

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 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 June 30, 2024

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: 001-40256

**ACV Auctions Inc.**

(Exact Name of Registrant as Specified in its Charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**640 Ellicott Street, #321  
Buffalo, New York**

(Address of principal executive offices)

**47-2415221**

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

**14203**

(Zip Code)

**Registrant's telephone number, including area code: 800 553-4070**

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common stock, par value \$0.001 per share	ACVA	Nasdaq Global Select Market

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

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

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

Large accelerated filer	<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 July 31, 2024, there were 152,175,941 shares of the registrant's Class A common stock, and 14,410,553 shares of Class B common stock, each with a par value of \$0.001, outstanding.

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## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, about us and our industry that involve substantial risks and uncertainties. All statements other than statements of historical facts contained in this Quarterly Report on Form 10-Q including statements regarding our future results of operations or financial condition, business strategy and plans and objectives of management for future operations, are forward-looking statements. In some cases, you can identify forward-looking statements because they contain words such as “anticipate,” “believe,” “contemplate,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “will” or “would” or the negative of these words or other similar terms or expressions. These forward-looking statements include, but are not limited to, statements concerning the following:

- our expectations regarding our revenue, operating expenses and other operating results, including our key metrics and our ability to meet previously announced earnings guidance;
- our ability to effectively manage our growth and expand our business, including providing additional channels for auction services for dealers and commercial partners;
- our ability to grow the number of marketplace participants on our platform;
- our ability to acquire new customers and successfully retain existing customers and capture a greater share of wholesale transactions from our existing customers;
- our ability to increase usage of our platform and generate revenue from our value-added services;
- anticipated trends, growth rates, and challenges in our business and in the markets in which we operate;
- our ability to achieve or sustain our profitability;
- future investments in our business, our anticipated capital expenditures and our estimates regarding our capital requirements;
- the costs and success of our marketing efforts, and our ability to promote our brand;
- the effects of macroeconomic conditions on our business;
- our reliance on key personnel and our ability to identify, recruit and retain skilled personnel, especially as we establish new offerings;
- our ability to compete effectively with existing competitors and new market entrants;
- our ability to obtain, maintain, protect and enforce our intellectual property rights and any costs associated therewith;
- our ability to predict, prepare and respond to new kinds of technology innovations, such as artificial intelligence, as well as market developments and changing customer needs;
- our ability to expand internationally;
- our ability to identify and complete acquisitions that complement and expand our reach and platform;
- our decision to not declare or pay dividends for the foreseeable future;
- our ability to comply or remain in compliance with laws and regulations that currently apply or become applicable to our business in the United States and other jurisdictions where we elect to do business; and
- the growth rates of the markets in which we compete.

You should not rely on forward-looking statements as predictions of future events. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties and other factors described under the header “Risk Factors” and elsewhere in this Quarterly Report on Form 10-Q. Moreover, we operate in a very competitive and rapidly changing environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained herein. The results, events and circumstances reflected in the forward-looking statements may not be achieved or occur, and actual results, events or circumstances could differ materially from those described in the forward-looking statements.

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this Quarterly Report on Form 10-Q. While we believe that information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements.

The forward-looking statements made in this Quarterly Report on Form 10-Q relate only to events as of the date on which the statements are made, and we undertake no obligation to update them to reflect events or circumstances after the date of this Quarterly Report on Form 10-Q or to reflect new information or the occurrence of unanticipated events, except as required by law.

Unless the context otherwise indicates, references in this report to the terms “ACV Auctions,” “ACV,” “the Company,” “we,” “our” and “us” refer to ACV Auctions Inc. and its subsidiaries.

We may announce material business and financial information to our investors using our investor relations website ([investors.acvauto.com](http://investors.acvauto.com)). We therefore encourage investors and others interested in ACV to review the information that we make available on our website, in addition to following our filings with the Securities and Exchange Commission (the “SEC”), webcasts, press releases and conference calls.

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements (Unaudited)

**ACV AUCTIONS INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Unaudited)  
(in thousands, except share data)

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
<b>Revenue:</b>				
Marketplace and service revenue	\$ 144,126	\$ 109,360	\$ 273,940	\$ 214,223
Customer assurance revenue	16,498	14,857	32,373	29,620
<b>Total revenue</b>	<b>160,624</b>	<b>124,217</b>	<b>306,313</b>	<b>243,843</b>
<b>Operating expenses:</b>				
Marketplace and service cost of revenue (excluding depreciation & amortization)	64,253	50,229	119,946	97,804
Customer assurance cost of revenue (excluding depreciation & amortization)	14,558	13,474	27,372	25,617
Operations and technology	39,694	35,303	77,763	71,048
Selling, general, and administrative	51,912	41,180	105,765	82,892
Depreciation and amortization	8,848	3,821	16,635	7,106
<b>Total operating expenses</b>	<b>179,265</b>	<b>144,007</b>	<b>347,481</b>	<b>284,467</b>
<b>Loss from operations</b>	<b>(18,641)</b>	<b>(19,790)</b>	<b>(41,168)</b>	<b>(40,624)</b>
<b>Other income (expense):</b>				
Interest income	2,329	4,720	5,360	8,016
Interest expense	(606)	(451)	(1,141)	(766)
<b>Total other income (expense)</b>	<b>1,723</b>	<b>4,269</b>	<b>4,219</b>	<b>7,250</b>
Loss before income taxes	(16,918)	(15,521)	(36,949)	(33,374)
<b>Provision for income taxes</b>	<b>145</b>	<b>61</b>	<b>585</b>	<b>408</b>
<b>Net loss</b>	<b>\$ (17,063)</b>	<b>\$ (15,582)</b>	<b>\$ (37,534)</b>	<b>\$ (33,782)</b>
<b>Weighted-average shares - basic and diluted</b>	<b>164,383,588</b>	<b>159,463,851</b>	<b>163,636,615</b>	<b>159,090,377</b>
<b>Net loss per share - basic and diluted</b>	<b>\$ (0.10)</b>	<b>\$ (0.10)</b>	<b>\$ (0.23)</b>	<b>\$ (0.21)</b>

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

**ACV AUCTIONS INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**  
**(Unaudited)**  
**(in thousands)**

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
<b>Net loss</b>	\$ (17,063)	\$ (15,582)	\$ (37,534)	\$ (33,782)
<b><i>Other comprehensive income (loss):</i></b>				
Net unrealized gains (losses) on available-for-sale securities	386	(972)	356	28
Foreign currency translation (loss) gain	(214)	19	(443)	263
<b>Comprehensive loss</b>	\$ (16,891)	\$ (16,535)	\$ (37,621)	\$ (33,491)

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

**ACV AUCTIONS INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(Unaudited)  
(in thousands, except share data)

	June 30, 2024	December 31, 2023
<b>Assets</b>		
<b>Current Assets:</b>		
Cash and cash equivalents	\$ 214,972	\$ 182,571
Marketable securities	57,675	228,761
Trade receivables (net of allowance of \$5,507 and \$2,868)	208,560	164,009
Finance receivables (net of allowance of \$3,192 and \$3,428)	120,936	119,034
Other current assets	11,941	12,524
<b>Total current assets</b>	<b>614,084</b>	<b>706,899</b>
Property and equipment (net of accumulated depreciation of \$4,045 and \$4,462)	7,491	4,918
Real estate held for sale	14,100	—
Goodwill	175,883	103,379
Acquired intangible assets (net of amortization of \$22,662 and \$17,534)	102,037	34,192
Capitalized software (net of amortization of \$26,856 and \$17,059)	62,985	55,771
Other assets	34,267	17,765
<b>Total assets</b>	<b>\$ 1,010,847</b>	<b>\$ 922,924</b>
<b>Liabilities and Stockholders' Equity</b>		
<b>Current Liabilities:</b>		
Accounts payable	\$ 367,873	\$ 305,845
Accrued payroll	9,934	12,245
Accrued other liabilities	34,336	15,851
<b>Total current liabilities</b>	<b>412,143</b>	<b>333,941</b>
Long-term debt	110,000	115,000
Other long-term liabilities	31,087	17,455
<b>Total liabilities</b>	<b>553,230</b>	<b>466,396</b>
Commitments and Contingencies (Note 5)		
<b>Stockholders' Equity:</b>		
Preferred Stock; \$0.001 par value; 20,000,000 shares authorized; 0 and 0 shares issued and outstanding at June 30, 2024 and December 31, 2023, respectively	—	—
Common Stock - Class A; \$0.001 par value; 2,000,000,000 shares authorized; 151,659,441 and 138,637,352 shares issued and outstanding at June 30, 2024 and December 31, 2023, respectively	152	139
Common Stock - Class B; \$0.001 par value; 160,000,000 shares authorized; 14,370,258 and 23,205,487 shares issued and outstanding at June 30, 2024 and December 31, 2023, respectively	14	23
Additional paid-in capital	919,216	880,510
Accumulated deficit	(460,149)	(422,615)
Accumulated other comprehensive loss	(1,616)	(1,529)
<b>Total stockholders' equity</b>	<b>457,617</b>	<b>456,528</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 1,010,847</b>	<b>\$ 922,924</b>

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

**ACV AUCTIONS INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY**  
**(Unaudited)**  
**(in thousands, except share data)**

	Three Months Ended June 30, 2024							
	Common Stock Class A		Common Stock Class B		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Par Value	Shares	Par Value				
<b>Balance, March 31, 2024</b>	147,307,191	\$ 147	17,297,339	\$ 17	\$ 902,989	\$ (443,086)	\$ (1,788)	\$ 458,279
Conversion of Class B common stock to Class A common stock	3,621,414	4	(3,621,414)	(4)	—	—	—	—
Net loss	—	—	—	—	—	(17,063)	—	(17,063)
Other comprehensive loss	—	—	—	—	—	—	172	172
Stock-based compensation	—	—	—	—	15,746	—	—	15,746
Exercise of common stock options	206,942	—	631,239	1	4,410	—	—	4,411
Vested restricted stock units	381,611	1	63,094	—	(5,927)	—	—	(5,926)
Issuance of shares for employee stock purchase plan	142,283	—	—	—	1,998	—	—	1,998
<b>Balance as of June 30, 2024</b>	<b>151,659,441</b>	<b>\$ 152</b>	<b>14,370,258</b>	<b>\$ 14</b>	<b>\$ 919,216</b>	<b>\$ (460,149)</b>	<b>\$ (1,616)</b>	<b>\$ 457,617</b>

	Six Months Ended June 30, 2024							
	Common Stock Class A		Common Stock Class B		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Par Value	Shares	Par Value				
<b>Balance, December 31, 2023</b>	138,637,352	\$ 139	23,205,487	\$ 23	\$ 880,510	\$ (422,615)	\$ (1,529)	\$ 456,528
Conversion of Class B common stock to Class A common stock	9,603,036	10	(9,603,036)	(10)	—	—	—	-
Net loss	—	—	—	—	—	(37,534)	—	(37,534)
Other comprehensive income (loss)	—	—	—	—	—	—	(87)	(87)
Stock-based compensation	—	—	—	—	34,345	—	—	34,345
Issuance of shares for acquisitions	1,413,075	1	—	—	8,555	—	—	8,556
Exercise of common stock options	925,981	1	631,239	1	6,811	—	—	6,813
Vested restricted stock units	937,714	1	136,568	—	(13,003)	—	—	(13,002)
Issuance of shares for employee stock purchase plan	142,283	—	—	—	1,998	—	—	1,998
<b>Balance as of June 30, 2024</b>	<b>151,659,441</b>	<b>\$ 152</b>	<b>14,370,258</b>	<b>\$ 14</b>	<b>\$ 919,216</b>	<b>\$ (460,149)</b>	<b>\$ (1,616)</b>	<b>\$ 457,617</b>

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	Three Months Ended June 30, 2023							
	Common Stock Class A		Common Stock Class B		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Par Value	Shares	Par Value				
<b>Balance as of March 31, 2023</b>	128,854,443	\$ 129	30,275,430	\$ 30	\$ 848,832	\$ (365,554)	\$ (2,531)	\$ 480,906
Conversion of Class B common stock to Class A common stock	4,752,818	4	(4,752,818)	(4)	—	—	—	—
Net loss	—	—	—	—	—	(15,582)	—	(15,582)
Other comprehensive income (loss)	—	—	—	—	—	—	(953)	(953)
Stock-based compensation	—	—	—	—	11,605	—	—	11,605
Exercise of common stock options	655,392	1	—	—	1,876	—	—	1,877
Vested restricted stock units	278,711	1	88,031	—	(3,015)	—	—	(3,014)
Issuance of shares for employee stock purchase plan	175,927	—	—	—	1,330	—	—	1,330
<b>Balance as of June 30, 2023</b>	<b>134,717,291</b>	<b>\$ 135</b>	<b>25,610,643</b>	<b>\$ 26</b>	<b>\$ 860,628</b>	<b>\$ (381,136)</b>	<b>\$ (3,484)</b>	<b>\$ 476,169</b>

	Six Months Ended June 30, 2023							
	Common Stock Class A		Common Stock Class B		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Par Value	Shares	Par Value				
<b>Balance, December 31, 2022</b>	121,214,275	\$ 121	37,241,952	\$ 37	\$ 836,695	\$ (347,354)	\$ (3,775)	\$ 485,724
Conversion of Class B common stock to Class A common stock	11,794,939	11	(11,794,939)	(11)	—	—	—	—
Net loss	—	—	—	—	—	(33,782)	—	(33,782)
Other comprehensive income (loss)	—	—	—	—	—	—	291	291
Stock-based compensation	—	—	—	—	26,464	—	—	26,464
Exercise of common stock options	836,676	1	—	—	2,774	—	—	2,775
Vested restricted stock units	695,474	1	163,630	—	(6,635)	—	—	(6,634)
Issuance of shares for employee stock purchase plan	175,927	1	—	—	1,330	—	—	1,331
<b>Balance as of June 30, 2023</b>	<b>134,717,291</b>	<b>\$ 135</b>	<b>25,610,643</b>	<b>\$ 26</b>	<b>\$ 860,628</b>	<b>\$ (381,136)</b>	<b>\$ (3,484)</b>	<b>\$ 476,169</b>

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

**ACV AUCTIONS INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(Unaudited)**  
**(in thousands)**

	<b>Six months ended June 30,</b>	
	<b>2024</b>	<b>2023</b>
<b><i>Cash Flows from Operating Activities</i></b>		
Net income (loss)	\$ (37,534)	\$ (33,782)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation and amortization	16,682	7,320
Stock-based compensation expense, net of amounts capitalized	29,794	23,407
Provision for bad debt	5,055	5,807
Other non-cash, net	119	(575)
Changes in operating assets and liabilities, net of effects from purchases of businesses:		
Trade receivables	(19,158)	27,102
Other operating assets	3,036	1,622
Accounts payable	37,641	(9,075)
Other operating liabilities	11,856	1,530
<b>Net cash provided by (used in) operating activities</b>	<b>47,491</b>	<b>23,356</b>
<b><i>Cash Flows from Investing Activities</i></b>		
Net increase in finance receivables	(1,851)	(22,265)
Purchases of property and equipment	(2,872)	(880)
Capitalization of software costs	(14,855)	(12,826)
Purchases of marketable securities	(21,607)	(88,058)
Maturities and redemptions of marketable securities	69,699	74,490
Sales of marketable securities	122,698	2,402
Acquisition of businesses (net of cash acquired)	(155,209)	(12,000)
<b>Net cash provided by (used in) investing activities</b>	<b>(3,997)</b>	<b>(59,137)</b>
<b><i>Cash Flows from Financing Activities</i></b>		
Proceeds from long term debt	340,000	200,000
Payments towards long term debt	(345,000)	(170,500)
Payment of debt issuance costs	(1,702)	—
Proceeds from exercise of stock options	6,812	2,774
Payment of RSU tax withholdings in exchange for common shares surrendered by RSU holders	(13,110)	(6,635)
Proceeds from employee stock purchase plan	1,998	1,330
Other financing activities	(23)	—
<b>Net cash provided by (used in) financing activities</b>	<b>(11,025)</b>	<b>26,969</b>
<b>Effect of exchange rate changes on cash, cash equivalents, and restricted cash</b>	<b>(68)</b>	<b>7</b>
<b>Net increase (decrease) in cash, cash equivalents, and restricted cash</b>	<b>32,401</b>	<b>(8,805)</b>
<b><i>Cash, cash equivalents, and restricted cash, beginning of period</i></b>	<b>182,571</b>	<b>280,752</b>
<b><i>Cash, cash equivalents, and restricted cash, end of period</i></b>	<b>\$ 214,972</b>	<b>\$ 271,947</b>
<b><i>Supplemental disclosure of cash flow information</i></b>		
Non-cash investing and financing activities:		
Stock-based compensation included in capitalized software development costs	\$ 2,254	\$ 1,483
Purchase of property and equipment and internal use software in accounts payable	\$ 1,177	\$ 1,880

*The accompanying notes are an integral part of these condensed consolidated financial statements*

**ACV AUCTIONS INC.**  
**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**1. Nature of Business and Summary of Significant Accounting Policies**

**Nature of Business** – The Company operates in one industry segment, providing a wholesale auction marketplace (the “Marketplace”) to facilitate business-to-business used vehicle sales between a selling dealership (“Seller”) and a buying dealership (“Buyer”). Customers using the Marketplace are licensed automotive dealerships or other commercial automotive enterprises. At the election of the customer purchasing a vehicle, the Company can arrange third-party transportation services for the delivery of the purchased vehicle through its wholly owned subsidiary, ACV Transportation LLC. The Company can also provide the customer financing for the purchased vehicle through its wholly owned subsidiary, ACV Capital LLC (“ACV Capital”). ACV also provides data services that offer insights into the condition and value of used vehicles for transactions both on and off the Company's Marketplace, which help dealerships, their end customers, and commercial partners make more informed decisions to transact with confidence and efficiency. Customers using data services are licensed automotive dealerships or other commercial automotive enterprises. All services are provided in the United States and certain data services are also provided internationally. Services are supported by the Company’s operations which are primarily in North America and India.

**Basis of Consolidation** – The condensed consolidated financial statements include the accounts of ACV Auctions Inc. and all of its controlled subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

**Basis of Preparation** – The accompanying unaudited interim condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America (“GAAP”) for interim financial information and pursuant to the applicable rules and regulations of the Securities and Exchange Commission (“SEC”). The Company has condensed or omitted certain information and notes normally included in complete annual financial statements prepared in accordance with GAAP. These financial statements have been prepared on the same basis as the Company's annual financial statements and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments, which are necessary for the fair statement of the Company's financial information. The unaudited interim condensed consolidated financial statements should therefore be read in conjunction with the audited consolidated financial statements and accompanying notes contained in the Company's Annual Report on Form 10-K for the year ended December 31, 2023, as filed with the SEC on February 21, 2024 (the "Annual Report"). Any reference in these notes to applicable guidance is meant to refer to the authoritative GAAP as found in the Accounting Standards Codification (“ASC”) and Accounting Standards Update (“ASU”) of the Financial Accounting Standards Board (“FASB”).

**Seasonality** – The volume of vehicles sold through the Marketplace generally fluctuates from quarter to quarter. This seasonality is caused by several factors, including holidays, weather, the seasonality of the retail market for used vehicles and the timing of federal tax returns, which affects the demand side of the automotive industry. As a result, revenue and operating expenses related to volume fluctuate accordingly on a quarterly basis. In the fourth quarter, we typically experience lower used vehicle volume on our Marketplace as well as additional costs associated with the holidays. Seasonally depressed used vehicle volume on our Marketplace typically continues during the winter months through the beginning of the first quarter. Typical seasonality trends may not be observed in periods where other external factors more significantly impact the industry.

## 2. Financial Instruments

The following is a summary of available-for-sale financial instruments, as of June 30, 2024 and December 31, 2023, respectively (in thousands):

	June 30, 2024			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
Marketable securities:				
Corporate securities <sup>(1)</sup>	\$ 53,407	\$ —	\$ (334)	\$ 53,073
U.S. treasury and agency securities	4,641	—	(39)	4,602
Total Marketable securities	<u>\$ 58,048</u>	<u>\$ —</u>	<u>\$ (373)</u>	<u>\$ 57,675</u>

(1) Comprised primarily of corporate bonds

	December 31, 2023			
	Amortized Cost	Unrealized Gain	Unrealized Losses	Fair Value
Cash equivalents:				
Corporate securities <sup>(1)</sup>	\$ 1,213	\$ —	\$ (1)	\$ 1,212
Total cash equivalents	1,213	—	(1)	1,212
Marketable securities:				
Corporate securities <sup>(1)</sup>	\$ 199,084	\$ 115	\$ (819)	\$ 198,380
U.S. treasury and agency securities	30,404	25	(48)	30,381
Total Marketable securities	<u>\$ 229,488</u>	<u>\$ 140</u>	<u>\$ (867)</u>	<u>\$ 228,761</u>

(1) Comprised primarily of corporate bonds and commercial paper

As of June 30, 2024, the fair values of available-for-sale financial instruments, by remaining contractual maturity, were as follows (in thousands):

Due within one year	\$ 51,057
Due in one to five years	6,618
Total	<u>\$ 57,675</u>

The Company typically invests in highly rated securities, with the primary objective of minimizing the potential risk of principal loss. The Company's investment policy generally requires securities to be investment grade and limits the amount of credit exposure to any one issuer. Fair values were determined for each individual security in the investment portfolio.

The Company does not believe that any unrealized losses are attributable to credit-related factors based on its evaluation of available evidence. To determine whether a decline in value is related to credit loss, the Company evaluates, among other factors: the extent to which the fair value is less than the amortized cost basis, changes to the rating of the security by a rating agency and any adverse conditions specifically related to an issuer of a security or its industry. Unrealized gain and losses on marketable securities are presented net of tax.

## 3. Fair Value Measurement

Fair value accounting is applied for all financial assets and liabilities and non-financial assets and liabilities that are recognized or disclosed at fair value in the condensed consolidated financial statements on a recurring basis (at least annually). Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

Assets and liabilities recorded at fair value in the condensed consolidated financial statements are categorized based upon the level of judgment associated with the inputs used to measure their fair value. Hierarchical levels, which

are directly related to the amount of subjectivity, associated with the inputs to the valuation of these assets or liabilities are as follows:

Level 1: Observable inputs such as quoted prices in active markets for identical assets and liabilities.

Level 2: Inputs other than the quoted prices in active markets that are observable either directly or indirectly.

Level 3: Unobservable inputs in which there is little or no market data which require the Company to develop its own assumptions.

The Company's financial instruments that are not measured at fair value on a recurring basis include trade and finance accounts receivable and accounts payable whose carrying values approximate fair value due to the short-term nature of those instruments.

The following tables present information about the Company's financial assets measured at fair value on a recurring basis as of June 30, 2024 and December 31, 2023, and indicate the fair value hierarchy of the valuation inputs utilized to determine such fair value (in thousands):

	June 30, 2024			
	Level 1	Level 2	Level 3	Total
<b>Cash equivalents:</b>				
Money market funds	\$ 10,931	\$ —	\$ —	\$ 10,931
<b>Marketable Securities:</b>				
Corporate securities	—	53,073	—	53,073
U.S. treasury and agency securities	497	4,105	—	4,602
Total financial assets	\$ 11,428	\$ 57,178	\$ —	\$ 68,606
	December 31, 2023			
	Level 1	Level 2	Level 3	Total
<b>Cash equivalents:</b>				
Money market funds	\$ 22,433	\$ —	\$ —	\$ 22,433
Corporate securities	—	1,212	—	1,212
<b>Marketable Securities:</b>				
Corporate securities	—	198,380	—	198,380
U.S. treasury and agency securities	20,064	10,317	—	30,381
Total financial assets	\$ 42,497	\$ 209,909	\$ —	\$ 252,406

The Company classifies its highly liquid money market funds and U.S treasury securities within Level 1 of the fair value hierarchy because they are valued based on quoted market prices in active markets. The Company classifies its corporate securities, and U.S. agency securities within Level 2 because they are valued using inputs other than quoted prices that are directly or indirectly observable in the market, including readily available pricing sources for the identical underlying security which may not be actively traded.

#### 4. Accounts Receivable & Allowance for Doubtful Receivables

The Company maintains an allowance for doubtful receivables that in management's judgment reflects losses inherent in the portfolio. A provision for doubtful receivables is recorded to adjust the level of the allowance in accordance with GAAP.

Changes in the allowance for doubtful trade receivables for the three and six months ended June 30, 2024 and 2023 were as follows (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
Beginning balance	\$ 3,931	\$ 4,371	\$ 2,868	\$ 4,860
Provision for bad debt	2,045	2,251	2,777	3,279
Net write-offs				
Write-offs	(855)	(4,225)	(1,117)	(8,188)
Recoveries	386	1,232	979	3,678
Net (write-offs) recoveries	(469)	(2,993)	(138)	(4,510)
Ending balance	\$ 5,507	\$ 3,629	\$ 5,507	\$ 3,629

Changes in the allowance for doubtful finance receivables for the three and six months ended June 30, 2024 and 2023 were as follows (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
Beginning balance	\$ 3,728	\$ 2,256	\$ 3,428	\$ 2,275
Provision for bad debt	916	1,380	2,278	2,528
Net write-offs				
Write-offs	(1,615)	(771)	(2,810)	(2,152)
Recoveries	163	183	296	397
Net (write-offs) recoveries	(1,452)	(588)	(2,514)	(1,755)
Ending balance	\$ 3,192	\$ 3,048	\$ 3,192	\$ 3,048

## 5. Guarantees, Commitments and Contingencies

The Company provides certain guarantees to Sellers in the Marketplace in the ordinary course of business, which are accounted for under ASC 460 as a general guarantee.

*Vehicle Condition Guarantees* – Sellers must attach a vehicle condition report in the Marketplace for every auction; this vehicle condition report is used by Buyers to inform bid decisions. The Company offers guarantees to Sellers in qualifying situations where the Company performed a vehicle inspection and prepared the vehicle condition report. Sellers must pay an additional fee in exchange for this guarantee. The guarantee provides Sellers protection from paying remedies to Buyers related to a Buyer's claim that the vehicle condition report did not accurately portray the condition of the vehicle purchased on the Marketplace. The guarantee provides the Company with the right to retain proceeds from the subsequent liquidation of the vehicle covered under the guarantee. The guarantee is typically provided for 10 days after the successful sale of the vehicle on the Marketplace. The fair value of vehicle condition guarantees issued is estimated based on historical results and other qualitative factors. The vehicle condition guarantee revenue is recognized on the earlier of the guarantee expiration date or the guarantee settlement date. The maximum potential payment is the sale price of the vehicle. The total sale price of vehicles for which there was an outstanding guarantee was \$179.6 million and \$142.8 million at June 30, 2024 and December 31, 2023, respectively. The carrying amount of the liability presented in Accrued other liabilities was \$1.3 million and \$1.2 million at June 30, 2024 and December 31, 2023, respectively.

The recognized probable loss contingency, in excess of vehicle condition guarantees recognized, presented in Accrued other liabilities was \$1.7 million and \$1.8 million at June 30, 2024 and December 31, 2023, respectively.

*Other Price Guarantees* – The Company provides Sellers with a price guarantee for vehicles to be sold on the Marketplace from time to time. If a vehicle sells below the guaranteed price, the Company is responsible for paying the Seller the difference between the guaranteed price and the final sale price. The term of the guarantee is typically less than one week. No material unsettled price guarantees existed at June 30, 2024 and December 31, 2023.

*Litigation* – The Company and its subsidiaries are subject in the normal course of business to various pending and threatened legal proceedings and matters in which claims for monetary damages are asserted. On an on-going basis management, after consultation with legal counsel, assesses the Company's liabilities and contingencies in connection with such proceedings. For those matters where it is probable that the Company will incur losses and the amounts of the losses can be reasonably estimated, the Company records an expense and corresponding liability in its condensed consolidated financial statements. To the extent pending or threatened litigation could result in exposure in excess of the recorded liability, the amount of such excess is not currently estimable.

## **6. Borrowings**

### ***2021 Revolver***

On August 24, 2021, ACV Auctions Inc. entered into a revolving credit facility (the "2021 Revolver"). The 2021 Revolver was established to provide general financing to the Company. The 2021 Revolver is secured by substantially all of the Company's assets except for ACV Capital receivables. The maximum borrowing principal amount of the 2021 Revolver is \$160.0 million and includes a sub facility that provides for the issuance of letters of credit up to \$20.0 million outstanding at any time.

On June 1, 2023, the Company entered into Amendment No. 1 (the "First Amendment"), which modified the rate to which interest payments are indexed to the Secured Overnight Financing Rate, or SOFR. The interest rate applicable to the 2021 Revolver is, at our option, either (a) SOFR (or a replacement rate established in accordance with the terms of the credit agreement for the 2021 Revolver) (subject to a 0.00% SOFR floor), plus a margin of 2.75% per annum plus an additional credit spread adjustment of 0.11% for daily and one-month terms, 0.26% for three-month terms and 0.43% for six-month terms or (b) the Alternate Base Rate plus a margin of 1.75% per annum. The Alternate Base Rate is the highest of (a) the Wall Street Journal prime rate, (b) the NYFRB rate plus 0.5% and (c)(i) 1.00% plus (ii) the adjusted SOFR rate for a one-month interest period. The First Amendment maintains a maximum borrowing principal amount of \$160.0 million.

On June 20, 2024, the Company entered into Amendment No. 2 (the "Second Amendment") to permit the Company, ACV Capital and ACV Capital Funding II LLC ("ACV Funding"), a wholly owned, bankruptcy-remote, special-purpose subsidiary of ACV Capital, to enter into the transactions contemplated by the Warehouse Facility.

Refer to [Note 9 contained in our Annual Report on Form 10-K for the year ended December 31, 2023](#) for further details and key terms regarding the 2021 Revolver.

As of June 30, 2024 and December 31, 2023, outstanding borrowings under the 2021 Revolver were \$110.0 million and \$115.0 million, respectively, and there were outstanding letters of credit issued under the 2021 Revolver in the amount of \$3.1 million and \$2.1 million, respectively decreasing the availability under the 2021 Revolver by a corresponding amount. As of June 30, 2024, the interest rate on the outstanding borrowing was 10.25%.

### ***Warehouse Facility***

On June 20, 2024, ACV Funding entered into a revolving credit and security agreement, providing for a revolving warehouse facility (the "Warehouse Facility") with a maximum principal amount of \$125.0 million. The Warehouse Facility was established to provide liquidity to fund new originations of auto floorplan loans by ACV Capital. The facility is secured by all assets of ACV Funding, including the auto floorplan loans owned by it. The revolving feature on the facility ends on June 20, 2026. The facility matures twelve months later, unless sooner terminated or extended in accordance with its terms.

Advances under the Warehouse Facility funded by asset-backed commercial paper conduit through the issuance of commercial paper notes will bear interest generally at a rate equivalent to the weighted average annual rate of all commercial paper notes issued by the commercial paper conduit to fund its advances, plus a margin of 3.00%. Advances funded by lenders that are not commercial paper conduits, or by commercial paper conduits funded through means other than the issuance of commercial paper notes, will bear interest generally at a rate equal to (i) Term SOFR for a period of one-month (subject to a 0.00% floor), plus 0.11448% or, in certain circumstances, the Alternate Base Rate, plus (ii) a margin of 3.00%. The Alternate Base Rate is the highest of (a) the prime rate quoted in the Wall Street Journal, (b) the NYFRB rate plus 0.50% and (c)(i) 1.00% plus (ii) the Term SOFR rate for a one-month interest period. The interest rate may be increased under certain circumstances, including upon the occurrence of an early amortization event or event of default under the warehouse documentation. ACV Funding must also pay upfront any unused fees in connection with the facility. As of June 30, 2024 there were no borrowings under the Warehouse Facility.

As of June 30, 2024, the Company was in compliance with all of its financial covenants and non-financial covenants.

## 7. Leases

The Company leases office space under operating leases expiring at various dates through 2038. For the three and six months ended June 30, 2024, the Company incurred operating lease costs of \$1.6 million and \$2.9 million, respectively. For the three and six months ended June 30, 2023, the Company incurred operating lease costs of \$0.3 million and \$0.8 million, respectively. For operating leases, the weighted-average remaining term is 9.5 years and 7.3 years with a weighted-average discount rate of 10% and 5% for the periods ended June 30, 2024 and December 31, 2023, respectively.

Maturities of lease liabilities as of June 30, 2024 were as follows (in thousands):

2024 (remaining)	\$	3,175
2025		6,050
2026		5,781
2027		5,476
2028		5,229
Thereafter		22,104
Total lease payments		47,815
Less imputed interest		(16,471)
Total	\$	31,344

The following amounts relate to operating leases that were recorded on the Company's Condensed Consolidated Balance Sheets at June 30, 2024 and December 31, 2023 (in thousands):

	June 30, 2024	December 31, 2023
Operating lease right of use assets:		
Other assets	\$ 31,570	\$ 16,858
Operating lease liabilities:		
Accrued other liabilities	3,235	1,647
Other long-term liabilities	28,109	15,034

The Company recorded right of use assets in exchange for new lease liabilities of \$0.2 million and \$14.2 million during the three and six months ended June 30, 2024, respectively. The Company recorded right of use assets in exchange for new lease liabilities of \$5.8 million and \$5.8 million during the three and six months ended June 30, 2023, respectively.

## 8. Revenue

The following table summarizes the primary components of revenue; this level of disaggregation takes into consideration how the nature, amount, timing, and uncertainty of revenue and cash flows are affected by economic factors (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
Auction marketplace revenue	\$ 75,433	\$ 54,519	\$ 142,762	\$ 108,521
Other marketplace revenue	60,354	46,548	114,923	89,239
Data services revenue	8,339	8,293	16,255	16,463
Marketplace and service revenue	\$ 144,126	\$ 109,360	\$ 273,940	\$ 214,223

Contract liabilities represent consideration collected prior to satisfying performance obligations. The Company had \$5.5 million and \$4.2 million of contract liabilities included in Accrued other liabilities on the Condensed Consolidated Balance Sheets as of June 30, 2024 and December 31, 2023, respectively. Revenue recognized for the three months ended June 30, 2024 from amounts included in deferred revenue as of March 31, 2024, was \$5.4 million. Revenue recognized for the six months ended June 30, 2024 from amounts included in deferred revenue as of December 31, 2023 was \$4.2 million. All the remaining performance obligations for contracts are expected to be recognized within one year.



## 9. Stock-Based Compensation

Refer to [Note 13 contained in our Annual Report on Form 10-K for the year ended December 31, 2023](#) for further details regarding our equity plans.

The following table summarizes the stock option activity for the six months ended June 30, 2024 (in thousands, except for share and per share amounts):

	Number of Options	Weighted- Average Exercise Price Per Share	Intrinsic Value	Weighted- Average Remaining Contractual Term (in years)
Outstanding, December 31, 2023	6,296,350	\$ 2.49	\$ 79,728	4.83
Exercised	(1,557,220)	4.37		
Forfeited	(2,961)	5.64		
Expired	(7,428)	4.76		
Outstanding, June 30, 2024	4,728,741	\$ 1.86	\$ 77,502	3.93
Exercisable, June 30, 2024	4,566,970	\$ 1.71	\$ 75,556	3.84

The following table summarizes the restricted stock unit and performance share unit activity for the six months ended June 30, 2024 (in thousands, except for share and per share amounts):

	Number of RSUs	Weighted- Average Grant-Date Fair Value
Outstanding, December 31, 2023	7,237,920	\$ 14.37
Granted	4,665,887	\$ 17.41
Vested	(1,835,931)	\$ 14.68
Forfeited	(266,107)	\$ 14.36
Outstanding, June 30, 2024	9,801,769	\$ 15.74

As of June 30, 2024, there was approximately \$139.5 million of compensation expense related to the unvested portion of common stock options, restricted stock units, and performance share units that will be recorded as compensation expense over a weighted-average period of 2.7 years.

During the first quarter of 2024, the Company entered into two contingently returnable share agreements (the "2024 Agreements") for certain compensatory share-based service awards. The 2024 Agreements authorized 773,099 shares of common stock to be issued. Shares will be released and distributed to the employee award recipients with the final vesting date during the first quarter of 2028. At June 30, 2024, there was approximately \$10.1 million of compensation expense related to the unvested portion of the contingently returnable shares that will be recorded over 3.6 years.

During the second quarter of 2024, the Company's Board of Directors approved long-term incentive awards to certain of the Company's executive officers which comprised performance share units ("PSUs"), which may only be settled in shares of the Company's Class A Common Stock. The PSUs are subject to both service-based vesting conditions and a requirement that the average closing price of the Company's Class A Common Stock, as measured over a period of 30 trading days commencing at the grant date and ending July 1, 2027, equal or exceed a designated level (the "Stock Price Condition"). The PSUs will vest in one-third installments on each of July 1, 2025, 2026 and 2027, provided that the Stock Price Condition has been satisfied prior to the relevant date. If the Stock Price Condition has not yet been satisfied prior to the relevant date, then the PSUs that otherwise would have vested on such date will remain unvested unless and until the Stock Price Condition has been satisfied. If the Stock Price Condition has not been satisfied by July 1, 2027, then the PSUs will be forfeited on that date. In each circumstance, vesting is subject to the executive's continued service with the Company until the time of vesting.

## 10. Income Taxes

The Company had an effective tax rate of approximately (1)% and 0% for the three months ended June 30, 2024 and 2023, and 0% and (1)% for the six months ended June 30, 2024 and 2023, respectively. The principal differences between the federal statutory rate and the effective tax rate are related to state taxes, foreign taxes and credits, and the non-recognition of tax benefits for certain entities in a loss position for which a full valuation allowance has been recorded.

## 11. Net Income (Loss) Per Share

The numerators and denominators of the basic and diluted net income (loss) per share computations for the Company's common stock are calculated as follows for the three and six months ended June 30, 2024 and 2023 (in thousands, except share data):

	Three months ended June 30,				Six months ended June 30,			
	2024		2023		2024		2023	
	Class A	Class B	Class A	Class B	Class A	Class B	Class A	Class B
<b>Numerator:</b>								
Net loss attributable to common stockholders	\$ (15,343)	\$ (1,720)	\$ (12,798)	\$ (2,784)	\$ (33,121)	\$ (4,413)	\$ (27,233)	\$ (6,549)
<b>Denominator:</b>								
Weighted-average number of shares of common stock - Basic and diluted	147,810,964	16,572,624	130,969,040	28,494,811	144,395,417	19,241,198	128,249,720	30,840,657
<b>Net loss per share attributable to common stockholders:</b>								
Basic and diluted	\$ (0.10)	\$ (0.10)	\$ (0.10)	\$ (0.10)	\$ (0.23)	\$ (0.23)	\$ (0.21)	\$ (0.21)

The following table presents the total weighted-average number of potentially dilutive shares that were excluded from the computation of diluted net loss per share attributable to common shareholders because their effect would have been anti-dilutive for the period presented:

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
Unvested RSUs and other awards	2,085,042	2,276,673	2,063,970	1,803,979
Stock options	4,542,980	5,564,549	4,694,170	5,470,883

## 12. Acquisitions

The Company completed four business acquisitions during the six months ended June 30, 2024. These acquisitions were accounted for using the acquisition method and, accordingly, the results of the acquired businesses have been included in the Company's results of operations from the respective acquisition dates. Purchase price allocations related to these acquisitions are subject to adjustments as they are finalized over the 12-month measurement period from the respective acquisition date. Goodwill acquired in connection with these acquisitions will be deductible for tax purposes in the United States and will be amortized on a straight-line basis over 15 years.

### June 2024 Acquisition

On June 17, 2024, the Company completed its acquisition of all of the ownership interest of a business (the "June 2024 acquisition") for estimated cash consideration of \$51.6 million, which included \$5.0 million of acquired cash and \$14.1 million of acquired real estate. The aggregate purchase price was preliminarily allocated to \$1.7 million of goodwill, \$18.7 million of intangibles, and \$21.1 million of net assets assumed. The Company completed a sale of the real estate to a third party on August 6, 2024. The business acquired in the June 2024 acquisition offers wholesale and

commercial car auction and reconditioning services and enabled the Company to expand its range of offerings to dealers and commercial partners.

#### **March 13, 2024 Acquisition**

On March 13, 2024, the Company completed its acquisition of all of the ownership interests of a business (the "March 13, 2024 acquisition") for estimated cash consideration of \$19.1 million. The aggregate purchase price was preliminarily allocated to \$14.4 million of goodwill, \$5.5 million of intangible assets, and \$0.7 million of net liabilities assumed. The business acquired in the March 13, 2024 acquisition offers wholesale car auction services and enabled the Company to expand its range of offerings to dealers and commercial partners.

#### **March 8, 2024 Acquisition**

On March 8, 2024, the Company completed its acquisition of all of the ownership interests of a business ("the March 8, 2024 acquisition") for estimated cash consideration of \$26.7 million. The aggregate purchase price was preliminarily allocated to \$6.7 million of goodwill, \$16.3 million of intangible assets, and \$3.7 million of net assets assumed. The business acquired in the March 8, 2024 acquisition offers wholesale and commercial car auction and reconditioning services and enabled the Company to expand its range of offerings to dealers and commercial partners.

#### **Alliance Auto Auctions**

On January 30, 2024, the Company completed its acquisition of all of the ownership interests of Alliance Auto Auctions for estimated cash consideration of \$6.9 million and 639,976 common shares of the Company's Class A common stock. The fair value of the consideration shares of \$3.6 million was determined based upon the closing market price of the Company's Class A common shares on January 30, 2024.

The aggregate purchase price for the Alliance Auto Auctions acquisition was preliminarily allocated to the assets and liabilities assumed as follows (in thousands):

<b>Assets Acquired</b>	
Cash and cash equivalents	\$ 2,467
Trade receivables	14,926
Finance receivables	—
Other current assets	768
Property & equipment	892
Goodwill	40,391
Acquired intangible assets	32,700
Other assets	8,305
Total assets acquired	\$ 100,449
<b>Liabilities Assumed</b>	
Accounts payable	\$ 15,040
Accrued payroll	400
Accrued other liabilities	2,132
Deferred revenue	64
Other long-term liabilities	7,362
Total liabilities assumed	24,998
Net assets acquired	\$ 75,451

Alliance Auto Auctions offers wholesale car auction services and enabled the Company to expand its range of offerings to dealers and commercial partners.

#### **April 2023 Acquisition**

On April 24, 2023, the Company completed its acquisition of all of the ownership interests of a business ("the April 2023 acquisition") for total cash consideration of \$12.5 million. The aggregate purchase price was allocated to

\$5.3 million of goodwill, \$6.0 million of intangible assets, and \$1.2 million of net assets assumed. The business acquired in the April 2023 acquisition offers wholesale and commercial car auction services and enabled the Company to expand its range of offerings to dealers and commercial partners. Goodwill acquired in connection with this acquisition is deductible for tax purposes in the United States and will be amortized on a straight-line basis over 15 years.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

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

You should read the following discussion and analysis of our financial condition and results of operations together with our unaudited condensed consolidated financial statements and the related notes and other financial information included elsewhere in this Quarterly Report on Form 10-Q and our audited consolidated financial statements and the related notes and the discussion under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations" relating to our financial condition and results of operations for the year ended December 31, 2023 included in our Annual Report on Form 10-K, filed with the Securities and Exchange Commission, or SEC, on February 21, 2024, or the Annual Report. Some of the information contained in this discussion and analysis, including information with respect to our financial condition or results of operations, business strategy and plans and objectives of management for future operations, includes forward-looking statements that involve risks and uncertainties as described under the heading "Special Note Regarding Forward-Looking Statements" in this Form 10-Q. You should review the "Risk Factors" section of our Annual Report for a discussion of important factors that could cause our actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

#### Overview

Our mission is to build and enable the most trusted and efficient marketplace platform for buying and selling used vehicles with transparency and comprehensive data that was previously unimaginable.

We provide a highly efficient and vibrant marketplace platform ("marketplace platform" or "marketplace") for wholesale vehicle transactions and data services that offer transparent and accurate vehicle information to our customers. Our marketplace platform leverages data insights and technology to power our digital marketplace and data services, enabling our dealers and commercial partners to buy, sell, and value vehicles with confidence and efficiency. We strive to solve the challenges that the used automotive industry has faced for generations and provide powerful technology-enabled capabilities to our dealers and commercial partners who fulfill a critical role in the automotive ecosystem. We help dealers source and manage inventory and accurately price their vehicles as well as process payments, transfer titles, manage arbitrations, and finance and transport vehicles. Our marketplace platform encompasses:

- **Digital Marketplace.** Connects buyers and sellers of wholesale vehicles in an intuitive and efficient manner. Our core digital marketplace offerings are auctions in varying formats, which facilitate real time transactions of wholesale vehicles, and are accessible across multiple platforms including mobile apps, desktop, and directly through API integration. We also offer transportation, financing and assurance services to facilitate the entire transaction journey.
- **Remarketing Centers.** Provides an additional channel to provide dealers and commercial partners with auction services. At remarketing centers, vehicles may be auctioned onsite and/or launched into the digital marketplace. Additional services are offered at remarketing centers that are important to servicing commercial partners.
- **Data Services.** Offers insights into the condition and value of used vehicles for transactions both on and off our marketplace and helps dealers, their end consumers, and commercial partners make more informed decisions and transact with confidence and efficiency. We enable dealers to manage their inventory and set pricing more effectively while turning vehicles faster and maximizing profit by leveraging predictive analytics informed by artificial intelligence, machine learning and market data.
- **Data and Technology.** Underpins everything we do, and powers our vehicle inspections, comprehensive vehicle intelligence reports, digital marketplace, inventory management software, and operations automation.

