any option period may elect to participate in the Plan by executing and delivering, at least one business day prior to such day, a payroll deduction authorization

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and/or other required enrollment agreement(s)/form(s) in accordance with Section 5. Such employee shall thereby become a participant ("participant") on the first day of such option period and shall remain a participant until his or her participation is terminated as provided in the Plan. VMware may permit participants to elect or indicate whether an enrollment election, once made, will apply to subsequent option periods without being required to submit a new enrollment form. If an employee makes an enrollment election that does not apply to subsequent option periods, the employee will be deemed to have terminated his or her participation with respect to subsequent option periods unless and until the employee submits a new enrollment form in accordance with the Plan.

## **Section 5. Contributions**

A participant may elect to make contributions under the Plan at a rate of not less than 2% nor more than 15% from the participant's compensation (subject to a maximum of \$7,500 per six-month option period and pro-rated for longer or shorter periods, at the Committee's discretion), by means of substantially equal payroll deductions over the option period; provided, however, where applicable local laws prohibit payroll deductions for the purpose of participation in the Plan, the Committee may permit all participants in a specified separate offering under the 423 component or an offering under the non-423 component of the Plan to contribute amounts to the Plan through payment by cash, check or other means set forth in the enrollment form. Any amount remaining in a participant's contribution account at the end of an option period representing a fractional share that is rolled over to the contribution account for the next option period pursuant to Section 8 below (a "rollover") may be used to purchase additional stock; provided that the maximum dollar amount per option period shall be reduced by the amount of any rollover. For purposes of the Plan, "compensation" shall mean all cash compensation paid to the participant by the Company unless otherwise specified by the Board.

A participant may only elect to change his or her contribution rate by written notice delivered to VMware (or its designated agent) at least one business day prior to the first day of the option period as to which the change is to be effective. Following delivery to VMware (or its designated agent) of any enrollment form or any election to change the withholding rate of a payroll deduction authorization, appropriate payroll deductions or changes thereto shall commence as soon as reasonably practicable. All amounts withheld in accordance with a participant's payroll deduction authorization or contributed by other permitted means (if any) shall be credited to a contribution account for such participant.

## **Section 6. Grant of Options**

Each person who is a participant on the first day of an option period shall, as of such day, be granted an option for such period. Such option shall be for the number of shares of stock to be determined by dividing (a) the balance in the participant's contribution account on the last day of the option period by (b) the purchase price per share of the stock determined under Section 7, and eliminating any fractional share from the quotient. In the event that the number of shares then available under the Plan is otherwise insufficient, VMware shall reduce on a substantially proportionate basis the number of shares of stock receivable by each participant upon exercise of his or her option for an option period and shall return the balance in a participant's contribution account to such participant without interest (unless otherwise required by local law). In no event shall the number of shares of stock that a participant may purchase during any one six-month option period under the Plan exceed 750 shares of stock (subject to adjustment as provided in Section 16), and pro-rated for longer or shorter periods, at the Committee's discretion.

## **Section 7. Purchase Price**

The purchase price of stock issued pursuant to the exercise of an option shall be 85% of the fair market value of the stock at (a) the time of grant of the option or (b) the time at which the option is deemed exercised, whichever is less. "Fair market value" shall mean the closing sales price per share of the stock

on the principal securities exchange on which the stock is traded or, if there is no such sale on the relevant date, then on the last previous day on which a sale was reported; if the stock is not listed for trading on a national securities exchange, the fair market value of the stock shall be determined in good faith by the Board of Directors.

#### **Section 8. Exercise of Options**

If an employee is a participant in the Plan on the last business day of an option period, he or she shall be deemed to have exercised the option granted to him or her for that period. Upon such exercise, VMware shall apply the balance of the participant's contribution account to the purchase of the number of whole shares of stock determined under Section 6, and as soon as practicable thereafter shall issue and deliver certificates for said shares to the participant (or have the shares deposited in a brokerage account for the benefit of the participant). No fractional shares shall be issued hereunder. Any balance accumulated in the participant's contribution account that is not sufficient to purchase a full share shall be retained in such account for any remaining or subsequent option period, subject to early withdrawal by the participant as provided in Section 10. Any other monies remaining in the participant's contribution account under the Plan after the date of exercise shall be returned to the participant or his or her beneficiary (as applicable) in cash without interest (unless otherwise required by local law).