We have historically generated the majority of our revenue from our digital marketplace where we earn auction and ancillary fees from both buyers and sellers in each case only upon a successful auction. Buyer auction fees are variable based on the price of the vehicle, while seller auction fees include a fixed auction fee and an optional fee for the elective condition report associated with the vehicle. We also earn ancillary fees through additional value-added services to buyers and sellers in connection with the auction.

Our customers include participants on our marketplace platform and purchasers of our data services. Certain dealers and commercial partners purchase data services in connection with vehicle assessments, software subscriptions, and transactions that do not occur on our marketplace. Our dealer customers include a majority of the top 100 used vehicle dealers in the United States.

### Key Operating and Financial Metrics

We regularly monitor a number of operating and financial metrics in order to measure our current performance and estimate our future performance. Our business metrics may be calculated in a manner different than similar business metrics used by other companies.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Marketplace Units	186,526	153,148	361,157	304,711
Marketplace GMV	\$ 2.4 billion	\$ 2.5 billion	\$ 4.7 billion	\$ 4.9 billion
Adjusted EBITDA	\$ 7.1 million	\$ (3.5) million	\$ 11.3 million	\$ (9.2) million

#### Marketplace Units

Marketplace Units is a key indicator of our potential for growth in Marketplace GMV and revenue. It demonstrates the overall engagement of our customers and our market share of wholesale transactions in the United States. We define Marketplace Units as the number of vehicles transacted within the applicable period. Marketplace Units transacted includes any vehicle that successfully reaches sold status, even if the auction is subsequently unwound, meaning the buyer or seller does not complete the transaction. These instances were immaterial in the periods presented. Marketplace Units exclude vehicles that were inspected by ACV, but not sold. Marketplace Units have generally increased as we have expanded our territory coverage, added new Marketplace Buyers and Marketplace Sellers and increased our share of wholesale transactions from existing customers. Because we only earn auction and ancillary fees in the case of a successful auction, Marketplace Units will remain a critical driver of our revenue growth.

#### Marketplace GMV

Marketplace GMV is primarily driven by the volume and dollar value of Marketplace Unit transactions. We believe that Marketplace GMV acts as an indicator of our success, signaling satisfaction of dealers and buyers, and the health, scale, and growth of our business. We define Marketplace GMV as the total dollar value of vehicles transacted within the applicable period, excluding any auction and ancillary fees. Because our definition of Marketplace Units does not include vehicles inspected but not sold, and because the value of the vehicle sold is not recognized as revenue, GMV does not represent revenue earned by us. We expect that Marketplace GMV will continue to grow as Marketplace Units grow, though at a varying rate within a given applicable period, as Marketplace GMV is also impacted by the value of each vehicle transacted. In periods of declining used vehicle values, Marketplace GMV may decline even while Marketplace Units increase.

#### Marketplace Buyers

We define Marketplace Buyers as dealers or commercial partners with a unique customer ID that have transacted at least once in the last 12 months as a buyer on our marketplace platform. Marketplace Buyers include independent and franchise dealers buying on our marketplace.

#### Marketplace Sellers

We define Marketplace Sellers as dealers or commercial partners with a unique customer ID that have transacted at least once in the last 12 months as a seller on our marketplace platform. Marketplace Sellers include independent and franchise dealers selling on our marketplace, as well as commercial partners, consisting of commercial leasing companies, rental car companies, bank or other finance companies, who use our marketplace to sell their inventory.

We monitor the growth in both Marketplace Buyers and Marketplace Sellers as they each promote a more vibrant and healthy marketplace. We believe that our growth in Marketplace Sellers and Marketplace Buyers over time has been driven by the value proposition of our offerings, and our sales and marketing success, including our ability to attract new

dealers and commercial partners to our marketplace platform. Based on our current position in the market, we believe that we have significant opportunity to continue to increase the number of Marketplace Buyers and Marketplace Sellers.

### ***Adjusted EBITDA***

Adjusted EBITDA is a performance measure that we use to assess our operating performance and the operating leverage in our business. We define Adjusted EBITDA as net income (loss), adjusted to exclude: depreciation and amortization, stock-based compensation expense, interest (income) expense, provision for income taxes, and other one-time, non-recurring items, when applicable, such as acquisition-related and restructuring expenses. We monitor Adjusted EBITDA as a non-GAAP financial measure to supplement the financial information we present in accordance with generally accepted accounting principles, or GAAP, to provide investors with additional information regarding our financial results. For further explanation of the uses and limitations of this measure and a reconciliation of our Adjusted EBITDA to the most directly comparable GAAP measure, net income (loss), please see “—Non-GAAP Financial Measures.”

We expect Adjusted EBITDA to fluctuate in the near term as we continue to invest in our business and improve over the long term as we achieve greater scale in our business and efficiencies in our operating expenses.

### **Factors Affecting Our Performance**

We believe that the growth and future success of our business depend on many factors. While each of these factors presents significant opportunities for our business, they also pose important challenges that we must successfully address in order to sustain our growth, improve our results of operations, and increase profitability.

#### ***Increasing Marketplace Units***

Increasing Marketplace Units is a key driver of our revenue growth. The transparency, efficiency and vibrancy of our marketplace is critical to our ability to grow our share of wholesale transactions from existing customers and attract new buyers and sellers to our marketplace platform. Failure to increase the number of Marketplace Units would adversely affect our revenue growth, operating results, and the overall health of our marketplace.

#### ***Grow Our Share of Wholesale Transactions from Existing Customers***

Our success depends in part on our ability to grow our share of wholesale transactions from existing customers, increasing their engagement and spend on our marketplace platform. We remain in the early stages of penetrating our Marketplace Buyers’ and Sellers’ total number of wholesale transactions. As we continue to invest in eliminating key risks of uncertainty related to the auction process through our trusted and efficient marketplace platform, we expect that we will capture an increasing share of transactions from our existing buyers and sellers. Our ability to increase share from existing customers will depend on a number of factors, including our customers’ satisfaction with our marketplace platform, competition, pricing and overall changes in our customers’ engagement levels.

#### ***Add New Marketplace Buyers and Marketplace Sellers***

We believe we have a significant opportunity to add new marketplace participants. As we expand our presence within our existing territories, we are able to drive increased liquidity and greater vehicle selection, which in turn improves our ability to attract new Marketplace Buyers and Marketplace Sellers. Additionally, we intend to add more commercial consignors to our marketplace platform and capture a greater share of vehicles in the wholesale market that are sold to dealers by commercial consignors through auctions and private sales.

Our ability to attract new Marketplace Buyers and Marketplace Sellers will depend on a number of factors including: the ability of our sales team to onboard dealers and commercial consignors onto our marketplace platform and ensure their satisfaction, the ability of our territory managers to build awareness of our brand, the ability of our vehicle condition inspectors, or VCIs, to cultivate relationships with our customers in their respective territories, and the effectiveness of our marketing efforts.

### ***Grow Awareness for Our Offerings and Brand***

Wholesale vehicle online penetration is in the early stages, lagging the consumer automotive market, and we expect more dealers and commercial partners to source and manage their inventory online. As the digitization of the wholesale automotive market accelerates, we believe that our digital marketplace is well positioned to capture a disproportionate share of that growth. We use targeted sales and marketing efforts to educate potential Marketplace Buyers and Marketplace Sellers as to the benefits of our offerings and drive adoption of our marketplace platform. Our ability to grow awareness of our offerings and brand depend on a number of factors, including:

- ***Secure Trusted Supply.*** The more trusted supply on our marketplace, the more buyers we can attract to our marketplace platform.
- ***Deepen Relationships with Dealers and Commercial Partners.*** We have a team of VCI's who regularly interact with our customers, providing high-quality inspection services and developing strong customer relationships.
- ***Drive Customer Loyalty.*** Our loyal customers and referrals serve as a highly effective customer acquisition tool, and help drive our growth in a given territory.
- ***Grow Brand Awareness.*** We invest in promoting our brand via targeted marketing spend to increase customer awareness in the territories in which we operate.

Our future success is dependent on our ability to successfully grow our market presence and market and sell products to both new and existing customers.

### ***Grow Value-Added and Data Services***

We continue to drive customer adoption of our existing value-added and data services and introduce new and complementary products. Our ability to drive higher attachment rates of existing value-added services, such as ACV Transportation and ACV Capital, will help grow our revenue. In 2019 we launched our financing arm, ACV Capital. In 2021, we added ACV MAX (formerly doing business as MAX Digital) flagship inventory management system to our portfolio of data services offerings. We continue to drive customer adoption of our data services such as our True360 Reports that bring transparency and offer insights into the condition and value of used vehicles, as well as our inventory management system, which enables dealers to accurately price wholesale and retail inventory while maximizing profit by leveraging predictive analytics informed by artificial intelligence. These data services enable our customers to make more informed inventory management decisions both on and off our digital marketplace. In addition, we will continue to focus on developing new products and services that enhance our marketplace platform in areas including new data-powered products. Our ability to drive customer adoption of these products and services is dependent on the pricing of our products, the offerings of our competitors and the effectiveness of our marketing efforts.

### ***Investment in Growth***

We are actively investing in our business. In order to support our future growth and expanded product offerings, we expect this investment to continue. We anticipate that our operating expenses will increase as we continue to build our sales and marketing efforts, expand our employee base and invest in our technology development. The investments we make in our marketplace platform are designed to grow our revenue opportunity and to improve our operating results in the long term, but these investments could also delay our ability to achieve sustained profitability or reduce our profitability in the near term. Our success is dependent on making value-generative investments that support our future growth.

### ***Used Car Demand***

Our success depends in part on sufficient demand for used vehicles. Our growth over the last several years has coincided with a rising consumer demand for used vehicles. Since early 2020 demand for cars has outpaced supply. During this period, we have seen new car supply have a significant impact on the supply of wholesale vehicles available within our marketplace. More recently, new vehicle supply has begun to increase, although still below 2019 levels. However, this increase in new vehicle supply has been coupled with an increase in interest rates which has made both new and used vehicles more expensive for retail consumers utilizing financing. Used car demand will be in part dependent on the economic health of the retail consumer and their ability to afford a vehicle purchase.



Used vehicle sales are also seasonal. Sales typically peak late in the first quarter and early in the second quarter, with the lowest relative level of industry vehicle sales occurring in the fourth quarter. Due to our growth since launch, our sales patterns to date have not been entirely reflective of the general seasonality of the used vehicle market, but we expect this to normalize as our business matures. Seasonality also impacts used vehicle pricing, with used vehicles depreciating at a faster rate in the last two quarters of each year and a slower rate in the first two quarters of each year. We may experience seasonal and other fluctuations in our quarterly results of operations, which may not fully reflect the underlying performance of our business. See the section titled “Seasonality” for additional information on the impacts of seasonality on our business.

## **Components of Results of Operations**

### **Revenue**

#### *Marketplace and Service Revenue*

We have historically generated the majority of our revenue from our digital marketplace where we earn auction and ancillary fees from both buyers and sellers, in each case only upon a successful auction. Our marketplace and service revenue consists principally of revenue earned from facilitating auctions and arranging for the transportation of vehicles purchased in such auctions.

We act as an agent when facilitating a vehicle auction through the marketplace. Auction and related fees charged to the buyer and seller are reported as revenue on a net basis, excluding the price of the auctioned vehicle in the transaction.

We act as a principal when arranging for the transportation of vehicles purchased on the marketplace and leverage our network of third-party transportation carriers to secure the arrangement. Transportation fees charged to the buyer are reported on a gross basis.

We also generate data services revenue through our True360 reports and ACV MAX inventory management software subscriptions and offer short-term inventory financing to eligible customers purchasing vehicles through the marketplace.

#### *Customer Assurance Revenue*

We also generate revenue by providing our Go Green assurance to sellers on the condition of certain vehicles sold on the marketplace, which is considered a guarantee under GAAP. This assurance option is only available for Go Green sellers on qualifying vehicles for which we have prepared the vehicle condition report. Customer assurance revenue also includes revenue from other price guarantee products offered to sellers. Customer assurance revenue is measured based upon the fair value of the guarantees that we provide. We expect the fair value per vehicle assured to decrease over time as we continue to improve the quality of our inspection product, which in turn reduces the costs of satisfying such assurance.

### **Operating Expenses**

#### *Marketplace and Service Cost of Revenue*

Marketplace and service cost of revenue consists of third-party transportation carrier costs, titles shipping costs, customer support, website hosting costs, inspection costs related to data services and various other costs. These costs include salaries, benefits, bonuses and related stock-based compensation expenses, which we refer to as personnel expenses. We expect our marketplace and service cost of revenue to continue to increase in absolute dollars as we continue to scale our business and introduce new product and service offerings.

#### *Customer Assurance Cost of Revenue*

Customer assurance cost of revenue consists of the costs related to satisfying claims against the vehicle condition guarantees, and other price guarantees.

#### *Operations and Technology*

Operations and technology expense consists of costs for wholesale auction inspections, personnel costs related to payments and titles processing, transportation processing, product and engineering and other general operations and technology expenses. These costs include personnel-related expenses and other allocated facility and office costs. We expect that our operations and technology expense will increase in absolute dollars as our business grows, particularly as

we incur additional costs related to continued investments in our marketplace, transportation capabilities and other technologies.

*Selling, General and Administrative*

Selling, general and administrative expense consists of costs resulting from sales, accounting, finance, legal, marketing, human resources, executive, and other administrative activities. These costs include personnel-related expenses, legal and other professional services expenses and other allocated facility and office costs. Also included in selling, general and administrative expense is advertising and marketing costs to promote our services. We expect that our selling, general and administrative expense will increase in absolute dollars as our business grows. However, we expect that our selling, general and administrative expense will decrease as a percentage of our revenue as our revenue grows over the longer term.

*Depreciation and Amortization*

Depreciation and amortization expense consists of depreciation of fixed assets, and amortization of acquired intangible assets and internal-use software.

***Other Income (Expense)***

Other income (expense) consists primarily of interest income earned on our marketable securities and cash and cash equivalents. Other income (expense) also includes interest expense on our borrowings.

***Provision for Income Taxes***

Provision for income taxes consists of U.S. federal, state and foreign income taxes.

### Results of Operations

The following table sets forth our Condensed Consolidated Statements of Operations data expressed as a percentage of total revenue for the periods presented:

	Three months ended June 30,			
	2024		2023	
	Amount	% of Revenue	Amount	% of Revenue
(in thousands)				
<b>Revenue:</b>				
Marketplace and service revenue	\$ 144,126	90 %	\$ 109,360	88 %
Customer assurance revenue	16,498	10 %	14,857	12 %
Total revenue	160,624	100 %	124,217	100 %
<b>Operating expenses:</b>				
Marketplace and service cost of revenue (excluding depreciation & amortization) <sup>(1)</sup>	64,253	40 %	50,229	40 %
Customer assurance cost of revenue (excluding depreciation & amortization)	14,558	9 %	13,474	11 %
Operations and technology <sup>(1)</sup>	39,694	25 %	35,303	28 %
Selling, general, and administrative <sup>(1) (3) (5) (6)</sup>	51,912	32 %	41,180	33 %
Depreciation and amortization <sup>(2) (4)</sup>	8,848	6 %	3,821	3 %
Total operating expenses	179,265		144,007	
Income (loss) from operations	(18,641)		(19,790)	
<b>Other Income (expense):</b>				
Interest income	2,329		4,720	
Interest expense	(606)		(451)	
Total other income (expense)	1,723		4,269	
Income (loss) before income taxes	(16,918)		(15,521)	
Provision for income taxes	145		61	
Net loss	\$ (17,063)		\$ (15,582)	

	Six months ended June 30,			
	2024		2023	
	Amount	% of Revenue	Amount	% of Revenue
	(in thousands)			
<b>Revenue:</b>				
Marketplace and service revenue	\$ 273,940	89 %	\$ 214,223	88 %
Customer assurance revenue	32,373	11 %	29,620	12 %
Total revenue	306,313	100 %	243,843	100 %
<b>Operating expenses:</b>				
Marketplace and service cost of revenue (excluding depreciation & amortization) <sup>(1)</sup>	119,946	39 %	97,804	40 %
Customer assurance cost of revenue (excluding depreciation & amortization)	27,372	9 %	25,617	11 %
Operations and technology <sup>(1)(6)</sup>	77,763	25 %	71,048	29 %
Selling, general, and administrative <sup>(1)(3)(5)(6)</sup>	105,765	35 %	82,892	34 %
Depreciation and amortization <sup>(2)(4)</sup>	16,635	5 %	7,106	3 %
Total operating expenses	347,481		284,467	
Income (loss) from operations	(41,168)		(40,624)	
<b>Other Income (expense):</b>				
Interest income	5,360		8,016	
Interest expense	(1,141)		(766)	
Total other income (expense)	4,219		7,250	
Income (loss) before income taxes	(36,949)		(33,374)	
Provision for income taxes	585		408	
Net income (loss)	<u>\$ (37,534)</u>		<u>\$ (33,782)</u>	

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
	(in thousands)		(in thousands)	
(1) Includes stock-based compensation expense as follows:				
Marketplace and service cost of revenue (excluding depreciation & amortization)	\$ 206	\$ 199	\$ 456	\$ 402
Operations and technology	3,813	2,317	7,250	4,726
Selling, general, and administrative	10,946	9,386	22,088	18,279
Stock-based compensation expense	\$ 14,965	\$ 11,902	\$ 29,794	\$ 23,407

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
	(in thousands)		(in thousands)	
(2) Includes acquired intangible asset amortization as follows:				
Depreciation and amortization	\$ 3,013	\$ 1,268	\$ 5,226	\$ 2,440

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
	(in thousands)		(in thousands)	
(3) Includes litigation-related costs as follows:				
Selling, general, and administrative	\$ —	\$ —	\$ 1,553	\$ —

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
	(in thousands)		(in thousands)	
(4) Includes amortization of capitalized stock based compensation as follows:				
Depreciation and amortization	\$ 980	\$ 248	\$ 1,908	\$ 525

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
	(in thousands)		(in thousands)	
(5) Includes acquisition-related costs as follows:				
Selling, general, and administrative	\$ 1,187	\$ 317	\$ 3,306	\$ 523

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
	(in thousands)		(in thousands)	
(6) Includes other adjustments as follows:				
Selling, general, and administrative	\$ 145	\$ —	\$ 189	\$ —

**Comparison of the three months ended June 30, 2024 and 2023**

**Revenue**

*Marketplace and Service Revenue*

	Three months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Marketplace and service revenue	\$ 144,126	\$ 109,360	\$ 34,766	32 %

The increase was primarily driven by an increase in auction marketplace revenue from our buyers and sellers, as well as increases in revenue earned from arranging for the transportation of vehicles to buyers and an increase in revenue earned from the financing of vehicles sold on our marketplace. Revenue increases in the current quarter were primarily volume-driven. Additionally, buyer fee rates were higher for the three months ended June 30, 2024 compared to the prior year period. For the three months ended June 30, 2024 compared to the three months ended June 30, 2023, auction

marketplace revenue increased to \$75.4 million from \$54.6 million and other marketplace revenue increased to \$60.4 million from \$46.5 million. The increase in other marketplace revenue was primarily related to an increase in the revenue earned from the transportation of vehicles due to an increase in the number of units transported.

#### Customer Assurance Revenue

	Three months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Customer assurance revenue	\$ 16,498	\$ 14,857	\$ 1,641	11 %

The customer assurance revenue increase was mainly driven by an increase in Go Green assurance revenue, which was driven by an increase in units where customers elected the Go Green offering and an increase in the fair value per unit sold where customers elected the Go Green offering year over year. For the three months ended June 30, 2024, Go Green assurance revenue increased to \$14.6 million from \$13.3 million in the three months ended June 30, 2023. Other assurance revenue increased to \$1.9 million for the three months ended June 30, 2024 from \$1.5 million for the three months ended June 30, 2023.

#### Operating Expenses

##### Marketplace and Service Cost of Revenue

	Three months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Marketplace and service cost of revenue (excluding depreciation & amortization)	\$ 64,253	\$ 50,229	\$ 14,024	28 %
Percentage of revenue	40 %	40 %		

The increase primarily consisted of higher costs related to generating auction marketplace and other marketplace revenue. For the three months ended June 30, 2024 compared to the three months ended June 30, 2023, total cost attributed to generating auction marketplace revenue increased to \$14.2 million from \$9.0 million. The increase in auction marketplace cost of revenue is due to increased units sold through our marketplace and costs associated with our acquired remarketing centers' delivery of auction marketplace revenue. Other marketplace cost of revenues increased to \$44.9 million for the three months ended June 30, 2024, compared to \$35.5 million for the three months ended June 30, 2023, primarily due to an increase in the units transported to buyers from sellers. Marketplace and service costs of revenues as a percentage of revenue remained consistent during the three months ended June 30, 2024 compared to the three months ended June 30, 2023.

##### Customer Assurance Cost of Revenue

	Three months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Customer assurance cost of revenue (excluding depreciation & amortization)	\$ 14,558	\$ 13,474	\$ 1,084	8 %
Percentage of revenue	9 %	11 %		

The increase primarily consisted of costs attributable to our Go Green assurance offerings and was primarily driven by an increase in arbitration cost per unit sold where customers elected the Go Green offering and an increase in the number of completed auctions where customers elected the Go Green offering. For the three months ended June 30, 2024, Go Green assurance cost of revenue increased to \$13.2 million from \$12.0 million in the three months ended June 30, 2023. Other assurance cost of revenue decreased to \$1.4 million from \$1.5 million during the three months ended June 30, 2024 and 2023. Customer assurance cost of revenue as a percentage of revenue decreased during the three months

ended June 30, 2024 compared to the three months ended June 30, 2023 as we continued to manage arbitration costs and grow revenue.

#### *Operations and Technology Expenses*

	Three months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Operations and technology	\$ 39,694	\$ 35,303	\$ 4,391	12 %
Percentage of revenue	25 %	28 %		

The increase is primarily due to higher personnel-related costs. For the three months ended June 30, 2024 compared to the three months ended June 30, 2023, personnel-related costs increased to \$33.8 million from \$29.4 million as a result of increased headcount and stock-based compensation in 2024. Software and technology costs decreased to \$3.8 million from \$4.2 million in the three months ended June 30, 2024 compared to the three months ended June 30, 2023. Other expenses increased to \$2.1 million from \$1.7 million in the three months ended June 30, 2024 compared to the three months ended June 30, 2023. Operations and technology expense as a percentage of revenue decreased during the three months ended June 30, 2024 compared to the three months ended June 30, 2023 as we continued our efforts to effectively manage costs while growing revenue.

#### *Selling, General, and Administrative Expenses*

	Three months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Selling, general, and administrative	\$ 51,912	\$ 41,180	\$ 10,732	26 %
Percentage of revenue	32 %	33 %		

The increase is primarily due to higher personnel-related costs. For the three months ended June 30, 2024 compared to the three months ended June 30, 2023, personnel-related costs increased to \$42.2 million from \$34.3 million, primarily as a result of headcount increases and increased stock-based compensation in 2024. Non-personnel expenses increased to \$9.7 million from \$6.9 million in the three months ended June 30, 2024 compared to the three months ended June 30, 2023, primarily as a result of increased investment in our business to support our growth. Selling, general, and administrative expenses decreased as a percentage of revenue during the three months ended June 30, 2024 compared to the three months ended June 30, 2023 as we continued our efforts to effectively manage costs while growing revenue.

#### *Depreciation and Amortization*

	Three months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Depreciation and amortization	\$ 8,848	\$ 3,821	\$ 5,027	132 %
Percentage of revenue	6 %	3 %		

The increase is primarily due to an increase of \$3.4 million in amortization of internal-use software costs along with an increase of \$1.7 million in amortization related to acquired intangible assets. The increase in depreciation and

amortization as a percentage of revenue is primarily due to the placing of internal-use software projects into service and the subsequent recognition of amortization expense.

### **Interest Income**

	Three months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Interest income	\$ 2,329	\$ 4,720	\$ (2,391)	(51) %

The decrease was primarily driven by a lower balance in our marketable securities portfolio during the three months ended June 30, 2024 compared to the three months ended June 30, 2023. Marketable securities were sold during the six months ended June 30, 2024 and the related proceeds were used to complete acquisitions.

### **Interest Expense**

	Three months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Interest expense	\$ (606)	\$ (451)	\$ (155)	34 %

The increase was primarily driven by an increase in borrowings and interest rates on the borrowings during the three months ended June 30, 2024 as compared to the three months ended June 30, 2023.

### **Provision for Income Taxes**

	Three months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Provision for income taxes	\$ 145	\$ 61	\$ 84	138 %

Our effective tax rate was approximately (1%) and 0% for the three months ended June 30, 2024 and 2023, respectively. The principal differences between the federal statutory rate and the effective tax rate are related to state taxes, foreign taxes and credits and the non-recognition of tax benefits for certain entities in a loss position for which a full valuation allowance has been recorded.

## **Comparison of the six months ended June 30, 2024 and 2023**

### **Revenue**

#### *Marketplace and Service Revenue*

	Six months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Marketplace and service revenue	\$ 273,940	\$ 214,223	\$ 59,717	28 %

The increase was primarily driven by an increase in auction marketplace revenue from our buyers and sellers, as well as increases in revenue earned from arranging for the transportation of vehicles to buyers and other service revenue. Revenue increases in the current quarter were primarily volume-driven. Additionally, buyer fee rates were higher for the six months ended June 30, 2024 compared to the prior year period. For the six months ended June 30, 2024 compared to the six months ended June 30, 2023, auction marketplace revenue increased to \$142.8 million from \$108.5 million and other marketplace revenue increased to \$114.9 million from \$89.2 million. The increase in other marketplace revenue was



primarily related to an increase in the revenue earned from the transportation of vehicles due to an increase in the number of units transported.

#### Customer Assurance Revenue

	Six months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Customer assurance revenue	\$ 32,373	\$ 29,620	\$ 2,753	9 %

The customer assurance revenue increase was primarily driven by an increase in Go Green assurance revenue. For the six months ended June 30, 2024, Go Green assurance revenue increased to \$28.8 million from \$26.5 million in the six months ended June 30, 2023 driven by an increase in units that elected the Go Green offering and an increase in the fair value per unit sold that elected the Go Green offering year over year. Other assurance revenue increased to \$3.5 million for the six months ended June 30, 2024 from \$3.2 million for the six months ended June 30, 2023.

#### Operating Expenses

##### Marketplace and Service Cost of Revenue

	Six months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Marketplace and service cost of revenue (excluding depreciation & amortization)	\$ 119,946	\$ 97,804	\$ 22,142	23 %
Percentage of revenue	39 %	40 %		

The increase primarily consisted of higher costs related to generating auction marketplace and other marketplace cost of revenue. For the six months ended June 30, 2024 compared to the six months ended June 30, 2023, total cost attributed to generating auction marketplace revenue increased to \$23.9 million from \$17.4 million. The increase in auction marketplace cost of revenue is primarily due to increased units sold through our marketplace and costs associated with our acquired remarketing centers' delivery of auction marketplace revenue. Other marketplace cost of revenues increased to \$85.7 million for the six months ended June 30, 2024, compared to \$69.0 million for the six months ended June 30, 2023, primarily due to an increase in the units transported to buyers from sellers. Marketplace and services costs of revenues as a percentage of revenue decreased during the six months ended June 30, 2024 compared to the six months ended June 30, 2023 as we continued to grow revenue and scale our business.

##### Customer Assurance Cost of Revenue

	Six months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Customer assurance cost of revenue (excluding depreciation & amortization)	\$ 27,372	\$ 25,617	\$ 1,755	7 %
Percentage of revenue	9 %	11 %		

The increase primarily consisted of costs attributable to our Go Green assurance offerings and was primarily driven by an increase in arbitration cost per unit sold where customers elected the Go Green offering and an increase in the number of completed auctions where customers elected the Go Green offering. For the six months ended June 30, 2024, Go Green assurance cost of revenue increased to \$24.9 million from \$23.1 million in the six months ended June 30, 2023. Other assurance cost of revenue decreased to \$2.5 million during the six months ended June 30, 2024 from \$2.6 million during the six months ended June 30, 2023. Customer assurance cost of revenues as a percentage of revenue decreased during the six months ended June 30, 2024 compared to the six months ended June 30, 2023 as we continued to manage arbitration costs and grow revenue.

### Operations and Technology Expenses

	Six months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Operations and technology	\$ 77,763	\$ 71,048	\$ 6,715	9 %
Percentage of revenue	25 %	29 %		

The increase primarily consisted of higher personnel expenses and related charges. For the six months ended June 30, 2024 compared to the six months ended June 30, 2023, personnel-related costs increased to \$66.0 million from \$60.1 million as a result of increased headcount and stock-based compensation in 2024. Software and technology expenses decreased to \$7.8 million from \$7.9 million. Other expenses increased to \$3.9 million from \$3.1 million in the six months ended June 30, 2024 compared to the six months ended June 30, 2023. Operations and technology expense as a percentage of revenue decreased during the six months ended June 30, 2024 compared to the six months ended June 30, 2023 as we continued our efforts to effectively manage costs while growing revenue.

### Selling, General, and Administrative Expenses

	Six months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Selling, general, and administrative	\$ 105,765	\$ 82,892	\$ 22,873	28 %
Percentage of revenue	35 %	34 %		

The increase primarily consisted of higher personnel-related costs. For the six months ended June 30, 2024 compared to the six months ended June 30, 2023, personnel-related costs increased to \$85.1 million from \$69.5 million, primarily as a result of headcount increases and increased stock-based compensation in 2024. Non-personnel expenses increased to \$20.7 million in the six months ended June 30, 2024 from \$13.4 million in the six months ended June 30, 2023 as a result of increased investment in our operations to support our growth. Selling, general, and administrative expenses as a percentage of revenue remained consistent during the six months ended June 30, 2024 compared to the six months ended June 30, 2023.

### Depreciation and Amortization

	Six months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Depreciation and amortization	\$ 16,635	\$ 7,106	\$ 9,529	134 %
Percentage of revenue	5 %	3 %		

The increase is primarily due to an increase of \$6.8 million in amortization of internal-use software costs along with an increase of \$2.8 million in amortization related to acquired intangible assets. The increase in depreciation and amortization as a percentage of revenue is primarily due to the placing of internal-use software projects into service and the subsequent recognition of amortization expense.

### Interest Income

	Six months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Interest income	\$ 5,360	\$ 8,016	\$ (2,656)	(33) %

The decrease was primarily driven by a lower balance in our marketable securities portfolio during the six months ended June 30, 2024 compared to the six months ended June 30, 2023. Marketable securities were sold during the period, and the related proceeds were used to complete acquisitions.

**Interest Expense**

	Six months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Interest expense	\$ (1,141)	\$ (766)	\$ (375)	49 %

The increase was primarily driven by an increase in borrowings and interest rates on the borrowings during the six months ended June 30, 2024 as compared to the six months ended June 30, 2023.

**Provision for Income Taxes**

	Six months ended June 30,		\$ Change	% Change
	2024	2023		
	(in thousands)			
Provision for income taxes	\$ 585	\$ 408	\$ 177	43 %

Our effective tax rate was approximately (2%) and (1%) for the six months ended June 30, 2024 and 2023, respectively. The principal differences between the federal statutory rate and the effective tax rate are related to state taxes, foreign taxes and credits and the non-recognition of tax benefits for certain entities in a loss position for which a full valuation allowance has been recorded.

**Non-GAAP Financial Measures**

**Adjusted EBITDA**

We report our financial results in accordance with GAAP. However, management believes that Adjusted EBITDA, a non-GAAP financial measure, provides investors with additional useful information in evaluating our performance.

Adjusted EBITDA is a financial measure that is not presented in accordance with GAAP. We believe that Adjusted EBITDA, when taken together with our financial results presented in accordance with GAAP, provides meaningful supplemental information regarding our operating performance and facilitates internal comparisons of our historical operating performance on a more consistent basis by excluding certain items that may not be indicative of our business, results of operations or outlook. In particular, we believe that the use of Adjusted EBITDA is helpful to our investors as it is a measure used by management in assessing the health of our business and evaluating our operating performance, as well as for internal planning and forecasting purposes.

Adjusted EBITDA is presented for supplemental informational purposes only, has limitations as an analytical tool and should not be considered in isolation or as a substitute for financial information presented in accordance with GAAP. Some of these limitations include that: (i) it does not properly reflect capital commitments to be paid in the future; (ii) although depreciation and amortization are non-cash charges, the underlying assets may need to be replaced and Adjusted EBITDA does not reflect these capital expenditures; (iii) it does not consider the impact of stock-based compensation expense; (iv) it does not reflect other non-operating income and expenses, including interest income and expense; (v) it does not consider the impact of any contingent consideration liability valuation adjustments; (vi) it does not reflect tax payments that may represent a reduction in cash available to us; and (vii) it does not reflect other one-time, non-recurring items, when applicable, such as acquisition-related and restructuring expenses. In addition, our use of Adjusted EBITDA may not be comparable to similarly titled measures of other companies because they may not calculate Adjusted EBITDA in the same manner, limiting its usefulness as a comparative measure. Because of these limitations, when evaluating our performance, you should consider Adjusted EBITDA alongside other financial measures, including our net loss and other results stated in accordance with GAAP.

The following table presents a reconciliation of Adjusted EBITDA to net income (loss), the most directly comparable financial measure stated in accordance with GAAP, for the periods presented:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Net income (loss)	\$ (17,063)	\$ (15,582)	\$ (37,534)	\$ (33,782)
Depreciation and amortization	8,880	3,928	16,682	7,320
Stock-based compensation	14,965	11,902	29,794	23,407
Interest (income) expense	(1,723)	(4,269)	(4,219)	(7,250)
Provision for income taxes	145	61	585	408
Acquisition-related costs	1,187	317	3,306	523
Litigation-related costs <sup>(1)</sup>	—	—	1,553	—
Other	687	121	1,180	218
Adjusted EBITDA	\$ 7,078	\$ (3,522)	\$ 11,347	\$ (9,156)

(1) Litigation-related costs are related to an anti-competition case which we do not consider to be representative of our underlying operating performance

#### **Non-GAAP Net income (loss)**

We report our financial results in accordance with GAAP. However, management believes that Non-GAAP Net income (loss), a financial measure that is not presented in accordance with GAAP, provides investors with additional useful information to measure operating performance and current and future liquidity when taken together with our financial results presented in accordance with GAAP. By providing this information, we believe management and the users of the financial statements are better able to understand the financial results of what we consider to be our continuing operations.

We believe that providing non-GAAP financial measures that exclude stock-based compensation expense allows for more meaningful comparisons between our operating results from period to period. We exclude amortization of acquired intangible assets from the calculation of Non-GAAP Net income (loss). We believe that excluding the impact of amortization of acquired intangible assets allows for more meaningful comparisons between operating results from period to period as the underlying intangible assets are valued at the time of acquisition and are amortized over several years after the acquisition.

We exclude contingent consideration liability valuation adjustments associated with the purchase consideration of transactions accounted for as business combinations. We also exclude certain other one-time, non-recurring items, when applicable, such as acquisition-related and restructuring expenses, because we do not consider such amounts to be part of our ongoing operations nor are they comparable to prior periods nor predictive of future results.

Non-GAAP Net income (loss) is presented for supplemental informational purposes only, has limitations as an analytical tool and should not be considered in isolation or as a substitute for financial information presented in accordance with GAAP. Some of these limitations include that: (i) it does not consider the impact of stock-based compensation expense; (ii) although amortization is a non-cash charge, the underlying assets may need to be replaced and Non-GAAP Net income (loss) does not reflect these capital expenditures; (iii) it does not consider the impact of any contingent consideration liability valuation adjustments; and (iv) it does not consider the impact of other one-time charges, such as acquisition-related and restructuring expenses, which could be material to the results of our operations. In addition, our use of Non-GAAP Net income (loss) may not be comparable to similarly titled measures of other companies because they may not calculate Non-GAAP Net income (loss) in the same manner, limiting its usefulness as a comparative measure. Because of these limitations, when evaluating our performance, you should consider Non-GAAP Net income (loss) alongside other financial measures, including our net loss and other results stated in accordance with GAAP.

The following table presents a reconciliation of Non-GAAP Net income (loss) to net loss, the most directly comparable financial measure stated in accordance with GAAP, for the periods presented:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Net income (loss)	\$ (17,063)	\$ (15,582)	\$ (37,534)	\$ (33,782)
Stock-based compensation	14,965	11,902	29,794	23,407
Amortization of acquired intangible assets	3,013	1,268	5,226	2,440
Amortization of capitalized stock based compensation	980	248	1,908	525
Acquisition-related costs	1,187	317	3,306	523
Litigation-related costs <sup>(1)</sup>	—	—	1,553	—
Other	145	—	189	—
Non-GAAP Net income (loss)	\$ 3,227	\$ (1,847)	\$ 4,442	\$ (6,887)

(1) Litigation-related costs are related to an anti-competition case which we do not consider to be representative of our underlying operating performance

### Liquidity and Capital Resources

We have financed operations since our inception primarily through our marketplace revenue, proceeds from sales of equity securities, and debt facilities.

As of June 30, 2024, our principal sources of liquidity were cash and cash equivalents totaling \$215.0 million, and investments in marketable securities totaling \$57.7 million. We believe that our existing cash and cash equivalents, marketable securities, and cash flow from operations will be sufficient to support working capital and capital expenditure requirements for at least the next 12 months and for the long-term. Our future capital requirements over the long-term will depend on many factors, including volume of sales with existing customers, expansion of sales and marketing activities to acquire new customers, timing and extent of spending to support development efforts and introduction of new and enhanced services. We may, in the future, enter into arrangements to acquire or invest in complementary businesses, products, and technologies. We may be required to seek additional equity or debt financing. In the event that we require additional financing, we may not be able to raise such financing on terms acceptable to us or at all. If we are unable to raise additional capital or generate cash flows necessary to expand our operations and invest in continued innovation, we may not be able to compete successfully, which would harm our business, results of operations and financial condition.

As of June 30, 2024, our principal commitments primarily consist of long-term debt and leases for facilities. We have \$3.3 million of lease obligations due within a year, and an additional \$28.1 million of lease obligations due at various dates through 2038. Refer to Note 7, Leases, of our condensed consolidated financial statements.

In order to compete successfully and sustain operations at current levels over the next 12 months, we will be required to devote a significant amount of operating cash flow to our human capital in the form of salaries and wages. Additionally, we enter into purchase commitments for goods and services made in the ordinary course of business. These purchase commitments include goods and services received and recorded as liabilities as of June 30, 2024 as well as goods and services which have not yet been delivered or performed and have, therefore, not been reflected in our unaudited Condensed Consolidated Balance Sheets and unaudited Condensed Consolidated Statements of Operations. These commitments typically become due after the delivery and completion of such goods or services.

We settle transactions among buyers and sellers using the marketplace, and as a result the value of the vehicles passes through our balance sheet. Because our receivables typically have been, on average, settled faster than our payables, our cash position at each balance sheet date has been bolstered by marketplace float. Changes in working capital vary from quarter-to-quarter as a result of GMV and the timing of collections and disbursements of funds related to auctions completed near period end.

## **Our Debt Arrangements**

### **2021 Revolver**

We entered into a revolving credit facility with JP Morgan Chase Bank, N.A., or the 2021 Revolver, on August 24, 2021. On June 1, 2023, we entered into an Amendment on the 2021 Revolver which modified the rate at which interest payments are indexed from LIBOR to Secured Overnight Financing Rate ("SOFR"). On June 20, 2024, we entered into a Second Amendment on the 2021 Revolver, pursuant to which we, ACV Capital and ACV Capital Funding II LLC ("ACV Funding"), a wholly owned, bankruptcy-remote, special-purpose subsidiary of ACV Capital, were permitted to enter into the transactions contemplated by the Warehouse Facility.

The 2021 Revolver, provides for a revolving line of credit in the aggregate principal amount of up to \$160.0 million. The 2021 Revolver also includes a sub facility that provides for the issuance of letters of credit up to \$20.0 million outstanding at any time. The 2021 Revolver is guaranteed by substantially all of our material domestic subsidiaries and is secured by substantially all of our and such subsidiaries' assets except for ACV Capital receivables. The interest rate applicable to the 2021 Revolver is, at our option, either (a) SOFR (or a replacement rate established in accordance with the terms of the credit agreement for the 2021 Revolver) (subject to a 0.00% SOFR floor), plus a margin of 2.75% per annum plus an additional credit spread adjustment of 0.11% for daily and one-month terms, 0.26% for three-month terms and 0.43% for six-month terms or (b) the Alternate Base Rate plus a margin of 1.75% per annum. The Alternate Base Rate is the highest of (a) the Wall Street Journal prime rate, (b) the NYFRB rate plus 0.5% and (c)(i) 1.00% plus (ii) the adjusted SOFR rate for a one-month interest period. The 2021 Revolver has a maturity date of August 24, 2026. The 2021 Revolver contains customary covenants that limit our ability to enter into indebtedness, make distributions and make investments, among other restrictions. The 2021 Revolver also contains financial covenants that require us to maintain a minimum liquidity level and achieve specified trailing four quarter revenue targets.

### **Warehouse Facility**

On June 20, 2024, we entered into a revolving credit and security agreement, providing for a revolving warehouse facility (the "Warehouse Facility") with a maximum principal amount of \$125.0 million. The revolving feature on the facility ends on June 20, 2026 and the facility matures twelve months later, unless sooner terminated or extended in accordance with its terms. The revolving credit facility was established to provide liquidity to fund new originations of auto floorplan loans by ACV Capital. The facility is secured by all assets of ACV Funding, including the auto floorplan loans owned by it.

Advances under the Warehouse Facility funded by asset-backed commercial paper conduit through the issuance of commercial paper notes will bear interest generally at a rate equivalent to the weighted average annual rate of all commercial paper notes issued by the commercial paper conduit to fund its advances, plus a margin of 3.00%. Advances funded by lenders that are not commercial paper conduits, or by commercial paper conduits funded through means other than the issuance of commercial paper notes, will bear interest generally at a rate equal to (i) Term SOFR for a period of one-month (subject to a 0.00% floor), plus 0.11448% or, in certain circumstances, the Alternate Base Rate, plus (ii) a margin of 3.00%. The Alternate Base Rate is the highest of (a) the prime rate quoted in the Wall Street Journal, (b) the NYFRB rate plus 0.50% and (c)(i) 1.00% plus (ii) the Term SOFR rate for a one-month interest period. The interest rate may be increased under certain circumstances, including upon the occurrence of an early amortization event or event of default under the warehouse documentation. ACV Funding must also pay upfront any unused fees in connection with the facility. As of June 30, 2024 there were no borrowings under the Warehouse Facility.

We were in compliance with all such applicable covenants as of June 30, 2024, and believe we are in compliance as of the date of this Quarterly Report on Form 10-Q. As of June 30, 2024, \$110.0 million was drawn under the 2021 Revolver, and there were outstanding letters of credit issued under the 2021 Revolver in the amount of \$3.1 million.

**Cash Flows from Operating, Investing, and Financing Activities**

The following table shows a summary of our cash flows for the periods presented:

	Six Months Ended June 30,	
	2024	2023
Net cash provided by (used in) operating activities	\$ 47,491	\$ 23,356
Net cash provided by (used in) investing activities	(3,997)	(59,137)
Net cash provided by (used in) financing activities	(11,025)	26,969
Effect of exchange rate changes	(68)	7
Net increase (decrease) in cash and equivalents	<u>\$ 32,401</u>	<u>\$ (8,805)</u>

***Operating Activities***

Our largest source of operating cash is cash collection from fees earned on our marketplace. Our primary uses of cash from operating activities are for personnel expenses, marketing expenses and overhead expenses.

In the six months ended June 30, 2024 and 2023, net cash provided by operating activities was \$47.5 million and \$23.4 million, respectively. Net cash provided by operating activities during the six months ended June 30, 2024 consisted primarily of an increase in accounts payable to sellers offset by an increase in accounts receivable from buyers. In the six months ended June 30, 2023 net cash provided by operating activities consisted primarily of a decrease in accounts receivable from buyers offset by a decrease in accounts payable to sellers. This increase in operating cash flows is due to the timing of collections and disbursements of funds related to auctions completed near period end.

***Investing Activities***

In the six months ended June 30, 2024 and 2023, net cash used in investing activities was \$(4.0) million and \$(59.1) million, respectively. Net cash used in investing activities during the six months ended June 30, 2024 was primarily related to business acquisitions along with capitalized software development partially offset by the sales/maturities of a portion of our marketable securities portfolio to support our business acquisition transactions. Net cash used in investing activities during the six months ended June 30, 2023 was primarily due to the growth of our finance receivables portfolio, capitalized software development, and business acquisitions.

The decrease in net cash used in investing activities during the six months ended June 30, 2024 relative to the six months ended June 30, 2023 was primarily driven by increased cash outflows for business acquisitions which was more than offset by greater cash inflows from maturities and sales of marketable securities.

***Financing Activities***

In the six months ended June 30, 2024 and 2023, net cash provided by (used in) financing activities was \$(11.0) million and \$27.0 million, respectively. Net cash provided by (used in) financing activities during the six months ended June 30, 2024 relates to repayments, net of proceeds, on long term debt in addition to payments of RSU tax withholding net of proceeds from other equity plan activity. Net cash provided by (used in) in financing activities during the six months ended June 30, 2023 related to proceeds, net of repayments, on long term debt partially offset by payments of RSU tax withholding in exchange for common shares surrendered by RSU holders.

The decrease during the six months ended June 30, 2024 relative to the six months ended June 30, 2023 was primarily the result of lower proceeds from long term debt, net of repayments of long term debt during the period.

**Acquisitions**

We completed four business acquisitions during the six months ended June 30, 2024. Purchase price allocations related to these acquisitions are subject to adjustments as they are finalized over the 12 month measurement period from the respective acquisition date. Goodwill acquired in connection with these acquisitions will be deductible for tax purposes in the United States and will be amortized on a straight-line basis over 15 years.

On January 30, 2024, we completed the acquisition of all of the ownership interests of Alliance Auto Auctions for estimated cash consideration of \$66.9 million and 639,976 common shares of the Company's Class A common stock. The fair value of the consideration shares of \$8.6 million was determined based upon the closing market price of the

Company's Class A common shares on January 30, 2024. The aggregate purchase price was preliminarily allocated to \$40.4 million of goodwill, \$32.7 million of intangible assets, and \$2.4 million of net assets assumed.

On March 8, 2024, we completed the acquisition of all of the ownership interests of a business (the "March 8, 2024 acquisition") for estimated cash consideration of \$26.7 million. The aggregate purchase price was preliminarily allocated to \$6.7 million of goodwill, \$16.3 million of intangible assets, and \$3.7 million of net assets assumed.

On March 13, 2024, we completed the acquisition of all of the ownership interests of a business (the "March 13, 2024 acquisition") for estimated cash consideration of \$19.1 million. The aggregate purchase price was preliminarily allocated to \$14.4 million of goodwill, \$5.5 million of intangible assets, and \$0.7 million of net liabilities assumed.

On June 17, 2024, we completed the acquisition of all of the ownership interest of a business (the "June 2024 acquisition") for estimated cash consideration of \$51.6 million. The aggregate purchase price was preliminarily allocated to \$11.7 million of goodwill, \$18.7 million of intangibles, and \$21.1 million of net assets assumed.

### **Seasonality**

The volume of vehicles sold through our auctions generally fluctuates from quarter to quarter. This seasonality is caused by several factors, including holidays, weather, the seasonality of the retail market for used vehicles and the timing of federal tax returns, which affects the demand side of the auction industry. As a result, revenue and operating expenses related to volume will fluctuate accordingly on a quarterly basis. In the fourth quarter, we typically experience lower used vehicle auction volume as well as additional costs associated with the holidays. Seasonally depressed used vehicle auction volume typically continues during the winter months through the first quarter. Typical seasonality trends may not be observed in periods where other external factors more significantly impact the industry.

### **Critical Accounting Estimates**

Our financial statements are prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses and related disclosures. We evaluate our estimates and assumptions on an ongoing basis. Our estimates are based on historical experience and various other assumptions that we believe are reasonable under the circumstances, however, our actual results could differ from these estimates.

There have been no material changes to our critical accounting estimates as compared to those disclosed in the Annual Report.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

We are exposed to market risk in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily the result of fluctuations in interest rates.

#### ***Interest Rate Risk***

We had cash and cash equivalents of \$215.0 million and marketable securities of \$57.7 million as of June 30, 2024, which consisted of interest-bearing investments with maturities of three months or less and investment grade securities respectively. Interest-earning instruments carry a degree of interest rate risk as increases in rates will negatively affect the fair value of our marketable securities. We do not enter into investments for trading or speculative purposes and have not used any derivative financial instruments to manage our interest rate risk exposure. We had borrowings from banks of \$110.0 million as of June 30, 2024. The interest rate paid on these borrowings is variable, indexed to SOFR. Therefore, increases in interest rates will increase the interest expense on these borrowings. A hypothetical 100 basis point change in interest rates would not result in a material impact on our condensed consolidated financial statements.



#### **Item 4. Controls and Procedures.**

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

We maintain “disclosure controls and procedures,” as defined in Rule 13a-15(e) and Rule 15d-15(e) under the Exchange Act, that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of June 30, 2024. Based on the evaluation of our disclosure controls and procedures as of June 30, 2024, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

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

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the period covered by this Quarterly Report on Form 10-Q that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

##### **Inherent Limitations on Effectiveness of Controls**

Our management, including our Chief Executive Officer and Chief Financial Officer, believes that our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives and are effective at the reasonable assurance level. However, management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all errors and fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the company have been detected. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

## PART II—OTHER INFORMATION

### Item 1. Legal Proceedings.

From time to time we may become involved in legal proceedings or be subject to claims arising in the ordinary course of our business. The material set forth in [Note 5](#) (pertaining to information regarding legal contingencies) of the Notes of the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q is incorporated herein by reference.

### Item 1A. Risk Factors.

There have been no material changes to the risk factors previously disclosed in the Annual Report. Refer to the Annual Report for a complete discussion of our potential risks and uncertainties related to our business and on investment in our Class A common stock. The risks and uncertainties described in our Annual Report are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business. If any risks not specified in our Annual Report materialize, our business, financial condition and results of operations could be materially and adversely affected. See also “Special Note Regarding Forward-Looking Statements” in this Quarterly Report on Form 10-Q for additional information.

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

#### (a) Recent Sales of Unregistered Equity Securities

Not applicable.

#### (b) Use of Proceeds

Not applicable.

#### (c) Issuer Purchases of Equity Securities

Not applicable.

### Item 3. Defaults Upon Senior Securities.

Not applicable.

### Item 4. Mine Safety Disclosures.

Not applicable.

### Item 5. Other Information.

Our Section 16 officers (as defined in Rule 16a-1 under the Exchange Act) may from time to time enter into plans for the purchase or sale of ACV stock that are intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) under the Exchange Act.

During the quarter ended June 30, 2024, the following Section 16 officers adopted, modified, or terminated “Rule 10b5-1 trading arrangements” (as defined in Item 408 under Regulation S-K of the Exchange Act):

- On June 14, 2024, George Chamoun, ACV's Chief Executive Officer, adopted a trading plan. Mr. Chamoun's trading plan provides for the sale of up to 700,000 shares. The first trade will not occur until September 17, 2024, at the earliest. Mr. Chamoun's trading plan is scheduled to terminate on March 20, 2025.
- On May 20, 2024, Leanne Fitzgerald, ACV's Chief Legal Officer adopted a trading plan. Ms. Fitzgerald's trading plan provides for the sale of up to 73,167 shares. The first trade will not occur until August 20, 2024, at the earliest. Ms. Fitzgerald's trading plan is scheduled to terminate on February 27, 2025.

- On May 24, 2024, Vikas Mehta, ACV's Chief Operating Officer adopted a trading plan. Mr. Mehta's trading plan provides for the sale of up to 308,647 shares. The first trade will not occur until August 23, 2024, at the earliest. Mr. Mehta's trading plan is scheduled to terminate on February 27, 2025.

The Rule 10b5-1 trading arrangements described above were adopted and precleared in accordance with ACV's Insider Trading Policy and actual sale transactions made pursuant to such trading arrangements will be disclosed publicly in future Section 16 filings with the SEC. Other than disclosed above, no other officer adopted, modified or terminated a Rule 10b5-1 trading arrangement or "non-Rule 10b5-1 trading arrangement" (as defined in Item 408 of Regulation S-K) during the three months ended June 30, 2024.

**Item 6. Exhibits.**

<b>Exhibit Number</b>	<b>Description</b>	<b>Form</b>	<b>File No.</b>	<b>Exhibit</b>	<b>Filing Date</b>	<b>Filed Herewith</b>
3.1	<a href="#">Amended and Restated Certificate of Incorporation of the Registrant, as currently in effect.</a>	8-K	001-40256	3.1	March 26, 2021	
3.2	<a href="#">Amended and Restated Bylaws of the Registrant, as currently in effect.</a>	8-K	001-40256	3.1	July 29, 2024	
10.1+	<a href="#">Form of Performance Stock Unit Agreement pursuant to the ACV Auctions Inc. 2021 Equity Incentive Plan</a>	10-Q	001-40256	10.1	May 8, 2024	
10.2	<a href="#">Amendment No. 2, dated June 20, 2024, to Revolving Credit Agreement, dated as of August 24, 2021, among ACV Auctions Inc., the lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent.</a>					X
10.3	<a href="#">Revolving Credit and Security Agreement, dated as of June 20, 2024, among ACV Capital Funding II LLC, the funding agents and lenders party thereto and Citibank, N.A., as Administrative Agent.</a>					X
10.4	<a href="#">Purchase and Sale Agreement, dated as of June 20, 2024, between ACV Capital LLC and ACV Capital Funding II LLC.</a>					X
10.5	<a href="#">Servicing Agreement, dated as of June 20, 2024, among ACV Capital LLC, ACV Capital Funding II LLC and Citibank, N.A.</a>					X
10.6	<a href="#">Limited Indemnity Agreement, dated as of June 20, 2024, between the Registrant and Citibank, N.A.</a>					X
10.7	<a href="#">Performance Guaranty, dated as of June 20, 2024, between the Registrant and Citibank, N.A.</a>					X
31.1	<a href="#">Certification of Principal Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>					X
31.2	<a href="#">Certification of Principal Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>					X

32.1*	<a href="#">Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>	X
32.2*	<a href="#">Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>	X
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document.	
101.SCH	Inline XBRL Taxonomy Extension Schema Document	
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)	

† Indicates management contract or compensatory plan.

\* This certification is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

**SIGNATURES**

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

ACV Auctions Inc.

Date: Aug 7, 2024

By: \_\_\_\_\_  
*/s/ George Chamoun*  
**George Chamoun**  
**Chief Executive Officer and Director**

Date: Aug 7, 2024

By: \_\_\_\_\_  
*/s/ William Zerella*  
**William Zerella**  
**Chief Financial Officer**

*Execution Version*

AMENDMENT NO. 2 dated as of June 20, 2024 (this "Amendment") by and among ACV Auctions Inc., a Delaware corporation (the "Borrower"), each Lender party hereto (constituting the Required Lenders) (the "Consenting Lenders") and JPMorgan Chase Bank, N.A. ("JPMorgan"), as Administrative Agent (in such capacity, the "Administrative Agent") to the Revolving Credit Amendment dated as of August 24, 2021 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the "Credit Agreement" and, the Credit Agreement as amended hereby, the "Amended Credit Agreement") among the Borrower, the Lenders from time to time party thereto, and JPMorgan, as Administrative Agent. Capitalized terms used herein and not otherwise defined herein have the meanings assigned to them in the Amended Credit Agreement.

**RECITALS:**

WHEREAS, pursuant to Section 9.02 of the Credit Agreement, the Borrower has requested that the Consenting Lenders and the Administrative Agent consent to amend the Credit Agreement as set forth in Section 1, and the Consenting Lenders are willing, on and subject to the terms and conditions hereof, to consent to such amendment;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. *Amendments to the Credit Agreement.* Subject to the satisfaction or waiver of the conditions set forth in Section 3 hereof, each of the parties hereto agrees that, effective on the Amendment No. 2 Effective Date, the Credit Agreement shall be amended as set forth below:

(a) The definition of "ACV Capital Entity" set forth in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety as follows:

"ACV Capital Entity" means each of (i) ACV Capital LLC, a Delaware limited liability company, (ii) ACV Capital Funding LLC, a Delaware limited liability company and (iii) ACV Capital Funding II LLC, a Delaware limited liability company."

(b) The definition of "ACV Capital Loan Agreement" set forth in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety as follows:

"ACV Capital Loan Agreement" means that certain Revolving Credit and Security Agreement, dated on or about June 20, 2024, by and among ACV Capital Funding II LLC as borrower, the funding agents from time to time party thereto, the committed lenders from time to time party thereto, the conduit lenders from time to time party thereto, and Citibank, N.A., as administrative agent (the "ACV Capital Agent"), as amended, restated, supplemented or otherwise modified from time to time in a manner that is not materially adverse to the interests of the Administrative Agent and the Lenders."

(c) The definition of "Indemnity Agreement" set forth in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety as follows:

---

“Indemnity Agreement” means, collectively, (i) that certain Limited Indemnity Agreement, dated on or about June 20, 2024, executed by ACV Auctions Inc. in favor of the ACV Capital Agent, and (ii) that certain Performance Guaranty, dated on or about June 20, 2024, executed by ACV Auctions Inc. in favor of the ACV Capital Agent, in each case, as amended, restated, supplemented or otherwise modified from time to time in a manner that is not materially adverse to the interests of the Administrative Agent and the Lenders.

(d) The definition of “Permitted ACV Capital Dispositions” set forth in Section 1.01 of the Credit Agreement is hereby amended and restated in its entirety as follows:

“Permitted ACV Capital Dispositions” mean the sale or contribution of Accounts and related assets (including any related security) by the Loan Parties to an ACV Capital Entity from time to time in the ordinary course of the Borrower’s business pursuant to the terms of any document or agreement entered into between a Loan Party or a Subsidiary and an ACV Capital Entity providing for the sale or contribution of such Accounts and related assets to such ACV Capital Entity, in connection with a bona fide financing transaction; provided that such sale or contribution shall be made for fair value.

(e) Section 5.01(a) is hereby amended by adding the following proviso to the end thereof:

“; provided that, if more than 10% of the Total Revenue reported on the income statement delivered pursuant to this Section 5.01(a) is attributable to Unrestricted Subsidiaries, the Borrower shall prepare supplemental unaudited consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries from such consolidated financial statements;”

(f) Section 5.01(b) is hereby amended by adding the following proviso to the end thereof:

“; provided that, if more than 10% of the Total Revenue reported on the income statement delivered pursuant to this Section 5.01(b) is attributable to Unrestricted Subsidiaries, the Borrower shall prepare supplemental unaudited consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries from such consolidated financial statements;”

Section 2. *Representations and Warranties*. The Borrower hereby represents and warrants to the Administrative Agent and each Lender as of the Amendment No. 2 Effective Date:

(a) The execution, delivery and performance by the Borrower of this Amendment is within the Borrower’s corporate powers and have been duly authorized by all necessary corporate action;

(b) The Borrower has duly executed and delivered this Amendment, and this Amendment constitutes its legal, valid and binding obligation, 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;



(c) The execution, delivery and performance by the Borrower of this Amendment (a) does not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect and (ii) those approvals, consents, registrations, filings or other actions, the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect, (b) except as would not reasonably be expected to have a Material Adverse Effect, will not violate any applicable law or regulation or any order of any Governmental Authority applicable to the Borrower, (c) will not violate the charter, by-laws or other organizational document of the Borrower or any of its Subsidiaries, (d) except as would not reasonably be expected to have a Material Adverse Effect, will not violate or result in a default under any indenture, agreement or other instrument (other than the agreements and instruments referred to in clause (c)) binding upon the Borrower or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any of its Subsidiaries, and (e) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries (other than liens arising pursuant to the Security Documents);

(d) The representations and warranties of the Borrower set forth in this Amendment, the Credit Agreement and the other Loan Documents are true and correct in all material respects on and as of the Amendment No. 2 Effective Date, except that (i) for purposes of this Section 2(a), (x) the representations and warranties contained in Section 3.04(a) of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b) (subject, in the case of unaudited financial statements furnished pursuant to clause (b), to year-end audit adjustments and the absence of footnotes), respectively, of Section 5.01 of the Credit Agreement and (y) the representations and warranties contained in Section 3.14 of the Credit Agreement shall be deemed to refer to the Amendment No. 2 Effective Date, (ii) to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date and (iii) to the extent that such representations and warranties are already qualified or modified by materiality in the text thereof, they shall be true and correct in all respects; and

(e) As of the Amendment No. 2 Effective Date and immediately after giving effect to this Amendment and the transactions contemplated hereby, no Event of Default shall have occurred and be continuing.

Section 3. *Conditions to the Amendment No. 2 Effective Date.* This Amendment shall become effective on the date (the "Amendment No. 2 Effective Date") when (a) the Administrative Agent shall have received an executed counterpart (which may include a facsimile or other electronic transmission) of this Amendment from the Borrower, the Consenting Lenders party hereto (constituting Required Lenders) and the Administrative Agent, (b) the representations and warranties of the Borrower set forth in Section 2 hereof are true and correct as of the date hereof, (c) as of the date hereof and immediately after giving effect to this Amendment and the transactions contemplated hereby, no Event of Default shall have occurred and be continuing and (d) the Administrative Agent shall have received all fees required to be paid by the Borrower on the Amendment No. 2 Effective Date, and all expenses required to be reimbursed by the Borrower for which invoices have been presented at least three business days prior to the Amendment No. 2 Effective Date, on or before the Amendment No. 2 Effective Date.

Section 4. *Effect of Amendment.*

(a) Except as expressly set forth herein or in the Amended Credit Agreement, this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the Administrative Agent under the Amended Credit Agreement, the Guaranty and Security Agreement or any other Loan Document, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants, Liens, guarantees or agreements contained in the Credit Agreement, the Guaranty and Security Agreement or any other Loan Document or any other provision of the Credit Agreement, the Guaranty and Security Agreement or of any other Loan Document. Except as expressly set forth herein, nothing herein shall be deemed to be a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement, the Guaranty and Security Agreement or any other Loan Document in similar or different circumstances.

(b) From and after the Amendment No. 2 Effective Date, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof”, “herein”, or words of like import, and each reference to the “Credit Amendment” in any other Loan Document shall be deemed a reference to the Amended Credit Agreement. This Amendment shall constitute a “Loan Document” and a “Joinder Agreement” for all purposes of the Amended Credit Agreement and the other Loan Documents.

Section 5. *Governing Law.* THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

Section 6. *Costs and Expenses.* The Borrower agrees to reimburse the Administrative Agent and each Consenting Lender for its actual and reasonable costs and expenses in connection with this Amendment to the extent required pursuant to Section 9.03 of the Amended Credit Agreement.

Section 7. *Counterparts; Electronic Execution.* This Amendment may be executed by one or more of the parties to this Amendment on any number of separate counterparts (including by email or telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. In accordance with Section 9.06 of the Credit Agreement, delivery of an executed signature page or Electronic Signature to this Agreement by facsimile transmission or other electronic means shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 8. *Headings.* Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

Section 9. *Incorporation by Reference.* The provisions of Sections 9.09(b), (c) and (d) and 9.10 of the Amended Credit Agreement are hereby incorporated by reference, *mutatis mutandis*.

Section 10. *Severability.* If any provision of this Amendment is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Amendment shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 11. *Post-Closing Covenant.* The Borrower shall, within fifteen (15) days (or such longer period of time as the Administrative Agent may agree in its sole discretion) after the Amendment No. 2 Effective Date, cause the Subsidiaries listed on Schedule I hereto to (i) enter into a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent to the Guaranty and (ii) (A) enter into a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent to the Security Agreement and (B) take such actions necessary or advisable to grant to the Administrative Agent for the benefit of the Lenders a perfected first priority security interest (subject to Liens permitted by Section 6.02 of the Amended Credit Agreement) in the Collateral described in the Security Agreement with respect to such Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions, filings with the United States Copyright Office and filings with the United States Patent and Trademark Office, as may be required by the Security Agreement or by law or as may be requested by the Administrative Agent, (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions consistent with the legal opinions delivered on the Effective Date, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent and (iv) deliver to the Administrative Agent, at least two (2) Business Days prior to the effectiveness of the joinder agreements required under clauses (i) and (ii)(A) above, all documentation and other information in respect of such Subsidiary 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 Subsidiary; *provided* that the Borrower and its Subsidiaries shall not be required to take any action under this Section 11 if prior to the end of such fifteen (15) day period (or such longer period of time as the Administrative Agent may agree in its sole discretion) such Person ceases to be a Subsidiary as a result of a transfer of assets from such Person to the Borrower in a transaction or transactions permitted under the Amended Credit Agreement.

*[Remainder of page intentionally blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

ACV AUCTIONS INC.,  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Amendment No. 2]*

---

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent and a Lender

By: \_\_\_\_\_

Name:

Title:

*[Signature Page to Amendment No. 2]*

---

Goldman Sachs Lending Partners LLC, as a Lender

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Amendment No. 2]*

---

FIRST-CITIZENS BANK & TRUST COMPANY, as a Lender

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Amendment No. 2]*

---

WELLS FARGO BANK, N.A., as a Lender

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Amendment No. 2]*

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**Joinder Entities**

<b>Entity Name</b>
ACV Remarketing Centers Inc
Dealers Auto Auction of Oklahoma City Inc.
Cross Point NW LLC
West Texas Auction LLC
Alliance Auto Auction of Austin LLC
Alliance Auto Auction of Dallas LLC
Alliance Auto Auction LLC
166 Auto Auction LLC
Jordan Valley Auto Body LLC
Waco Auction Inc.

*[Signature Page to Amendment No. 2]*

EXECUTION VERSION

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**REVOLVING CREDIT AND SECURITY AGREEMENT**

among

**ACV CAPITAL FUNDING II LLC,**  
as Borrower,

**THE FUNDING AGENTS FROM TIME TO TIME PARTIES HERETO,**  
**THE COMMITTED LENDERS FROM TIME TO TIME PARTIES HERETO,**  
**THE CONDUIT LENDERS FROM TIME TO TIME PARTIES HERETO,**

and  
**CITIBANK, N.A.,**  
as Administrative Agent

Dated as of June 20, 2024

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## **SCHEDULES**

- Schedule 1 Initial Commitments and Percentages; Facility Groups
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## **EXHIBITS**

- Exhibit A Form of Request for Advance (with attached form of Borrowing Base Certificate)
- Exhibit B Form of Notice of Prepayment
- Exhibit C Form of Assignment and Acceptance
- Exhibit D Form of U.S. Tax Compliance Certificate
- Exhibit E Form of Servicer's Monthly Payment Certificate
- Exhibit F Form of Portfolio Documents
- Exhibit G Underwriting Guidelines
- Exhibit H Form of Release Notice

## REVOLVING CREDIT AND SECURITY AGREEMENT

REVOLVING CREDIT AND SECURITY AGREEMENT, dated as of June 20, 2024, among ACV Capital Funding II LLC, a Delaware limited liability company, as borrower (together with its permitted successors and assigns, the "Borrower"), the FUNDING AGENTS for the Facility Groups (as defined herein) from time to time party hereto (the "Funding Agents"), the CONDUIT LENDERS from time to time party hereto, the COMMITTED LENDERS from time to time party hereto and Citibank, N.A., as Administrative Agent for the Secured Parties (as hereinafter defined) (in such capacity, together with its successors and assigns, the "Administrative Agent").

### RECITALS

**WHEREAS**, the Borrower desires that the Lenders make advances on a revolving basis to the Borrower on the terms and subject to the conditions set forth in this Agreement; and

**WHEREAS**, each Lender is willing to make such advances to the Borrower on the terms and subject to the conditions set forth in this Agreement.

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

### Article I

#### DEFINITIONS; RULES OF CONSTRUCTION; COMPUTATIONS

Section I.1 Definitions. As used in this Agreement, the following terms shall have the meanings indicated:

"ABR" means, for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus 0.50% and (c) Term SOFR for a one-month tenor in effect on such day plus 1.00%. Any change in the ABR due to a change in the Prime Rate, the Federal Funds Rate or Term SOFR shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or Term SOFR, respectively.

"ABR Loan" means a Loan that bears interest based on the ABR.

"Account Bank" means a Qualified Institution reasonably acceptable to the Administrative Agent, which as of the Closing Date is JPMorgan Chase Bank, N.A.

"Account Bank Fee" means the fee payable monthly by the Borrower to the Account Bank, if any, in respect of the maintenance of the Collection Account.

"Account Control Agreement" means an agreement in form and substance reasonably acceptable to the Administrative Agent among the Borrower, the Administrative Agent and the Account Bank establishing "control" within the meaning of the UCC over the Collection Account or any such other account as may be applicable from time to time, as the same may be amended, restated or modified from time to time.



“ACV Auctions Marketplace Transaction” means any wholesale vehicle transaction facilitated by and settled through Parent or any of its Subsidiaries.

“Additional Unused Fee” has the meaning assigned to such term in the Lender Fee Letter.

“Administrative Agent” has the meaning assigned to such term in the introduction to this Agreement.

“Advance” has the meaning assigned to such term in Section 2.01.

“Advance Rate” means, on any date of determination, 80.00%; provided that on any date of determination on which the 3-Month Average Payment Rate Percentage (calculated as of the end of the prior calendar month) is less than 35.00%, the Advance Rate shall be 75%.

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

“Affected Person” means (i) each Lender and each of its Affiliates and (ii) any Participant.

“Affiliate” means, in respect of a referenced Person, another Person (other than any natural person) Controlling, Controlled by or under common Control with such referenced Person, provided that a Person shall not be deemed to be an “Affiliate” of another Person solely because it is under the common ownership or control of the same financial sponsor or affiliate thereof as such Person (except if any such Person provides collateral under, guarantees or otherwise supports the obligations of the other such Person).

“Aggregate Loan Amount” means, at any time, the aggregate unpaid principal amount of the Loans outstanding under this Agreement at such time.

“Aggregate Principal Balance” means, when used with respect to all or a portion of the Collateral Receivables, the sum of the Principal Balances of all or of such portion of such Collateral Receivables.

“Agreement” means this Revolving Credit and Security Agreement, as amended, restated or otherwise modified from time to time after the date hereof.

“Anti-Corruption Laws” means all laws, rules, and regulations from time to time, as amended, concerning or relating to bribery or corruption, including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and all other applicable anti-bribery and corruption laws.

“Applicable Law” means any action, code, consent decree, constitution, decree, directive, enactment, finding, law, injunction, binding interpretation, judgment, order, ordinance, policy statement, proclamation, promulgation, regulation, requirement, rule, rule of law, rule of public policy, settlement agreement, statute, or writ, of any Governmental Authority, or any particular section, part or provision thereof, including all federal and state banking or securities laws, to which the Person in question is subject or by which it or any of its assets or properties are bound.

“Applicable Margin” shall have the meaning assigned to such term in the Lender Fee Letter.

“Assignment and Acceptance” means an Assignment and Acceptance in substantially the form of Exhibit C hereto, entered into by a Lender, an assignee, the Administrative Agent and, if applicable, the Borrower.

“Available Funds” means, for any Payment Date, any and all Collections and other amounts on deposit in the Collection Account.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Accrual Period” pursuant to Section 1.05(d).

“Backup Servicer” means, Vervent, Inc., in its capacity as backup servicer under the Backup Servicing Agreement, or any other Person acting as a backup servicer that has been approved in writing by the Administrative Agent (such approval not to be unreasonably withheld, conditioned or delayed).

“Backup Servicer Fee” means the fees payable monthly by the Borrower to the Backup Servicer pursuant to the terms of the Backup Servicing Agreement.

“Backup Servicing Agreement” means that certain Backup Servicing Agreement, entered into as of the date hereof, between the Servicer, the Backup Servicer and the Administrative Agent, as the same may be amended, restated or modified from time to time.

“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, 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.

“Bankruptcy Code” means the United States Bankruptcy Code, as amended.

“Benchmark” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 1.05(a).

“Benchmark Replacement” means with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement benchmark

rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Facility Documents.

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

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

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative or non-compliant with or non-aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; provided that such non-representativeness, non-compliance or non-alignment will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

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

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

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or

publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

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

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.

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

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

“Benchmark Unavailability Period” means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Facility Document in accordance with Section 1.05 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Facility Document in accordance with Section 1.05.

“Borrower” has the meaning assigned to such term in the introduction to this Agreement.

“Borrower Group Representatives” has the meaning assigned to such term in Section 11.09(b).

“Borrower Obligations” means all present and future indebtedness and other liabilities and obligations (howsoever created or evidenced, whether direct or indirect, absolute or contingent, or due or to become due) of the Borrower to the Lenders or any Funding Agent for a Facility Group arising under this Agreement or any other Facility Document or the transactions contemplated hereby or thereby,

including the repayment of the Aggregate Loan Amount (including any portion thereof associated with any Erroneous Payment Subrogation Rights) and the payment of Interest, Unused Fees and all other amounts due or to become due from the Borrower to the Lenders or any Funding Agent for a Facility Group under this Agreement and the other Facility Documents (whether in respect of fees, expenses, indemnifications, breakage costs, increased costs or otherwise), interest, fees and other obligations that accrue after the commencement of any bankruptcy, insolvency or similar proceeding with respect to any party (in each case whether or not allowed as a claim in such proceeding).

“Borrowing” has the meaning assigned to such term in Section 2.01.

“Borrowing Base” means, as of any date of determination, an amount equal to the product of (A) the Advance Rate multiplied by (B) the Eligible Receivables Balance as of such date; provided that, with respect to any date of determination that is a Transfer Date, the Borrowing Base shall be calculated after giving effect to any Collateral Receivables to be acquired by the Borrower on such Transfer Date.

“Borrowing Base Calculation Date” means, with respect to the submission of any Borrowing Base Certificate, the applicable date identified on the Borrowing Base Certificate and used as the cut-off date for the calculation of the applicable Principal Balance of all Collateral Receivables, which date shall be the end of business on the Business Day immediately preceding the date of such Borrowing Base Certificate.

“Borrowing Base Certificate” means a statement in substantially the form attached to the form of Request for Advance attached hereto as Exhibit A, as such form of Borrowing Base Certificate may be modified from time to time by mutual agreement of the Borrower and the Administrative Agent.

“Borrowing Base Deficiency” means, as of any date of determination, the Aggregate Loan Amount as of such date exceeds the Borrowing Base as of such date.

“Borrowing Base Test” means a test that will be satisfied if, with respect to any date of determination, no Borrowing Base Deficiency exists.

“Borrowing Date” means the date of a Borrowing.

“Business Day” means any day other than a Saturday or Sunday, provided that (i) days on which banks are authorized or required to close in the State of New York, and (ii) in relation to Loans bearing interest based on Term SOFR and any interest rate settings, fundings, disbursements, settlements or payments of any such Loan, or any other dealings of such Loan, any such day that is also a U.S. Government Securities Business Day.

“Cash” means Dollars that are unrestricted on the day in question.

“Cash Equivalents” means, as of any date of determination, the aggregate amount of Eligible Investments held by the Parent and its consolidated Subsidiaries.

“Change of Control” means an event or series of events by which the following occurs: (a) ACV Capital LLC no longer directly owns 100% of the Equity Interests of the Borrower free and clear of all Liens (other than Permitted Liens); (b) the Parent no longer owns 100% of the Equity Interests of ACV Capital LLC, (c) any “change in/of control” or “sale” or “disposition” or “merger” or similar event

as defined in any certificate of incorporation or formation or statement of designation or operating agreement or partnership agreement or trust agreement of Borrower, Parent or ACV Capital LLC or in any document governing Indebtedness of such Person which gives the holder of such Indebtedness the right to accelerate or otherwise require payment of such Indebtedness prior to the maturity date thereof, (d) an event by which any Person succeeds to all or substantially all of the properties and assets of the Parent, or (e) the acquisition by any "person" or "group" (as such terms are used in sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) at any time of beneficial ownership of 51% or more of the outstanding capital stock or other equity interests of the Parent on a fully diluted basis.

"Closing Date" means June 20, 2024.

"Code" means the U.S. Internal Revenue Code of 1986, as amended from time to time, or any successor statute.

"Collateral" has the meaning assigned to such term in Section 7.01(a).

"Collateral Receivable" means, as of any date of determination, a Receivable owned by the Borrower as of such date.

"Collection Account" means any account established pursuant to Section 8.02 at the Account Bank, in the name of the Borrower, which account has been designated as the Collection Account and is the subject of the Account Control Agreement.

"Collection Period" means a calendar month; provided that the initial Collection Period shall commence on the Closing Date and shall end on and include the last day of the calendar month in which the Closing Date occurs.

"Collections" means (i) all cash collections, distributions, payments, receipts, recoveries (net of collection expenses), and other amounts received from any Person in respect of any Collateral Receivables, including all principal, interest, fees, late charges and repurchase proceeds payable to the Borrower under or in connection with any such Collateral Receivables, (ii) all net liquidation proceeds collected by the Servicer from any sale or disposition of any such Collateral Receivables and (iii) any and all proceeds of Collateral and/or other amounts received of any and every description payable to Borrower by or on behalf of an Obligor pursuant to the applicable Collateral Receivable, the related Portfolio Documents, or any other related documents or instruments, including, but not limited to judgment awards or settlements, and refinancing proceeds.

"Commitment" means, as to each Facility Group, the obligation of such Facility Group, collectively, to make, on and subject to the terms and conditions hereof, Advances to the Borrower pursuant to Section 2.01 in an aggregate principal amount at any one time outstanding for each Lender up to but not exceeding the amount set forth opposite the name of such Lender on Schedule 1 or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its obligations with respect to the Commitment of the Facility Group, as applicable, as such amount may be reduced from time to time pursuant to Section 2.06 or increased or reduced from time to time pursuant to assignments effected in accordance with Section 11.06(a).

"Commitment Amount" means (a) on or prior to the Commitment Termination Date, the aggregate amount of all Commitments of all Committed Lenders set forth on Schedule 1 (as such amount

may be reduced from time to time pursuant to Section 2.05) and (b) following the Commitment Termination Date, zero. As of the Closing Date, the Commitment Amount is \$125,000,000.

“Commitment Termination Date” means the last day of the Revolving Period; provided that, if the Commitment Termination Date would otherwise not be a Business Day, then the Commitment Termination Date shall be the immediately succeeding Business Day.

“Committed Conduit Lender” means each Conduit Lender with a Commitment specified on Schedule 1 attached hereto.

“Committed Lender” means each Person designated as a Committed Lender on its signature page hereto and any other Person that becomes a party to this Agreement as a “Committed Lender.”

“Concentration Limits” means those limits set forth below, which shall be satisfied on any day if:

- (a) the Aggregate Principal Balance of the Eligible Receivables related to the Obligor with the largest Aggregate Principal Balance of Eligible Receivables does not exceed 10.00% of the Eligible Pool Balance;
- (b) the Aggregate Principal Balance of the Eligible Receivables that are related to the Obligors with the four largest Aggregate Principal Balances of Eligible Receivables does not exceed 20.00% of the Eligible Pool Balance;
- (c) the average Aggregate Principal Balance of the Eligible Receivables that are related to each Obligor does not exceed 1.00% of the Eligible Pool Balance;
- (d) the Aggregate Principal Balance of all Eligible Receivables that are related to Obligors domiciled in the state with the largest Aggregate Principal Balances of Eligible Receivables does not exceed 25.00% of the Eligible Pool Balance;
- (e) the Aggregate Principal Balance of all Eligible Receivables that are related to Obligors domiciled in any given state (other than as described in clause (d) above) does not exceed 20.00% of the Eligible Pool Balance;
- (f) the Aggregate Principal Balance of all Eligible Receivables that are attributable to the financing of the single make of vehicle with the largest Aggregate Principal Balances of Eligible Receivables does not exceed 20.00% of the Eligible Pool Balance;
- (g) the Aggregate Principal Balance of all Eligible Receivables that are attributable to the financing of any single make of vehicle (other than as described in clause (f) above) does not exceed 15.00% of the Eligible Pool Balance;
- (h) the weighted average FICO Score of all Proprietors (as determined by Aggregate Principal Balance of all Eligible Receivables relating to each Proprietor) related to Eligible Receivables is not less than 650;

- (i) the Aggregate Principal Balance of all Eligible Receivables that are related to Obligors with Proprietors that have a FICO Score of less than 650 does not exceed 35.00% of the Eligible Pool Balance;
- (j) the Aggregate Principal Balance of all Eligible Receivables that are related to Obligors with Proprietors that have a FICO Score of less than 600 does not exceed 5.00% of the Eligible Pool Balance
- (k) the weighted average age of the vehicles (as measured by the model year of such vehicles and determined by the Aggregate Principal Balance of all Eligible Receivables) related to Eligible Receivables is not greater than 10 years;
- (l) the weighted average mileage of the vehicles (as determined by the Aggregate Principal Balance of all Eligible Receivables) related to Eligible Receivables is not greater than 120,000 miles;
- (m) the Aggregate Principal Balance of all Eligible Receivables that are attributable to the financing of any Exotic Vehicles does not exceed 1.00% of the Eligible Pool Balance;
- (n) the Aggregate Principal Balance of all Eligible Receivables that are attributable to the financing of Vehicles that were not purchased through an ACV Auctions Marketplace Transaction does not exceed 20.00% of the Eligible Pool Balance;
- (o) the Aggregate Principal Balance of all Eligible Receivables constituting Collateral Receivables that are related to Obligors that have an Intelliscore of less than 25 does not exceed 30.00% of the Eligible Pool Balance; and
- (p) if as of the last day of the immediately preceding fiscal quarter the Parent either (a) has a Tangible Net Worth of less than \$150,000,000 or (b) maintains Unrestricted Cash in an amount less than \$125,000,000, the Aggregate Principal Balance of all Eligible Receivables that are attributable to the financing of Vehicles with a title status of "None" (as determined by the Servicer and recorded on the Data File) does not exceed 27.00% of the Eligible Pool Balance.

"Conduit Lender" means each Person designated as a Conduit Lender on its signature page hereto and any conduit lender that becomes a party to this Agreement with the consent of the Borrower.

"Conforming Changes" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "ABR," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Accrual Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 1.05 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative



Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Facility Documents).

“Constituent Documents” means in respect of any Person, the trust agreement, the limited liability company agreement, operating agreement, partnership agreement, joint venture agreement or other applicable agreement of formation or organization (or equivalent or comparable constituent documents) and other organizational documents and by-laws and any certificate of trust, certificate of incorporation, certificate or articles of formation or organization, certificate of limited partnership and other agreement, similar instrument filed or made in connection with its formation or organization, in each case, as the same may be amended, restated, replaced or otherwise modified from time to time.

“Control” means the direct or indirect possession of the power to direct or cause the direction of the management or policies of a Person, whether through ownership, by contract, arrangement or understanding, or otherwise. “Controlled” and “Controlling” have the meaning correlative thereto.

“CP” means the commercial paper notes issued from time to time by means of which a Conduit Lender (directly or indirectly) obtains financing.

“CP Rate” means, with respect to each Conduit Lender for any day during any Interest Accrual Period, the greater of (i) the per annum rate equivalent to the weighted average of the per annum rates paid or payable by such Conduit Lender from time to time as interest on or otherwise (by means of interest rate hedges or otherwise) that are allocated on a fair and equitable basis, in whole or in part, by its respective Funding Agent (on behalf of such Conduit Lender), which rates shall reflect and give effect to (in each case, to the extent such costs are allocated, in whole or in part, to such Conduit Lender by the related Funding Agent (on behalf of such Conduit Lender) (a) the commissions of placement agents and dealers in respect of such commercial paper notes, (b) all reasonable costs and expenses of any issuing and paying agent or other person responsible for the administration of such Conduit Lender’s commercial paper programs in connection with the preparation, completion, issuance, delivery or payment of such commercial paper, and (c) any other costs, fees and expenses associated with the funding or maintenance of the applicable Advance by such Conduit Lender, including any liquidity support, credit enhancement, government sponsored funding programs (including the Federal Reserve Bank’s Commercial Paper Funding Facility), or any other borrowings by such Conduit Lender including, without limitation, borrowings to fund small or odd dollar amounts that are not easily accommodated in the commercial paper market; provided, however, that if any component of such rate is a discount rate, in calculating the CP Rate, the respective Funding Agent for such Conduit Lender shall for such component use the rate resulting from converting such discount rate to an interest bearing equivalent rate per annum and (ii) zero.

“Custodial Deliverables” shall mean, with respect to each Receivable, those certain Portfolio Documents to be reviewed by the Custodian pursuant to the terms of the Backup Servicing Agreement.

“Custodian” shall mean Vervent, Inc., or any other Person engaged by the Administrative Agent from time to time and, except during the existence of an Event of Default, reasonably acceptable to Borrower.

“Data File” means an electronic file in a computer readable format acceptable to the Administrative Agent, containing the information described on Schedule 5 attached hereto with respect to the Collateral Receivables.

“Debtor Relief Law” shall mean, collectively, the Bankruptcy Code and all other United States federal, State or foreign applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws from time to time in effect affecting the rights of creditors generally, as amended from time to time.

“Default Period” has the meaning assigned to such term in Section 2.13(a)(ii).

“Default Ratio” means, with respect to any calendar month, the result of (x) the percentage equivalent of a fraction, (a) the numerator of which is the aggregate Principal Balance of all Collateral Receivables that became Defaulted Receivables during such calendar month and (b) the denominator of which is the aggregate Principal Balance of all Collateral Receivables as of the first day of such calendar month *multiplied* by (y) 12.

“Defaulted Receivable” means a Receivable that (i) has been specifically and separately reserved against by any of the Servicer, the Seller or the Borrower or deemed charged-off or non-collectible by any such Person in accordance with the Underwriting Guidelines, (ii) at any point is one hundred twenty (120) days or more past due, or (iii) for which the Servicer or the Borrower or any Affiliate of the Servicer or the Borrower shall have been notified that the related Obligor shall have engaged in fraud in connection with such Receivable, become deceased or become the subject of a proceeding under a Debtor Relief Law.

“Defaulting Lender” means, at any time, any Committed Lender that (a) has failed for two (2) or more Business Days after a Borrowing Date to fund its portion of an Advance required pursuant to the terms of this Agreement (other than failures to fund as a result of a bona fide dispute as to whether the conditions to borrowing were satisfied on the relevant Borrowing Date), (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund an Advance hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied) or (c) is not Solvent. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (c) shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.13(b)) upon delivery of written notice of such determination to the Borrower and each Lender.

“Delinquent Receivable” means any Receivable, other than a Defaulted Receivable, as to which all or any portion of any payment required to be made under the terms of the Receivable is past due with respect to such Receivable for a period of more than thirty (30) days past the applicable due date of any such payment.

“Determination Date” means the last day of each Collection Period.

“Dollars” and “\$” mean lawful money of the United States of America.

“Due Date” means each date on which any payment is due on a Receivable in accordance with its terms.

“Early Amortization Event” means, as of any date of determination:

- (1) an Event of Default occurs;
- (2) the 3-Month Average Payment Rate Percentage is less than 30.00%;
- (3) the 3-Month Average Default Ratio is greater than 10.00%;
- (4) the 3-Month Average Excess Spread Ratio is less than 0.00%;
- (5) as of the last day of any fiscal quarter commencing with the fiscal quarter ending on June 30, 2024, the Parent’s Tangible Net Worth is an amount less than \$100,000,000;
- (6) as of the last day of any fiscal quarter commencing with the fiscal quarter ending on June 30, 2024, the Parent maintains Unrestricted Cash in an amount less than \$100,000,000, as determined based on the unaudited quarterly financial statements of the Parent in accordance with GAAP;
- (7) as of the last day of any fiscal quarter commencing with the fiscal quarter ending on June 30, 2024, the Parent’s Leverage Ratio is 2.0x or greater, as determined based on the unaudited quarterly financial statements of the Parent in accordance with GAAP; or
- (8) a Servicer Default occurs and remains unwaived.

“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 institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) and (b) of this definition and is subject to consolidated supervision with its parent.

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

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

“Eligible Dealer” shall mean an Obligor which meets, as of any date of determination, all of the following requirements:

- (a) the primary business of such Obligor is the retail sales or retail sale and lease of new and/or used automobiles and trucks;
- (b) such Obligor is an independent used car dealership or a new car franchised dealership;

- (c) such Obligor is a corporation, partnership, trust or limited liability company;
- (d) the business of such Obligor is located in the United States of America;
- (e) such Obligor has been directed by the Servicer to make all payments in respect of each Collateral Receivable to the Master Servicing Account;
- (f) such Obligor is in good standing under the laws of its state of organization and is duly qualified to do business in each jurisdiction in which it is required to be so qualified;
- (g) the Seller shall have filed a UCC financing statement with respect to such Obligor and the applicable Vehicles of such Obligor;
- (h) as of the related Receivable Addition Date, such Obligor is not subject to any insolvency proceeding or the subject of any proceeding for the appointment of a receiver, trustee, liquidator or conservator of itself or of the whole or any substantial part of its property or any other such liquidation;
- (i) neither such Obligor nor the Proprietor in relation to such Obligor is an officer, director, manager, employee of or Affiliate of Parent, any of its Subsidiaries or any of their Affiliates;
- (j) none of the Parent, the Servicer or any of their Affiliates has made any material investment in such Obligor;
- (k) such Obligor is not a Governmental Authority;
- (l) such Obligor has been operating its business continuously for at least twelve (12) calendar months;
- (m) such Obligor has not closed its business or sold all or substantially all of its business or the assets of its business and the related Proprietor is not deceased; and
- (n) such Obligor has been subject to an inventory audit by the Servicer (or its designee) in accordance with the Servicing Policy.