Notwithstanding anything herein to the contrary, VMware shall not be obligated to deliver any shares unless and until, in the opinion of VMware's counsel, all requirements of applicable federal, state and foreign laws and regulations (including any requirements as to legends) have been complied with, nor, if the outstanding stock is at the time listed on any securities exchange, unless and until the shares to be delivered have been listed (or authorized to be added to the list upon official notice of issuance) upon such exchange, nor unless or until all other legal matters in connection with the issuance and delivery of shares have been approved by VMware's counsel.

#### **Section 9. Interest**

No interest will be payable on contribution accounts, except as may be required by applicable law, as determined by the Committee.

#### **Section 10. Cancellation and Withdrawal**

A participant who holds an option under the Plan may cancel all (but not less than all) of his or her option by written notice delivered to the Company, in such form as the Committee may prescribe, provided that VMware (or its designated agent) must receive such notice at least 31 days, or such other number of days determined by the Committee, before the last day of the option period (the "Withdrawal Deadline"). Any participant who delivers such written notice shall be deemed to have canceled his or her option, terminated any applicable payroll deduction authorization with respect to the Plan and terminated his or her participation in the Plan, in each case, as of the date of such written notice. In the event that the date of the Withdrawal Deadline with respect to the applicable option period, shall be a Saturday, Sunday or day on which banks in the State of Delaware are required to close, a participant may cancel his or her option by written notice given on or prior to the last business day immediately preceding such date. Following delivery of any such notice, any balance in the participant's contribution account will be returned to such participant as soon as reasonably practicable without interest (unless otherwise required by local law). Any participant who has delivered such notice may elect to participate in the Plan in any future option period in accordance with the provisions of Section 4.

#### **Section 11. Termination of Employment**

Except as otherwise provided in Section 12, upon the termination of a participant's employment with the Company for any reason whatsoever, he or she shall cease to be a participant, and any option held by him or her under the Plan shall be deemed canceled, the balance of his or her contribution account shall

be returned to him or her without interest (unless otherwise required by local law), and he or she shall have no further rights under the Plan. For purposes of this Section 11, a participant's employment will not be considered terminated in the case of a transfer to the employment of an eligible subsidiary or to the employment of VMware. However, in the event of a transfer of employment, VMware may transfer participant's participation to a separate offering or non-423 component offering, if advisable or necessary, considering applicable local law and Code Section 423 requirements. For purposes of the Plan, an individual's employment relationship is still considered to be continuing intact while such individual is on sick leave, or other leave of absence approved for purposes of this Plan by the Company; provided however, that if such period of leave of absence exceeds three months, and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship shall be deemed to have terminated on the first day following such three month period.

#### **Section 12. Death of Participant**

In the event a participant holds any option hereunder at the time his or her employment with the Company is terminated by his or her death, whenever occurring, then his or her legal representative, may, by a writing delivered to VMware on or before the date such option is exercisable, elect either (a) to cancel any such option and receive in cash the balance in his or her contribution account, or (b) to have the balance in his or her contribution account applied as of the last day of the option period to the exercise of his or her option pursuant to Section 8, and have the balance, if any, in such account in excess of the total purchase price of the whole shares so issued returned in cash without interest (unless otherwise required by local law). In the event his or her legal representative does not file a written election as provided above, any outstanding option shall be treated as if an election had been filed pursuant to subparagraph 12(a) above.

#### **Section 13. Participant's Rights Not Transferable, etc.**

All participants granted options under a specified offering under the 423 component of the Plan shall have the same rights and privileges. Each participant's rights and privileges under any option granted under the Plan shall be exercisable during his or her lifetime only by him or her, and shall not be sold, pledged, assigned, or otherwise transferred in any manner whatsoever except by will or the laws of descent and distribution. In the event any participant violates the terms of this Section, any options held by him or her may be terminated by VMware and, upon return to the participant of the balance of his or her contribution account, all his or her rights under the Plan shall terminate.