“Eligible Investments” means book-entry securities, negotiable instruments or securities represented by instruments in bearer or registered form which evidence:

- (a) marketable securities issued by the U.S. Government and supported by the full faith and credit of the U.S. Treasury, either by statute or an opinion of the Attorney General of the United States;
- (b) marketable debt securities issued by U. S. Government-sponsored enterprises, U.S. Federal agencies, U.S. Federal financing banks, and international institutions whose capital stock has been subscribed for by the United States;
- (c) certificates of deposit, time deposits, and bankers acceptances of any bank or trust company incorporated under the laws of the United States or any State, provided that, at the date of acquisition, such investment, or the commercial paper or other short-term

debt obligation of such bank or trust company has a short-term credit rating or ratings from Moody's and S&P, each at "P-1" or at least "A-1", as applicable;

- (d) deposit accounts with any bank that is insured by the Federal Deposit Insurance Corporation and whose long-term obligations are rated "A2" or better by Moody's and "A" or better by S&P;
- (e) commercial paper of any corporation incorporated under the laws of the United States or any State which on the date of acquisition is rated by Moody's and S&P, provided each such credit rating is "P-1" or at least "A-1", as applicable;
- (f) money market mutual funds that are registered with the Securities and Exchange Commission under the Investment Company Act and operated in accordance with Rule 2a-7 and that at the time of such investment are rated "Aaa-mf" by Moody's and "AAAm" by S&P.
- (g) tax-exempt variable rate commercial paper, tax-exempt adjustable-rate option tender bonds, and other tax-exempt bonds or notes issued by municipalities in the United States, having a short-term rating of at least "MIG-1" or at least "VMIG-1" or a long-term rating of at least "Aa2" (Moody's), and a short-term rating of at least "A-1" or a long-term rating of at least "AA" (S&P); and
- (h) repurchase obligations with a term of not more than thirty (30) days, 100 percent collateralized, for underlying securities of the types described in clauses (a) and (b) above, entered into with any bank or trust company or its respective affiliate meeting the requirements specified in clause (c) above;

provided that (i) all rating requirements are based on the time of purchase and (ii) Eligible Investments purchased with funds in the Collection Account shall be held until maturity and shall include only such investments which mature no later than the Business Day prior to the next Payment Date (or money market mutual funds that may be liquidated without a loss) and (ii) no such Eligible Investment may be purchased at a premium to its principal amount; provided, further, that an Eligible Investment must have a fixed principal amount due at maturity and, if rated by S&P, must not have an "r" suffix attached to the rating.

"Eligible Pool Balance" means, on any date, the Aggregate Principal Balance of all of the Eligible Receivables on such date.

"Eligible Receivable" means a Collateral Receivable which, as of any date of determination (including, without limitation, the Receivable Addition Date for such Collateral Receivable) satisfied the following requirements:

- (1) such Collateral Receivable is denominated and payable in Dollars;
- (2) the applicable Obligor with respect to such Collateral Receivable is an Eligible Dealer;
- (3) the Portfolio Documents relating to such Receivable, shall be substantially in the form of Exhibit F attached hereto, or otherwise in form and content consented to by Administrative

Agent (such consent not to be unreasonably withheld, conditioned or delayed) and shall (i) satisfy in all material respects the requirements set forth in the Underwriting Guidelines in effect at the time of origination of such Collateral Receivable, (ii) permit inventory checks by Parent, Servicer, or any agent or designee of Parent or Servicer and (iii) not prohibit or restrict any sale, assignment, transfer or pledge thereof to any Person;

(4) such Collateral Receivable was originated in accordance with Applicable Law, the terms of such Collateral Receivable comply with Applicable Law and since origination of such Collateral Receivable, it has been serviced in accordance with Applicable Law, in each case, in all material respects;

(5) such Collateral Receivable is a legal, valid, binding and enforceable obligation of the Obligor in accordance with its terms, except as limited by applicable bankruptcy or similar laws affecting creditor's rights;

(6) the Obligor for such Collateral Receivable, as of the related Receivable Addition Date (i) is not a debtor in a bankruptcy case, (ii) had the legal capacity to enter into the Collateral Receivable and (iii) has an acceptable credit history (as determined by reference to the Underwriting Guidelines);

(7) such Collateral Receivable is supported by loan documentation in the possession of the Servicer on behalf of the Borrower;

(8) the Obligor of such Collateral Receivable is domiciled in a state or territory of the United States;

(9) such Collateral Receivable it is not subject to any dispute, litigation or claim;

(10) such Collateral Receivable is not a Delinquent Receivable or a Defaulted Receivable;

(11) such Collateral Receivable was originated by the Seller in the Seller's ordinary course of business and satisfies all material requirements of and was originated and approved in accordance with the Seller's Underwriting Guidelines;

(12) such Collateral Receivable can be readily segregated from other Receivables and identified for ownership and related security purposes on any day;

(13) such Collateral Receivable is governed by the laws of a state or territory of the United States;

(14) the terms of the Collateral Receivable require the Obligor to make all payments in respect of the Collateral Receivable without withholding, set-off or counterclaim;

(15) neither the Seller nor the Borrower has received any notice of the insolvency or bankruptcy of the Obligor;

(16) the Borrower is the sole legal and beneficial owner of and has good title to such Collateral Receivable free from any Lien that is not a Permitted Lien;

(17) such Collateral Receivable has not been selected for sale to the Borrower using any procedures intentionally adverse to the interests of the Lenders, but has been selected to satisfy the requirements set forth in this Agreement;

(18) the Portfolio Documents with respect to such Collateral Receivable shall not constitute “electronic chattel paper” (as such term is defined in the UCC);

(19) such Collateral Receivable shall not be subject to and shall not result in any tax, fee or governmental charge payable by the Borrower or any other Person to any federal, state or local Governmental Authority unless the Obligor thereon is required under the terms of the applicable Portfolio Documents to make “gross up” payments that cover the full amount of such withholding tax on an after-tax basis (other than with respect to customary “excluded taxes”);

(20) the maximum line of credit related to the Obligor on such Collateral Receivable is not more than \$25,000,000;

(21) such Collateral Receivable has a term of no longer than 240 days;

(22) such Collateral Receivable shall not be a loan subject to Chapter 41 of Title 15 of the United States Code or any regulations promulgated pursuant to that chapter or any of its parts, as amended, or subject to any other similar state or local laws applicable only to consumer loans;

(23) such Collateral Receivable shall be a business-purpose loan under the Truth in Lending Act (and Regulation Z promulgated thereunder) and all applicable state laws and regulations and the applicable Portfolio Documents shall require that the proceeds of such Collateral Receivable be used for a business purpose and not for personal, family or household purposes;

(24) such Collateral Receivable shall be guaranteed by a personal performance guaranty of all obligations provided for by the Proprietor;

(25) with respect to which all necessary consents, licenses, approvals or authorizations of, or registrations or declarations with, any Governmental Authority required to be obtained, effected or given by the Seller or the Servicer in connection with the creation or the execution, delivery and performance of such Collateral Receivable and servicing of such Collateral Receivable, or by the Seller or the Borrower in connection with its ownership of such Collateral Receivable, have been duly obtained, effected or given and are in full force and effect;

(26) such Collateral Receivable shall not arise from a working capital loan or a loan for any purpose other than floorplan financing of dealer inventory consisting of Eligible Vehicles;

(27) each vehicle securing or financed in connection with such Collateral Receivable shall be an Eligible Vehicle;

(28) none of Servicer, the Parent nor the Borrower shall be engaged in any adverse proceeding or other adverse litigation with the applicable Obligor (including, but not limited to, each Proprietor) related to such Receivable;

(29) all amounts and information in respect of such Receivable furnished by the Borrower or the Servicer to the Administrative Agent shall be true and correct in all material respects and undisputed by the Obligor thereon or any guarantor thereof;

(30) each of the Seller, Servicer and Borrower shall have complied with its obligations under such Collateral Receivable and the related Portfolio Documents;

(31) such Collateral Receivable constitutes an “account,” “payment intangible,” “instrument,” or the proceeds thereof within the meaning of the UCC; and

(32) the Custodian shall have received all the Custodial Deliverables for such Receivable.

“Eligible Receivables Balance” means, for any date of determination, the sum of the aggregate Principal Balance as of such date of all Eligible Receivables owned by the Borrower as of such date of determination (calculated to give effect to any Collateral Receivables to be acquired or sold by the Borrower and any prepayment of the Aggregate Loan Amount on such date). For the avoidance of doubt, for purposes of calculating the Eligible Receivables Balance, (A) the balance of any Collateral Receivables that were Defaulted Receivables and (B) the portion of the balance of any Collateral Receivables that would need to be excluded in order to satisfy the Concentration Limits, in each case, will be deemed to be zero as of such date of determination.

“Eligible Vehicle” means an automobile, truck or van that meets, as of any date of determination, all of the following requirements:

- (a) the vehicle is owned by an Eligible Dealer, subject to a perfected first priority security interest in favor of the Borrower or the Seller, and free of any title defects, liens, security interests, leases, bailments, consignments or other interests of any Person other than the Borrower or the Seller;
- (b) such vehicle is located at locations which the Eligible Dealer disclosed to the Borrower or the Seller, except for temporary relocations permitted pursuant to the Underwriting Guidelines;
- (c) the vehicle is held for sale or lease in the ordinary course of the Eligible Dealer’s business;
- (d) the vehicle is of good and merchantable quality;
- (e) the vehicle was purchased by the Eligible Dealer at auction within sixty (60) days of the Transfer Date for the Collateral Receivable relating to such vehicle;
- (f) the net book value of such vehicle (as determined by the auction price of such vehicle) does not exceed \$150,000;
- (g) the Obligor on the Collateral Receivable relating to such vehicle has obtained and maintains an insurance policy or policies covering such vehicle for at least the amount required by the Portfolio Documents and the Servicer is listed as loss payee



and as an additional insured with respect to such policy or policies, as applicable; and

(h) the vehicle otherwise complies with all requirements of the applicable Portfolio Documents.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

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

“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 thirty (30) day notice requirement is waived); (b) the failure with respect to any Plan to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA); (c) the filing pursuant to Section 412(c) of the Code or Section 302 of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) a determination that any Plan is, or is expected to be, in “at risk” status (as defined in Section 430 of the Code or Section 303 of ERISA); (e) the incurrence by the Borrower or any member of its ERISA Group of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) (i) the receipt by the Borrower or any member of its ERISA Group from the PBGC of a notice of determination that the PBGC intends to seek termination of any Plan or to have a trustee appointed for any Plan, or (ii) the filing by the Borrower or any member of its ERISA Group of a notice of intent to terminate any Plan; (g) the incurrence by the Borrower or any member of its ERISA Group of any liability (i) with respect to a Plan pursuant to Sections 4063 and 4064 of ERISA, (ii) with respect to a facility closing pursuant to Section 4062(e) of ERISA, or (iii) with respect to the withdrawal or partial withdrawal from any Multiemployer Plan; (h) the receipt by the Borrower or any member of its ERISA Group of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, in endangered status or critical status, within the meaning of Section 432 of the Code or Section 305 of ERISA or is or is expected to be insolvent or in reorganization, within the meaning of Title IV of ERISA; or (i) the failure of the Borrower or any member of its ERISA Group to make any required contribution to a Multiemployer Plan.

“ERISA Group” means each controlled group of corporations or trades or businesses (whether or not incorporated) under common control that is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code with the Borrower.

“Erroneous Payment” has the meaning assigned to it in Section 10.07(a).

“Erroneous Payment Deficiency Assignment” has the meaning assigned to it in Section 10.07(d)(i).

“Erroneous Payment Impacted Class” has the meaning assigned to it in Section 10.07 (d)(i).

“Erroneous Payment Return Deficiency” has the meaning assigned to it in Section 10.07(d)(i).

“Erroneous Payment Subrogation Rights” has the meaning assigned to it in Section 10.07(e).

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

“Event of Default” means the occurrence of any of the events, acts or circumstances set forth in Section 6.01.

“Excess Spread Ratio” means, with respect to any calendar month, a fraction, expressed as a percentage (which may be a negative percentage), the numerator of which is the excess of (A) the aggregate Finance Collections received during such calendar month over (B) the sum of (x) the Principal Balance of all Collateral Receivables that became or are designated Defaulted Receivables during such calendar month (in each case, determined immediately prior to such Receivables becoming or being designated Defaulted Receivables) and (y) the aggregate amount payable pursuant to clauses (i) and (ii) of Section 9.01 on the Payment Date following such calendar month, and the denominator of which is the Aggregate Principal Balance of all Eligible Receivables as of the first day of such calendar month.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, all as from time to time in effect, or any successor law, rules or regulations, and any reference to any statutory or regulatory provision shall be deemed to be a reference to any successor statutory or regulatory provision.

“Excluded Taxes” has the meaning assigned to such term in Section 11.03(a).

“Exotic Vehicle” shall mean any vehicle manufactured by any of Ferrari, Lamborghini, Maserati, Aston Martin, Bentley, Rolls-Royce, McLaren, Bugatti or Maybach.

“Facility Documents” means this Agreement, the Account Control Agreement, the Servicing Agreement, the Backup Servicing Agreement, the Lender Fee Letter, the Indemnity Agreement, the Performance Guaranty, the Purchase Agreement, the Pledge Agreement and any other security agreements and other instruments entered into or delivered by or on behalf of the Borrower pursuant to Section 7.07 to create, perfect or otherwise evidence the Administrative Agent’s security interest on behalf of itself and the Lenders.

“Facility Group” means a Committed Lender hereunder and its related Funding Agent and Conduit Lenders (if any), each as identified on Schedule 1 hereto, and the Program Support Providers related to any such Conduit Lenders, as applicable.

“FATCA” means Code Sections 1471 through 1474 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 regulations or official interpretations thereof, any intergovernmental agreements entered into in connection therewith, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any current or future fiscal or regulatory legislation, rules or official administrative practices adopted pursuant to any intergovernmental agreement, or any treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

“Federal Funds Rate” means, for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day’s Federal funds transactions by depository

institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) 0%.

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

“FICO Score” means a credit score created by Fair Isaac & Corporation, or any successor thereto.

“Final Maturity Date” means the earliest of (a) the Payment Date that is twelve (12) months after the Scheduled Commitment Termination Date, (b) the date of the termination of the Commitments and the acceleration of the maturity of the Loans pursuant to Section 6.02, or (c) the date on which all Obligations shall have been paid in full and all other amounts payable to the Administrative Agent and the Lenders under the Facility Documents shall have been paid in full and the Commitments have terminated hereunder (other than contingent indemnification obligations for which a claim has not been asserted).

“Finance Collections” means all Collections received by the Borrower (or the Servicer on the Borrower’s behalf) in respect of the Collateral Receivables other than Collections applied to reduce the Principal Balance of the Collateral Receivables, including for the avoidance of doubt, all interest, finance charges, late fees and other fees.

“Financial Asset” has the meaning specified in Section 8-102(a)(9) of the UCC.

“Financing Statements” has the meaning specified in Section 9-102(a)(39) of the UCC.

“Fitch” means Fitch Inc., together with its successors.

“Floor” means a rate of interest equal to 0.00%.

“GAAP” means generally accepted accounting principles in effect from time to time in the United States.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, quasi-regulatory authority, administrative tribunal, central bank, public office, court, arbitration or mediation panel, or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of government, including the United States Securities and Exchange Commission, the stock exchanges, any federal, state, territorial, county, municipal or other government or governmental agency or other political unit or subdivision of any of the foregoing, whether domestic or foreign.

“Guarantor” means the Parent.

“Indebtedness” means for any Person (without duplication) (a) all indebtedness created, assumed or incurred in any manner by such Person representing borrowed money (including by the issuance of debt securities), (b) all indebtedness for the deferred purchase price of property or services (other than trade payables and accrued expenses arising in the ordinary course of business), (c) all indebtedness secured by any Lien upon property of such Person, whether or not such Person has assumed

or become liable for the payment of such indebtedness; provided that, if such Person has not assumed or become liable for the payment of such indebtedness, the amount of such Indebtedness shall be limited to the lesser of (i) the principal amount of the indebtedness being secured and (ii) the fair market value (as estimated by such Person's board of directors or board of managers in good faith) of the encumbered property, (d) all capitalized lease obligations of such Person, (e) all obligations of such Person on or with respect to letters of credit, bankers' acceptances and other extensions of credit, (f) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any equity interest in such Person or any other Person or any warrant, right or option to acquire such equity interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (g) all net obligations (determined as of any time based on the termination value thereof) of such Person under any interest rate, foreign currency, and/or commodity swap, exchange, cap, collar, floor, forward, future or option agreement, or any other similar interest rate, currency or commodity hedging arrangement, as estimated by the Parent in good faith, and (h) all guarantees of such Person in respect of any of the foregoing.

“Indemnified Party” has the meaning assigned to such term in Section 11.04(b).

“Indemnified Taxes” has the meaning assigned to such term in Section 11.03(a).

“Indemnity Agreement” means that certain Limited Indemnity Agreement, dated as of June 20, 2024, provided by the Guarantor in favor of the Administrative Agent for the benefit of the Secured Parties, as the same may be amended, restated or modified from time to time.

“Ineligible Receivable” means, as of any date of determination, a Receivable that fails to satisfy one or more criteria of the definition of “Eligible Receivable” after the date of acquisition thereof by the Borrower.

“Intangible Assets” shall mean all assets of any Person which would be classified in accordance with GAAP as intangible assets, including without limitation (a) all franchises, licenses, permits, patents, applications, copyrights, trademarks, trade names, goodwill, experimental or organization expenses and other like intangibles, and (b) unamortized debt discount and expense and unamortized stock discount and expense.

“Interest” means, for each day during an Interest Accrual Period, the sum of the products (for each day during such Interest Accrual Period) of:

$$IR \times P \times 1/D$$

where:

IR = the applicable Interest Rate for the Loan on such day;

P = the applicable Lender's portion of the Aggregate Loan Amount on such day; and

D = 360.

“Interest Accrual Period” means, (i) with respect to the first Payment Date following the Closing Date, the period from and including the Closing Date to and including the Determination Date

preceding the first Payment Date and (ii) with respect to any subsequent Payment Date, the period from but excluding the Determination Date immediately preceding the immediately previous Payment Date to and including the Determination Date immediately preceding such current Payment Date; provided, that the final Interest Accrual Period shall end on the Final Maturity Date.

“Interest Rate” means, for each day during any Interest Accrual Period and with respect to a Lender’s portion of the Aggregate Loan Amount:

(i) if a Conduit Lender funds (directly or indirectly) such Lender’s portion of the Aggregate Loan Amount, a rate equal to the applicable CP Rate for such day plus the Applicable Margin; and

(ii) if such Lender funds its portion of the Aggregate Loan Amount other than with Conduit Lender funding, Term SOFR (subject to Section 1.05) (or in the case of an ABR Loan, ABR) for such Interest Accrual Period plus the Applicable Margin plus, if Term SOFR is being used, 0.11448%.

“Investment Company Act” means the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder.

“Invoice Delivery Date” means the second Business Day immediately preceding each Monthly Reporting Date.

“IRS” means the Internal Revenue Service.

“JPMorgan Credit Agreement” means the Revolving Credit Agreement, dated as of August 24, 2021, among the Parent, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent, as the same may be amended, restated, extended, replaced or supplemented from time to time.

“Lender Fee Letter” means each of that certain Lender Fee Letter, dated as of June 20, 2024, by and among the Lenders, the Administrative Agent and the Borrower, as the same may be amended, restated or modified from time to time.

“Lenders” means each Person listed on Schedule 1 as a “Lender” and any other Person that shall have become a party hereto as a “Lender” in accordance with the terms hereof pursuant to an Assignment and Acceptance, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Acceptance.

“Leverage Ratio” shall mean, at any date of determination with respect to any Person and its consolidated Subsidiaries, the ratio of (a) Indebtedness of such Person and its consolidated Subsidiaries to (b) the Tangible Net Worth of such Person and its consolidated Subsidiaries.

“Lien” means any mortgage, pledge, hypothecation, assignment, encumbrance, lien or security interest.

“Limited Power of Attorney” shall mean, with respect to each Receivable, a limited power of attorney granted by the Obligor that holds title to each vehicle that serves as collateral for such Receivable, in favor of the Seller or the Borrower.

“Loan” means any loan made by each Lender to the Borrower pursuant to the terms and conditions of this Agreement.

“Margin Stock” has the meaning assigned to such term in Regulation U.

“Master Servicing Account” means that certain account of the Servicer at JPMorgan Chase Bank, N.A. into which Collections are deposited, or such successor account as may be maintained by the Servicer from time to time in replacement of such account.

“Material Adverse Effect” means an event or circumstance which will or is likely to have a material adverse effect on (a) the ability of any of the Servicer, the Seller, the Parent or the Borrower to perform its obligations under any Facility Document to which it is a party, (b) the recoverability of amounts relating to Collateral Receivables, (c) the legality, validity or enforceability of this Agreement or any other Facility Document, (d) the priority of the Administrative Agent’s Lien on the Collateral or (e) the rights and remedies of the Administrative Agent, the Lenders and the Secured Parties with respect to matters arising under the foregoing clauses (a) through (d).

“Money” has the meaning specified in Section 1-201(b)(24) of the UCC.

“Monthly Invoice” has the meaning specified in Section 2.03(b).

“Monthly Payment Rate Percentage” means, with respect to any calendar month, a fraction (expressed as a percentage) equal to the quotient of (i) the aggregate amount of all principal Collections with respect to the Collateral Receivables received during such calendar month, divided by (ii) the Aggregate Principal Balance of all Collateral Receivables owned by the Borrower on the first day of such calendar month.

“Monthly Report” has the meaning specified in Section 8.04.

“Monthly Reporting Date” means, with respect to any Payment Date, the date that is two (2) Business Days prior to such Payment Date.

“Moody’s” means Moody’s Investors Service, Inc., together with its successors.

“Multiemployer Plan” means a “multiemployer plan” within the meaning of Section 4001(a)(3) of ERISA, to which the Borrower or any member of its ERISA Group contributes.

“New Lending Office” has the meaning given in Section 11.03(d).

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

“Notice of Prepayment” has the meaning assigned to such term in Section 2.04(a).

“Obligations” means all indebtedness, whether absolute, fixed or contingent, at any time or from time to time owing by the Borrower to any Secured Party or any Affected Person under or in connection with this Agreement or any other Facility Document, including all amounts payable by the Borrower in respect of the Loans, with interest thereon, and all fees, original issue discount, expenses and other amounts payable hereunder or under any other Facility Document.

“Obligor” means a person obliged to make payment under, or who is indebted under, a Receivable including any guarantor thereof.

“OFAC” has the meaning assigned to such term in Section 4.01(f).

“Other Connection Taxes” has the meaning given in Section 11.03(a).

“Other Taxes” has the meaning given in Section 11.03(b).

“Parent” means ACV Auctions Inc.

“Participant” means any Person to whom a participation is sold as permitted by Section 11.06(c).

“PATRIOT Act” has the meaning assigned to such term in Section 11.16.

“Payment Date” means the fifteenth (15) day of each calendar month commencing in July 2024; provided that, if any such day is not a Business Day, then such Payment Date shall be the next succeeding Business Day.

“PBGC” means the Pension Benefit Guaranty Corporation, or any successor agency or entity performing substantially the same functions.

“Percentage” of any Lender or Facility Group means, (a) with respect to any Lender or Facility Group party hereto on the date hereof, the percentage specified for such Lender or Facility Group on Schedule 1 hereto, as such amount is reduced by any Assignment and Acceptance entered into by such Lender or Facility Group with an assignee or increased by any Assignment and Acceptance entered into by such Lender or Facility Group with an assignor, or (b) with respect to a Lender or Facility Group that has become a party hereto pursuant to an Assignment and Acceptance, the percentage set forth therein as such Lender’s or Facility Group’s Percentage, as such amount is reduced by an Assignment and Acceptance entered into between such Lender or Facility Group and an assignee or increased by any Assignment and Acceptance entered into by such Lender or Facility Group with an assignor.

“Performance Guaranty” means that certain Performance Guaranty, dated as of June 20, 2024, provided by the Guarantor in favor of the Administrative Agent for the benefit of the Secured Parties, as the same may be amended, restated or modified from time to time.

“Permitted Asset Sale” means each of the following: (a) the sale and transfer by the Borrower to the Seller of any Ineligible Receivables; or (b) the sale and transfer by the Borrower to the Seller or any other Person of any Defaulted Receivables.

“Permitted Assignee” means (i) with respect to any Lender: (a) any other Lender (other than any Defaulting Lender), (b) any Affiliate of any Lender, (c) any liquidity provider to or sponsor of any Conduit Lender or financial institution otherwise providing the commitment in the event a Conduit Lender chooses not to fund, and (d) any asset-backed commercial paper conduit sponsored, administered or supported by any Lender or any Affiliate of any Lender; or (ii) any other Person with the prior written approval of the Administrative Agent and the Borrower, which shall not be unreasonably withheld or delayed.

“Permitted Liens” means the following: (a) Liens in favor of the Administrative Agent granted pursuant to this Agreement or any other Facility Document; (b) Liens for taxes, assessments and governmental charges not yet due or the payment of which is being contested in good faith and by appropriate proceedings and for which adequate reserves are maintained in accordance with GAAP; and (c) Liens imposed by law, such as carriers’, warehousemen’s, mechanics’, materialmens’ and other similar Liens arising in the ordinary course of business and securing obligations (other than indebtedness for borrowed money) that are not overdue by more than 45 days or are being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, and for which reserves are maintained in accordance with GAAP.

“Person” means an individual or a corporation (including a business trust), partnership, trust, incorporated or unincorporated association, joint stock company, limited liability company, government (or an agency or political subdivision thereof) or other entity of any kind.

“Plan” means an employee pension benefit plan within the meaning of Section 3(2) of ERISA (other than a Multiemployer Plan) sponsored by the Borrower or any member of its ERISA Group or to which the Borrower or any member of its ERISA Group contributes, which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code.

“Pledge Agreement” means that certain Pledge Agreement, dated as of June 20, 2024, between ACV Capital LLC, as pledgor, and the Administrative Agent, as the same may be amended, restated or modified from time to time.

“Portfolio Documents” shall mean, with respect to each Receivable, each contract and other agreement or document executed and delivered by the related Obligor, including, without limitation, (i) any loan agreement or promissory note, (ii) any security agreement and (iii) a Limited Power of Attorney, in each case, to or for the benefit of the Seller or any subsequent transferee thereof, including renewals, extensions, modifications and amendments thereof.

“Post-Default Rate” means a rate equal to the Interest Rate plus 2.00% per annum. The Post-Default Rate will be determined based on a year of three hundred sixty (360) days and the actual number of days elapsed.

“Prime Rate” means the rate of interest per annum 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 Federal Reserve 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 Federal Reserve Board (as determined by the Administrative Agent). Any change in the Prime Rate shall take effect at the opening of business on the day such change is publicly announced or quoted as being effective.

“Principal Balance” shall mean, at any specified time with respect to any Receivable, the then outstanding unpaid principal balance of such Receivable.

“Priority of Payments” has the meaning specified in Section 9.01(a).



“Proceeds” has, with reference to any asset or property, the meaning assigned to it under the UCC and, in any event, shall include, but not be limited to, any and all amounts from time to time paid or payable under or in connection with such asset or property.

“Program Support Agreement” means, with respect to any Conduit Lender, any liquidity agreement or any other agreement entered into by any Program Support Provider providing for the issuance of one or more letters of credit for the account of such Conduit Lender (or any related commercial paper issuer that finances such Conduit Lender), the issuance of one or more surety bonds for which such Conduit Lender or such related issuer is obligated to reimburse the applicable Program Support Provider for any drawings thereunder, the sale by the Conduit Lender or such related issuer to any Program Support Provider of any interest in an Advance (or portions thereof or participations therein) and/or the making of loans and/or other extensions of liquidity or credit to the Conduit Lender or such related issuer in connection with its commercial paper program, together with any letter of credit, surety bond or other instrument issued thereunder.

“Program Support Provider” means and includes any Person now or hereafter extending liquidity or credit or having a commitment to extend liquidity or credit to or for the account of, or to make purchases from, a Conduit Lender (or any related commercial paper issuer that finances such Conduit Lender) in support of commercial paper issued, directly or indirectly, by such Conduit Lender in order to fund Advances made by such Conduit Lender hereunder or issuing a letter of credit, surety bond or other instrument to support any obligations arising under or in connection with such Conduit Lender’s or such related issuer’s commercial paper program, but only to the extent that such letter of credit, surety bond, or other instrument supported either CP issued to make Advances and purchase the Advances hereunder or was dedicated to that Program Support Provider’s support of the Conduit Lender as a whole rather than one particular issuer (other than the Borrower) within such Conduit Lender’s commercial paper program.

“Proprietor” shall mean each natural person that is an owner or proprietor of an Obligor that is also an obligor or guarantor with respect to a Receivable.

“Purchase Agreement” means that certain Purchase and Sale Agreement, dated as of June 20, 2024, between the Seller and the Borrower, as a purchaser, as the same may be amended, restated or modified from time to time.

“Purchase Price” has the meaning specified in the Purchase Agreement.

“Qualified Institution” means (x) Citibank, N.A. or (y) a depository institution or trust company organized under the laws of the United States of America or any one of the States thereof or the District of Columbia (or any domestic branch of a foreign bank), (i)(a) that has either (1) a long-term unsecured debt rating of “A-” or better by S&P and “A3” or better by Moody’s or (2) a short-term unsecured debt rating or certificate of deposit rating of “A-1” or better by S&P and “P-1” by Moody’s, (b) the parent corporation of which has either (1) a long-term unsecured debt rating of “A-” or better by S&P and “A3” or better by Moody’s or (2) a short-term unsecured debt rating or certificate of deposit rating of “A-1” or better by S&P and “P-1” by Moody’s or (c) is otherwise acceptable to the Administrative Agent and (ii) the deposits of which are insured by the Federal Deposit Insurance Corporation.

“Receivable” means all rights to receive receipts or proceeds from an Obligor in respect of a loan or loans or other financial accommodations originated by the Seller and serviced by the Servicer. Each Receivable shall include, without limitation, all rights (including enforcement rights) under or

pursuant to all Related Documents in respect thereof, and all supporting obligations in connection therewith.

“Receivable Addition Date” means the date on which the Seller has transferred the related Receivables to the Borrower.

“Recoveries” mean amounts received from or on behalf of Obligors in respect of Defaulted Receivables.

“Register” has the meaning specified in Section 11.06(d).

“Regulation T”, “Regulation U” and “Regulation X” mean Regulation T, U and X, respectively, of the Board of Governors of the Federal Reserve System, as in effect from time to time.

“Regulatory Change” has the meaning specified in Section 2.08(a).

“Related Documents” means, with respect to any Collateral Receivable, all Portfolio Documents or agreements or documents evidencing, guaranteeing, securing, governing or giving rise to such Collateral Receivable under which a loan is made to an Obligor.

“Release” has the meaning assigned to such term in Section 8.03(a).

“Release Notice” means a notice substantially in the form attached hereto as Exhibit H.

“Relevant Governmental Body” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“Repurchase Price” means, for any Collateral Receivable repurchased by the Seller under the Purchase Agreement, an amount equal to the outstanding principal balance of such Collateral Receivable plus accrued and unpaid interest thereon as of the date of such repurchase.

“Request for Advance” has the meaning assigned to such term in Section 2.02(a).

“Requested Amount” has the meaning assigned to such term in Section 2.02(a).

“Required Contribution Date” has the meaning assigned to it in Section 6.04(c).

“Required Lenders” means, at any time, (i) the initial Lenders, and (ii) if at such time Lenders include Lenders other than the initial Lenders, Lenders holding a majority of the Loans.

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

“Responsible Officer” means (a) in the case of a corporation, partnership or limited liability company that, pursuant to its Constituent Documents, has officers, any chief executive officer, chief financial officer, chief operating officer, deputy chief financial officer, financial controller, president, senior vice president or treasurer (b) in the case of a limited partnership, the “Responsible Officer” of the general partner pursuant to clause (a) of this definition, acting on behalf of such general partner in its capacity as general partner, (c) in the case of a limited liability company, any “Responsible

Officer” of the sole member or managing member pursuant to clause (a) of this definition, acting on behalf of the sole member or managing member in its capacity as sole member or managing member, (d) in the case of a trust, the “Responsible Officer” of the trustee pursuant to clause (a) of this definition, acting on behalf of such trustee in its capacity as trustee, (e) in the case of the Borrower, the chief executive officer, chief financial officer, president or treasurer and (f) in the case of the Administrative Agent, an officer of the Administrative Agent responsible for the administration of this Agreement.

“Restricted Payments” means the declaration of any distribution or dividends or the payment of any other amount to any shareholder, partner, member or other equity investor in the Borrower on account of any share, membership interest, partnership interest or other equity interest in respect of the Borrower, or the payment on account of, or the setting apart of assets for a sinking or other analogous fund for, or the purchase or other acquisition of any class of stock of or other equity interest in the Borrower or of any warrants, options or other rights to acquire the same (or to make any “phantom stock” or other similar payments in the nature of distributions or dividends in respect of equity to any Person), whether now or hereafter outstanding, either directly or indirectly, whether in cash, property (including marketable securities), or any payment or setting apart of assets for the redemption, withdrawal, retirement, acquisition, cancellation or termination of any share, membership interest, partnership interest or other equity interest in respect of the Borrower.

“Revolving Period” means the period from and including the Closing Date and ending upon the earliest of (a) the Scheduled Commitment Termination Date, (b) the occurrence and continuance of an Early Amortization Event or Event of Default that has not been waived with the consent of the Administrative Agent and the Required Lenders (provided, that, the Revolving Period shall be automatically reinstated upon any cure of an Early Amortization Event), or (c) the date of the termination of the Commitments pursuant to Section 6.02.

“Routine Inquiry” shall mean any inquiry, written or otherwise, made by a Governmental Authority to any Person in connection with (i) the routine transmittal of a customer complaint, (ii) a formal or informal request for information regarding the Person’s business activities, licensing status and/or regulatory posture, other than a formal or informal inquiry that alleges any violation or wrongdoing by such Person, or (iii) a civil investigative demand, formal inquiry or investigation into acts or practices that would not render the applicable Receivables or the related Portfolio Documents invalid, illegal or unenforceable as a matter of law or in accordance with their terms.

“S&P” means S&P Global Ratings, together with its successors.

“Sanctioned Jurisdiction” means, at any time, a country or territory that is, or whose government is, the subject of Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions related list maintained by any Sanctions Authority, (b) any Person located, organized, or resident in a Sanctioned Jurisdiction, or (c) any other subject of Sanctions, including, without limitation, any Person controlled or 50 percent or more owned in the aggregate, directly or indirectly, by, or acting for or on behalf of, or at the direction of, any such Person or Persons described in the foregoing clauses (a) or (b).

“Sanctions” means economic, trade, or financial sanctions, requirements, or embargoes imposed, administered, or enforced from time to time by any Sanctions Authority.

“Sanctions Authority” means the United States (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury and the U.S. Department of State), the United Kingdom (including, without limitation, His Majesty’s Treasury), the European Union and any EU member state, the United Nations Security Council, and any other relevant sanctions authority.

“Sanctions Target” means a Sanctioned Person or Sanctioned Jurisdiction.

“Scheduled Commitment Termination Date” means June 20, 2026, or such later date as may be agreed by the Borrower and each of the Lenders and notified in writing to the Administrative Agent.

“Secured Parties” means the Administrative Agent, the Lenders and their respective permitted successors and assigns.

“Secured Party Information” has the meaning assigned to such term in Section 11.09(b).

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, all as from time to time in effect, or any successor law, rules or regulations, and any reference to any statutory or regulatory provision shall be deemed to be a reference to any successor statutory or regulatory provision.

“Seller” means ACV Capital LLC, in its capacity as seller under the Purchase Agreement.

“Servicer” means ACV Capital LLC, in its capacity as servicer under the Servicing Agreement, or any other Person acting as successor servicer and that has been approved in writing by the Administrative Agent and consented to by the Required Lenders (such consent not to be unreasonably withheld, conditioned or delayed).

“Servicer Default” shall have the meaning assigned to such term in the Servicing Agreement.

“Servicer’s Monthly Payment Certificate” means a certificate completed and executed by a Responsible Officer of the Servicer substantially in the form of Exhibit E.

“Servicer Termination Notice” has the meaning assigned to such term in Section 6.03(a).

“Servicing Agreement” means that certain Servicing Agreement, dated as of June 20, 2024, among the Servicer, the Borrower and the Administrative Agent, as the same may be amended, restated or modified from time to time.

“Servicing Fee” shall have the meaning assigned to such term in the Servicing Agreement.

“Servicing Policy” means the customary servicing policies and procedures of the Servicer with respect to the servicing and administration of the Receivables from time to time, a copy or copies of which have been previously provided to the Administrative Agent and a copy of which, as of the Closing Date, is attached to the Servicing Agreement as Exhibit B, as such policies may be amended, modified or supplemented from time to time in accordance with the terms of this Agreement and the Servicing Agreement.

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

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

“SOFR Loan” means a Loan that bears interest at a rate based on Term SOFR, other than pursuant to clause (c) of the definition of “ABR”.

“Solvent” means, with respect to any Person, that as of the date of determination, both (i) (a) the sum of such Person’s debt (including contingent liabilities) does not exceed the present fair saleable value of such Person’s present assets; (b) such Person’s capital is not unreasonably small in relation to its business as contemplated on the Closing Date and reflected in any of its financial projections; and (c) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (ii) such Person is “solvent” within the meaning given that term and similar terms under the Bankruptcy Code, Section 271 of the Debtor and Creditor Law of the State of New York or other Applicable Laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standards No. 5).

“Subsidiaries” means, with respect to any Person, any corporation or other Person of which more than 50% of the outstanding Equity Interests having ordinary voting power to elect members of the board of directors, board of managers or other governing body of such Person (other than Equity Interests having such power only by reason of the happening of a contingency), are at the time, directly or indirectly, owned by, or the management of which is otherwise controlled, directly or indirectly, by, such Person and one or more of its other Subsidiaries or a combination thereof.

“Tangible Net Worth” means, as of any date, the aggregate total assets of the Parent and its Subsidiaries, calculated in accordance with GAAP, minus the aggregate total debt of the Parent and its Subsidiaries, calculated in accordance with GAAP, minus the amount of all intangible items reflected therein, including all unamortized debt discount and expense, unamortized research and development expense, unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights, and all similar items that should properly be treated as intangibles in accordance with GAAP, minus, without duplication, all amounts due from the Parent’s Affiliates.

“Taxes” has the meaning assigned to such term in [Section 11.03\(a\)](#).

“Term SOFR” means, for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Accrual Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Accrual Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities

Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, provided that, if Term SOFR as so determined shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

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

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

“Transfer Date” has the meaning specified in the Purchase Agreement.

“UCC” means the Uniform Commercial Code, as from time to time in effect in the State of New York; provided that if, by reason of any mandatory provisions of law, the perfection, the effect of perfection or non-perfection or priority of the security interests granted to the Administrative Agent pursuant to this Agreement are governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States of America other than the State of New York, then “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of such perfection, effect of perfection or non-perfection or priority.

“UK Financial Institution” 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.

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

“Underwriting Guidelines” means the underwriting guidelines of the Seller with respect to the Receivables, a copy or copies of which have been previously provided to the Administrative Agent and a copy of which, as of the Closing Date, is attached hereto as Exhibit G, as such guidelines may be amended, modified or supplemented from time to time in accordance with the terms of this Agreement.

“Unmatured Event of Default” means any event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default.

“Unmatured Servicer Default” means any event which, with the passage of time, the giving of notice, or both, would constitute a Servicer Default.

“Unrestricted Cash” means, with respect to any calendar month or fiscal quarter, the sum of (a) the cash and Cash Equivalents of the Parent and its consolidated Subsidiaries that, in accordance with GAAP, is reflected on the consolidated balance sheet of the Parent and its consolidated Subsidiaries,

as of the end of such calendar month or fiscal quarter, as applicable, but only to the extent that such cash and Cash Equivalents (or any deposit account or securities account in which such cash and Cash Equivalents are held) are not controlled by or subject to any Lien or other preferential arrangement in favor of any creditor (other than customary Liens of account banks); provided, that the calculation of Unrestricted Cash to the extent attributable to any Subsidiary shall be the Unrestricted Cash of such Subsidiary multiplied by the percentage Equity Interests in such Subsidiary held by the Parent (measured against all Equity Interests in such Subsidiary held by all Persons), plus (b) the undrawn commitments that can be drawn under the JPMorgan Credit Agreement as of the end of such calendar month or fiscal quarter, as applicable.

“Unused Fee” has the meaning assigned to such term in the Lender Fee Letter.

“Upfront Fee” shall have the meaning assigned to such term in the Lender Fee Letter.

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

“Volcker Rule” means the common rule entitled “Proprietary Trading and Certain Interests and Relationships with Covered Funds” published at 79 Fed. Reg. 5779 et seq.

“Warranty Receivable” means a Collateral Receivable that is required to be repurchased by the Seller pursuant to the terms of the Purchase Agreement.

“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.

“3-Month Average Default Ratio” means, as of any date of determination, the average of the Default Ratios for the three most recently ended calendar months.

“3-Month Average Excess Spread Ratio” means, as of any date of determination, the average of the Excess Spread Ratios for the three most recently ended calendar months.

“3-Month Average Payment Rate Percentage” means, as of any date of determination, the average of the Monthly Payment Rate Percentages for the three most recently ended calendar months.

#### Section I.2 Rules of Construction.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires (i) singular words shall connote the plural as well as the singular, and vice versa,

except as indicated and as may be appropriate, (ii) the words “herein,” “hereof” and “hereunder” and other words of similar import used in this Agreement refer to this Agreement as a whole and not to any particular article, schedule, section, paragraph, clause, exhibit or other subdivision, (iii) the headings, subheadings and table of contents set forth in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect the meaning, construction or effect of any provision hereof, (iv) 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 unless otherwise specified herein, (v) references in this Agreement to “include” or “including” shall mean include or including, as applicable, without limiting the generality of any description preceding such term, and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or with reference to an enumeration of specific matters, to matters similar to those specifically mentioned, (vi) the word “will” shall be construed to have the same meaning and effect as the word “shall,” (vii) any definition of or reference to any Facility Document, agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated or otherwise modified (subject to any restrictions on such amendments, restatements or modifications set forth herein), (viii) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions set forth herein or in any other applicable agreement), (ix) any reference to any law or regulation herein shall refer to such law or regulation as amended, modified or supplemented from time to time, and (x) each reference to time without further specification shall mean the time in New York, New York.

Section I.3 Computation of Time Periods.

Unless otherwise stated in this Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” both mean “to but excluding”. Periods of days referred to in this Agreement shall be counted in calendar days unless Business Days are expressly prescribed.

Section I.4 Collateral Value Calculation Procedures.

(a) In connection with all calculations required to be made pursuant to this Agreement with respect to any payments on any other assets included in the Collateral, with respect to the sale of and purchase of Receivables, and with respect to the income that can be earned on any other amounts that may be received for deposit in the Collection Account, the provisions set forth in this Section 1.04 shall be applied. The provisions of this Section 1.04 shall be applicable to any determination or calculation that is covered by this Section 1.04, whether or not reference is specifically made to Section 1.04, unless some other method of calculation or determination is expressly specified in the particular provision.

(a) References in the Priority of Payments to calculations made on a “pro forma basis” shall mean such calculations after giving effect to all payments, in accordance with the Priority of Payments, that precede (in priority of payment) or include the clause in which such calculation is made.

(b) References in this Agreement to the Borrower’s “purchase” or “acquisition” of a Receivable include references to the Borrower’s acquisition of such Receivable by way of a sale and/or contribution from the Seller.



(c) Notwithstanding any other provision of this Agreement to the contrary, all monetary calculations under this Agreement shall be in Dollars. For purposes of this Agreement, calculations with respect to all amounts received or required to be paid in a currency other than Dollars shall be valued at zero.

Section I.1 Benchmark Replacement Setting.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Facility Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 1.05(a)(i) will occur prior to the applicable Benchmark Transition Start Date.