#### **Section 14. Employment Rights**

Neither the adoption of the Plan nor any of the provisions of the Plan shall confer upon any participant any right to continued employment with the Company or a subsidiary or affect in any way the right of the participant's employer to terminate the employment of such participant at any time.

#### **Section 15. Rights as a Shareholder/Use of Funds**

A participant shall have the rights of a shareholder only as to stock actually acquired by him or her under the Plan.

All contributions received under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such funds, but may do so if required under applicable local law.

#### **Section 16. Change in Capitalization**

In the event of a stock dividend, stock split or combination of shares, recapitalization, merger in which VMware is the surviving corporation or other change in VMware's capital stock, the number and kind of shares of stock or securities of VMware to be subject to the Plan and to options then outstanding or

to be granted hereunder, the maximum number of shares or securities which may be delivered under the Plan, the option price and other relevant provisions shall be appropriately adjusted by the Board of Directors, whose determination shall be binding on all persons. In the event of a consolidation or merger in which VMware is not the surviving corporation or in the event of the sale or transfer of substantially all VMware's assets (other than by the grant of a mortgage or security interest), all outstanding options shall thereupon terminate, provided that prior to the effective date of any such merger, consolidation or sale of assets, the Board of Directors shall either (a) return the balance in all contribution accounts and cancel all outstanding options, or (b) accelerate the exercise date provided for in Section 8, or (c) if there is a surviving or acquiring corporation, arrange to have that corporation or an affiliate of that corporation grant to the participants replacement options having equivalent terms and conditions as determined by the Board of Directors.

In the event of a corporate restructuring, VMware may transfer or terminate participant's participation to a separate offering or non-423 component offering, if advisable or necessary, considering applicable local law and Code Section 423 requirements.

#### **Section 17. Administration of Plan**

The Plan will be administered by the Board of Directors. The Board of Directors will have authority, not inconsistent with the express provisions of the Plan, to take all action necessary or appropriate hereunder, to interpret its provisions, and to decide all questions which may arise in connection therewith. Except with respect to officers of VMware who are subject to the reporting requirements of Section 16 of the Securities Act of 1934, management of VMware is also authorized to resolve participant disputes under the Plan, consistent with the terms of the Plan and any agreements thereunder and any interpretations or guidance issued under the Plan by the Board of Directors or the Committee.

The Board may, in its discretion, delegate its powers with respect to the Plan to the Compensation and Corporate Governance Committee or any other committee at VMware (the "Committee"), in which event all references to the Board of Directors hereunder, including without limitation the references in Section 17, shall be deemed to refer to the Committee. A majority of the members of any such Committee shall constitute a quorum, and all determinations of the Committee shall be made by a majority of its members. Any determination of the Committee under the Plan may be made without notice or meeting of the Committee by a writing signed by all of the Committee members.

Determinations of the Board of Directors, the Committee or where appropriate, management of the Company, shall be conclusive and shall bind all parties.

#### **Section 18. Amendment and Termination of Plan**

The Board of Directors may at any time or times amend the Plan or amend any outstanding option or options for the purpose of satisfying the requirements of any changes in applicable laws or regulations or for any other purpose which may at the time be permitted by law, provided that (except to the extent explicitly required or permitted herein) no such amendment will, without the approval of the shareholders of the Company, (a) increase the maximum number of shares available under the Plan, (b) reduce the option price of outstanding options or reduce the price at which options may be granted, (c) change the conditions for eligibility under the Plan, or (d) amend the provisions of this Section 18 of the Plan, and no such amendment will adversely affect the rights of any participant (without his or her consent) under any option theretofore granted.

The Plan may be terminated at any time by the Board of Directors, but no such termination shall adversely affect the rights and privileges of holders of the outstanding options.

## **Section 19. Approval of Shareholders**

The Plan as amended and restated was approved by the stockholders of the Company on June 8, 2017 and was further amended by the stockholders on June 25, 2019. Subsequent amendments will be approved by the stockholders to the extent required by applicable securities and tax rules and regulations as well as applicable rules of the securities exchange(s) upon which the stock may be listed for trading.