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

(c) Notices; Standard for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 1.05(d). Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 1.05, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Facility Document, except, in each case, as expressly required pursuant to this Section 1.05.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Facility Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial

Benchmarks, then the Administrative Agent may modify the definition of “Interest Accrual Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Accrual Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, and at all times during the continuation of a Benchmark Unavailability Period, the Loans that are not funded with CP will bear interest based on the ABR. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

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

Section I.5 Inability to Determine Rates. Subject to Section 1.05, if, on or prior to the first day of any Interest Accrual Period for any SOFR Loan, (x) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that “Term SOFR” cannot be determined pursuant to the definition thereof, or (y) the Required Lenders determine that for any reason in connection with any request for any SOFR Loan or a continuation thereof that “Term SOFR” for any Interest Accrual Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the

cost to such Lenders of making and maintaining such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent, the Administrative Agent will promptly so notify the Borrower and each Lender in writing in accordance with Section 11.02. Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make SOFR Loans shall be suspended (to the extent of the affected SOFR Loans or affected Interest Accrual Periods) until the Administrative Agent (with respect to clause (y), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of SOFR Loans (to the extent of the affected SOFR Loans or affected Interest Accrual Periods) and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans at the end of the applicable Interest Accrual Period.

## Article II

### ADVANCES

Section II.1 Revolving Credit Facility. (a) On the terms and subject to the conditions hereinafter set forth, including Article III, each Lender (other than a Conduit Lender which is not a Committed Conduit Lender) agrees to make loans to the Borrower (each, an “Advance”) from time to time on any Business Day during the period from the Closing Date until the Commitment Termination Date, as shall be identified as the Borrowing Date for such Advance specified in the related Request for Advance pursuant to Section 2.02, on a pro rata basis (based on each Facility Group’s Commitment) across all Facility Groups, in each case in an aggregate principal amount at any one time outstanding up to but not exceeding such Facility Group’s Commitment and, as to all Lenders, in an aggregate principal amount up to but not exceeding an amount such that the Advances outstanding do not exceed the Borrowing Base, as then in effect. Each such borrowing of an Advance on any single day is referred to herein as a “Borrowing”.

(b) Within such limits and subject to the other terms and conditions of this Agreement, the Borrower may borrow (and re-borrow) under this Section 2.01 and prepay the Loans under Section 2.04. Each Lender’s obligations under this Section are several and the failure of any Lender to make available its share of any requested Advance amount on the date of any Advance shall not relieve any other Lender of its obligations hereunder. No Lender shall be obligated to fund any portion of any Advance which would cause the aggregate principal amount of its Advances to exceed its Commitment. The Commitment of each Lender is set forth on Schedule 1.

Section II.2 Making of the Advances. (a) If the Borrower desires to make a Borrowing under this Agreement, the Borrower shall provide the Administrative Agent and each Funding Agent with a written request for an advance substantially in the form of Exhibit A hereto (a “Request for Advance”), which Request for Advance shall be irrevocable and effective upon receipt of (i) a Borrowing Base Certificate demonstrating compliance with the Borrowing Base Test as of the date of the Request for Advance and (ii) a Data File identifying certain characteristics of any Receivables being sold to the Borrower in connection with such Borrowing, in each case, subject to Section 2.02(b), not later than 12:00 p.m. (New York time) on the third U.S. Government Securities Business Day immediately prior to the day of the requested Borrowing (or such later time or date as the Administrative Agent and the applicable Funding Agents may agree). The proposed Borrowing Date specified in each Request for Advance shall be a Business Day falling on or prior to the Commitment Termination Date, and the amount of the Borrowing requested in each such Request for Advance (the “Requested Amount”) shall be

equal to at least \$500,000 (or, if less, the remaining unfunded Commitments hereunder) and integral multiples of \$1 in excess thereof.

Promptly following receipt of a Request for Advance in accordance with this Section 2.02, the Funding Agents shall advise each applicable Lender in its Facility Group of the details thereof and of the amounts of such Lender's Advance to be made as part of the requested Borrowing. Each Request for Advance shall be dated the date it is delivered to the Administrative Agent and the Funding Agents, and signed by a Responsible Officer of the Borrower. By submitting a Request for Advance, the Borrower shall be deemed to have represented and warranted to the Administrative Agent and the Lenders that, immediately after giving effect to the proposed Borrowing on the related Borrowing Date, each of the conditions precedent set forth in Section 3.02 have been satisfied.

(a) Funding by Lenders. Each Facility Group shall make its Percentage of the applicable Requested Amount on each Borrowing Date by wire transfer of immediately available funds by 3:00 p.m. (New York City time) to the account designated by the Borrower on the related Request for Advance. Notwithstanding the foregoing, with respect to any Facility Group, each Conduit Lender without a Commitment in such Facility Group may, in its sole discretion, make available to the Borrower the Percentage of the applicable Requested Amount allocable to such Conduit Lender's Facility Group. If a Conduit Lender (other than a Committed Conduit Lender) elects not to fund its Facility Group's Percentage of the Requested Amount, such Conduit Lender's related Lender or Lenders with a Commitment or Commitments in such Conduit Lender's Facility Group, respectively, shall, upon satisfaction of the applicable conditions set forth in this Agreement, make available to the Borrower, such Facility Group's respective Percentage of the Requested Amount.

(b) Each Request for Advance, upon submission of the final Request for Advance, shall be irrevocable and binding on the Borrower, and the Borrower shall indemnify each Lender against any loss or expense incurred by such Lender, either directly or indirectly (including, in the case of a Conduit Lender, through the applicable Program Support Agreement) as a result of any failure by the Borrower to complete such Advance, including any loss or expense incurred by such Lender or such Lender's conduit administrator, either directly or indirectly (including, in the case of a Conduit Lender, pursuant to the applicable Program Support Agreement) by reason of the liquidation or reemployment of funds acquired by such Lender (or the applicable Program Support Provider(s)) (including funds obtained by issuing CP or promissory notes or obtaining deposits or loans from third parties) in order to fund such Advance; provided, that no such loss or expense shall be indemnifiable absent receipt by the Borrower of a statement of the applicable Lender setting forth in reasonable detail the basis of such demand for indemnity.

Section II.3 Payment of Principal and Interest. The Borrower shall pay principal and interest on the Loans as follows:

(a) 100% of the outstanding principal amount of the Loans, together with all accrued and unpaid Interest thereon shall be due and payable on the Final Maturity Date.

(b) Interest shall accrue on the unpaid principal amount of each Loan from the date of such Loan until such principal amount is paid in full. The Administrative Agent shall prepare an invoice for each Payment Date (each, a "Monthly Invoice") and deliver such invoice to the Servicer and the Borrower on the related Invoice Delivery Date, setting forth the interest due by the Borrower to each of the Lenders on such Payment Date. The interest rates

applicable to the Loans shall be determined by the Administrative Agent in accordance with the applicable provisions hereof, and such determination shall be conclusive absent manifest error.

(c) Accrued Interest on the Aggregate Loan Amount in respect of each Interest Accrual Period shall be payable in arrears (x) on each Payment Date next succeeding such Interest Accrual Period, and (y) in connection with any prepayment in full of the Aggregate Loan Amount pursuant to Section 2.04(a); provided that (i) with respect to any prepayment in full of the Aggregate Loan Amount, accrued and unpaid Interest on such amount to but excluding the date of prepayment may be payable on such date of prepayment or as otherwise agreed to between the Lenders and the Borrower and (ii) with respect to any partial prepayment of the Aggregate Loan Amount, accrued Interest on such amount to but excluding the date of prepayment shall be payable following such prepayment on the applicable Payment Date in accordance with the Priority of Payments for the Collection Period in which such prepayment occurred.

(d) Subject in all cases to Section 2.03(f), the obligation of the Borrower to pay the Obligations, including the obligation of the Borrower to pay the Lenders the outstanding principal amount of the Aggregate Loan Amount and accrued Interest thereon shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms hereof, under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the Borrower or any other Person may have or have had against any Secured Party or any other Person.

(e) As a condition to the payment of principal and interest without the imposition of withholding Tax, the Borrower or the Administrative Agent may require certification reasonably acceptable to it to enable the Borrower and the Administrative Agent to determine their duties and liabilities with respect to any Taxes or other charges that they may be required to deduct or withhold from payments in respect of such payment under any present or future law or regulation of the United States and any other applicable jurisdiction, or any present or future law or regulation of any political subdivision thereof or taxing authority therein or to comply with any reporting or other requirements under any such law or regulation.

(f) No recourse shall be had against any officer, director, employee, shareholder, owner, Affiliate, member, manager, agent, partner, principal or incorporator of the Borrower or their respective successors or assigns for any amounts payable under this Agreement.

#### Section II.4 Prepayment of the Aggregate Loan Amount.

(a) Optional Prepayments. The Borrower may from time to time on any Business Day, voluntarily prepay the Aggregate Loan Amount in whole or in part, without penalty or premium other than as specified in Section 2.04(c), but subject to payment of all amounts due pursuant to Section 2.03(c) and Section 2.04(c), as follows:

(i) Other than in connection with a prepayment pursuant to Sections 2.04(a)(ii), the Borrower shall have delivered to the Administrative Agent written notice of such prepayment (such notice, a “Notice of Prepayment”) in the form of Exhibit B hereto by no later than 12:00 p.m. (New York time) on the second Business Day prior to the day of such prepayment (or such later time or date as the Administrative Agent and each Funding Agent may agree). Upon receipt of such Notice of Prepayment, the Administrative Agent shall promptly

notify each Funding Agent and each Funding Agent shall promptly notify each Lender in its Facility Group. Each prepayment of the Aggregate Loan Amount by the Borrower pursuant to this Section 2.04(a)(i) shall be in a principal amount of at least \$500,000 or, if less, the entire Aggregate Loan Amount. Each prepayment of the Loans shall be made ratably among the Lenders based on the aggregate outstanding principal amount of the Advances held by each Lender. The Borrower shall make the payment amount specified in such notice by wire transfer of immediately available funds by 2:00 p.m. (New York time) to the account of the applicable Lenders, as directed by each applicable Funding Agent.

(ii) On any date that the Borrower acquires Receivables from the Seller pursuant to the Purchase Agreement or the Borrower consummates a Permitted Asset Sale in accordance with the terms and conditions of this Agreement, the Borrower may make an optional prepayment of some or all of the Aggregate Loan Amount by withdrawing funds on deposit in the Collection Account (including any proceeds of a Permitted Asset Sale); provided, that the Administrative Agent and each Funding Agent shall have received no later than 2:00 p.m. (New York time) on the Business Day immediately prior to the day of such prepayment, a Borrowing Base Certificate and related Data File (i) certifying that the Borrowing Base Test will be satisfied after such prepayment and (ii) demonstrating that, following such prepayment, funds shall remain in the Collection Account sufficient to pay in full all amounts due and owing on the immediately following Payment Date pursuant to Sections 9.01(a)(i), (ii) and (iii). For the avoidance of doubt, the Borrower may satisfy clause (i) of the foregoing condition (A) in respect of any prepayment being made on a Borrowing Date by delivering a Request for Advance dated as of the date of such withdrawal that includes the calculation of the Borrowing Base as of such date or (B) in respect of any prepayment being made on the date of a Permitted Asset Sale by delivering the required deliverables pursuant to Section 8.05(a)(i)(v) of this Agreement.

(b) Mandatory Prepayments. The Borrower shall prepay the Loans on each Payment Date in the manner and to the extent provided in the Priority of Payments. The Borrower (or the Servicer on its behalf) shall provide, in each Monthly Report, notice of the aggregate amount of Loans that are to be prepaid on the related Payment Date in accordance with the Priority of Payments. Additionally, if on any day during the Revolving Period the Borrowing Base Test shall not be satisfied, the Borrower shall prepay the Loans in an amount sufficient to satisfy the Borrowing Base Test within five (5) Business Days by withdrawing funds on deposit in the Collection Account unless the Borrower has entered into Permitted Asset Sales within such five (5) Business Days the proceeds of which (together with the Eligible Investments and other amounts on deposit in the Collection Account) shall be sufficient to satisfy the Borrowing Base Test after giving effect to any prepayment of the Loans within such five (5) Business Days pursuant to Section 2.04(a).

(c) Additional Prepayment Provisions. Each prepayment pursuant to this Section 2.04 shall be subject to Section 2.03(c) and applied to the Aggregate Loan Amount in accordance with the Lenders' pro rata share of the Aggregate Loan Amount. The Borrower hereby agrees to reimburse the Administrative Agent or any Lender, as applicable, in such amount or amounts as shall compensate the Administrative Agent or any such Lender, as applicable, for any actual loss, cost or expense incurred by the Administrative Agent or any such Lender, as applicable

(as reasonably determined by the Administrative Agent or any such Lender, as applicable) as a result of any prepayment pursuant to this Section 2.04 that is not made on a Payment Date.

Section II.5 Changes of Commitments.

(a) Automatic Reduction and Termination. The Commitments of all Committed Lenders shall be automatically reduced to zero at 5:00 p.m. (New York time) on the Commitment Termination Date.

(b) Optional Reductions. Prior to the Commitment Termination Date and except as specified in Section 2.13(c), the Borrower shall have the right to terminate or reduce the unused amount of the Commitment Amount at any time or from time to time without any fee or penalty upon not less than five (5) Business Days' prior written notice to the Lenders, the Funding Agents and the Administrative Agent of each such termination or reduction, which notice shall specify the effective date of such termination or reduction and the amount of any such termination or reduction; provided that (i) the amount of any such reduction of the Commitment Amount shall be equal to at least \$1,000,000, and (ii) no such reduction will reduce the Commitment Amount below the Aggregate Loan Amount at such time. Such notice of termination or reduction shall be irrevocable and effective only upon receipt and shall be applied pro rata to reduce the respective Commitments of each Committed Lender.

(c) Effect of Termination or Reduction. The Commitments of the Committed Lenders once terminated or reduced may not be reinstated unless otherwise approved by the Administrative Agent, the Funding Agents and the Lenders. Each termination or reduction of the Commitment Amount pursuant to this Section 2.05 shall be applied ratably among the Committed Lenders in accordance with their respective Commitments.

Section II.6 Maximum Lawful Rate. It is the intention of the parties hereto that the Interest on the Aggregate Loan Amount shall not exceed the maximum rate permissible under Applicable Law. Accordingly, anything herein to the contrary notwithstanding, in the event any interest is charged to, collected from or received from or on behalf of the Borrower by the Lenders pursuant hereto in excess of such maximum lawful rate, then the excess of such payment over that maximum shall be applied first to the payment of amounts then due and owing by the Borrower to the Secured Parties under this Agreement (other than in respect of principal of and interest) and then to the reduction of the outstanding principal amount of the Aggregate Loan Amount.

Section II.7 Several Obligations. The failure of any Lender to make any Advance to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its Advance on such date. Neither the Administrative Agent nor any Funding Agent shall be responsible for the failure of any Lender to make any Advance and no Lender shall be responsible for the failure of any other Lender to make an Advance to be made by such other Lender.

Section II.8 Increased Costs. (a) If the introduction of or any change in or in the interpretation, application or implementation of any Applicable Law or GAAP or other applicable accounting policy after the date hereof (a "Regulatory Change"):

(A) shall impose, modify or deem applicable any reserve (including, without limitation, any reserve imposed by the Board of Governors of the Federal Reserve System, but excluding any reserve included in the determination of interest),

compulsory loan, insurance charge, special deposit or similar requirement against assets of any Affected Person, deposits or obligations with or for the account of any Affected Person or credit extended by any Affected Person;

(B) shall change the amount of capital maintained or required or requested or directed to be maintained by any Affected Person;

(C) shall impose any other condition affecting any Advance owned or funded in whole or in part by any Affected Person, or its obligations or rights, if any, to make Advances or to provide funding therefor;

(D) subject any Affected Person to any Taxes (other than (1) Indemnified Taxes, (2) Taxes described in clauses (B) through (D) of the definition of Excluded Taxes and (3) Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(E) shall change the rate for, or the manner in which the Federal Deposit Insurance Corporation (or a successor thereto) assesses, deposit insurance premiums or similar charges;

and the result of any of the foregoing is or would be:

(x) to increase the cost to or to impose a cost on an Affected Person funding or making or maintaining the Aggregate Loan Amount;

(y) to reduce the amount of any sum received or receivable by an Affected Person under this Agreement; or

(z) to reduce the rate of return on the capital of an Affected Person as a consequence of its obligations hereunder or under any Program Support Agreement to a level below that which such Affected Person could have achieved but for such Regulatory Change (taking into consideration such Affected Person's policies with respect to capital adequacy);

then, commencing on the first Payment Date after demand by such Affected Person (which demand shall be accompanied by a statement setting forth in reasonable detail the basis of such demand), the Borrower shall pay directly to such Affected Person such additional amount or amounts as will compensate such Affected Person for such additional or increased cost or such reduction to the extent accruing after the date of such demand in accordance with the Priority of Payments from funds available for such purpose. In connection with any amounts to be reimbursed to any Lender on a Payment Date pursuant to this Section 2.08, the Borrower hereby agrees that it shall cause the Servicer to reflect such amounts to be reimbursed to each Lender on the Servicer's Monthly Payment Certificate. For the avoidance of doubt, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank Act"); (ii) the revised Basel Accord prepared by the Basel Committee on Banking Supervision as set out in the publication entitled "Basel II: International Convergence of Capital Measurements and Capital Standards: A Revised



Framework,” as updated from time to time (“Basel II”); (iii) the publication entitled “Basel III: A global regulatory framework for more resilient banks and banking systems,” as updated from time to time (“Basel III”), including without limitation, any publications addressing the liquidity coverage ratio or the supplementary leverage ratio; or (iv) any implementing laws, rules, regulations, guidance, interpretations or directives from any Governmental Authority relating to the Dodd Frank Act, Basel II or Basel III (whether or not having the force of law), and in each case all rules and regulations promulgated thereunder or issued in connection therewith shall be deemed to have been introduced after the Closing Date, thereby constituting a Regulatory Change hereunder with respect to the Affected Persons as of the Closing Date, regardless of the date enacted, adopted or issued, and such additional amounts which are sufficient to compensate such Affected Person for such increase in capital or liquidity or reduced return in accordance with the Priority of Payments.

If any Affected Person becomes entitled to claim any additional amounts pursuant to this Section 2.08, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled and deliver to the Borrower a certificate setting forth in reasonable detail such amounts.

(a) Each demand made pursuant to this Section 2.08 shall be provided by a Lender to the Borrower in writing and shall state, in reasonable detail, the reasons therefor. In determining the amount owed by the Borrower under this Section 2.08, any applicable Lender or Affected Person may use any method of averaging and attribution that it shall reasonably deem applicable so long as it applies such method to other similar transactions. Failure or delay on the part of any Lender or Affected Person to demand compensation pursuant to this Section 2.08 shall not constitute a waiver of any such Lender or Affected Person’s right to compensation; provided that the Borrower shall not be required to compensate such Lender or Affected Person pursuant to this Section 2.08 for any increased costs or reductions incurred more than one hundred twenty (120) days prior to the date that such Lender or Affected Person notifies the Borrower of the Regulatory Change giving rise thereto; provided further that, if such Regulatory Change is retroactive, then the 120 day period referred to in the preceding proviso shall be extended to include the period of retroactive effect thereof.

(b) Upon the occurrence of any event giving rise to the Borrower’s obligation to pay additional amounts to a Lender pursuant to this Section 2.08, such Lender will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to reduce or eliminate any claim for compensation pursuant to this Section 2.08, including but not limited to designating a different lending office if such efforts or designation would reduce or obviate the obligations of the Borrower to make future payments of such additional amounts pursuant to this Section 2.08; provided that such efforts or designation will not, in the reasonable opinion of such Lender, be unlawful or otherwise disadvantageous to such Lender or inconsistent with its policies or made on such terms that such Lender and its lending office suffer unreimbursed cost or expense or material legal or regulatory disadvantage (as reasonably determined by such Lender), with the object of avoiding future consequence of the event giving rise to the operation of any such provision.

Section II.9 Rescission or Return of Payment. The Borrower agrees that, if at any time (including after the occurrence of the Final Maturity Date) all or any part of any payment previously made by it to any Secured Party or any designee of a Secured Party is or must be rescinded or returned for any reason whatsoever (including the insolvency, bankruptcy or reorganization of the Borrower or any of its Affiliates), the obligation of the Borrower to make such payment to such Secured Party shall, for the

purposes of this Agreement, to the extent that such payment is or must be rescinded or returned, be deemed to have continued in existence and this Agreement shall continue to be effective or be reinstated, as the case may be, as to such obligations, all as though such payment had not been made; provided that interest shall accrue on any such amount from and after the date of its original payment by the Borrower.

Section II.10 Payments Generally. (a) Except as otherwise provided under Section 11.04, all amounts owing and payable to any Secured Party, any Affected Person or any Indemnified Party, in respect of the Aggregate Loan Amount and other Obligations, including the principal thereof, interest, fees, indemnities, expenses or other amounts payable under this Agreement or under any other Facility Document, shall be paid by the Borrower to the applicable recipient in Dollars, in immediately available funds, in accordance with the Priority of Payments, and all without counterclaim, setoff, deduction, defense, abatement, suspension or deferment. The Administrative Agent and each Lender shall provide wire instructions to the Borrower (i) prior to the Closing Date, in the case of the Administrative Agent and any Lender party hereto as of the Closing Date and (ii) prior to executing an Assignment and Acceptance substantially in the form attached hereto as Exhibit C, in the case of any Lender who is not a party hereto as of the Closing Date. Payments received from the Borrower after 5:00 p.m. (New York time) on a Business Day will be deemed to have been paid on the next following Business Day.

(a) Except as otherwise expressly provided herein, all computations of interest on the Aggregate Loan Amount, and to the extent applicable, all computations of fees and other Obligations, shall, in each case, be made on the basis of a year of 360 days (or in the case of interest computed by reference to the ABR at times when the ABR is based on the Prime Rate, such interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year)) for the actual number of days elapsed, inclusive of the date the Advance is made and exclusive of the date of payment. All computations made by a Lender, the Administrative Agent or a Funding Agent under this Agreement shall be conclusive absent manifest error.

Section II.11 Extension of the Scheduled Committed Termination Date. A Responsible Officer of the Borrower may make a request to the Administrative Agent, the Funding Agents and the Lenders, upon written notice, to extend the Scheduled Commitment Termination Date for an additional period mutually agreeable to the Borrower and the Administrative Agent (acting at the direction of the Required Lenders). No later than thirty (30) days from the date on which the Administrative Agent and the Lenders shall have received any such written notice from a Responsible Officer of the Borrower pursuant to the preceding sentence, the Administrative Agent shall notify the Borrower of the initial consent or non-consent of the Administrative Agent and the Required Lenders to such extension request, which consent shall be given at the sole and absolute discretion of the Administrative Agent and the Required Lenders. If the Administrative Agent and the Required Lenders shall have consented to such extension request, the Administrative Agent (acting at the direction of the Required Lenders) shall deliver to the Borrower written notice of the Administrative Agent's and the Lenders' election to extend the Scheduled Commitment Termination Date. The consent of the Administrative Agent and the Required Lenders shall be subject to the preparation, execution and delivery of any required legal documentation in form and substance satisfactory to the Administrative Agent and the Required Lenders and their counsel incorporating substantially the terms and conditions contained in the extension request. Failure of the Administrative Agent to respond to a request for extension of the Scheduled Commitment Termination Date shall constitute denial of such extension and, as a result, the current Scheduled Commitment Termination Date shall continue to be applicable. As part of any extension of the Scheduled Commitment Termination Date, the Final Maturity Date shall also be

extended by an equal period of time unless otherwise agreed by the Administrative Agent (acting at the direction of the Required Lenders) and the Borrower.

Section II.12 [Reserved].

Section II.13 Defaulting Lenders. (a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 11.01(c).

(ii) Certain Fees. Notwithstanding any other provision of this Agreement or the other Facility Documents to the contrary, for so long as a Lender is a Defaulting Lender (such period of time, a "Default Period"), such Defaulting Lender shall not be entitled to receive any Unused Fees or Additional Unused Fees accruing to it during such Default Period under this Agreement (and the Borrower shall not be required to pay any such Unused Fee or Additional Unused Fees that otherwise would have been required to have been paid to such Defaulting Lender during such Default Period).

(a) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing that a Lender that is a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such written notice and subject to any conditions set forth therein, that Lender shall purchase such portions of the outstanding Aggregate Loan Amount of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause (i) the Aggregate Loan Amount to be held pro rata by the Lenders in accordance with their respective Percentages of the Commitment Amount, whereupon such Lender will cease to be a Defaulting Lender and will be a Non-Defaulting Lender; provided that no adjustments shall be made retroactively with respect to Unused Fees or Additional Unused Fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(b) The Borrower may terminate the unused amount of the Commitment of any Defaulting Lender upon not less than five (5) Business Days' prior written notice to the Administrative Agent (which shall promptly notify the Lenders thereof); provided that such termination shall not be deemed to be a waiver or release of any claim the Borrower, the Administrative Agent or any Lender may have against such Defaulting Lender.

(c) The Borrower may on any Business Day, voluntarily prepay the portion of a Defaulting Lender's Aggregate Loan Amount in whole or in part, without penalty or premium, but subject to payment of all accrued and unpaid Interest on such amount to but excluding the date of prepayment. The Borrower shall have delivered to the Administrative Agent and the applicable Funding Agent and Defaulting Lender written notice of such prepayment by no

later than 12:00 p.m. (New York time) on the third U.S. Government Securities Business Day prior to the day of such prepayment (or such later time or date as the Administrative Agent and the applicable Funding Agent and Defaulting Lender may agree). The Borrower shall make the payment amount specified in such notice by wire transfer of immediately available funds by 12:00 p.m. (New York time) to the account of the applicable Defaulting Lender, as directed by the applicable Funding Agent.

Section II.14 Post-Default Interest. After the occurrence of and during the continuance of an Event of Default, the Borrower shall pay interest on all Obligations that are not paid when due for the period from (and including) the due date thereof until (but excluding) the date the same is paid in full at the Post-Default Rate. Interest payable at the Post-Default Rate shall be payable on each Payment Date in accordance with the Priority of Payments.

Section II.15 Lender Relationship.

(a) In exercising any of its or their voting rights, rights to direct and consent or any other rights as a Lender hereunder, subject to the terms and conditions of this Agreement, a Lender or Lenders, as the case may be, shall not, except as may be expressly provided herein with respect to any particular matter, have any obligation or duty to any Person or to consider or take into account the interests of any Person and shall not be liable to any Person for any action taken by it or them or at its or their direction or any failure by it or them to act or to direct that an action be taken, without regard to whether such action or inaction benefits or adversely affects any Lender, the Borrower or any other Person, except for any liability to which such Lender may be subject to the extent that the same results from such Lender's taking or directing an action, or failing to take or direct an action, in bad faith or in violation of the express terms of this Agreement.

### Article III

#### CONDITIONS PRECEDENT

Section III.1 Conditions Precedent to Initial Advances. The effectiveness of this Agreement and of the obligation of each Lender hereunder to make its initial Advance hereunder shall be subject to receipt in satisfactory form or waiver by the Administrative Agent of the following conditions precedent:

- (a) each of the Facility Documents duly executed and delivered by the parties thereto, which shall each be in full force and effect;
- (b) true and complete copies of the Constituent Documents of the Borrower, the Servicer and the Guarantor as in effect on the date of this Agreement;
- (c) a certificate of a Responsible Officer of the Borrower, certifying (i) as to its Constituent Documents, (ii) as to its resolutions or other action of its board of directors or members approving this Agreement and the other Facility Documents to which it is a party and the transactions contemplated thereby, (iii) that its representations and warranties set forth in the Facility Documents to which it is a party are true and correct in all material respects as of the Closing Date (except to the extent such representations and warranties expressly relate to any earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date), (iv) no Early Amortization Event, Unmatured Event of

Default or Event of Default has occurred and is continuing, and (v) as to the incumbency and specimen signature of each of its Responsible Officers authorized to execute the Facility Documents to which it is a party;

(d) a certificate of a Responsible Officer or secretary of ACV Capital LLC, in its capacities as the Servicer and the Seller, certifying (i) as to its Constituent Documents, (ii) as to its resolutions or other action of its board of directors or members approving this Agreement and the other Facility Documents to which it is a party and the transactions contemplated thereby, (iii) that the representations and warranties of ACV Capital LLC set forth in the Facility Documents to which it is a party are true and correct in all material respects as of the Closing Date (except to the extent such representations and warranties expressly relate to any earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date), (iv) that no Early Amortization Event, Unmatured Event of Default or Event of Default has occurred and is continuing, and (v) as to the incumbency and specimen signature of each of its Responsible Officers authorized to execute the Facility Documents to which it is a party;

(e) a certificate of a Responsible Officer or secretary of the Parent certifying (i) as to its Constituent Documents, (ii) as to its resolutions or other action of its board of directors or members approving this Agreement and the other Facility Documents to which it is a party and the transactions contemplated thereby, (iii) that the representations and warranties of the Parent set forth in the Facility Documents to which it is a party are true and correct in all material respects as of the Closing Date (except to the extent such representations and warranties expressly relate to any earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date), (iv) that no Early Amortization Event, Unmatured Event of Default or Event of Default has occurred and is continuing, and (v) as to the incumbency and specimen signature of each of its Responsible Officers authorized to execute the Facility Documents to which it is a party;

(f) financing statements, duly filed on or before the date of this Agreement, under the UCC in each jurisdiction necessary to perfect the security interest of the Administrative Agent in the Collateral, as contemplated by this Agreement;

(g) completion of "Know Your Customer" procedures customary for a transaction of this type and reasonably requested by the Administrative Agent and any Lender;

(h) legal opinions (addressed to each of the Secured Parties) of one or more firms of counsel to the Borrower, the Seller, the Servicer and the Parent in form and substance acceptable to the Administrative Agent and its counsel with respect to (i) enforceability, corporate power, due authorization, execution and delivery and legal, valid and binding obligation, in each case, in respect of the Facility Documents, (ii) certain UCC matters, including validity and perfection of security interests created pursuant to the Facility Documents, (iii) no consents or approvals, (iv) no conflict with Applicable Law or material documents, (v) Investment Company Act (vi) true sale and non-consolidation of the Borrower and (vii) any other opinions customary for a transaction of this type or reasonably requested by the Administrative Agent and its counsel;

(i) evidence reasonably satisfactory to it that the Collection Account shall have been established;

(j) evidence that (x) all fees or original issue discount, as applicable, to be received by the Administrative Agent and each Lender on or prior to the date of the initial Advance pursuant to the Lender Fee Letter; and (y) the accrued reasonable and documented out-of-pocket and third party fees and expenses of the Administrative Agent and the Lenders associated with the review, preparation, execution and delivery of the Facility Documents and the closing of the transactions contemplated hereby and thereby; and the reasonable and documented fees and expenses of Weil, Gotshal & Manges LLP, counsel to the Administrative Agent, in connection with the transactions contemplated hereby, shall have been paid by the Borrower, in each case, to the extent such fees and expenses were invoiced to the Borrower at least two (2) Business Days prior to such date; and

(k) any other deliverable that is customary for a transaction of this type and reasonably requested by the Administrative Agent.

Section III.2 Conditions Precedent to Each Borrowing. The obligation of each Lender to make each Advance to be made by it (including the initial Advance) on each Borrowing Date shall be subject to the satisfaction or waiver by the Administrative Agent of the following conditions precedent:

(a) the Administrative Agent and each Funding Agent shall have received a Request for Advance with respect to such Advance (including the Borrowing Base Certificate attached thereto demonstrating compliance with the Borrowing Base Test as of the date of such Request for Advance) delivered in accordance with Section 2.02;

(b) the Commitment Termination Date has not occurred;

(c) immediately after the making of such Advance on the applicable Borrowing Date, the aggregate outstanding Aggregate Loan Amount shall be less than or equal to the lesser of the Commitment Amount and the Borrowing Base at such time (as demonstrated in the calculations attached to the applicable Request for Advance);

(d) each of the representations and warranties of the Borrower contained in the Facility Documents shall be true and correct in all material respects as of such Borrowing Date, including, without limitation, representations and warranties with respect to the Collateral Receivables as of such date (except to the extent such representations and warranties expressly relate to any earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date as if made on such date);

(e) no Servicer Default, Event of Default, Unmatured Event of Default, Early Amortization Event or Borrowing Base Deficiency (as demonstrated in the calculations attached to the applicable Request for Advance) shall have occurred and be continuing at the time of the making of such Advance or shall result upon the making of such Advance;

(f) the Custodian shall have received the Custodial Deliverables with respect to each Receivable included in the calculation of the Borrowing Base in relation to such applicable Advance; and

(g) receipt by the Administrative Agent, the Funding Agents and Lenders of an updated list of Collateral Receivables and Data File as of the date of such Advance.

## Article IV

### REPRESENTATIONS AND WARRANTIES

Section IV.1 Representations and Warranties of the Borrower. The Borrower represents and warrants to each of the Secured Parties on the Closing Date, each Payment Date and each Borrowing Date, as follows:

(a) Due Organization. The Borrower (i) is a Delaware limited liability company duly organized and validly existing under the laws of the State of Delaware and (ii) has full power and authority to own and operate its assets and properties (including, without limitation, the Collateral), conduct the business in which it is now engaged and to execute and deliver and perform its obligations under this Agreement and the other Facility Documents to which it is a party, including, without limitation, its grant of the Liens with regard to the Collateral. The Borrower has no other operations or business other than owning the Collateral Receivables and activities related thereto.

(b) Due Qualification and Good Standing. The Borrower is (i) in good standing in the State of Delaware and (ii) duly qualified to do business and, to the extent applicable, in good standing in each other jurisdiction in which the nature of its business, assets and properties, including the performance of its obligations under this Agreement, the other Facility Documents to which it is a party and its Constituent Documents, requires such qualification, except where failure to so qualify would not have a Material Adverse Effect. The Borrower has obtained all necessary licenses and approvals in each jurisdiction in which the nature of its business, assets and properties, including the performance of its obligations under this Agreement, the other Facility Documents to which it is a party and its Constituent Documents, requires, except where failure to do so would not have a Material Adverse Effect.

(c) Due Authorization; Execution and Delivery; Legal, Valid and Binding; Enforceability. The execution and delivery by the Borrower of, and the performance of its obligations under the Facility Documents to which it is a party and the other instruments, certificates and agreements contemplated thereby are within its powers and have been duly authorized by all requisite action by it and have been duly executed and delivered by it and constitute its legal, valid and binding obligations enforceable against it in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally or general principles of equity, regardless of whether considered in a proceeding in equity or at law. The Borrower has all requisite power and authority to borrow hereunder.

(d) Non-Contravention. None of the execution and delivery by the Borrower of this Agreement or the other Facility Documents to which it is a party, the Borrowings or the pledge of the Collateral hereunder, the consummation of the transactions herein or therein contemplated, or compliance by it with the terms, conditions and provisions hereof or thereof, will (i) conflict with, or result in a breach or violation of, or constitute a default under its Constituent Documents, (ii) conflict with, violate or contravene any Applicable Law in any material respect, (iii) conflict with, violate, contravene, result in a breach of or constitute a default under (A) any indenture, agreement or other contractual restriction binding on or affecting it or any of its assets, including any Related Document, or (B) any order, writ, judgment, award, injunction or decree

binding on or affecting it or any of its assets or properties or (iv) result in a breach or violation of, or constitute a default under, or permit the acceleration of any obligation or liability in, or but for any requirement of the giving of notice or the passage of time (or both) would constitute such a conflict with, breach or violation of, or default under, or permit any such acceleration in, any contractual obligation or any agreement or document to which it is a party or by which it or any of its assets are bound (or to which any such obligation, agreement or document relates).

(e) Government Consents. The execution, delivery and performance by the Borrower of this Agreement and the other Facility Documents to which the Borrower is a party and the consummation of the transactions contemplated by the Facility Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to the Administrative Agent for filing and/or recordation, as of the Closing Date other than (a) those that have already been obtained and are in full force and effect, or (b) any registrations, notices, consents or approvals the failure of which to send or obtain would not reasonably be expected to have a Material Adverse Effect.

(f) Compliance with Agreements, Laws, Etc. The Borrower has duly observed and complied in all material respects with all Applicable Laws relating to the conduct of its business and its assets. The Borrower has preserved and kept in full force and effect its legal existence. The Borrower has preserved and kept in full force and effect its rights, privileges, qualifications and franchises.

(g) No Material Adverse Effect. There is no event, fact, condition or circumstance which is reasonably likely to result in a Material Adverse Effect.

(h) Litigation. Except to the extent the following is not expected to have a Material Adverse Effect, (i) neither the Borrower nor, to the Borrower's actual knowledge, the Seller is a party to any pending action, suit, proceeding or investigation related to the business of the Borrower, (ii) the Borrower is not aware of any pending action, suit, proceeding or investigation with respect to the Borrower's business or any portion of the Collateral, (iii) the Borrower is not a party or subject to any order, writ, injunction, judgment or decree of any Governmental Authority, nor is there any action, suit, proceeding, inquiry or investigation by any Governmental Authority, in either case, that would delay the consummation by the Borrower of the transactions contemplated herein, and (iv) the Borrower has not had existing accrued and/or unpaid penalties, fines or sanctions imposed by and owing to any Governmental Authority or any other governmental payor.

(i) Location. The Borrower's registered office and the jurisdiction of organization of the Borrower is the jurisdiction referred to in Section 4.01(a).

(j) Subsidiaries. The Borrower has no subsidiaries, and 100% of the outstanding Equity Interests in the Borrower are directly owned by the Seller.

(k) Investment Company Act. The Borrower (i) is not required to register as an "investment company" within the meaning of the Investment Company Act, as amended, and (ii) is not a "covered fund" under the Volcker Rule. In determining that the Borrower is not a covered fund, the Borrower relies on Section 3(c)(5) of the Investment Company



Act, as amended, although other exemptions and exclusions may be available to the Borrower thereunder.

(l) Eligible Assets. The Collateral Receivables are “eligible assets” as defined in Rule 3a-7 of the Investment Company Act. Each Loan is an “eligible asset” as defined in Rule 3a-7 of the Investment Company Act.

(m) Information and Reports. Each Request for Advance and each Monthly Report (including the calculation of the Borrowing Base Test) and all other written information, reports, certificates and statements (other than projections and forward-looking statements) furnished by or on behalf of the Borrower to any Secured Party for purposes of or in connection with this Agreement, the other Facility Documents or the transactions contemplated hereby or thereby are, when taken as a whole, true, complete and correct in all material respects as of the date such information is stated or certified; provided, however, that with respect to any projections or forward-looking statements furnished by or on behalf of the Borrower, such projections and forward-looking statements were based on good faith estimates and assumptions that were believed by the Borrower to be reasonable at the time delivered to such Secured Party; and provided, further, that such projections and forward-looking statements are not to be viewed as facts, are subject to significant uncertainties and contingencies beyond the control of the Borrower, no assurance can be given that any particular projection or forward-looking statements will be realized and actual results during the period or periods covered by the projections and forward-looking statements may differ from such projections and that the differences may be material.

(n) ERISA. Neither the Borrower nor any member of its ERISA Group has, or during the past five years had, established or maintained or contributed (or has an obligation to contribute) to, or otherwise has any liability with respect to, any Plan or Multiemployer Plan, and the assets of the Borrower do not constitute the “plan assets” of any “benefit plan investor” each within the meaning of 29 C.F.R. 2510.3-101 as modified in operation by Section 3(42) of ERISA.

(o) Taxes. The Borrower and the Parent have filed all U.S. federal income tax returns and all other material tax returns which are required to be filed by them, if any, and have paid all taxes, if any, except for any taxes or assessments (i) which are being contested in good faith by appropriate proceedings and with respect thereto adequate reserves have been established in accordance with GAAP or (ii) the non-payment of which would not reasonably be expected to give rise to a Material Adverse Effect.

(p) Tax Status. For U.S. federal income tax purposes, assuming that the Aggregate Loan Amount constitutes debt for such purposes, the Borrower (i) is a “disregarded entity” within the meaning of U.S. Department of Treasury regulations Section 301.7701-3 that is wholly owned by a “United States person” (within the meaning of Section 7701(a)(30) of the Code), (ii) has not made an election under U.S. Department of Treasury regulations Section 301.7701-3 or taken any other action that would cause it to be treated other than as an entity disregarded as separate from its owner and (iii) is not an association (or publicly traded partnership) taxable as an association for U.S. federal income tax purposes and (iv) is not subject to withholding under Sections 1441, 1445, 1446 or 1461 of the Code (with respect to its beneficial owner). The Borrower is not subject to any Tax in any jurisdiction outside the United States. The Borrower is not subject to any material Taxes based on net income or gross receipts imposed by a state or local taxing authority.

(q) Collections. The name and address of the Account Bank, together with the account numbers of the Collection Account at the Account Bank are listed on Schedule 4 hereto. The Borrower has no other deposit or securities accounts other than the ones listed on Schedule 4 and subject to Liens in favor of the Secured Parties. No Person, other than as contemplated by and subject to this Agreement and the other Facility Documents, has been granted dominion and control of the Collection Account or the Master Servicing Account, or the right to take dominion and control of the Collection Account or the Master Servicing Account at a future time or upon the occurrence of a future event. The Borrower has not assigned or granted an interest in any rights it may have in the Collection Account to any Person other than the Administrative Agent.

(r) Solvency. On the Closing Date and after giving effect to each Advance hereunder, and the disbursement of the proceeds of such Advance, the Borrower is and will be Solvent.

(s) Representations Relating to the Collateral. The Borrower hereby represents and warrants that:

(i) it owns and has legal and beneficial title to all Collateral Receivables and other Collateral free and clear of any Lien, claim or encumbrance of any person, other than Permitted Liens;

(ii) other than Permitted Liens, the Borrower has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Collateral. The Borrower has not authorized the filing of and is not aware of any financing statements against the Borrower that include a description of collateral covering the Collateral other than any financing statement relating to the security interest granted to the Administrative Agent hereunder or that has been terminated; and there are no judgments, PBGC liens or tax lien filings against the Borrower;

(iii) the Collateral Receivables constitute "accounts," "payment intangibles," "instruments," or proceeds thereof within the meaning of the UCC;

(iv) this Agreement creates a valid, continuing and, upon the filing of the financing statement referred to in clause (v) and execution of the applicable Account Control Agreement, perfected security interest (as defined in Section 1-201(b)(35) of the UCC) in the Collateral in favor of the Administrative Agent, for the benefit and security of the Secured Parties, which security interest is prior to all other liens (other than Permitted Liens), claims and encumbrances and is enforceable as such against creditors of and purchasers from the Borrower;

(v) with respect to Collateral that constitutes chattel paper, accounts or general intangibles, the Borrower has caused or will have caused, on or prior to the Closing Date, the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under Applicable Law in order to perfect the security interest in the Collateral granted to the Administrative Agent, for the benefit and security of the Secured Parties, hereunder (which the Borrower hereby agrees will be an "all asset" filing); and

(vi) each Collateral Receivable included in the calculation of the Borrowing Base as of any date is an Eligible Receivable as of such date.

(t) Purchase Agreement. The Purchase Agreement is the only agreement pursuant to which the Borrower purchases the Collateral Receivables and the related Collateral, unless otherwise mutually agreed to in writing by the Borrower and the Administrative Agent. The Borrower has furnished to the Administrative Agent a true, correct and complete copy of the Purchase Agreement. The purchases by the Borrower under the Purchase Agreement is stated and intended to be a sale enforceable against creditors of the Seller; provided, however, that, notwithstanding the intent of such parties, if a court of competent jurisdiction holds that the transactions evidenced thereby constitute a loan and not a purchase and sale, the Purchase Agreement is deemed to be and is a security agreement under Applicable Law, and the conveyances provided for in such agreement shall be deemed to be a grant to the Borrower of a first priority security interest in and to all of the Seller's right, title and interest, whether now existing or hereafter acquired, in, to and under the assets conveyed thereby to secure all obligations from the Seller to the Borrower. The Purchase Agreement constitutes the legal, valid and binding obligation of the parties thereto, enforceable against such parties in accordance with their respective terms, subject to the effect of any applicable bankruptcy, moratorium, insolvency, reorganization or other similar law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity (whether in a proceeding at law or in equity). There is no provision in the Purchase Agreement that would restrict the ability of the Borrower to collaterally assign its rights thereunder to the Administrative Agent, for the benefit of the Lenders.

(u) [Reserved].

(v) All Payments Made in Ordinary Course of Business. Each payment to any Lender in respect of any principal or interest on its Loan or other Obligation by or on behalf of the Borrower under or in connection with this Agreement shall be (i) a payment of a debt incurred by the Borrower in the ordinary course of business and financial affairs of the Borrower and (ii) made in the ordinary course of business and financial affairs of the Borrower and each such Lender. In the event that the true sale of the Collateral Receivables from the Seller to the Borrower is recharacterized by any court as a secured lending rather than a sale, each remittance of Collections on Collateral Receivables to the Borrower in accordance with this Agreement and the Servicing Agreement will have been (i) in payment of a debt incurred by the Seller in the ordinary course of business or financial affairs of the Seller and the Borrower and (ii) made in the ordinary course of business or financial affairs of the Seller and the Borrower.

(w) Anti-Corruption Laws; Sanctions. The Borrower is conducting and will continue to conduct its business in compliance with Anti-Corruption Laws. The Borrower has implemented, maintained, and will continue to maintain in effect policies and procedures to ensure compliance by the Borrower and its directors, officers, employees, and agents, with Anti-Corruption Laws. Neither the Borrower nor its parent, or any of their respective directors, officers, or employees, or to the knowledge of the Borrower, the affiliates or agents of the Borrower or any of their subsidiaries, is a Sanctioned Person, or located, organized, or resident in a Sanctioned Jurisdiction.

(x) Anti-Money Laundering. The operations of the Borrower are and have been conducted at all times in compliance with applicable financial recordkeeping and

reporting requirements, as amended, the applicable money laundering statutes of all jurisdictions where the Borrower conducts business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental or regulatory agency (collectively, the “Anti-Money Laundering Laws”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Borrower with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Borrower, threatened.

## Article V

### COVENANTS

Section V.1 Affirmative Covenants of the Borrower. The Borrower covenants and agrees that, until the Final Maturity Date (and thereafter until the date that all Obligations have been paid in full (other than with respect to contingent indemnification obligations for which a claim has not yet been asserted)):

(a) Compliance with Agreements, Laws, Etc. It shall (i) duly observe and comply in all material respects with all Applicable Laws relative to the conduct of its business or to its assets, including, without limitation, all consumer lending, servicing and debt collection laws applicable to the Receivables and its activities and obligations as contemplated by the Facility Documents, (ii) preserve and keep in full force and effect its legal existence, (iii) preserve and keep in full force and effect its rights, privileges, qualifications and franchises (including, without limitation, all consumer lending, servicing and debt collection licenses or qualifications applicable to the Receivables and its activities contemplated by the Facility Documents), and (iv) comply with the terms and conditions of each Facility Document and with its Constituent Documents to which it is a party.

(b) Financial Statements; Other Information. It shall provide to the Administrative Agent and each Lender or cause to be provided to the Administrative Agent and each Lender:

(i) promptly after becoming available and in any event within seventy (70) calendar days after the end of each fiscal year of the Parent commencing with the 2024 fiscal year, the Parent’s 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 independent public accountants 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 Parent and its consolidated subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(i) promptly after becoming available and in any event within sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year of the Parent, the Parent’s unaudited 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 senior financial officers as presenting fairly in all material respects the financial condition and results of operations of the Parent and its consolidated subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(ii) promptly after a Responsible Officer of the Servicer or a Responsible Officer of the Borrower obtains actual knowledge of the occurrence of any (A) Early Amortization Event, (B) Unmatured Event of Default, (C) Event of Default, (D) Unmatured Servicer Default or (E) Servicer Default, a certificate of a Responsible Officer of the Borrower, in each case setting forth the details thereof and the action which the Borrower is taking or proposes to take with respect thereto;

(iii) promptly following a request of the Administrative Agent or any Lender, such additional information regarding the Borrower's or the Seller's financial position or business and the Collateral (including reasonably detailed calculations of the Borrowing Base Test) as the Administrative Agent or such Lender may reasonably request; provided, however, that any such additional information data may be redacted to exclude sensitive business, competitive or other confidential information;

(iv) at least once per calendar year, commencing with the year beginning January 1, 2024, at the expense of the Borrower, the Borrower shall deliver to the Administrative Agent and each Lender an agreed upon procedures and/or findings-and-recommendations audit report in form and substance reasonably satisfactory to the Administrative Agent, in accordance with the terms of Section 5.01(d); provided that the first such audit report shall be delivered prior to the six-month anniversary of the Closing Date;

(v) promptly after a Responsible Officer of the Borrower obtains actual knowledge thereof, written notice of the occurrence of the formal commencement by written notice by any Governmental Authority of any formal inquiry, legal action or similar adversarial proceeding against the Borrower, the Seller or the Servicer challenging its authority to originate, hold, own, service, collect or enforce any Receivable, or otherwise alleging (x) in the case of the Borrower, any non-compliance or (y) in the case of the Seller or Servicer, any material non-compliance, in each case, with any Applicable Laws restricting the ability of such Person to originate, hold, pledge, collect, service or enforce such Receivable; and

(vi) promptly after a Responsible Officer of the Borrower obtains actual knowledge thereof, written notice of the occurrence of the formal commencement by written notice by any Governmental Authority of any formal inquiry, legal action or similar adversarial proceeding (A) against the Borrower or (B) against the Seller, the Servicer or any of their respective Affiliates (other than the Borrower) which, if adversely determined, would have a Material Adverse Effect on the Seller, the Servicer or the Receivables.

(c) Use of Proceeds. It shall use the proceeds of each Advance made hereunder solely:

(i) to fund or pay the Purchase Price of Collateral Receivables acquired by the Borrower in accordance with the terms and conditions set forth herein or for general corporate purposes;

(ii) to make distributions to the holders of the Equity Interest of the Borrower in accordance with its Constituent Documents and as permitted hereunder; and

(iii) for such other legal and proper purposes as are consistent with all Applicable Laws.

Without limiting the foregoing, it shall use the proceeds of each Advance in a manner that does not, directly or indirectly, violate any provision of its Constituent Documents or any Applicable Law.

(d) Access to Records; Audit Rights. The Borrower shall permit the Administrative Agent or any of its agents, officers or representatives to enter and attend at its offices during normal office hours for the purposes of monitoring its compliance with this Agreement and the other Facility Documents, including (A) to the maximum extent permitted by law, to examine, make and take with them copies of all books of account, records and documents (including computerized information) relating to the Collateral Receivables and computer printouts of Collateral Receivables, records or other information as the Administrative Agent may reasonably require from time to time and (B) to visit the offices and properties of Servicer for the purpose of examining such records, and to discuss matters relating to the Receivables or the Servicer's or the Borrower's performance under this Agreement with any of the officers or employees of the Servicer having knowledge of such matters. Such access and materials shall be provided not more than once in any calendar year unless (i) an Early Amortization Event or Event of Default has occurred but is no longer continuing, in which case such access and materials shall be provided one additional time with respect to each such Early Amortization Event or Event of Default in any such calendar year or (ii) an Event of Default or an Early Amortization Event has occurred and is continuing, in which case such access and materials shall be provided at any time upon request. If no Event of Default or Early Amortization Event has occurred, such access and materials shall be provided immediately upon request by the Administrative Agent upon ten (10) Business Days' prior notice to the Borrower and the Servicer if the Administrative Agent or a Lender has formed the opinion that such access and materials are required for the purposes of monitoring compliance with the Facility Documents. Such access and materials shall be provided immediately upon request by the Administrative Agent at any time following an Event of Default or Early Amortization Event, whether or not any such Early Amortization Event has been cured. Notwithstanding anything to the contrary, any audit or inspection rights under this Agreement or any other Facility Document that are at the expense of the Borrower shall be capped at \$75,000 per annum; provided that such cap shall not apply following the occurrence of an Event of Default or an Early Amortization Event.

(e) Servicing. The Borrower shall cause each Receivable to be serviced in accordance with the terms of the Servicing Agreement.

(f) Payment of Obligations. The Borrower shall make full and timely indefeasible payment in cash of the principal of and interest on the outstanding Aggregate Loan Amount and the Obligations when due and payable.

(g) Tax Matters. The Borrower shall (and each Lender hereby agrees to) treat the Aggregate Loan Amount as debt for U.S. federal income tax purposes and will take no contrary filing position absent a final determination to the contrary. The Borrower shall at all times (i) maintain its status as disregarded as an entity separate from its owner for U.S. federal income tax purposes) and (ii) ensure that it does not become an association taxable as a corporation or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes. The Borrower (i) shall at all times ensure that its owner is and will remain a "United States person" as defined by Section 7701(a)(30) of the Code and (ii) shall not permit itself to be subject to withholding under Sections 1441, 1445, 1446 or 1461 of the Code (with respect to its beneficial owner). The Borrower and Parent will file all U.S. federal income tax returns and all other material tax returns which are required to be filed by them, if any, and have paid all taxes, if any, except for any taxes or assessments (i) which are being contested in good faith by appropriate proceedings and with respect thereto adequate reserves have been established in accordance with GAAP or (ii) the non-payment of which would not reasonably be expected to give rise to a Material Adverse Effect. Notwithstanding any contrary agreement or understanding, the Servicer, the Borrower, the Administrative Agent and the Lenders (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such tax treatment and tax structure. The foregoing provision shall apply from the beginning of discussions between the parties. For this purpose, the tax treatment of a transaction is the purported or claimed U.S. tax treatment of the transaction under applicable U.S. federal, state or local law, and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. tax treatment of the transaction under applicable U.S. federal, state or local law.

(h) Collections. The Borrower shall, or shall direct Servicer to, direct the Obligor of each Collateral Receivable to pay all Collections directly to the Master Servicing Account and the Borrower shall, or shall cause the Servicer to, transfer all Collections on deposit in the Master Servicing Account to the Collection Account within two (2) Business Days of receipt thereof. In the event that the Borrower, the Servicer or an Affiliate of the Borrower or the Servicer receives any Collections directly from or on behalf of the Obligor thereof in a manner other than through a deposit into the Master Servicing Account or the Collection Account, such Person shall receive all such Collections in trust for the benefit of Administrative Agent as secured party hereunder, and the Borrower shall promptly (and in any event within two (2) Business Days of its receipt and identification thereof) deliver such Collections to the Collection Account unless the Administrative Agent shall have notified the Borrower to deliver (or cause to be delivered) directly to the Administrative Agent all such Collections after the occurrence and during the continuance of an Event of Default, in which event all such Collections (in the form received) shall, if applicable, be endorsed by the applicable Person to the Administrative Agent and delivered to the Administrative Agent promptly upon such Person's receipt thereof. The Borrower shall, or shall cause the Servicer to, ensure that no Person, other than as contemplated by and subject to this Agreement and the Account Control Agreement has been granted dominion and control of the Collection Account or the Master Servicing Account, or the right to take dominion and control of

the Collection Account or the Master Servicing Account at a future time or upon the occurrence of a future event.

(i) Priority of Payments. The Borrower shall ensure all Collections are applied solely in accordance with the provisions of this Agreement.

(j) Servicing; Backup Servicer. (i) The Borrower shall promptly provide (or require the Servicer to promptly provide) the Administrative Agent and each Funding Agent with true and complete copies of all material notices, reports, statements and other documents sent or received by it or the Servicer with respect to the Collateral Receivables. The Borrower shall require the Servicer to service all Collateral Receivables in accordance with the terms hereof and the Servicing Agreement.

(i) The Borrower agrees not to, and will require the Servicer not to, interfere with the Backup Servicer's performance of its duties under the Backup Servicing Agreement or to take any action that would be in breach in any way of the terms of the Backup Servicing Agreement. The Borrower covenants and agrees to, and will require the Servicer to, provide any and all information and data reasonably requested by the Administrative Agent that is available to the Borrower to be provided promptly to the Backup Servicer in order to allow the Backup Servicer to perform its obligations under the applicable Backup Servicing Agreement in the manner and form reasonably requested by the Administrative Agent.

(ii) Upon the occurrence of any Servicer Default, the Administrative Agent shall have the right to immediately substitute for the Servicer (a) itself, (b) the Backup Servicer or (c) another third-party servicer acceptable to the Administrative Agent in all of the Servicer's roles and functions as contemplated by the Facility Documents and upon and after such substitution, the Administrative Agent or the Backup Servicer as substituted Servicer, or such other third-party servicer acceptable to the Administrative Agent, shall be entitled to receive the applicable Servicing Fee.

(k) Changes to Underwriting Guidelines, Servicing Policy. The Borrower shall notify the Administrative Agent and each Funding Agent in writing of any change or amendment to the Underwriting Guidelines or the Servicing Policy and shall not permit the implementation of any material change or amendment to the Underwriting Guidelines or the Servicing Policy that would loosen credit standards or otherwise be adverse to the Lenders unless the Borrower has presented any such material change or amendment to the Administrative Agent and the Administrative Agent has consented to such material change or amendment prior to the proposed effective date of such change or amendment. Upon request of the Administrative Agent, the Borrower shall promptly provide a copy of the most recent Underwriting Guidelines and Servicing Policy as of such date of request. For the avoidance of doubt, unless and until any such material changes to the Underwriting Guidelines or the Servicing Policy are consented to by the Administrative Agent, any Receivables originated pursuant to such amended Underwriting Guidelines or the Servicing Policy will only be Eligible Receivables with the prior written consent of the Administrative Agent.

(l) Rating of Commercial Paper Notes. To the extent that any rating provided by any rating agency with respect to any commercial paper notes issued by any Conduit



Lender is conditional upon the furnishing of documents or information or the taking of any other action in connection with the transactions contemplated by this Agreement, the Borrower will use all reasonable efforts to furnish such documents or information and take any such other action.

(m) Defense. It will defend (or cause the Servicer to defend) all legal proceedings which are necessary to protect the rights or title of the Borrower or Administrative Agent to the Collateral Receivables.

(n) Accuracy. It will ensure that each document or other information it prepares and gives to any party in connection with the Facility Documents or the transactions contemplated by them is, at the time it is given, true, accurate and complete in all material respects and not misleading or deceptive, or likely to mislead or deceive, in any material respect.

(o) Proper Accounts. It will keep proper books of account and other records which accurately record all details relating to Collateral Receivables, and ensure that financial statements furnished by it under the Facility Documents, if any, are prepared in accordance with accounting principles generally accepted in the United States consistently applied.

(p) Incorrect Representation or Warranty. It will notify the Administrative Agent and each Funding Agent promptly if, to the Borrower's actual knowledge, any representation or warranty made by it or on its behalf in connection with a Facility Document is found to have been materially incorrect when made.

(q) Default. It will promptly notify the Administrative Agent and each Funding Agent if it has actual knowledge that any party to a Facility Document (other than the Administrative Agent, a Lender or a Funding Agent) has breached any of its obligations in any material respect or the occurrence of any event which is reasonably expected to have a Material Adverse Effect.

(r) Give Notice of Security Interests. It will promptly notify the Administrative Agent and each Funding Agent promptly after it becomes aware of the creation or existence of any Lien or other security interest in relation to any Collateral Receivable competing with its interest or the interest of the Administrative Agent in such Collateral Receivable (other than any Permitted Lien).

Section V.2 Negative Covenants of the Borrower. The Borrower covenants and agrees that, until the Final Maturity Date (and thereafter until the date that all Obligations have been paid in full (other than with respect to contingent indemnification obligations for which a claim has not yet been made)):

(a) Restrictive Agreements. It shall not enter into or suffer to exist or become effective any agreement that prohibits, limits or imposes any condition upon its ability to create, incur, assume or suffer to exist any Lien (other than Permitted Liens) upon any of its property or revenues constituting Collateral, whether now owned or hereafter acquired, to secure its obligations under the Facility Documents other than this Agreement and the other Facility Documents.

(b) Liquidation; Merger; Sale of Collateral. It shall not consummate any plan of liquidation, dissolution, partial liquidation, merger or consolidation (or suffer any liquidation, dissolution or partial liquidation) nor sell, transfer, exchange or otherwise dispose of any of its assets, or enter into an agreement or commitment to do so or enter into or engage in any business with respect to any part of its assets, except as expressly permitted by this Agreement and the other Facility Documents.

(c) Amendments to Documents, etc. Without the written consent of the Administrative Agent, (i) it shall not amend or modify, or take any action inconsistent with, its Constituent Documents, and (ii) unless otherwise specified in the Facility Documents, it will not amend, modify or waive any term or provision in any Facility Document.

(d) ERISA. It shall not establish any Plan or Multiemployer Plan.

(e) Liens. It shall not create, assume or suffer to exist any Lien on any of its assets now owned or hereafter acquired by it at any time, except for Permitted Liens or as otherwise expressly permitted by this Agreement and the other Facility Documents.

(f) Margin Requirements. It shall not (i) extend credit to others for the purpose of buying or carrying any Margin Stock in such a manner as to violate Regulation T or Regulation U or (ii) use all or any part of the proceeds of any Advance, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that violates the provisions of the Regulations of the Board of Governors, including, to the extent applicable, Regulation U and Regulation X.

(g) Restricted Payments. It shall not make, directly or indirectly, any Restricted Payment (whether in the form of cash or other assets) or incur any obligation (contingent or otherwise) to do so; provided, however, that the Borrower (i) shall be permitted to make Restricted Payments from funds distributed to it pursuant to the Priority of Payments, and (ii) shall be permitted to recycle Collections pursuant to Section 8.03.

(h) Changes to Filing Information. It shall not change its name or its jurisdiction of organization from that referred to in Section 4.01(a), unless it gives thirty (30) days' prior written notice to the Administrative Agent and takes all actions necessary to protect and perfect the Administrative Agent's perfected security interest in the Collateral and shall promptly file appropriate amendments to all previously filed financing statements and continuation statements that are necessary to perfect the security interests of the Administrative Agent under this Agreement under each method of perfection required herein with respect to the Collateral (and shall provide copy of such amendments to the Administrative Agent).

(i) Transactions with Affiliates. It shall not sell, lease or otherwise transfer any property or assets to (other than in accordance with the terms of the Facility Documents), or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates (including, without limitation, sales of Defaulted Receivables and other Collateral Receivables) except as expressly contemplated by this Agreement and the other Facility Documents, unless such transaction is upon terms consistent with those in a comparable arm's length transaction with a Person that is not an Affiliate.

(j) Investment Company Restriction. It shall not become required to register as an “investment company” under the Investment Company Act.

(k) Sanctions. It, nor any of its parents, subsidiaries, or any of their respective directors, officers, or employees, or to the knowledge of the Borrower, its affiliate or agents, shall not, directly or indirectly, use any part of any proceeds of any Loan or lend, contribute, or otherwise make available such proceeds (a) to fund or facilitate any activities or business of or with any Person that, at the time of such funding or facilitation, is a Sanctioned Person, (b) to fund or facilitate any activities or business of or in any Sanctioned Jurisdiction, (c) in any manner that would result in a violation by any Person of Sanctions, or (d) in violation of applicable law, including, without limitation, Anti-Corruption Laws. None of the execution, delivery, or performance of this Agreement, or any activities, transactions, services, or any collateral or security interest contemplated by this Agreement, would result in a violation of Sanctions by any party to this Agreement or their respective affiliates.

(l) Sale of Collateral Receivables. The Borrower shall not sell any Collateral Receivable unless (i) such Collateral Receivable is a Warranty Receivable required to be repurchased by the Seller pursuant to the terms of the Purchase Agreement or (ii) so long as (x) no Event of Default exists before or after giving effect to such sale and transfer (y) and no Early Amortization Event or Unmatured Event of Default would exist as a result of such sale and transfer, such Collateral Receivable is sold in a Permitted Asset Sale.

(m) Indebtedness; Guarantees; Securities; Other Assets. It shall not incur or assume or guarantee any indebtedness, obligations (including contingent obligations) or other liabilities, or issue any additional securities, whether debt or equity, in each case other than (i) pursuant to or as expressly permitted by this Agreement and the other Facility Documents and (ii) obligations under its Constituent Documents. The Borrower shall not acquire any Receivables or other property other than as expressly permitted hereunder and pursuant to the Purchase Agreement.

(n) Validity of this Agreement. It shall not (i) permit the validity or effectiveness of this Agreement or any grant of a security interest in the Collateral hereunder to be impaired, or permit the Liens granted pursuant to this Agreement to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations with respect to this Agreement and (ii) except as permitted by this Agreement, take any action that would permit the Lien of this Agreement not to constitute a valid first priority security interest in the Collateral (subject to Permitted Liens).

(o) Priority of Payments. It shall not pay any cash distributions other than in accordance with the Priority of Payments (it being understood that any amounts paid to the Borrower pursuant to the Priority of Payments may be distributed to its equity holders or used to purchase new Collateral Receivables in accordance with Section 8.03).

(p) Subsidiaries. It shall not have or permit the formation of any subsidiaries.

(q) Name. It shall not conduct business under any name other than its own.

(r) Employees. It shall not have any employees (other than officers and directors to the extent they are employees).

(s) Non-Petition. The Borrower shall not be party to any agreements (other than the Facility Documents) under which it has any material obligations or liability (direct or contingent) without using commercially reasonable efforts to include customary “non-petition” and “limited recourse” provisions therein (and shall not amend or eliminate such provisions in any agreement to which it is party).

(t) Accounts. The Borrower shall not assign or grant an interest in any rights it may have in the Collection Account to any Person other than the Administrative Agent. The Borrower shall cause the Servicer not to assign or grant an interest in any rights it may have in any Collections to any Person.

(u) No Adverse Selection. The Borrower covenants and agrees that, (A) in selecting the Receivables to be sold to the Borrower under the Purchase Agreement from among the loans owned by the Seller and eligible for sale to Borrower under the Purchase Agreement, no selection procedures will be employed that identify such Receivables as being less desirable or valuable than other Eligible Receivables originated since the prior Transfer Date (as defined in the Purchase Agreement) and (B) in selecting the Receivables to be sold in a Permitted Asset Sale from among the loans owned by the Borrower, no selection procedures will be employed that identify such Receivables as being more desirable or valuable than other Receivables owned by the Borrower.

(v) Enforcement. The Borrower shall not take any action, and will use commercially reasonable efforts not to permit any action to be taken by others, that would release any Person from any of such Person’s covenants or obligations under any instrument included in the Collateral, except as permitted under the Servicing Agreement.

(w) No Other Business. The Borrower shall not engage in any business or activity other than pursuant to the Facility Documents, originating, funding, acquiring, owning, holding, administering, selling, enforcing, lending, exchanging, redeeming, pledging, contracting for the management of and otherwise dealing with Collateral Receivables and the other Collateral in connection therewith and entering into the Facility Documents, any applicable Related Documents and any other agreements contemplated by (or necessary to perform under) this Agreement and any activities reasonably related to the foregoing, and shall not engage in any activity or take any other action that would cause the Borrower to be treated as other than disregarded from its owner for U.S. federal income tax purposes.

(x) No Claims Against the Aggregate Loan Amount. Subject to Applicable Law, it shall not claim any credit on, make any deduction from, or dispute the enforceability of payment of the principal or interest payable (or any other amount) in respect of the Aggregate Loan Amount or assert any claim against any present or future Lender, by reason of the payment of any taxes levied or assessed upon any part of the Collateral.

Section V.3 Certain Undertakings Relating to Separateness. (a) Without limiting any, and subject to all, other covenants of the Borrower contained in this Agreement, the Borrower shall conduct its business and operations separate and apart from that of any other Person (including the

Servicer and any of its Affiliates, and the holders of the Equity Interests of the Servicer and its Affiliates) and in furtherance of the foregoing:

(i) The Borrower shall maintain its accounts, financial statements, books, accounting and other records, and other Borrower documents separate from those of any other Person, provided that the Borrower may be consolidated into the Parent solely for tax and accounting purposes.

(ii) The Borrower shall not commingle or pool any of its funds or assets with those of any Affiliate or any other Person, and it shall hold all of its assets in its own name, in each case except as otherwise permitted, contemplated or required by the terms of the Facility Documents.

(iii) The Borrower shall conduct its own business in its own name and, for all purposes, shall not operate, or purport to operate, collectively as a single or consolidated business entity with respect to any Person.

(iv) The Borrower shall pay its own debts, liabilities and expenses (including overhead expenses, if any) only out of its own assets as the same shall become due; provided, that the Parent may pay certain start-up and related upfront expenses in connection with the establishment of the Facility Documents on behalf of the Borrower.

(v) The Borrower has observed, and shall observe organizational formalities to the extent necessary or advisable to preserve its separate existence, and shall preserve its existence, and it shall not, nor shall it permit any Affiliate or any other Person to, amend, modify or otherwise change its Constituent Documents in a manner that would adversely affect the existence of the Borrower as a bankruptcy remote special-purpose entity.

(vi) The Borrower shall not (A) guarantee, become obligated for, or hold itself or its credit out to be responsible for or available to satisfy, the debts or obligations of any other Person or (B) control the decisions or actions respecting the daily business or affairs of any other Person except as expressly permitted by or pursuant to the Facility Documents.

(vii) The Borrower shall, at all times, hold itself out to the public as a legal entity separate and distinct from any other Person and, to the fullest extent permitted by law, shall not merge into or consolidate with any Person, dissolve or terminate in whole or in part, liquidate, transfer or otherwise dispose of all or substantially all of its assets, change its legal structure, engage in a division (whether pursuant to a plan of division or otherwise) or permit any transfer of any of its direct ownership interests, except as permitted by the Facility Documents; provided that the assets of the Borrower may be consolidated into the Parent for accounting purposes and included in publicly filed financial statements of the Parent.

(viii) The Borrower shall not identify itself as a division of any other Person.

(ix) The Borrower shall maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or any other Person.

(x) The Borrower shall not use its separate existence to perpetrate a fraud in violation of Applicable Law.

(xi) The Borrower shall not, in connection with the Facility Documents, act with an intent to hinder, delay or defraud any of its creditors in violation of Applicable Law.

(xii) The Borrower shall maintain an arm's length relationship with its Affiliates and the Servicer and cause all business transactions entered into by it with any of its Affiliates or the Servicer to be on terms that are commercially reasonable and are not more or less favorable to it, as the case may be, than terms and conditions available at the time to it for comparable arm's-length transactions with unaffiliated Persons.

(xiii) Except as permitted by or pursuant to the Facility Documents, the Borrower shall not grant a security interest or otherwise pledge its assets for the benefit of any other Person.

(xiv) The Borrower shall not acquire any securities or debt instruments of the Servicer, its Affiliates or any other Person or own any material assets other than the Collateral Receivables and related assets, any assets acquired by it pursuant to the Facility Documents and any incidental property as may be necessary for its operation.

(xv) The Borrower shall not make loans or advances to any Person.

(xvi) The Borrower shall make no transfer of its assets except as permitted by or pursuant to the Facility Documents.

(xvii) The Borrower shall file its own tax returns separate from those of any other Person or entity, except to the extent that the Borrower is not required to file tax returns under Applicable Law or is not permitted to file its own tax returns separate from those of any other Person.

(xviii) The Borrower shall not acquire obligations or securities of its members.

(xix) The Borrower shall correct any known misunderstanding regarding its separate identity.

(xx) The Borrower shall maintain adequate capital in light of its contemplated business operations.

(xxi) The Borrower shall at all times be organized as a special-purpose entity with organizational documents substantially similar to those in effect on the Closing Date.

(xxii) The Borrower shall at all times conduct its business so that any assumptions made with respect to the Borrower in any “substantive non-consolidation” opinion letter delivered in connection with the Facility Documents will continue to be true and correct in all respects.

(xxiii) The Borrower shall not form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other) except as permitted under the Facility Documents.

(xxiv) The Borrower shall maintain separate office space and/or allocate fairly and reasonably any overhead for office space shared with any other Person.

(xxv) The Borrower shall use invoices and checks bearing its own name (or under any name licensed pursuant to any trademark license or similar agreement) through which all business correspondence and communication are conducted separate from those of any other Person.

(xxvi) The Borrower shall pay the salaries, if any, of its own directors, consultants, agents and employees from its own funds for services provided to it by such persons, if any.

(xxvii) The Borrower shall cause its directors, officers, agents and other representatives to act at all times with respect to it consistently and in furtherance of the foregoing.

Section V.4 Electronic Records. In respect of the portion of the Collateral consisting of any Collateral Receivable which is evidenced by an electronic record that is a “transferable record” as defined in Section 16 of the Uniform Electronic Transactions Act (as in effect in any relevant jurisdiction), if applicable, the Borrower shall, or shall cause the Servicer and/or the Custodian to, deliver to the Administrative Agent the control of such transferable electronic record in accordance with Applicable Law, including the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction (to ensure, among other things, that Administrative Agent has a first priority perfected Lien in such Collateral), which shall be delivered, at the Borrower’s expense, to the Administrative Agent at its address as set forth herein or as otherwise specified by Agent and, except as otherwise expressly provided herein to the contrary, held in Administrative Agent’s possession, custody, and control until all of the Obligations have been fully satisfied or the Administrative Agent expressly agrees to release such documents. Alternatively, Administrative Agent, in its sole discretion, may elect for the Servicer or any other agent to accept delivery of and maintain possession, custody, and control of all such documents and any instruments on behalf of the Administrative Agent during such period of time. The Borrower shall identify (or shall cause the Servicer and/or the Custodian to identify) on the related electronic record the pledge of such Receivable by the Borrower to the Administrative Agent.

## Article VI

### EVENTS OF DEFAULT

Section VI.1 Events of Default. “Event of Default”, wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), unless otherwise waived by the Administrative Agent in its sole discretion:

(a) a default by the Borrower in the payment, when due and payable, of any (i) interest or principal in respect of the Loans and such default is not cured within two (2) Business Days, or (ii) any other Obligation and such failure shall remain uncured for ten (10) days;

(b) the failure to reduce the Aggregate Loan Amount to \$0 on the Final Maturity Date;

(c) the Borrower, the Servicer, the Seller or the Guarantor shall fail generally to pay its debts as they come due, or shall make a general assignment for the benefit of creditors; or any case or other proceeding shall be instituted by the Borrower, the Servicer, the Seller or the Guarantor seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, reorganization, debt arrangement, dissolution, winding up, or composition or readjustment of debts of it or its debts under any Debtor Relief Law or seeking the entry of an order for relief or the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for the Borrower, the Servicer, the Seller or the Guarantor or all or substantially all of any of their assets; or the Borrower, the Servicer, the Seller or the Guarantor shall take any corporate, limited liability company, partnership or trust action to authorize any of such actions;

(d) a case or other proceeding shall be commenced, without the application or consent of the Borrower, the Servicer, the Seller or the Guarantor in any court seeking the liquidation, reorganization, debt arrangement, dissolution, winding up, or composition or readjustment of debts of the Borrower, the Servicer, the Seller or the Guarantor, the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for the Borrower, the Servicer, the Seller or the Guarantor or all or substantially all of any of their assets, or any similar action with respect to the Borrower, the Servicer, the Seller or the Guarantor under any Debtor Relief Law, and (i) such case or proceeding shall continue undismissed, or unstayed and in effect, for a period of thirty (30) consecutive days or (ii) an order for relief in respect of the Borrower, the Servicer, the Seller or the Guarantor shall be entered in such case or proceeding or a decree or order granting such other requested relief shall be entered;

(e) (i) any material provision of any Facility Document shall terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of the Seller, the Servicer or the Borrower, as applicable, (ii) the obligations of Guaranty under the Guaranty and Indemnity Agreement are limited or terminated by operation of law or by Guarantor or (iii) the security interest granted under this Agreement securing the Obligations shall not be or cease to be a perfected first priority security interest in the Collateral (other than Permitted Liens) except to the extent such security interest is released in accordance with the terms of the Facility Documents;



(f) a judgment, order or encumbrance is enforced, or becomes enforceable, over any material portion of the Collateral;

(g) a Lender is not entitled to fully exercise its right of indemnity pursuant to Section 11.4 (subject to the terms thereof) and the circumstances are not rectified within thirty (30) days from written notice to the Borrower from such Lender or the Administrative Agent;

(h) any representation or warranty made by the Borrower, the Servicer, the Seller or the Guarantor in any Facility Document shall have been incorrect in any material respect (except to the extent any such representation or warranty is already qualified by materiality, in which case such representation and warranty shall be true and correct in all respects) when made and, if the breach of such representation or warranty is capable of being cured, such breach shall remain uncured for a period in excess of thirty (30) days after the earlier of (x) written notice to the Borrower or the Servicer by the Administrative Agent or (y) knowledge thereof by the Borrower or the Servicer;

(i) except as otherwise provided in this Section 6.01, any failure by the Borrower, the Servicer, the Seller or the Guarantor to comply with any covenant or obligation in any Facility Document, and if the non-compliance can be remedied, the Borrower, the Servicer, the Seller or the Guarantor, as applicable, does not remedy the non-compliance to the satisfaction of the Lenders within thirty (30) days of the earlier of such Person becoming aware of such breach or receiving notice of such breach from the Administrative Agent;

(j) (i) failure of the Servicer, the Seller or the Guarantor to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than the Obligations) in excess of \$1,000,000, in each case, beyond any applicable grace or cure period, if any, provided therefor; or (ii) breach or default by the Servicer, the Seller or the Guarantor with respect to (1) any other term of Indebtedness (other than the Obligations), or (2) any loan agreement, mortgage, indenture or other agreement relating to Indebtedness, in each case in excess of \$1,000,000 and beyond any applicable grace or cure period, if any, provided therefor, if the effect of such breach or default is to cause that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be;

(k) the Borrowing Base Test shall fail to be satisfied as of any date of calculation and remains unsatisfied for five (5) Business Days following the earlier of the Borrower having actual knowledge thereof or written notice thereof from the Administrative Agent;

(l) the Backup Servicer resigns or is otherwise terminated and, provided that the Administrative Agent shall have used commercially reasonable efforts to timely engage a replacement Backup Servicer reasonably acceptable to the Borrower, the Administrative Agent and the Required Lenders following notice of such resignation or termination, within forty-five (45) days of such notice of termination or such notice of resignation no replacement agreement with an alternative Backup Servicer shall be effective;

(m) one or more final non-appealable judgments shall be entered against, or settlements by, the Borrower, the Servicer, the Seller or the Guarantor by a court of competent jurisdiction assessing monetary damages in excess of (i) in the case of the Borrower, \$100,000 in the aggregate and (ii) in the case of the Servicer, the Seller or the Guarantor,

\$1,000,000 in the aggregate and, in each case, such amount is not discharged, paid or stayed within thirty (30) days;

(n) any of the Borrower, the Servicer, the Seller or the Guarantor is required to be registered under the Investment Company Act;

(o) the occurrence of an ERISA Event with respect to the Borrower or any member of the Borrower's ERISA Group that would be reasonably expected to result, directly or indirectly, in any Lien pursuant to Section 4068 of ERISA being imposed on the Collateral;

(p) the IRS shall file notice of a Lien pursuant to Section 6323 of the Code with regard to any assets of (i) the Servicer, the Seller or the Guarantor, which Lien is reasonably expected to have a Material Adverse Effect, or (ii) the Borrower and, in each case, such Lien shall not have been released within five (5) Business Days after the earlier of the Borrower, the Servicer, the Seller or the Guarantor having actual knowledge thereof or written notice thereof from the Administrative Agent, or the Pension Benefit Guaranty Corporation shall file notice of a Lien pursuant to Section 4068 of ERISA with regard to any of the assets of the Borrower, the Servicer, the Seller or the Guarantor and such Lien shall not have been released or stayed within thirty (30) days after the earlier of the Borrower, the Servicer, the Seller or the Guarantor having actual knowledge thereof or written notice thereof from the Administrative Agent;

(q) the Servicer resigns or any event that constitutes a Servicer Default shall have occurred and the Servicer has not been replaced by the Backup Servicer (or another third-party servicer acceptable to the Administrative Agent) within thirty (30) days of termination or resignation of the Servicer;

(r) any failure by the Servicer to make any deposit of Collections when required and the continuance of such failure for a period of two (2) Business Days;

(s) any failure by the Servicer to timely deliver any Monthly Report and the continuance of such failure for a period of two (2) Business Days (or such longer period if approved by the Administrative Agent);

(t) any litigation, arbitration, criminal or administrative proceeding is brought against the Borrower, the Servicer, the Seller or the Guarantor, in each case, that would be reasonably likely to have a Material Adverse Effect;

(u) a Change of Control occurs; or

(v) following a failure by any Account Bank to be a Qualified Institution, the Borrower fails to replace such Account Bank as Account Bank with a Qualified Institution reasonably acceptable to the Administrative Agent within thirty (30) days following such failure (or such later date as consented to by the Administrative Agent in its sole and absolute discretion).

Section VI.2 Remedies upon an Event of Default.

(a) [Reserved].

(b) Upon the occurrence of any Event of Default and so long as such Event of Default remains unwaived, in addition to all rights and remedies specified in this Agreement and the other Facility Documents, including Article VII, and the rights and remedies of a secured party under Applicable Law, including the UCC, the Administrative Agent, following the direction of, or consent by, the Required Lenders, by notice to the Borrower, may declare that: (1) the Commitments are terminated, and/or (2) the principal of and the accrued Interest on the Aggregate Loan Amount and all other amounts whatsoever payable by the Borrower hereunder are forthwith due and payable, whereupon such amounts shall be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby waived by the Borrower; provided that, upon the occurrence of any Event of Default described in clause (c) or clause (d) of Section 6.01, the Commitments shall automatically terminate and the principal of and the accrued Interest on the Aggregate Loan Amount and all other amounts shall automatically become due and payable, without any further action by any party.

(c) Upon, and subsequent to, the occurrence of an Event of Default and so long as such Event of Default remains unwaived, following written notice by the Administrative Agent (provided in its sole discretion or at the direction of the Required Lenders) of the exercise of control rights with respect to the Collateral: (x) the Servicer's unilateral power to consent to modifications to and direct the acquisition, sales and other dispositions of Receivables on behalf of the Borrower will be immediately suspended, (y) at the request of the Required Lenders, the Administrative Agent shall direct the Servicer to direct the Obligor to make payments on the Collateral Receivables directly to the Administrative Agent on behalf of the Lenders and (z) the Administrative Agent, with the prior written consent of or at the direction of the Required Lenders, shall have, in addition to all other rights and remedies under this Agreement or otherwise, all other rights and remedies provided under the UCC of each applicable jurisdiction and other Applicable Laws to a secured party, which rights shall be cumulative, including the right to foreclose upon the Collateral and sell all or any portion thereof at public or private sale (and the Borrower agrees that, to the extent that notice of such sale is required, notice ten (10) days prior to such sale shall be adequate and reasonable notice for all purposes).

(d) Without limiting the generality of the foregoing, the Borrower agrees that subject to the terms of this Agreement, upon the occurrence and continuation of an Event of Default, if the Administrative Agent chooses to exercise its foreclosure rights with respect to the Collateral, the Administrative Agent shall have the right, subject to the mandatory requirements of Applicable Law, to sell or otherwise dispose of all or any part of the Collateral at a public or private sale, for cash, upon credit or for future delivery, as the Administrative Agent shall deem appropriate. Any purchaser that has purchased any Collateral pursuant to any such sale shall hold the property sold absolutely free from any claim or right on the part of the Borrower, and the Borrower hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal which the Borrower now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

(e) The Administrative Agent shall give a Responsible Officer of each of the Borrower and the Seller ten (10) days' prior written notice (which the Borrower and the Seller agree is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Administrative Agent's intention to sell any Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to

be made and the day on which the Collateral, or portion thereof, shall first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Administrative Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate portions thereof, as the Administrative Agent may (in its sole and absolute discretion) determine. The Administrative Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Administrative Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Administrative Agent until the sale price is paid by the purchaser or purchasers thereof, but the Administrative Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by law, private) sale made pursuant to this Agreement, the Administrative Agent may bid for or purchase, free (to the extent permitted by Applicable Law) from any right of redemption, stay, valuation or appraisal on the part of the Borrower or the Seller (all said rights being also hereby waived and released to the extent permitted by Applicable Law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Person from the Borrower or the Seller as a credit against the purchase price, and such Person may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to the Borrower or the Seller therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Administrative Agent shall be free to carry out such sale pursuant to such agreement and after a sale of the Collateral, the Borrower shall not be entitled to the return of the Collateral, and neither party shall be entitled to the return of any portion thereof subject thereto, notwithstanding the fact that after the Administrative Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Obligations paid in full; provided that the Administrative Agent shall apply such proceeds in accordance with Section 9.01(a) and after all Obligations have been paid in full, any Collateral and any funds remaining from the sale of the Collateral shall be released to the Borrower or its designees, as applicable, and control over and ownership of such Collateral and any such funds shall revert to the Borrower. As an alternative to exercising the power of sale herein conferred upon it, the Administrative Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court appointed receiver. Any sale pursuant to the provisions of this Section shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its equivalent in other jurisdictions. The Administrative Agent shall select an offer to purchase in its sole discretion but shall not be obligated to make any sale of Collateral.

(f) Upon the occurrence of an Event of Default, regardless of the other means of obtaining payment of any of the obligations of the Borrower hereunder or under any other Facility Document, each of the Lenders and any other Secured Party is hereby authorized at any time and from time to time, without notice to the Borrower (any such notice being expressly waived by the Borrower) and to the fullest extent permitted by law, to set off and apply deposits and other sums against the obligations of the Borrower due under this Agreement and the other

Facility Documents, whether or not such Lender or the other Secured Parties shall have made any demand under this Agreement or the other Facility Documents. If any Lender or other Secured Party, directly or through an Affiliate, obtains any payment of any Obligation of the Borrower, such Lender or Secured Party shall turn over such payments to the Administrative Agent for deposit into the Collection Account and application in accordance with Section 9.01.

Section VI.3 Servicer Events of Default.

(a) Upon the occurrence of a Servicer Default and so long as such Servicer Default remains unwaived, the Required Lenders, by written notice to the Servicer (with a copy to the Backup Servicer) (a "Servicer Termination Notice"), may terminate all of the rights and obligations of the Servicer in accordance with the terms of the Servicing Agreement.

**Article VII**

**PLEDGE OF COLLATERAL; RIGHTS OF THE ADMINISTRATIVE AGENT**

Section VII.1 Grant of Security. (a) The Borrower hereby grants, pledges, transfers and collaterally assigns to the Administrative Agent, for the benefit of the Secured Parties, as collateral security for all Obligations, a continuing security interest in, and a Lien upon, all of the Borrower's right, title and interest in, to and under, the following property, in each case whether tangible or intangible, wheresoever located, and whether now owned by the Borrower or hereafter acquired and whether now existing or hereafter coming into existence (all of the property described in this Section 7.01(a) being collectively referred to herein as the "Collateral"):

- (i) all Collateral Receivables and Related Documents, both now and hereafter owned, including all Collections and other proceeds thereon or with respect thereto;
- (ii) the Collection Account and all Cash and investment property on deposit therein;
- (iii) each Facility Document and all rights, remedies, powers, privileges and claims under or in respect thereto (whether arising pursuant to the terms thereof or otherwise available to the Borrower at law or equity), including the right to enforce each such Facility Document and to give or withhold any and all consents, requests, notices, directions, approvals, extensions or waivers under or with respect thereto, to the same extent as the Borrower could but for the assignment and security interest granted to the Administrative Agent under this Agreement;
- (iv) all accounts, chattel paper, deposit accounts, financial assets, general intangibles, instruments, investment property, letter of credit rights and other supporting obligations of the Borrower whether or not relating to the foregoing (in each case as defined in the UCC);
- (v) all other property of the Borrower and all property of the Borrower which is delivered to the Administrative Agent (or any custodian on its behalf) by or on behalf of the Borrower or held by any party by or on behalf of the Borrower;

(vi) all security interests, liens, collateral, property, guaranties, supporting obligations, insurance and other agreements or arrangements of whatever character from time to time supporting or securing payment of the assets, investments and properties described above; and

(vii) all Proceeds of any and all of the foregoing.

(a) All terms used in this Section 7.01 that are defined in the UCC but are not defined in Section 1.01 shall have the respective meanings assigned to such terms in the UCC.

Section VII.2 Release of Security Interest. Liens granted to the Administrative Agent for the benefit of the Secured Parties on any Collateral shall be automatically released (i) if and only if all Obligations have been paid in full and all Commitments have been terminated (other than with respect to contingent indemnification obligations for which a claim has not yet been made) or (ii) upon the sale or disposition of any Collateral by the Borrower in compliance with the terms and conditions of this Agreement and, in each case, the Administrative Agent (for itself and on behalf of the other Secured Parties) shall, at the expense of the Borrower, promptly execute, deliver and file or authorize for filing such instruments as the Borrower shall reasonably request in order to reassign, release or terminate the Secured Parties' security interest in the Collateral. Any and all actions under this Article VII in respect of the Collateral shall be without any recourse to, or representation or warranty by any Secured Party and shall be at the sole cost and expense of the Borrower.