## **Section 20. Limitations**

Notwithstanding any other provision of the Plan:

(a) An employee shall not be eligible to receive an option pursuant to the Plan if, immediately after the grant of such option to him or her, he or she would (in accordance with the provisions of Sections 423 and 424(d) of the Code) own or be deemed to own stock possessing 5% or more of the total combined voting power or value of all classes of stock of the employer corporation or of its parent or subsidiary corporation, as defined in Section 424 of the Code.

(b) No employee shall be granted an option under this Plan that would permit his or her rights to purchase shares of stock under all employee stock purchase plans (as defined in Section 423 of the Code) of VMware or any subsidiary or parent corporation to accrue at a rate which exceeds \$25,000 in fair market value of such stock (determined at the time the option is granted) for each calendar year during which any such option granted to such employee is outstanding at any time, as provided in Section 423 of the Code.

(c) No employee shall be granted an option under this Plan that would permit him or her to withhold more than \$7,500 in each six-month option period, and prorated for longer or shorter periods, at the Committee's discretion, or \$15,000 per calendar year, less the amount of any rollover.

(d) No employee whose customary employment is 20 hours or less per week shall be eligible to participate in the Plan, unless otherwise required under applicable law. If participation in the Plan is offered to employees whose customary employment is 20 hours or less, the offering will be made under a separate offering under the 423 component or under the non-423 component of the Plan.

(e) No employee whose customary employment is for not more than five months in any calendar year shall be eligible to participate in the Plan.

(f) No independent contractor shall be eligible to participate in the Plan.

## **Section 21. Jurisdiction and Governing Law.**

The Company and each participant in the Plan submit to the exclusive jurisdiction and venue of the U.S. federal or state courts of Delaware to resolve issues that may arise out of or relate to the Plan or the same subject matter. The Plan shall be governed by the laws of Delaware, excluding its conflicts or choice of law rules or principles that might otherwise refer construction or interpretation of this Plan to the substantive law of another jurisdiction.

## **Section 22. Compliance with Foreign Laws and Regulations.**

Notwithstanding anything to the contrary herein, the Board, in order to conform with provisions of local laws and regulations in foreign countries in which the Company or its subsidiaries operate, shall have sole discretion to (i) adversely modify the terms and conditions of options granted to participants employed outside the United States to the extent consistent with the U.S. Treasury regulations under Code Section 423; (ii) establish comparable offerings that are not intended to qualify under Code Section 423 with the shares to be taken from the allotment available under this Plan and with modified enrollment or exercise procedures and/or establish such other modifications as may be necessary or advisable under the

circumstances presented by local laws and regulations; and (iii) take any action which it deems advisable to obtain, comply with or otherwise reflect any necessary governmental regulatory procedures, exemptions or approvals with respect to the Plan or any sub-plan established hereunder.

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Rangarajan (Raghu) Raghuram, certify that:

1. I have reviewed this quarterly report on Form 10-Q of VMware, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - i. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - ii. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - iii. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - iv. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - i. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - ii. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 3, 2021

By: /s/ Rangarajan (Raghu) Raghuram

**Rangarajan (Raghu) Raghuram**  
Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Zane Rowe, certify that:

1. I have reviewed this quarterly report on Form 10-Q of VMware, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - i. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - ii. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - iii. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - iv. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - i. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - ii. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 3, 2021

By: /s/ Zane Rowe

**Zane Rowe**  
**Chief Financial Officer and Executive Vice President**  
**(Principal Financial Officer)**



**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Rangarajan (Raghu) Raghuram, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge, the Quarterly Report of VMware, Inc. on Form 10-Q for the fiscal quarter ended July 30, 2021 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and the information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of VMware, Inc.

Date: September 3, 2021

By: /s/ Rangarajan (Raghu) Raghuram

**Rangarajan (Raghu) Raghuram**  
**Chief Executive Officer**  
**(Principal Executive Officer)**

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Zane Rowe, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge, the Quarterly Report of VMware, Inc. on Form 10-Q for the fiscal quarter ended July 30, 2021 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and the information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of VMware, Inc.

Date: September 3, 2021

By: /s/ Zane Rowe

**Zane Rowe**  
**Chief Financial Officer and Executive Vice President**  
**(Principal Financial Officer)**