Section VII.3 Rights and Remedies. Without limiting Section 6.02, the Administrative Agent (for itself and on behalf of the other Secured Parties) shall have all of the rights and remedies of a secured party under the UCC and other Applicable Law. Upon, and subsequent to, the occurrence of an Event of Default, the Administrative Agent may, in addition to any remedies set forth in Section 6.02, following the direction of, or consent by, the Required Lenders (i) instruct the Borrower to deliver any or all of the Collateral, the Related Documents and any other documents relating to the Collateral to the Administrative Agent or its designees and otherwise give all instructions for the Borrower regarding the Collateral; (ii) sell or otherwise dispose of the Collateral in a commercially reasonable manner, all without judicial process or proceedings; (iii) take control of the Proceeds of any such Collateral; (iv) subject to the provisions of the applicable Related Documents, exercise any consensual or voting rights in respect of the Collateral; (v) release, make extensions, discharges, exchanges or substitutions for, or surrender all or any part of the Collateral; (vi) enforce the Borrower's rights and remedies with respect to the Collateral; (vii) institute and prosecute legal and equitable proceedings to enforce collection of, or realize upon, any of the Collateral; (viii) require that the Borrower immediately take all actions necessary to cause the liquidation of the Collateral in order to pay all amounts due and payable in respect of the Obligations, in accordance with the terms of the Related Documents; (ix) redeem or withdraw or cause the Borrower to redeem or withdraw any asset of the Borrower to pay amounts due and payable in respect of the Obligations; (x) make copies of or, if necessary, remove from the Borrower's, the Servicer's and their respective agents' (including custodian's) place of business all books, records and documents relating to the Collateral; and (xi) endorse the name of the Borrower upon any items of payment relating to the Collateral or upon any proof of claim in bankruptcy against an account debtor.

The Borrower hereby agrees that, upon, and subsequent to, the occurrence of an Event of Default, at the request of the Administrative Agent, it shall execute all documents and agreements which are necessary or appropriate to have the Collateral to be assigned to the Administrative Agent or its

designee. For purposes of taking the actions described in clauses (i) through (xi) of the first paragraph of this Section 7.03, the Borrower hereby irrevocably appoints the Administrative Agent as its attorney-in-fact (which appointment being coupled with an interest and is irrevocable while any of the Obligations remain unpaid, with power of substitution), in the name of the Administrative Agent or in the name of the Borrower or otherwise, for the use and benefit of the Administrative Agent (for the benefit of the Secured Parties), but at the cost and expense of the Borrower and, except as prohibited by Applicable Law, without notice to the Borrower.

Section VII.4 Remedies Cumulative. Each right, power, and remedy of the Administrative Agent and the other Secured Parties, or any of them, as provided for in this Agreement or in the other Facility Documents or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or in the other Facility Documents or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Administrative Agent or any other Secured Party of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by such Persons of any or all such other rights, powers, or remedies.

Section VII.5 Related Documents. (a) The Borrower hereby agrees that, to the extent not expressly prohibited by, or otherwise in conflict with, the terms of the Related Documents, after the occurrence of an Event of Default, it shall (i) upon the written request of the Administrative Agent, promptly forward to the Backup Servicer (or other successor servicer) all material information and notices which it receives under or in connection with the Related Documents relating to the Collateral, and (ii) upon the written request of the Administrative Agent, act and refrain from acting in respect of any request, act, decision or vote under or in connection with the Related Documents relating to the Collateral only in accordance with the direction of the Administrative Agent.

(a) The Borrower agrees that, to the extent the same shall be in the Borrower's possession, it will hold all Related Documents relating to the Collateral in trust for the Administrative Agent on behalf of the Secured Parties, and, upon request of the Administrative Agent following the occurrence of an Event of Default or as otherwise provided herein, promptly deliver the same to the Administrative Agent or its designee (including the Backup Servicer).

Section VII.6 Borrower Remains Liable. (a) Notwithstanding anything herein to the contrary, (i) the Borrower shall remain liable under the contracts and agreements included in and relating to the Collateral (including the Related Documents) to the extent set forth therein, and shall perform all of its duties and obligations under such contracts and agreements to the same extent as if this Agreement had not been executed, and (ii) the exercise by any Secured Party of any of its rights hereunder shall not release the Borrower from any of its duties or obligations under any such contracts or agreements included in the Collateral.

(a) No obligation or liability of the Borrower is intended to be assumed by the Administrative Agent or any other Secured Party under or as a result of this Agreement or the other Facility Documents, and the transactions contemplated hereby and thereby, including under any Related Document or any other agreement or document that relates to the Collateral and, to the maximum extent permitted under provisions of law, the Administrative Agent and the other Secured Parties expressly disclaim any such assumption.

Section VII.7 Protection of Collateral. The Borrower shall from time to time execute and deliver all such supplements and amendments hereto and file or authorize the filing of all such UCC-1 financing statements, continuation statements, instruments of further assurance and other instruments, and shall take such other action as may be reasonably necessary or advisable or desirable to secure the rights and remedies of the Secured Parties hereunder and to (including at the reasonable request of the Administrative Agent):

- (i) grant security more effectively on all or any portion of the Collateral;
- (ii) maintain, preserve and perfect any grant of security made or to be made by this Agreement including, without limitation, the first priority nature of the lien or carry out more effectively the purposes hereof (subject to Permitted Liens);
- (iii) perfect, publish notice of or protect the validity of any grant made or to be made by this Agreement (including, without limitation, any and all actions necessary or desirable as a result of changes in law or regulations);
- (iv) enforce any of the Collateral or other instruments or property included in the Collateral;
- (v) preserve title to the Collateral and defend title to the Collateral and the rights therein of the Administrative Agent and the Secured Parties in the Collateral against the claims of all third parties; and
- (vi) pay or cause to be paid any and all taxes levied or assessed upon all or any part of the Collateral.

For so long as this Agreement remains in full force and effect, the Borrower hereby designates the Administrative Agent as its agent and attorney-in-fact to prepare and file any UCC-1 financing statement, continuation statement and all other instruments, and take all other actions, required pursuant to this Section 7.07. Such designation shall not impose upon the Administrative Agent, or release or diminish, the Borrower's obligations under this Section 7.07. The Borrower further authorizes and shall cause its counsel to file, without the Borrower's signature, UCC-1 financing statements that names the Borrower as debtor and the Administrative Agent as secured party and that describes "all assets in which the debtor now or hereafter has rights" as the Collateral in which the Administrative Agent has a grant of security hereunder and any amendments or continuation statements that may be reasonably necessary or desirable.

Section VII.8 Conduit Lenders. The Borrower hereby agrees and consents to the pledge, assignment and/or granting of a security interest by each Conduit Lender in or of all of its rights under, interest in, title to and obligations under this Agreement and the other Facility Documents to such Conduit Lender's collateral agent or trustee under such Conduit Lender's commercial paper note program; provided, that, no such pledge, assignment or grant shall release such Conduit Lender from any of its obligations hereunder or substitute any such pledge or grantee for such Conduit Lender as a party hereto.



## Article VIII

### ACCOUNTS, ACCOUNTINGS AND RELEASES

Section VIII.1 Collection of Money . Except as otherwise expressly provided herein, the Administrative Agent may demand payment or delivery of, and shall receive and collect, directly and without intervention or assistance of any fiscal agent or other intermediary, all Money and other property payable to or receivable by the Administrative Agent pursuant to this Agreement, including all payments due on the Collateral, in accordance with the terms and conditions of such Collateral and the related Facility Documents. The Administrative Agent shall segregate and hold all such Money and property received by it in trust for the Secured Parties and shall apply it as provided in this Agreement. The Collection Account shall be the subject of the Account Control Agreement. The Collection Account may contain any number of subaccounts for the convenience of the Servicer in administering the Collection Account or the Collateral.

#### Section VIII.2 Collection Account.

(a) The Borrower shall, on or prior to the Closing Date, establish at the Account Bank one or more accounts in the name “ACV Capital Funding II Collection Account” or such other name as is acceptable to the Administrative Agent, which shall be designated as the “Collection Account”. The Collection Account shall be subject to the Lien of the Administrative Agent and, from and after the initial Borrowing Date, the Collection Account shall be maintained with the Account Bank and shall be the subject of the Account Control Agreement.. The Borrower shall deposit, or cause to be deposited, from time to time into the Collection Account, in accordance with the terms of this Agreement, all Collections. All Monies deposited from time to time in the Collection Account pursuant to this Agreement shall be held by the Borrower as part of the Collateral and shall be applied to the purposes herein provided. Prior to the Administrative Agent taking control of the Collection Account by delivery of a notice of exclusive control, the Borrower and the Servicer shall be the only parties permitted to access such accounts. Unless an Event of Default, Unmatured Event of Default or an Early Amortization Event shall have occurred, the Administrative Agent agrees that it shall not exercise any right under the Account Control Agreement to deliver any notice of exclusive control with respect to the Collection Account.

#### Section VIII.3 Recycling of Collections During Collection Period.

(a) Subject to the Recycling Conditions set forth in Section 8.03(b), on each Transfer Date on which Receivables represented by the Seller to be Eligible Receivables (other than with respect to the requirement that each such Receivable is a Collateral Receivable) are to be purchased by the Borrower pursuant to the Purchase Agreement, the Purchase Price for those Receivables is to be paid by the Borrower applying:

(i) first, where the Transfer Date is not a Payment Date and provided that no Early Amortization Event is continuing and no Event of Default has occurred, Collections in the Collection Account (less the estimated Servicing Fees, interest and any other fees and expenses that will be payable by the Borrower on the next Payment Date, as determined by the Servicer based on amounts paid on the immediately prior Payment Date) to the extent the Borrower elects to apply such funds to payment of such Purchase Price; and

(ii) third, any proceeds of any Advance made on such Transfer Date (any use of funds pursuant to clauses (i) through (ii), a “Release”).

The Borrower shall not, and shall direct the Servicer to not, accept any offer by the Seller to the Borrower to purchase Receivables if the amounts available under paragraphs (a) through (c) above, and the satisfaction of any Purchase Price in part by a capital contribution made by the Seller to the Borrower pursuant to Section 3.1 of the Purchase Agreement, are insufficient to pay the Purchase Price of such Receivables on that Transfer Date. For avoidance of doubt, nothing in this clause obliges the Borrower to accept any offer by the Seller to the Borrower to purchase any Receivables.

(b) Subject to satisfaction of the conditions set forth in clauses (i) through (v) below (collectively, the “Recycling Conditions”), on any Business Day, the Borrower may withdraw funds on deposit in the Collection Account:

(i) no Early Amortization Event shall have occurred and be continuing and the Commitment Termination Date shall not have occurred;

(ii) no Servicer Default, Event of Default or Unmatured Event of Default shall have occurred and remain unwaived;

(iii) each of the representations and warranties of the Borrower contained in the Facility Documents shall be true and correct in all material respects as of such date (except to the extent such representations and warranties expressly relate to any earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date as if made on such date;

(iv) the Borrower shall have delivered a Release Notice to the Administrative Agent (which may be delivered electronically) and a Data File identifying certain characteristics of the Receivables being sold to the Borrower in connection with such Release; and

(v) after giving effect to such release of funds, the Borrowing Base Test will be satisfied.

#### Section VIII.4 Accountings.

(a) The Borrower, or the Servicer on behalf of the Borrower, shall compile and provide (or cause to be compiled and provided) (i) a monthly report on a settlement basis (each, a “Monthly Report”) for the previous Collection Period and (ii) a Data File with respect to the Collateral Receivables as of the last day of such previous Collection Period, in each case, no later than 5:00 p.m. (New York time), on each Monthly Reporting Date (beginning with the Monthly Reporting Date following the month in which the initial Advance occurs) to the Administrative Agent and each Funding Agent. The Monthly Report delivered for any Collection Period shall contain the information with respect to the Receivables included in the Collateral set forth in Schedule 2 hereto (including, without limitation, a calculation of the Borrowing Base), and shall be determined as of the last day of the Collection Period applicable to such Monthly Report.

(b) Upon the request of the Administrative Agent, the Borrowers (or the Servicer on its behalf) shall cause the Administrative Agent to receive read-only access to the Collection Account or, if read-only access is not available, daily account statements with respect to the Collection Account.

Section VIII.5 Sale and Release of Receivables. (a) Notwithstanding anything to the contrary in this Agreement, without the consent of the Administrative Agent or any Lender and subject to the satisfaction of the conditions set forth in this Section 8.05, (1) the Borrower may sell and transfer to the Seller any Warranty Receivable that the Seller is required to repurchase pursuant to the terms of the Purchase Agreement, and (2) the Borrower may sell and transfer any Collateral Receivable in a Permitted Asset Sale. As a condition of any such sale or transfer:

(i) (x) in the case of a repurchase of a Warranty Receivable, such repurchase shall occur on the Payment Date immediately following the Seller obtaining actual knowledge that the related Collateral Receivable is a Warranty Receivable or receiving notification thereof from the Administrative Agent (in accordance with Section 6.1 of the Purchase Agreement), and Borrower shall deliver, in accordance with the terms hereof, a Borrowing Base Certificate and updated Data File demonstrating pro forma compliance with the Borrowing Base Test; (y) in the case of any Permitted Asset Sale (other than a Permitted Asset Sale of Defaulted Receivables pursuant to clause (z) below), the Borrower shall deliver a written notice to the Administrative Agent and each Funding Agent at least two (2) Business Days prior to the settlement date for any sale of such Collateral Receivable and, as a condition to any such sale of a Collateral Receivable, the Borrower shall deliver a certificate of a Responsible Officer of the Borrower (or the Servicer on its behalf) certifying that the sale of such Collateral Receivable is a Permitted Asset Sale being made in accordance with the terms and conditions of this Agreement and no Borrowing Base Deficiency will exist after giving effect to such Permitted Asset Sale, identifying the Collateral Receivables to be released in such Permitted Asset Sale, and attaching an updated loan schedule listing all Collateral Receivables owned by the Borrower after giving effect to such Permitted Asset Sale, together with an updated Monthly Report containing the relevant information with respect to the Collateral calculated on a pro forma basis after giving effect to such Permitted Asset Sale; and (z) in the case of a Permitted Asset Sale of any Defaulted Receivable, such repurchase shall occur on any Business Day following the Collection Period in which such Collateral Receivable became a Defaulted Receivable as agreed to by the Borrower and the Seller, and in connection with any Permitted Asset Sale of Defaulted Receivables, Borrower shall deliver to the Administrative Agent and each Funding Agent (1) a written notice prior to such date of repurchase attaching a schedule identifying the Collateral Receivables to be released in such Permitted Asset Sale, (2) a Borrowing Base Certificate, and (3) a certificate of a Responsible Officer of the Borrower (or the Servicer on its behalf) certifying that the sale of such Collateral Receivable is a Permitted Asset Sale being made in accordance with the terms and conditions of this Agreement; provided, that, no such sale and transfer of any Collateral Receivable (other than a Warranty Receivable) shall be permissible or effective if the aggregate Principal Balance of all Receivables purchased by the Seller or any of its Affiliates hereunder in Permitted Asset Sales during any 12-month period exceeds 10% of the aggregate Principal Balance of all Receivables acquired by the Borrower during such 12-month period; and

(ii) the cash proceeds of any such sale and transfer of any Collateral Receivable shall be equal to the Repurchase Price (provided, that, the proceeds of any such sale and transfer of any Defaulted Receivable shall be equal to the fair market value thereof) and shall be deposited directly into the Collection Account.

(a) Any Collateral Receivable that is sold by the Borrower in accordance with the terms of this Agreement and (if applicable) the Purchase Agreement shall automatically be released from the Lien of this Agreement, and the Administrative Agent is hereby authorized by each Lender to, and shall, deliver and, if necessary, execute such UCC-3 financing statements and releases prepared by the Borrower and submitted to the Administrative Agent for authorization as are necessary or reasonably requested in writing by the Borrower to terminate and remove of record any documents constituting public notice of the security interest in such sold Receivables granted hereunder being released.

(b) The Administrative Agent is hereby authorized by each Lender to, and shall, upon the written request of the Borrower (or the Servicer on its behalf), at such time as there are no Commitments outstanding and all Obligations of the Borrower hereunder and under the other Facility Documents have been satisfied (other than contingent indemnification obligations for which a claim has not been asserted), deliver and, if necessary, execute such UCC-3 financing statements and releases prepared by the Borrower and submitted to the Administrative Agent for authorization as are necessary or reasonably requested in writing by the Borrower to terminate and remove of record any documents constituting public notice of the security interest in such Collateral granted hereunder being released.

Section VIII.6 Account Details. The account number of the Collection Account is set forth on Schedule 4 hereto. Amounts credited to the Collection Account may be invested in Eligible Investments at the written direction of the Borrower to the Account Bank, provided that prior to any such investment the Borrower shall have entered into a securities account control agreement satisfactory in form and substance to the Administrative Agent. To the extent the Account Bank is not directed in writing by the Borrower, such assets shall remain uninvested.

Section VIII.7 Servicer's Monthly Payment Certificate. No later than 1:00 p.m. (New York time), on the second Business Day immediately preceding each Payment Date, the Borrower shall cause the Servicer to deliver to the Administrative Agent, each Funding Agent (which shall promptly make such information available to the Lenders in its Facility Group in accordance with its customary practice) and the Backup Servicer, a copy of the Servicer's Monthly Payment Certificate executed by a Responsible Officer of the Servicer substantially in the form of Exhibit E, which shall contain: (i) instructions with respect to the specific distributions to be made by the Borrower (or the Servicer on its behalf) from Available Funds to each Person entitled thereto on the related Payment Date pursuant to Section 9.01(a); (ii) to the extent an Advance shall not have occurred in the thirty (30) days preceding the delivery of the Servicer's Monthly Payment Certificate, a certification that, as of such date and as of the Payment Date (after giving effect to all distributions and transfers contemplated on such date), each of the Borrower, Seller and Servicer is and will be Solvent and no Event of Default, Unmatured Event of Default, Servicer Default or Unmatured Servicer Default has occurred or will occur as of such Payment Date (after giving effect to all distributions and transfers contemplated on such date), or describing any of the foregoing that has occurred and the steps being taken as a result thereof; (iii) all information required pursuant to the Backup Servicing Agreement or necessary to enable the Backup Servicer to verify the information specified in the Backup Servicing Agreement (if any); (iv) to the extent an Advance shall not

have occurred in the thirty (30) days preceding the delivery of the Servicer's Monthly Payment Certificate, attaching a Borrowing Base Certificate, dated and current as of the close of business on the fifth (5th) Business Day preceding the delivery date for such Servicer's Monthly Payment Certificate set forth above, and showing as of such date and on a pro forma basis as of the Payment Date (after giving effect to all distributions, transfers and other activity to occur on such Payment Date), the calculation of the Eligible Receivables Balance, any excess concentrations with respect to any breach of a Concentration Limit and the Borrowing Base; and (v) containing such other information as is reasonably requested by the Administrative Agent. The Borrower shall, or shall cause the Servicer to, immediately notify the Administrative Agent and each Funding Agent if, to its actual knowledge, any such pro forma information or calculations fail to be true in any material respect as of the applicable Payment Date, together with corrected and updated information and calculations as of such Payment Date.

## Article IX

### APPLICATION OF MONIES

Section IX.1 Disbursements of Monies. (a) Notwithstanding any other provision in this Agreement, but subject to the other subsections of this Section 9.01, on each Payment Date, based on the Servicer's Monthly Payment Certificate, the Borrower (or the Servicer on its behalf) shall disburse Available Funds in accordance with the following priorities (the "Priority of Payments") and the related Monthly Report:

(i) first, on a pro rata basis (1) to the Account Bank, the related Account Bank Fee, plus any such accrued fees not paid to the Account Bank when due on any prior Payment Date, plus any expense, indemnity or other amounts owing by the Borrower to such party under the Facility Documents (including any wire transfer fees or other banking fees owing to the Account Bank), to the extent accrued and unpaid through the last day of the related Collection Period until such accrued fees, expenses, indemnities and other amounts are paid in full; provided, however, that the aggregate amount of expenses, indemnities and other amounts (excluding the Account Bank Fee) payable under this clause (1) shall not exceed \$75,000 in any calendar year; provided further, that after the occurrence and during the continuance of an Event of Default, such cap shall not apply; and (2) pro rata to the Servicer and the Backup Servicer, the Servicing Fee and Backup Servicer Fee, plus any such accrued fees not paid to the Servicer or the Backup Servicer when due on any prior Payment Date, plus any expense, indemnity and other amounts owing by the Borrower to either of such parties under the Facility Documents, respectively, each to the extent accrued and unpaid through the last day of the related Collection Period until such accrued fees, expenses, indemnities and other amounts are paid in full; provided, however, that the aggregate amount of expenses, indemnities and other amounts (excluding the Servicing Fee and the Backup Servicer Fee) payable under this clause (2) to the Servicer and the Backup Servicer shall not exceed \$75,000 in the aggregate, in any calendar year; provided further, that after the occurrence and during the continuance of an Event of Default, such cap shall not apply to any conversion fee paid to a successor Servicer.

(ii) second, to the applicable Funding Agents, for distribution to each Lender, to pay (A) first, accrued and unpaid Interest on the Advances due to such Lender and (B) second, Unused Fees and Additional Unused Fees due each such Lender;

(iii) third, to the applicable Funding Agents, for distribution to each Lender, (1) during the Revolving Period, to pay principal to each Lender (pro rata, based on each Lender's share of the Aggregate Loan Amount) until the Borrowing Base Test is satisfied (on a pro forma basis as at the most recent Determination Date), and (2) at any other time, to pay principal to each Lender (pro rata, based on each Lender's share of the Aggregate Loan Amount) until paid in full;

(iv) fourth, to pay, on a pro rata basis, accrued and unpaid amounts owing to Affected Persons (if any) under Sections 2.08 and 11.03, and all other fees, expenses or indemnities owed to the Secured Parties or Indemnified Parties;

(v) fifth, on a pro rata basis, based on amounts payable to each party pursuant to this clause (v), to the Account Bank, the Servicer and the Backup Servicer, any amounts due and payable to each such party which are in excess of any applicable cap on such amounts described in clause (i); and

(vi) sixth, the remainder to or at the direction of the Borrower.

(a) If, on any Payment Date, the Borrower (or the Servicer on its behalf) fails to direct the Account Bank to withdraw funds from the Collection Account in accordance with the Monthly Report, the Administrative Agent may direct the Account Bank in writing to make the required distributions from the Collection Account.

## Article X

### THE ADMINISTRATIVE AGENT AND THE FUNDING AGENTS

Section X.1 Authorization and Action. Each Lender hereby irrevocably appoints and authorizes its related Funding Agent and the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and, to the extent applicable, the other Facility Documents as are delegated to such Funding Agent or the Administrative Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, subject to the terms hereof and thereof. Neither the Administrative Agent nor any Funding Agent (the Administrative Agent and each Funding Agent being referred to in this Article as an "Agent") shall have any duties or responsibilities, except those expressly set forth herein or in the other Facility Documents, or any fiduciary relationship with any Secured Party, and no implied covenants, functions, responsibilities, duties or obligations or liabilities on the part of any Agent shall be read into this Agreement or any other Facility Document to which any Agent is a party (if any) as duties on its part to be performed or observed. No Agent shall have or be construed to have any other duties or responsibilities in respect of this Agreement and the transactions contemplated hereby. As to any matters not expressly provided for by this Agreement or the other Facility Documents, each Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of (i) in the case of the Administrative Agent, the Required Lenders or the Funding Agents, as applicable, and (ii) in the case of any Funding Agent, the majority of Lenders (based on each Lender's Commitment) in such Funding Agent's Facility Group; provided that no Agent shall be required to take any action which exposes the Agent, in its judgment, to personal liability, cost or expense or which is contrary to this Agreement, the other Facility Documents or Applicable Law,

or would be, in its judgment, contrary to its duties hereunder, under any other Facility Document or under Applicable Law. Each Lender agrees that in any instance in which the Facility Documents provide that an Agent's consent may not be unreasonably withheld, provide for the exercise of an Agent's reasonable discretion, or provide to a similar effect, it shall not in its instructions (or, by refusing to provide instruction) to the such Agent withhold its consent or exercise its discretion in an unreasonable manner.

Section X.2 Delegation of Duties. Each Agent may execute any of its duties under this Agreement and each other Facility Document by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

Section X.3 Agent's Reliance, Etc.. (a) Neither any Agent nor any of their directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Agreement or any of the other Facility Documents, except for its or their own gross negligence or willful misconduct. Without limiting the generality of the foregoing, each Agent: (i) may consult with legal counsel (including, without limitation, counsel for the Borrower or the Servicer or any of their Affiliates) and independent public accountants and other experts selected by it with due care and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (ii) makes no warranty or representation to any Secured Party or any other Person and shall not be responsible to any Secured Party or any Person for any statements, warranties or representations (whether written or oral) made in or in connection with this Agreement or the other Facility Documents; (iii) shall not have any duty to monitor, ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement, the other Facility Documents or any Related Documents on the part of the Borrower or the Servicer or any other Person or to inspect the property (including the books and records) of the Borrower or the Servicer; (iv) shall not be responsible to any Secured Party or any other Person for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of any Collateral, this Agreement, the other Facility Documents, any Related Document or any other instrument or document furnished pursuant hereto or thereto or for the validity, perfection, priority or enforceability of the Liens on the Collateral; and (v) shall incur no liability under or in respect of this Agreement or any other Facility Document by relying on, acting upon (or by refraining from action in reliance on) any notice, consent, certificate (including for the avoidance of doubt, the Monthly Report or the Servicer's Monthly Payment Certificate), instruction or waiver, report, statement, opinion, direction or other instrument or writing (which may be delivered by telecopier, email, cable or telex, if acceptable to it) believed by it to be genuine and believed by it to be signed or sent by the proper party or parties. No Agent shall have any liability to the Borrower or any Lender or any other Person for the Borrower's, the Servicer's or any Lender's, as the case may be, performance of, or failure to perform, any of their respective obligations and duties under this Agreement or any other Facility Document.

(a) Except as otherwise provided in this Agreement, no Agent shall be liable for the actions or omissions of any other agent (including without limitation concerning the application of funds), or under any duty to monitor or investigate compliance on the part of any other agent with the terms or requirements of this Agreement, any Facility Documents or any Related Documents, or their duties thereunder. Each Agent shall be entitled to assume the due authority of any signatory and genuineness of any signature appearing on any instrument or document it may receive (including, without limitation, each Request for Advance received hereunder). No Agent shall be liable for any action taken in good faith and reasonably believed by

it to be within the powers conferred upon it, or taken by it pursuant to any direction or instruction by which it is governed, or omitted to be taken by it by reason of the lack of direction or instruction required hereby for such action (including without limitation for refusing to exercise discretion or for withholding its consent in the absence of its receipt of, or resulting from a failure, delay or refusal on the part of the Required Lenders, or the Funding Agents, as applicable, to provide, written instruction to exercise such discretion or grant such consent from the Required Lenders, or the Funding Agents, as applicable). No Agent shall be liable for any error of judgment made in good faith unless it shall be proven by a court of competent jurisdiction that such Agent was grossly negligent in ascertaining the relevant facts. Nothing herein or in any Facility Documents or Related Documents shall obligate any Agent to advance, expend or risk its own funds, or to take any action which in its reasonable judgment may cause it to incur any expense or financial or other liability for which it is not, in its sole discretion, adequately indemnified. No Agent shall be liable for any indirect, special or consequential damages (including but not limited to lost profits) whatsoever, even if it has been informed of the likelihood thereof and regardless of the form of action. No Agent shall be charged with knowledge or notice of any matter unless actually known to a Responsible Officer of such Agent, or unless and to the extent written notice of such matter is received by such Agent at its address in accordance with Section 11.02. Any permissive grant of power to any Agent hereunder shall not be construed to be a duty to act. No Agent shall be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, entitlement order, approval or other paper or document. No Agent shall be liable for any error of judgment, or for any act done or step taken or omitted by it, in good faith, or for any mistakes of fact or law, or for anything that it may do or refrain from doing in connection herewith except in the case of its willful misconduct, bad faith, reckless disregard or grossly negligent performance or omission of its duties.

(b) No Agent shall be responsible or liable for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters.

Section X.4 Indemnification. Each of the Committed Lenders (i) agrees to indemnify the Administrative Agent (to the extent not reimbursed by or on behalf of the Borrower pursuant to Section 11.04 or otherwise), and (ii) in each Facility Group agrees to indemnify the Funding Agent for such Facility Group, ratably according to their respective Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, attorney's fees and expenses) or disbursements of any kind or nature whatsoever (including in connection with any investigative or threatened proceeding, whether or not such Agent is a party thereto) which may be imposed on, incurred by, or asserted against such Agent in any way relating to or arising out of this Agreement or any other Facility Document or any Related Document or any action taken or omitted by such Agent under this Agreement or any other Facility Document or any Related Document; provided that no Committed Lender shall be liable to any Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from such Agent's gross negligence or willful misconduct. The rights of the Agents and obligations of the Committed Lenders under or pursuant to this Section 10.04 shall survive the termination of this Agreement, and the earlier removal or resignation of the Administrative Agent hereunder.



Section X.5 Successor Administrative Agent. (a) Subject to the terms of this Section 10.05, the Administrative Agent may, upon thirty (30) days' notice to the Lenders and the Borrower, resign as Administrative Agent. If the Administrative Agent shall resign then the Required Lenders shall appoint a successor agent. If for any reason a successor agent is not so appointed or does not accept such appointment within thirty (30) days of notice of resignation the Administrative Agent may appoint a successor agent. The appointment of any successor Administrative Agent shall be subject to the prior written consent of the Borrower (which consent shall not be unreasonably withheld or delayed); provided that the consent of the Borrower to any such appointment shall not be required if (i) an Event of Default shall have occurred and is continuing or, (ii) such successor Administrative Agent is a Lender or an Affiliate of the Administrative Agent or any Lender. Any resignation of the Administrative Agent shall be effective upon the appointment of a successor agent pursuant to this Section 10.05. After the effectiveness of the retiring Administrative Agent's resignation hereunder as the Administrative Agent, the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Facility Documents and the provisions of this Article X shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement and under the other Facility Documents. Any Person (i) into which the Administrative Agent may be merged or consolidated, (ii) that may result from any merger or consolidation to which the Administrative Agent shall be a party, or (iii) that may succeed to the properties and assets of the Administrative Agent substantially as a whole, shall be the successor to the Administrative Agent under this Agreement without further act of any of the parties to this Agreement.

Section X.6 Administrative Agent's Capacity as a Lender. Each Person serving as an 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 an Agent, and such Person 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 an Agent hereunder.

Section X.7 Erroneous Payments. (a) If the Administrative Agent (x) notifies a Lender or Secured Party, or any Person who has received funds on behalf of a Lender or Secured Party (any such Lender, Secured Party or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that the Administrative Agent has determined in its reasonable discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 10.07 and held in trust for the benefit of the Administrative Agent, and such Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount

is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(a) Without limiting immediately preceding clause (a), each Lender, Secured Party or any Person who has received funds on behalf of a Lender or Secured Party (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) 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 this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender or Secured Party shall (and shall use commercially reasonable efforts to cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one (1) Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 10.07(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 10.07(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 10.07(a) or on whether or not an Erroneous Payment has been made.

(a) Each Lender or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Secured Party under any Facility Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Secured Party under any Facility Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(b) (i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto),

(A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the “Erroneous Payment Impacted Class”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “Erroneous Payment Deficiency Assignment”) (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Acceptance with respect to such Erroneous Payment Deficiency Assignment, (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(i) Subject to Section 11.06 (but excluding, to the extent such transfer is to an existing Lender, any assignment consent or approval requirements (whether from the Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(c) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Secured Party, to the rights and interests of such Lender or Secured Party, as the case may be) under the Facility Documents with respect to such amount (the “Erroneous Payment Subrogation Rights”) (provided that the Borrower’s Obligations under the Facility Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans

that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower; provided that this Section 10.07 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of satisfying any Obligations owed by the Borrower.

(d) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

(e) Each party’s obligations, agreements and waivers under this Section 10.07 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Facility Document.

## Article XI

### MISCELLANEOUS

Section XI.1 No Waiver; Modifications in Writing. (a) No failure or delay on the part of any Secured Party exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver of any provision of this Agreement, and any consent to any departure by any party to this Agreement from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(a) No amendment, modification, supplement or waiver of this Agreement shall be effective unless signed by the Borrower, the Administrative Agent and the Required Lenders.

(b) Notwithstanding anything to the contrary contained in this Agreement or any other Facility Document, no Defaulting Lender shall have any right to vote, approve or disapprove of any amendment, waiver or consent under this Agreement or any other Facility Document (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected without the consent of any Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification (i) requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting

Lender more adversely than other affected Lenders or (ii) affecting the credit position or the rights of any Defaulting Lender shall, in each case, require the consent of such Defaulting Lender.

(c) The Borrower shall deliver to the Backup Servicer copies of any amendment, modification or waiver of this Agreement promptly following execution and effectiveness thereof.

Section XI.2 Notices, Etc.. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing and shall be personally delivered or sent by registered, certified or express mail, postage prepaid, by prepaid courier service or by electronic mail (if the recipient has provided an email address in Schedule 3), and shall be deemed to be given for purposes of this Agreement on the day that such writing (excluding electronic mail) is received by the intended recipient thereof in accordance with the provisions of this Section 11.02 (and, in the case of electronic mail, upon acknowledgement by the recipient of the receipt thereof). Unless otherwise specified in a notice sent or delivered in accordance with the foregoing provisions of this Section 11.02, notices, demands, instructions and other communications in writing shall be given to or made upon the respective parties hereto at their respective addresses (or to their respective email addresses) indicated in Schedule 3.

Section XI.3 Taxes. (a) Any and all payments by the Borrower under this Agreement shall be made, in accordance with this Agreement, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings imposed by any Governmental Authority, including penalties, interest and additions to tax with respect thereto (all such taxes, levies, imposts, deductions, charges, withholdings, penalties, interest and additions to tax being hereinafter referred to as "Taxes"), except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of the applicable withholding agent) requires the deduction or withholding of any Tax from any such payment, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax does not constitute (A) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profit Taxes, in each case, imposed (i) in the case of any Secured Party, by the jurisdiction (or any political subdivision thereof) under the laws of which such Secured Party is organized or in which its principal office is located, or in the case of any Lender, in which its applicable lending office is located, or (ii) in the case of any Secured Party, by any jurisdiction by reason of such Secured Party having any other present or former connection with such jurisdiction (other than a connection arising from entering into, receiving any payment under or enforcing its rights under this Agreement or any other Facility Document) (such Taxes described in Section 11.03(a)(A) (ii), "Other Connection Taxes"), (B) any withholding Taxes described in Section 11.03(d)(i), (C) Taxes described in Section 11.03(d)(ii) and (D) any Taxes imposed under FATCA (the Taxes described in preceding clauses (A)-(D) being referred to as "Excluded Taxes" and all Taxes other than Excluded Taxes being referred to as "Indemnified Taxes"), the sum payable by the Borrower shall be increased as may be necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 11.03) such Secured Party receives an amount equal to the sum it would have received had no such deductions or withholdings been made.

(a) In addition, the Borrower agrees, to timely pay any present or future stamp, court, filing, intangible or documentary Taxes or any similar Taxes which arise from any payment made by the Borrower hereunder or under any other Facility Document or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or under any

other Facility Document, except any such Taxes that are Other Connection Taxes, (hereinafter referred to as “Other Taxes”).

(b) The Borrower agrees to indemnify each of the Secured Parties for the full amount of Indemnified Taxes or Other Taxes, including any Indemnified Taxes or Other Taxes imposed or asserted by any jurisdiction on or attributable to amounts payable under this Section 11.03(c) paid by such Person and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Government Authority. Payments by the Borrower pursuant to this indemnification shall be made within ten (10) days following the date the Secured Party makes demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. Such certificate shall be presumed to be correct absent manifest or demonstrable error.

(c) The Borrower shall not be required to indemnify any Secured Party, or pay any additional amounts to any Secured Party, in respect of U.S. federal withholding Tax to the extent that (i) the obligation to withhold amounts with respect to U. S. federal withholding existed on the date such Lender became a party to this Agreement or, with respect to payments to a new lending office so designated by a Lender (a “New Lending Office”), the date such Lender designated such New Lending Office with respect to an Advance; provided that this clause (i) shall not apply to the extent the indemnity payment or additional amounts any Secured Party would be entitled to receive (without regard to this clause (i)) pursuant to Section 11.03(a) and (c) do not exceed the indemnity payment or additional amounts that the transferor Lender or the Lender making the designation of such New Lending Office would have been entitled to receive in the absence of such transfer or designation, or (ii) the obligation to pay such additional amounts is attributable to a failure by such Secured Party to comply with paragraphs (g),(h), (i) or (j) below.

(d) Promptly after the date of any payment of Indemnified Taxes or Other Taxes, the Borrower will furnish to the Administrative Agent and the applicable Funding Agents the original or a certified copy of a receipt issued by the relevant Governmental Authority evidencing payment thereof (or other evidence of payment as may be reasonably satisfactory to the Administrative Agent and the such Funding Agents).

(e) If any Secured Party, in its sole discretion exercised in good faith, determines that it is entitled to a refund of any Taxes as to which it has been indemnified pursuant to Section 11.03, such Secured Party shall, to the extent that it can do so without prejudice to the retention of the amount of such refund, apply for such refund and reimburse to the Borrower (or the Servicer, as applicable) such amount of any refund received (but only to the extent of indemnity payments made under this Section 11.03 with respect to the Taxes giving rise to such refund and net of reasonable out-of-pocket expenses incurred, including Taxes) attributable to the relevant Taxes and any interest paid by the relevant Governmental Authority with respect to such refund; provided that in the event that such Secured Party is required to repay such refund to the relevant taxing authority, the Borrower agrees to return the refund to such Secured Party. Notwithstanding anything to the contrary in this Section 11.03(f), in no event will a Secured Party be required to pay an amount to the Borrower pursuant to this Section 11.03(f) the payment of which would place the Secured Party in a less favorable net after-tax position than the Secured Party would have been in if the Tax or Other Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax or Other Tax had never been paid. This paragraph

shall not be construed to require any Secured Party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the any Person.

(f) (1) Any Secured Party and each Participant that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under this Agreement 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 Secured Party and each Participant, 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 Secured Party or Participant, as the case may be, is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (g)(2) and (j) below) shall not be required if in the Secured Party's or Participant's, as the case may be, reasonable judgment such completion, execution or submission would subject such Secured Party or Participant to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Secured Party or Participant.

(1) Without limiting the generality of the foregoing, (i) each Secured Party and each Participant that is a "United States person" as that term is defined in Section 7701(a)(30) of the Code (a "U.S. Person") hereby agrees that it shall, on or about the date of this Agreement, the date, if any, it designates a New Lending Office, or, in the case of a Secured Party or Participant which acquires an interest in the Aggregate Loan Amount in accordance with Section 11.06, the date upon which such Secured Party or Participant acquires an interest in the Aggregate Loan Amount, and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent, deliver to the Borrower and the Administrative Agent two accurate, complete and signed copies of IRS Form W-9, certifying that such Secured Party or Participant is on the date of delivery thereof entitled to an exemption from United States backup withholding Tax and (ii) each Secured Party or Participant that is not a U.S. Person (a "Non-U.S. Lender") shall, on or about the date of this Agreement, the date, if any, it designates a New Lending Office, or the date upon which such Secured Party or Participant acquires an interest in the Aggregate Loan Amount in accordance with Section 11.06, and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent, deliver to the Borrower and the Administrative Agent two properly completed and duly executed copies of either IRS Form W-8BEN, W-8BEN-E, W-8ECI or W-8IMY (accompanied by the necessary IRS forms or other certification documents from and with respect to the beneficial owners of a payment hereunder), in each case claiming complete exemption from, or reduced rate of, U.S. federal withholding Tax with respect to payments of interest hereunder. In addition, in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding Tax under Section 871(h) or 881(c) of the Code, such Non-U.S. Lender shall provide a certification substantially in the form of Exhibit D to the effect that such Non-U.S. Lender (x) is not a bank for purposes of Section 881(c) of the Code, (y) is

not a 10 percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of the Borrower or Parent and (z) is not a controlled foreign corporation related to the Borrower or Parent (within the meaning of Section 864(d)(4) of the Code), and such Non-U.S. Lender agrees that it shall notify the Borrower and the Administrative Agent in the event any such representation is no longer accurate. In addition, each Non-U.S. Lender shall deliver such forms as promptly as reasonable after receipt of a request therefor from the Borrower or the Administrative Agent. Notwithstanding any other provision of this Section 11.03, a Non-U.S. Lender shall not be required to deliver any form pursuant to this Section 11.03(g) that such Non-U.S. Lender is not legally able to deliver.

(g) If any Secured Party requires the Borrower to pay any additional amount to such Secured Party or any taxing Governmental Authority for the account of such Secured Party or to indemnify such Secured Party pursuant to this Section 11.03, then such Secured Party shall use reasonable efforts to designate a different lending office for funding or booking its Advances hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if such Lender determines, in its sole discretion exercised in good faith, that such designation or assignment (i) would eliminate or reduce amounts payable pursuant to this Section 11.03 in the future and (ii) would not subject such Secured Party to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Secured Party. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(h) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so. Nothing in this Section 11.03 shall be construed to require any Secured Party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(i) Compliance with FATCA. Each Lender that is organized under the laws of a jurisdiction other than the United States shall comply with any certification, documentation, information or other reporting necessary to establish an exemption from withholding under FATCA and shall provide any other documentation reasonably requested by the Borrower or the Administrative Agent sufficient for the Administrative Agent and the Borrower to comply with their obligations under FATCA and to determine that such Lender has complied with such applicable reporting requirements or to determine the amount required to be deducted or withheld, if any. Solely for purposes of this paragraph (j), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(j) The Lenders shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes or Other Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes or Other Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Facility Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally



imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Facility Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (k).

Section XI.4 Costs and Expenses: Indemnification. (a) The Borrower agrees to promptly pay on demand (i) all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent, the Funding Agents, the Lenders and the Program Support Providers in connection with the preparation, review, negotiation, reproduction, execution and delivery of this Agreement and the other Facility Documents and in connection with any modification or amendment of this Agreement or any other Facility Document and (ii) the reasonable fees and out-of-pocket expenses incurred by the Conduit Lenders in connection with the review by each rating agency then rating the commercial paper notes of such Conduit Lenders. Further, the Borrower shall promptly pay on demand (A) all reasonable and documented out-of-pocket costs and expenses (including all reasonable and documented fees, expenses and disbursements of legal counsel for the Administrative Agent, the Funding Agents, the Lenders and the Program Support Providers, and any auditors, accountants, consultants or appraisers or other professional advisors and agents engaged by the Administrative Agent) incurred by the Administrative Agent in the preparation, execution, delivery, filing, recordation, administration, performance or enforcement of this Agreement or any other Facility Document or any consent, amendment, waiver or other modification relating thereto, (B) all reasonable and documented out-of-pocket costs and expenses of creating, perfecting, releasing or enforcing the Administrative Agent's security interests in the Collateral, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, and title insurance premiums, and (C) after the occurrence of any Event of Default, all reasonable and documented out-of-pocket costs and expenses incurred by the Administrative Agent and the Lenders in connection with the preservation, collection, foreclosure or enforcement of the Collateral subject to the Facility Documents or any interest, right, power or remedy of the Administrative Agent and the Lenders or in connection with the collection or enforcement of any of the Obligations or the proof, protection, administration or resolution of any claim based upon the Obligations in any insolvency proceeding, including all reasonable and documented fees and disbursements of attorneys, accountants, auditors, consultants, appraisers and other professionals engaged by the Administrative Agent, the Lenders and the Program Support Providers. The undertaking in this Section 11.04 shall survive repayment of the Obligations, any foreclosure under, or modification, release or discharge of, any or all of the Related Documents, termination of this Agreement and the resignation or replacement of the Administrative Agent. Without prejudice to its rights hereunder, the expenses and the compensation for the services of the Administrative Agent are intended to constitute expenses of administration under any applicable bankruptcy law.

(a) The Borrower agrees to indemnify each Secured Party, each Funding Agent and each of their Affiliates and the respective officers, directors, employees, agents, managers of, and any Person controlling any of, the foregoing (each, an "Indemnified Party") for any and all claims, damages, losses, liabilities, obligations, expenses, penalties, actions, suits, judgments and disbursements of any kind or nature whatsoever, (including the reasonable and documented fees and disbursements of outside counsel; provided that such indemnification shall be limited to a single outside counsel, except to the extent additional such counsel is required due to conflicts of interest) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of the execution, delivery,

enforcement, performance, administration of or otherwise arising out of or incurred in connection with this Agreement, any other Facility Document, any Related Document or any transaction contemplated hereby or thereby (collectively, the “Liabilities”), including, without limitation, any such Liability that is incurred or arises out of or in connection with, or by reason of any one or more of the following: (i) preparation for a defense of any investigation, litigation or proceeding arising out of, related to or in connection with this Agreement or any other Facility Document or any of the transactions contemplated hereby or thereby; (ii) any breach of any covenant or agreement by the Borrower contained in any Facility Document; (iii) any representation or warranty made or deemed made by the Borrower contained in any Facility Document or in any certificate, statement or report delivered in connection therewith is false or misleading; (iv) any failure by the Borrower to comply with any Applicable Law or contractual obligation binding upon it; (v) any failure to vest, or delay in vesting, in the Administrative Agent (for the benefit of the Secured Parties) a perfected security interest in all of the Collateral free and clear of all Liens (other than Permitted Liens); (vi) any action or omission, not expressly authorized by the Facility Documents, by the Borrower which has the effect of subjecting the Collateral to any Lien (other than Permitted Lien) or impairing the rights of the Administrative Agent or the Secured Parties with respect thereto; (vii) the failure to file, or any delay in filing, financing statements, continuation statements or other similar instruments or documents under the UCC of any applicable jurisdiction or other Applicable Law with respect to any Collateral, whether at the time of any Advance or at any subsequent time; (viii) 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, and regardless of whether any Indemnified Party is a party thereto; and (ix) the commingling of Collections on the Collateral at any time with other funds; provided, that the Borrower shall not be liable (A) to the extent any such Liability is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Party’s fraud, gross negligence, bad faith or willful misconduct, or breach of its obligations under this Agreement or any other Facility Document, (B) with respect to any claim not involving an act or omission of the Borrower and that is brought by an Indemnified Party against another Indemnified Party or (C) for any Liability arising due to the deterioration in the credit quality or market value of the Collateral Receivables or other Collateral hereunder to the extent that such credit quality or market value was not misrepresented in any material respect by the Borrower or any of its Affiliates. Paragraph (b) of this Section 11.04 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(b) All amounts due under this Section 11.04 shall be payable in accordance with the Priority of Payments.

Section XI.5 Execution in Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement. Delivery of an executed signature page of this Agreement in electronic (e.g., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “signed,” “signature,” and words of like import in this Agreement and the other Facility Documents, including any Assignment and Acceptance, shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State

Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section XI.6 Assignability. (a) Each Lender may, with the prior written consent of the Administrative Agent and the Borrower (in each case not to be unreasonably withheld or delayed), assign to an assignee all or a portion of its rights and obligations under this Agreement (including all or a portion of its outstanding portion of the Aggregate Loan Amount or interests therein owned by it, together with ratable portions of its Commitment); provided that:

- (i) the Borrower shall be deemed to have consented to an assignment if no response is made by the Borrower within ten (10) Business Days after delivery to the Borrower of notice of a proposed assignment;
- (ii) neither the Administrative Agent's nor the Borrower's consent to any such assignment shall not be required if the assignee is a Permitted Assignee with respect to such assignor; and
- (iii) the Borrower's consent to any such assignment pursuant to this Section 11.06(a) shall not be required if an Event of Default has occurred and has not been waived by the Lenders in accordance with Section 11.01.

The parties to each such assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance and the applicable tax forms required by Section 11.03(g) and (j). For the avoidance of doubt, the parties hereto acknowledge and agree that any Conduit Lender may assign its rights and obligations hereunder and under its Loans to any Program Support Provider or any other Lender within its Facility Group (and any such Program Support Provider or Lender within its Facility Group may assign its rights and obligations hereunder to any Conduit Lender hereunder), in each case, without the consent of the Borrower, the Administrative Agent or any other Person. Each such intra-Facility Group assignment shall be recorded on the books and records of the relevant Lenders, without the need to execute and deliver an Assignment and Acceptance, and for all purposes of this Agreement and all related documents, the relevant Lenders shall be deemed to have the benefit of an executed, delivered, accepted and recorded Assignment and Acceptance relating to such assignment. Notwithstanding any other provision of this Section 11.06, any Lender may at any time pledge or grant a security interest in all or any portion of its rights (including rights to payment of principal and interest) under this Agreement to secure obligations of such Lender, including any pledge or security interest granted to a Federal Reserve Bank and, in the case of a Conduit Lender, to its program collateral agent or trustee, in each case, without notice to or consent of the Borrower or the Administrative Agent; provided that no such pledge or grant of a security interest shall release such Lender from any of its obligations hereunder or substitute any such pledgee or grantee for such Lender as a party hereto. Notwithstanding any other provision of this Agreement (including this Section 11.06(a)), and solely for the purpose of such Conduit Lender or Program Support Provider's compliance with Rule 3a-7 of the Investment Company Act, any Conduit Lender or Program Support Provider may at any time pledge or grant a security interest in all or any portion of its rights under this Agreement (including, without limitation, rights to payment of the aggregate outstanding principal balance of the Loans and Interest) to any collateral agent or trustee under such Conduit Lender's commercial paper note program without notice to or consent of the Borrower (and without entering into an assignment and assumption agreement); provided, that no such pledge or grant of security interest shall release such Conduit Lender or Program Support Provider from any of its

obligations hereunder or substitute any such collateral agent or trustee for such Conduit Lender under such Conduit Lender's commercial paper note program or Program Support Provider as a party hereto.

(a) The Borrower may not assign its rights or obligations hereunder or any interest herein without the prior written consent of the Administrative Agent and the Lenders.

(b) (i) Any Lender may, without the consent of the Borrower, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement; provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (C) the Borrower, the Administrative Agent, the applicable Funding 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, and (D) each Participant shall have agreed to be bound by this Section 11.06(c) and Sections 11.09(b), 11.15 and 11.19. Sections 2.08 and 11.03 shall apply to each Participant as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (a) of this Section; provided that no Participant shall be entitled to any amount under Section 2.08 or 11.03 which is greater than the amount the related Lender would have been entitled to under any such Sections or provisions if the applicable participation had not occurred, 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.

(i) In the event that any Lender sells participations in any portion of its rights and obligations hereunder, such Lender, acting solely for this purpose as a non-fiduciary agent for the Borrower, shall maintain a register on which it enters the names and addresses of all participants in the Aggregate Loan Amount held by it and the principal amount (and stated interest thereon) of each portion of the Aggregate Loan Amount which is the subject of such a participation (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, Aggregate Loan Amount or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Commitment, Aggregate Loan Amount or other obligation is in registered form under Section 5f.103-1(c) of the U. S. Department of the Treasury regulations. The Aggregate Loan Amount may be participated in whole or in part only by registration of such participation on the Participant Register. Any participation of such Aggregate Loan Amount may be effected only by the registration of such participation on the Participant Register. The entries in the Participant Register shall be conclusive absent manifest error.

(c) The Administrative Agent, on behalf of and acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at its address specified in Section 11.02 or such other address as the Administrative Agent shall designate in writing to the Lenders, a copy of this Agreement and each signature page hereto and each Assignment and Acceptance delivered to and accepted by it and a register (the "Register") for the recordation of the names and addresses of the Funding Agents, the Lenders and the aggregate outstanding principal amount of the Aggregate Loan Amount maintained by each Lender under this Agreement (and any stated interest

thereon). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Administrative Agent, the Funding Agents and the Lenders shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower, any Funding Agent (in respect of such Funding Agent's Facility Group's portion of the Aggregate Loan Amount or Commitments only) or Lender (in respect of such Lender's portion of the Aggregate Loan Amount or Commitments only) at any reasonable time and from time to time upon reasonable prior notice. The Aggregate Loan Amount may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register and in accordance with this Section 11.06.

Section XI.7 Governing Law. THIS AGREEMENT AND THE OTHER FACILITY DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FACILITY DOCUMENT (EXCEPT, AS TO ANY OTHER FACILITY DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

Section XI.8 Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section XI.9 Confidentiality. (a) Each Secured Party agrees to keep confidential all non-public information provided to it by the Borrower, the Seller, the Servicer or the Parent with respect to the Borrower, its Affiliates, the Collateral or any other information furnished to any Secured Party pursuant to this Agreement or any other Facility Document (collectively, the "Borrower Information"); provided that nothing herein shall prevent any Secured Party from disclosing any Borrower Information (a) in connection with this Agreement and the other Facility Documents and not for any other purpose, to (i) any Secured Party or any Affiliate of a Secured Party, or (ii) any of their respective Affiliates, employees, directors, agents, attorneys, accountants and other professional advisors (collectively, the "Secured Party Representatives"), it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Borrower Information, (b) subject to an agreement to comply with the provisions of this Section (or other provisions at least as restrictive as this Section), (i) to use the Borrower Information only in connection with this Agreement and the other Facility Documents and not for any other purpose, to any actual or bona fide prospective permitted assignees and Participants in any of the Secured Parties' interests under or in connection with this Agreement and (ii) as reasonably required by any direct or indirect contractual counterparties or professional advisors thereto, to any swap or derivative transaction relating to the Borrower and its obligations, (c) to any Governmental Authority purporting to have jurisdiction over any Secured Party or any of its Affiliates or any Secured Party Representative, (d) to the extent requested or required by applicable law, regulation, subpoena or any other legal process or by any court, governmental or regulatory authority, body or agency having jurisdiction over such party (including any self-regulatory authority), (e) that is a matter of general public knowledge or that has heretofore been made available to the public by any Person other than any Secured Party or any Secured Party Representative, (f) in connection with the exercise of any remedy hereunder or

under any other Facility Document, or (g) with respect to any Conduit Lender, (i) to any rating agency rating the CP of any Conduit Lender or a nationally recognized statistical rating organization in connection with any party's compliance with Rule 17g-5 promulgated by the U.S. Securities and Exchange Commission, (ii) to any administrative agent, sub-administrative agent, administrator, sub-administrator, administrative trustee, sub-administrative trustee or any entity serving in a similar capacity for any Conduit Lender, and (iii) to any dealer or investor (or potential dealer or investor) for the commercial paper notes of a Conduit Lender, to any Program Support Provider (including any equity provider to the applicable Conduit Lender), any potential Program Support Provider, any assignee or participant or potential assignee or participant of any Program Support Provider, any program collateral agent or trustee for any Conduit Lender, any provider of credit protection to a Lender or any provider of a hedge for the benefit of a Lender, provided that with respect to the foregoing clauses (g)(ii) and (iii) such recipient from such Conduit Lender is informed of the confidentiality thereof and agree to maintain such confidentiality on the same terms as set forth in this Section 11.09.

(b) The Borrower shall, and shall cause each of its Affiliates to, keep confidential all economic terms of this Agreement and the other Facility Documents and all non-public information provided to it by any Secured Party with respect to such Secured Party (collectively, the "Secured Party Information"); provided that, the Secured Party Information may be disclosed (a) in connection with this Agreement and the other Facility Documents and not for any other purpose, to the Borrower's or any of its Affiliate's employees, directors, agents, attorneys, accountants and other professional advisors (collectively, the "Borrower Group Representatives"), it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such economic terms and such Secured Party Information, (b) subject to an agreement to comply with the provisions of this Section (or other provisions at least as restrictive as this Section), as reasonably required by any direct or indirect contractual counterparties or professional advisors thereto, to any swap or derivative transaction relating to the Borrower and its obligations to the extent that payments thereunder are to be made by reference to the terms hereof, (c) to any Governmental Authority purporting to have jurisdiction over the Borrower or any of its Affiliates or any Borrower Group Representative, (d) in response to any order of any court or other Governmental Authority or as may otherwise be required to be disclosed pursuant to any Applicable Law, (e) that is a matter of general public knowledge or that has heretofore been made available to the public other than as a result of a breach of this Section, (f) in connection with the exercise of any remedy hereunder or under any other Facility Document, or (g) with the consent of the Administrative Agent or applicable Lender.

Section XI.10 Merger. This Agreement and the other Facility Documents executed by the Administrative Agent or the Lenders taken as a whole incorporate the entire agreement between the parties thereto concerning the subject matter thereof and such Facility Documents supersede any prior agreements among the parties relating to the subject matter thereof.

Section XI.11 Survival. All representations and warranties made hereunder, in the other Facility Documents and in any certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery of this Agreement and the making of the Advances hereunder. The agreements in Sections 2.03(f), 2.11, 7.02, 7.06(b), 11.03, 11.04, 11.09, 11.16, 11.18, 11.19, 11.20, and this Section 11.11 shall survive the termination of this Agreement in whole or in part and the payment in full of the principal of and interest on the Aggregate Loan Amount.

Section XI.12 Submission to Jurisdiction; Waivers; Etc..

(a) Each party hereto hereby irrevocably and unconditionally:

(i) submits for itself and its property in any legal action or proceeding relating to this Agreement or the other Facility Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and the appellate courts of any of them;

(ii) consents that any such action or proceeding may be brought in any court described in Section 11.12(a) and waives to the fullest extent permitted by Applicable Law any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(iii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such party at its address set forth in Section 11.02 or at such other address as may be permitted thereunder; and

(iv) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

(b) To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against the Administrative Agent, any Funding Agent or any Lender, or any of such Person's affiliates, partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives 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 Facility Document or any agreement or instrument contemplated thereby, any transactions contemplated hereunder or thereunder, any Loan or the use of the proceeds thereof.

Section XI.13 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER FACILITY DOCUMENT OR FOR ANY COUNTERCLAIM THEREIN OR RELATING THERETO.

Section XI.14 Service of Process. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 11.02 (other than by email or facsimile). Nothing in this Agreement or any other Facility Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section XI.15 Waiver of Setoff. The Borrower hereby waives any right of setoff it may have or to which it may be entitled under this Agreement from time to time against any Lender or its assets.

Section XI.16 PATRIOT Act Notice. Each Lender and the Administrative Agent hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107 56 (signed into law on October 26, 2001)) (the "PATRIOT Act"), 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 the Lenders to identify the Borrower in accordance with the PATRIOT Act. The Borrower shall provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by any Lender in order to assist such Lender in maintaining compliance with the PATRIOT Act.

Section XI.17 Legal Holidays. In the event that the date of any Payment Date, date of prepayment or Final Maturity Date shall not be a Business Day, then notwithstanding any other provision of this Agreement or any Facility Document, payment need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the nominal date of any such Payment Date, date of prepayment or Final Maturity Date, as the case may be, and interest shall accrue on such payment for the period from and after any such nominal date to but excluding such next succeeding Business Day.

Section XI.18 Non-Petition and No Recourse.

(a) Each of the parties hereto hereby covenants and agrees with respect to each Conduit Lender that, prior to the date which is one year and one day (or, if longer, any applicable preference period plus one day) after the payment in full of all outstanding indebtedness of such Conduit Lender (or its related commercial paper issuer), it will not institute against or join any other Person in instituting against such Conduit Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other similar proceeding under the laws of the United States or any state of the United States. The foregoing shall not limit the rights of the Borrower, the Administrative Agent or the Lenders to file any claim in, or otherwise take any action with respect to, any insolvency proceeding instituted against any Conduit Lender by a Person other than the Borrower, the Administrative Agent or the Lenders, as applicable.

(b) No recourse under any obligation, covenant or agreement of any Conduit Lender contained in this Agreement shall be had against any incorporator, stockholder, officer, director or employee of such Conduit Lender, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that this Agreement is solely a corporate obligation of each Conduit Lender, and that no personal liability whatsoever shall attach to or be incurred by the incorporators, stockholders, officers, directors or employees of any such Conduit Lender, or any of them under or by reason of any of the obligations, covenants or agreements of such Conduit Lender contained in this Agreement, or implied therefrom, and that any and all personal liability for breaches by any such Conduit Lender of any such obligations, covenants or agreements either at common law or at equity, or by statute or under any constitution, of such Conduit Lender and every such incorporator, stockholder, officer, or director is hereby expressly waived as a condition of and in consideration for the execution and delivery of this Agreement. Notwithstanding any provisions contained in this Agreement to the contrary, no Conduit Lender shall, and shall not be obligated to, fund or pay any amount pursuant to this Agreement or the Advances unless (i) such Conduit Lender has received funds which may be used to make such funding or other payment and which funds are not required to repay any of the commercial paper notes issued by such Conduit Lender when due and (ii) after giving effect to such funding or payment, either (x) such Conduit Lender could issue commercial paper notes to refinance all of its outstanding commercial paper notes (assuming such outstanding commercial paper notes matured at such time) in accordance with the program documents governing its commercial paper program or (y) all of the commercial paper notes are paid in full.



Any amount which a Conduit Lender does not pay pursuant to the operation of the preceding sentence shall not constitute a claim (as defined in Section 101 of the Bankruptcy Code) against or obligation of such Conduit Lender for any such insufficiency.

(c) Each of the Administrative Agent, the Funding Agent and the Lenders hereby covenants and agrees with respect to the Borrower that, prior to the date which is one year and one day (or, if longer, any applicable preference period plus one day) after the payment in full of all Obligations, it will not institute against or join any other Person in instituting against the Borrower any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other similar proceeding under the laws of the United States or any state of the United States. The foregoing shall not limit the rights of the Lenders to file any claim in, or otherwise take any action with respect to, any insolvency proceeding instituted against the Borrower by a Person other than the Lenders.

(d) The provisions of this Section 11.18 shall survive the termination of this Agreement.

Section XI.19 Third Party Beneficiary. Each of the Backup Servicer and the Account Bank shall be an express third-party beneficiary of this Agreement with a right to enforce the provisions of Section 9.01 that inure to its benefit.

Section XI.20 No Fiduciary Duty. The Administrative Agent, each Lender and their respective Funding Agents and Affiliates (collectively, solely for purposes of this paragraph, the “Lenders”), may have economic interests that conflict with those of the Borrower, the Servicer and the Seller (collectively, solely for purposes of this Section 11.20, the “Credit Parties”), their stockholders and/or their affiliates. Each Credit Party agrees that nothing in the Facility Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Credit Party, its stockholders or its affiliates, on the other. The Credit Parties acknowledge and agree that (i) the transactions contemplated by the Facility Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Administrative Agent and the Lenders, on the one hand, and the Credit Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) neither the Administrative Agent nor any Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether the Administrative Agent or any Lender has advised, is currently advising or will advise any Credit Party, its stockholders or its Affiliates on other matters) or any other obligation to any Credit Party except the obligations expressly set forth in the Facility Documents and (y) the Administrative Agent and each Lender is acting solely as principal and not as the agent or fiduciary of any Credit Party, its management, stockholders, creditors or any other Person. Each Credit Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Credit Party agrees that it will not claim that the Administrative Agent or any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Credit Party, in connection with such transaction or the process leading thereto.

Section XI.21 Right to Set-Off. Each Lender is hereby authorized (in addition to any other rights it may have) at any time that any Obligation hereunder is due and payable, to set off, appropriate and apply (without presentment, demand, protest or other notice which are hereby expressly waived) any

deposits and any other indebtedness held or owing by such Lender to, or for the account of, the Borrower against the amount of the Obligations owing by the Borrower to such Person.

Section XI.22 Acknowledgment and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Facility 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 Facility Document, to the extent such liability is unsecured, 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 (b) the effects of any Bail-In Action on any such liability, including, if applicable;

(ii) a reduction in full or in part or cancellation of any such liability;

(iii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Facility Document; or

(iv) 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.

[SIGNATURE PAGES TO FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**ACV CAPITAL FUNDING II LLC**, as Borrower

By: ACV Capital LLC, its Member

By:

Name:

Title:

[Signature Page to Revolving Credit and Security Agreement]

**CITIBANK, N.A.**, as Administrative Agent

By:  
Name:  
Title:

[Signature Page to Revolving Credit and Security Agreement]

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**CITIBANK, N.A.**, as Committed Lender and Funding Agent

By:  
Name:  
Title:

**CAFCO, LLC**, as Conduit Lender

By: Citibank, N.A., as attorney-in-fact

By:  
Name:  
Title:

[Signature Page to Revolving Credit and Security Agreement]

**CHARTA, LLC**, as Conduit Lender

By: **Citibank, N.A.**, as attorney-in-fact

By:

Name:

Title:

**CIESCO, LLC**, as Conduit Lender

By: **Citibank, N.A.**, as attorney-in-fact

By:

Name:

Title:

**CRC FUNDING, LLC**, as Conduit Lender

By: Citibank, N.A., as attorney-in-fact

By:

Name:

Title:

[Signature Page to Revolving Credit and Security Agreement]

[Signature Page to Revolving Credit and Security Agreement]

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**SCHEDULE 1**

**INITIAL COMMITMENTS AND PERCENTAGES; FACILITY GROUPS**

**FUNDING AGENTS AND LENDERS**

MEMBERS OF FACILITY GROUP	FACILITY GROUP	TYPE	COMMITMENT	PERCENTAGE
Citibank, N.A.	Citi	Committed Lender/Funding Agent	\$125,000,000	100%
CAFCO, LLC	Citi	Conduit Lender (non-committed)	\$0	0%
CHARTA, LLC	Citi	Conduit Lender (non-committed)	\$0	0%
CIESCO, LLC	Citi	Conduit Lender (non-committed)	\$0	0%
CRC Funding, LLC	Citi	Conduit Lender (non-committed)	\$0	0%
TOTAL			\$125,000,000.00	100%



**SCHEDULE 2**

**FORM OF MONTHLY REPORT**

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**SCHEDULE 3**

**NOTICE INFORMATION**

If to the Administrative Agent:

Citibank, N.A.  
1 Penns Way, Ops 2 Floor 2  
New Castle, DE 19720  
Attention: Citi Global Loans / Conduit Operations  
Telephone: 302-323-5492  
Email: [conduitoperations@citi.com](mailto:conduitoperations@citi.com);

With a copy to (excluding notices related to Requests for Advances, Monthly Reports, Servicer's Monthly Payment Certificate, financial statements and audit reports):

Citibank, N.A.  
388 Greenwich Street 6th Floor Trading  
New York, NY 10013  
Attention: Citi Global ABS Financing & Securitization  
Telephone: 212-723-3716  
Email: [CitiABSLendingNotices@citi.com](mailto:CitiABSLendingNotices@citi.com)

Citibank, N.A., as Committed Lender and Funding Agent:

Citibank, N.A.  
1 Penns Way, Ops 2 Floor 2  
New Castle, DE 19720  
Attention: Citi Global Loans / Conduit Operations  
Telephone: 302-323-5492  
Email: conduitoperations@citi.com; gsp.abs.tm@citi.com

With a copy to (excluding notices related to Requests for Advances, Monthly Reports, Servicer's Monthly Payment Certificate, financial statements and audit reports):

Citibank, N.A.  
388 Greenwich Street 6th Floor Trading  
New York, NY 10013  
Attention: Citi Global ABS Financing & Securitization  
Telephone: 212-723-3716  
Email: CitiABSLendingNotices@citi.com

CAFCO, LLC, CHARTA, LLC, CIESCO, LLC and CRC Funding, LLC, as Conduit Lenders:

c/o Citibank, N.A.  
1 Penns Way, Ops 2 Floor 2  
New Castle, DE 19720  
Attention: Citi Global Loans / Conduit Operations  
Telephone: 302-323-5492  
Email: conduitoperations@citi.com; gsp.abs.tm@citi.com

With a copy to (excluding notices related to Requests for Advances, Monthly Reports, Servicer's Monthly Payment Certificate, financial statements and audit reports):

c/o Citibank, N.A.  
388 Greenwich Street 6th Floor Trading  
New York, NY 10013  
Attention: Citi Global ABS Financing & Securitization  
Telephone: 212-723-3716  
Email: CitiABSLendingNotices@citi.com

If to the Lenders:

If to the Borrower:

ACV Capital Funding II LLC  
c/o ACV Capital LLC  
640 Ellicott Street  
Suite 321  
Buffalo, NY 14203  
Attention: Michael Mohr, Greta Lombardo and Leanne Fitzgerald  
Telephone: (716) 704-4611  
Email: mmohr@acvauctions.com; glombardo@acvauctions.com; lfitzgerald@acvauctions.com

**SCHEDULE 4**

**ACCOUNT DETAILS**

Collection Account

Bank: JPMorgan Chase Bank, N.A.

Account Name: ACV Capital Funding II LLC

Account #: 595735153

ABA #: 021000021

SWIFT CODE: CHASUS33

**SCHEDULE 5**

**DATA FILE FIELDS**

dealership_id	title status
auction_id	ACV Auctions Marketplace transaction
debt_eligible_dealer	
ineligible_receivable	
document_number	
auction_end_timestamp	
vin	
vehicle_amount	
vehicle_year	
vehicle_make	
vehicle_model	
vehicle_odometer	
vehicle_age	
exotic_classification	
portfolio_intelliscore	
primary_guarantor_FICO	
dealer_state	
Loan_Creation_Date	
due_date	
days_open	
days_overdue	
Outstanding Principal	
Interest and Fees	
Closing_Outstanding_Balance	

**SCHEDULE 6**

**Lender Wire Instructions**

Bank Name Citibank N.A.  
ABA/Routing No. 021-000-089  
Account Name CAFCO REDEMPTION A/C  
Account No. 4063-6695  
Attention Loan Admin  
Reference name ACV Warehouse

Bank Name Citibank N.A.  
ABA/Routing No. 021-000-089  
Account Name CHARTA REDEMPTION A/C  
Account No. 4073-7402  
Attention Loan Admin  
Reference name ACV Warehouse

Bank Name Citibank N.A.  
ABA/Routing No. 021-000-089  
Account Name CIESCO REDEMPTION A/C  
Account No. 4063-6636  
Attention Loan Admin  
Reference name ACV Warehouse

\*Bank Name Citibank N.A.  
ABA/Routing No. 021-000-089  
Account Name CRC REDEMPTION A/C  
Account No. 4051-7805  
Attention Loan Admin  
Reference name ACV Warehouse

\*Initial funding will be made by CRC.

**EXHIBIT A**  
**[FORM OF REQUEST FOR ADVANCE]**

[Date]

Citibank, N.A, as Administrative Agent and Funding Agent

1 Penns Way, Ops 2 Floor 2  
New Castle, DE 19720  
Attention: Citi Global Loans / Conduit Operations  
Telephone: 302-323-5492  
Email: conduitoperations@citi.com; gsp.abs.tm@citi.com

Ref: [ ]

This Request for Advance is made pursuant to Section 2.02 of that certain Revolving Credit and Security Agreement (the “Credit Agreement”), dated as of June 20, 2024, by and among ACV Capital Funding II LLC, as Borrower (the “Borrower”), the Funding Agents from time to time party thereto, the Conduit Lenders from time to time party thereto, the Committed Lenders from time to time party thereto, and Citibank, N.A., as Administrative Agent (the “Administrative Agent”). Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Credit Agreement.

1. The Borrower hereby requests that on \_\_\_\_\_, 20\_\_ (the “Borrowing Date”) it receive Borrowings under the Credit Agreement in an aggregate principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “Requested Amount”) and requests that the Lenders remit, or cause to be remitted, their respective pro rata portions of such Requested Amount in accordance with the following wiring instructions:

Bank:        [[        ]]  
Account Number: [[        ]]  
Account Name:    [[        ]]  
ABA:        [[        ]]  
Reference:    [[        ]]

2. The Borrower certifies that immediately after giving effect to the proposed Borrowing on the Borrowing Date each of the applicable conditions precedent set forth in Section 3.02 of the Credit Agreement are satisfied.

This Request for Advance is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ACV CAPITAL FUNDING II LLC, as Borrower

By: ACV Capital LLC, its Member

By:

Name:  
Title:

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**SCHEDULE I  
TO REQUEST FOR ADVANCE  
BORROWING BASE CERTIFICATE**

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**FORM OF BORROWING BASE CERTIFICATE**

Date: \_\_\_\_\_ (“**Certificate Date**”)

Reference is made to the Revolving Credit and Security Agreement, dated as of June 20, 2024 (as amended, supplemented, restated or otherwise modified, the “**Credit Agreement**”), by and among ACV Capital Funding II LLC, as Borrower (the “**Borrower**”), the Funding Agents from time to time party thereto, the Conduit Lenders from time to time party thereto, the Committed Lenders from time to time party thereto, and Citibank, N.A., as Administrative Agent (the “**Administrative Agent**”). Unless otherwise defined herein or as the context otherwise requires, terms used herein have the meaning assigned thereto under the Credit Agreement.

As used in this Certificate, “Applicable Pro Forma Date” means (a) if this Certificate is being delivered in connection with a Request for Advance, the date of the related Advance; (b) if this Certificate is being delivered in connection with a prepayment in accordance with Section 2.02(a)(ii) of the Credit Agreement or a sale of a Warranty Receivable in connection with Section 8.05(a)(i)(x) of the Credit Agreement, the date of the related prepayment or sale, as applicable; (c) if this Certificate is being delivered in connection with the Servicer’s Monthly Payment Certificate, the related Payment Date; and (d) if this Certificate is being delivered in connection with a Release Notice, the date of the related Release.

**BORROWING BASE CERTIFICATION:** The Servicer, through its Responsible Officer, hereby certifies, for the benefit of the Administrative Agent and the Lenders, as follows:

(a) the Borrowing Base calculation was prepared under my supervision;

(b) the terms of Section 8.5 of the Servicing Agreement] apply to the Borrowing Base calculation and each of the components thereof and the information set forth herein and therein, as if such Section 8.5 were fully set forth herein;

(c) the Borrowing Base Test is satisfied on the date hereof and, if applicable, on the Applicable Pro Forma Date (after giving effect to any sale or acquisition of Receivables by the Borrower, release of Collateral Receivables, and any prepayments or distributions to be made on such date);

(d) [If this Certificate is being delivered in connection with a Servicer’s Monthly Payment Certificate, the Borrowing Base is \_\_\_\_\_;/[If this Certificate is being delivered in connection with a Request for Advance, the Borrowing Base is \_\_\_\_\_; as at the date of such Request for Advance;]

(e) all representations and warranties of the Seller, the Servicer and Borrower set forth in each of the Facility Documents are true and correct in all material respects and each of the Seller, the Servicer and the Borrower are in compliance with all of their respective obligations under the Facility Documents, in each case, on the date hereof and, if applicable, on the Applicable Pro Forma Date (after giving effect to any sale or acquisition of Receivables by the Borrower, release of Collateral Receivables, and any prepayments or distributions to be made on such date) (except to the extent such representations and warranties expressly relate to any earlier date, in which case such representations and warranties are true and correct in all material respects as of such earlier date);

(f) the Account Bank remains a Qualified Institution; and

(g) on the date hereof and, if applicable, on the Applicable Pro Forma Date (after giving effect to any sale or acquisition of Receivables by the Borrower, release of Collateral Receivables, and any prepayments or distributions to be made on such date), no Event of Default, Unmatured Event of Default, Servicer Default or Unmatured Servicer Default shall have occurred or be continuing, or will arise as a result of any sale or acquisition of Receivables by the Borrower, release of Collateral Receivables, and any prepayments or distributions to be made on such Applicable Pro Forma Date.

(g) **DUTY TO UPDATE:** If this Certificate is being delivered in connection with any Applicable Pro Forma Date, the undersigned hereby undertakes the obligation to update the information, representations, warranties, and certifications provided herein and in each Annex attached hereto if any such information, representations, warranties, or certifications are no longer true, complete and correct in all material respects on and as of such Applicable Pro Forma Date (after giving effect to all activity to take place on such date) except to the extent such information, representations, warranties, and certifications expressly relate to any earlier date, as of such earlier date.

**The Servicer has executed this Borrowing Base Certificate through its Responsible Officer on the date first specified above.**

ACV CAPITAL LLC,  
as Servicer

By:  
Name:  
Title:

FORM OF BORROWING BASE CALCULATION

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**EXHIBIT B**

**[FORM OF NOTICE OF PREPAYMENT]**

[DATE]

Citibank, N.A., as Administrative Agent and Funding Agent  
1 Penns Way, Ops 2 Floor 2  
New Castle, DE 19720  
Attention: Citi Global Loans / Conduit Operations  
Telephone: 302-323-5492  
Email: conduitoperations@citi.com

Ref: [ ]

This Notice of Prepayment is made pursuant to Section 2.04 of that certain Revolving Credit and Security Agreement (the “Credit Agreement”), dated as of June 20, 2024, by and among ACV Capital Funding II LLC, as Borrower (the “Borrower”), the Funding Agents from time to time party thereto, the Conduit Lenders from time to time party thereto, the Committed Lenders from time to time party thereto, and Citibank, N.A., as Administrative Agent (the “Administrative Agent”). Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Credit Agreement.

1. The Borrower hereby gives notice that on \_\_\_\_\_, 20\_\_ (the “Prepayment Date”) it will make a prepayment under the Credit Agreement in the principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) of Loans (the “Prepayment Amount”).
2. The Borrower hereby gives notice of intent to prepay an aggregate principal amount equal to the Prepayment Amount to the applicable Lenders pursuant to Section 2.04 of the Credit Agreement and will remit, or cause to be remitted, the proceeds thereof to [ ]. The calculation of the Borrowing Base Test after giving effect to such prepayment is set forth in Schedule I hereto.

[SIGNATURE PAGE TO FOLLOW]

B-1

WITNESS my hand on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ACV CAPITAL FUNDING II LLC, as Borrower

By; ACV Capital LLC, its Member

By:  
Name:  
Title:

B-2

**SCHEDULE I  
TO NOTICE OF PREPAYMENT**

B-1

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## EXHIBIT C

### [FORM OF ASSIGNMENT AND ACCEPTANCE]

Reference is made to the Revolving Credit and Security Agreement (the “Credit Agreement”), dated as of June 20, 2024, by and among ACV Capital Funding II LLC, as Borrower (the “Borrower”), the Funding Agents from time to time party thereto, the Conduit Lenders from time to time party thereto, the Committed Lenders from time to time party thereto, and Citibank, N.A., as Administrative Agent (the “Administrative Agent”). Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Credit Agreement.

The Assignor and the “Assignee” referred to on Schedule I hereto agree as follows:

1. As of the Effective Date (as defined below), the Assignor hereby absolutely and unconditionally sells and assigns, without recourse, to the Assignee, and the Assignee hereby purchases and assumes, without recourse to or representation of any kind (except as set forth below) from Assignor, an interest in and to the Assignor’s rights and obligations under the Credit Agreement and under the other Facility Documents equal to the percentage interest specified on Schedule I hereto, including the Assignor’s percentage interest specified on Schedule I hereto of the outstanding principal amount of the Aggregate Loan Amount to the Borrower (such rights and obligations assigned hereby being the “Assigned Interests”). After giving effect to such sale, assignment and assumption, the Assignee’s “Percentage” will be as set forth on Schedule I hereto. The Assignee hereby directs the Borrower to remit all payments (including payments of principal, interest, fees and other amounts) owed to the Assignee pursuant to the Credit Agreement in accordance with the wire instructions set forth on Schedule I hereto.

2. The Assignor (i) represents and warrants that immediately prior to the Effective Date it is the legal and beneficial owner of the Assigned Interest free and clear of any Lien created by the Assignor; (ii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Facility Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security or ownership interest created or purported to be created under or in connection with, the Facility Documents or any other instrument or document furnished pursuant thereto or the condition or value of the Assigned Interest, Collateral relating to the Borrower, or any interest therein; and (iii) makes no representation or warranty and assumes no responsibility with respect to the condition (financial or otherwise) of the Borrower, the Administrative Agent, the Servicer or any other Person, or the performance or observance by any Person of any of its obligations under any Facility Document or any instrument or document furnished pursuant thereto.

3. The Assignee (i) confirms that it has received a copy of the Credit Agreement and the other Facility Documents, together with copies of any financial statements delivered pursuant to Section 5.01 of the Credit Agreement and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (ii) agrees that it will,



independently and without reliance upon the Administrative Agent, any Funding Agent, the Assignor, or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under or in connection with any of the Facility Documents; (iii) appoints and authorizes the Administrative Agent and its related Funding Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Facility Documents as are delegated to the Administrative Agent or the Funding Agent by the terms thereof, together with such powers and discretion as are reasonably incidental thereto; and (iv) agrees that it will perform in accordance with their terms all of the obligations that by the terms of the Facility Documents are required to be performed by it as a Lender.

4. The Assignee acknowledges that its Facility Group shall be as specified on Schedule I. By executing this Assignment and Acceptance, the Funding Agent and Conduit Lenders, if any, listed on Schedule I shall be party to and bound by the provisions of the Credit Agreement as they relate to Funding Agents and Conduit Lenders, as applicable, and shall have the rights and obligations of a Funding Agent or a Conduit Lender, as applicable, thereunder.

5. Following the execution of this Assignment and Acceptance, it will be delivered to the Administrative Agent for acceptance and recording by the Administrative Agent. The effective date for this Assignment and Acceptance (the "Effective Date") shall be the date of acceptance hereof by the Administrative Agent, unless a later effective date is specified on Schedule I hereto.

6. Upon such acceptance and recording by the Administrative Agent, as of the Effective Date, (i) the Assignee shall be a party to and bound by the provisions of the Credit Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of a Lender thereunder and under any other Facility Document, (ii) without limiting the generality of the foregoing, the Assignee expressly acknowledges and agrees to its obligations of indemnification to the Administrative Agent pursuant to and as provided in Section 11.04 thereof, and (iii) the Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Credit Agreement and under any other Facility Document.

7. Upon such acceptance and recording by the Administrative Agent, as of the Effective Date, the Assignee's Facility Group shall be as specified on Schedule I. By executing this Assignment and Acceptance, the Funding Agent and Conduit Lenders, if any, listed on Schedule I shall be party to and bound by the provisions of the Credit Agreement as they relate to Funding Agents and Conduit Lenders, as applicable, and shall have the rights and obligations of a Funding Agent or a Conduit Lender, as applicable, thereunder.

8. Upon such acceptance and recording by the Administrative Agent, from and after the Effective Date, the Borrower shall make all payments under the Credit Agreement in respect of the Assigned Interest to the Assignee. The Assignor and Assignee shall make all appropriate adjustments in payments under the Credit Agreement and the Assigned Interests for periods prior to the Effective Date directly between themselves.

9. This Assignment and Acceptance shall be governed by, and construed in accordance with, the internal laws of the State of New York.

10. This Assignment and Acceptance may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of Schedule I to this Assignment and Acceptance by electronic means shall be effective as a delivery of a manually executed counterpart of this Assignment and Acceptance.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment and Acceptance to be executed by their officers thereunto duly authorized as of the date first above written.

ASSIGNOR:

**[INSERT NAME OF ASSIGNOR]**, as Assignor

By:  
Authorized Signatory

FUNDING AGENT:

**[INSERT NAME OF FUNDING AGENT]**, as Funding Agent

By:  
Authorized Signatory

CONDUIT LENDER:

**[INSERT NAME OF CONDUIT LENDER]**, as Assignee

By:  
Authorized Signatory

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

CITIBANK, N.A., as Administrative Agent

By:  
Authorized Signatory

[Consented to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

ACV CAPITAL FUNDING II LLC, as Borrower

By: ACV Capital LLC, its Member

By:

Name:

Title: <sup>1</sup>

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<sup>1</sup> Insert in Assignment and Acceptance if Borrower consent is required.

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**SCHEDULE I  
TO ASSIGNMENT AND ACCEPTANCE**

Percentage interest transferred by Assignor: \_\_\_\_\_%

Assignee Funding Agent: [ ]

Assignee Conduit Lender[s]: [ ]

**WIRE INSTRUCTIONS OF ASSIGNEE**

Bank: [ ]

ABA#: [ ]

Account Name: [ ]

Account Number: [ ]

Attn: [ ]

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**EXHIBIT D**

**[FORM OF U.S. TAX COMPLIANCE CERTIFICATE]**

Reference is hereby made to the Revolving Credit and Security Agreement (the “Credit Agreement”), dated as of June 20, 2024, by and among ACV Capital Funding II LLC, as Borrower (the “Borrower”), the Funding Agents from time to time party thereto, the Conduit Lenders from time to time party thereto, the Committed Lenders from time to time party thereto, and Citibank, N.A., as Administrative Agent (the “Administrative Agent”).

Pursuant to the provisions of Section 11.03 (Taxes) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Aggregate Loan Amount (as well as any note(s) evidencing such Aggregate Loan Amount in respect of which it is providing this certificate), and in the case of a lender that is a foreign partnership, its direct or indirect partners/members are the sole beneficial owners of such Aggregate Loan Amount, (ii) it is not (and in the case of a lender that is a foreign partnership, none of its direct or indirect partners/members is) a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not (and in the case of a lender that is a foreign partnership, none of its direct or indirect partners/members is) a ten percent shareholder of the Borrower or Parent within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not (and in the case of a lender that is a foreign partnership, none of its direct or indirect partners/members is) a controlled foreign corporation related to the Borrower or Parent as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on the applicable IRS Form W-8 (i.e., W-8BEN, W-8BEN-E, or W-8IMY (accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption)). By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[SIGNATURE PAGE TO FOLLOW]

Dated: [\_\_\_\_\_]

**[NAME OF LENDER]**

By:  
Name:  
Title:

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**EXHIBIT E**

**[FORM OF SERVICER'S MONTHLY PAYMENT CERTIFICATE]**

(See Attached)

E-1



**FORM OF SERVICER'S MONTHLY PAYMENT CERTIFICATE**

Re: Revolving Credit and Security Agreement, dated as of June 20, 2024 (as amended, supplemented, restated or otherwise modified, the “Credit Agreement”), by and among ACV Capital Funding II LLC, as Borrower (the “Borrower”), the Funding Agents from time to time party thereto, the Conduit Lenders from time to time party thereto, the Committed Lenders from time to time party thereto, and Citibank, N.A., as Administrative Agent (the “Administrative Agent”). Unless otherwise defined herein or as the context otherwise requires, terms used herein have the meaning assigned thereto under the Credit Agreement.

*Prepared by* ACV Capital LLC, as Servicer (“Servicer”)

**Certificate Date:** \_\_\_\_\_  
 (second Business Day immediately preceding the Payment Date)

**Payment Date:** \_\_\_\_\_

On the Payment Date above, all amounts on deposit in the Collection Account shall be applied as follows:

PRIORITY LEVEL	PAYMENT OBLIGATION	PAYEE	WIRING INSTRUCTIONS	AMOUNT
<b>FIRST</b>	First: Account Bank Fee, plus reimbursable expenses and indemnities (subject to annual cap per Section 9.01 of the Credit Agreement, so long as no Event of Default has occurred)  Second: Servicer Fee and Backup Servicer Fee, plus reimbursable expenses and indemnities (subject to annual cap per Section 9.01 of the Credit Agreement)	Account Bank		\$
		Servicer		\$
		Backup Servicer		\$
<b>SECOND</b>	Interest, Unused Fees and Additional Unused Fees	Funding Agents (on behalf of the Lenders)	.	\$

<b>THIRD</b>	Principal payments to Lenders (during the Revolving Period, until the Borrowing Base Test is satisfied and otherwise, until principal is paid in full)	Funding Agents (on behalf of the Lenders)		\$
<b>FOURTH</b>	Amounts due to Affected Persons under Sections 2.08 and 11.03 of the Credit Agreement, and all other fees, expenses or indemnities owed to the Secured Parties or Indemnified Parties	Applicable Affected Persons, Secured Parties, and/or Indemnified Parties		\$
<b>FIFTH</b>	Amounts payable to the Account Bank, Servicer or Backup Servicer in excess of the capped amounts paid in Priority <u>FIRST</u>	Account Bank, Servicer and/or Backup Servicer		\$
<b>SIXTH</b>	REMAINDER	Borrower or its designee		\$

The Servicer, through its Responsible Officer, hereby certifies as follows:

(a) To the extent an Advance shall not have occurred in the thirty (30) days preceding the date hereof, as of the date hereof and as of the Payment Date listed above (after giving effect to all distributions and transfers contemplated on such date), each of the Borrower, Seller and Servicer is and will be Solvent and no Event of Default, Unmatured Event of Default, Servicer Default or Unmatured Servicer Default has occurred or will occur as of such Payment Date (after giving effect to all distributions and transfers contemplated on such date) [except as described on attachment if applicable].

(b) The terms of Section 8.5 of the Servicing Agreement apply to the information set forth in this Certificate and the below documents and information, which are delivered together herewith, as if such Section 8.5 of the Servicing Agreement were fully set forth herein:

(i) To the extent an Advance shall not have occurred in the thirty (30) days preceding the date hereof, a Borrowing Base Certificate, dated and current as of the close of business on the date preceding the delivery date for this Servicer's Monthly Payment Certificate, showing as of such date and on a *pro forma* basis as of the related Payment Date (after giving effect to all distributions, transfers and other activity to occur on such Payment Date), the calculation of the Eligible Receivables Balance, any excess concentrations with respect to any breach of a Concentration Limit and Borrowing Base; and

(ii) [all other information reasonably requested by the Administrative Agent].

(c) The foregoing calculations and determination were made in good faith.

(d) The Servicer hereby agrees to update the information and certifications provided herein and in the attachments hereto if any such information or certifications are no longer true, complete and correct in all material respects on and as of the Payment Date (after giving effect to all distributions on such date) except to the extent such information or certificate expressly relates to any earlier date, as of such earlier date.

This Servicer's Monthly Payment Certificate is being delivered on the Certificate Date set forth above with respect to the Payment Date set forth above by a Responsible Officer of the Servicer.

**ACV CAPITAL LLC**, as Servicer

By:  
Name/Title:

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**EXHIBIT F**  
**[FORMS OF PORTFOLIO DOCUMENTS]**

(See Attached)

F-1

**EXHIBIT G**  
**UNDERWRITING GUIDELINES**

(See Attached)

G-1

**EXHIBIT H**

**[FORM OF RELEASE NOTICE]**

[Date]  
Citibank, N.A.,  
as Administrative Agent  
[ ]  
New York, NY 10282

Attn: [ ]

This notice is being delivered pursuant to Section 8.03(b) of that certain Revolving Credit and Security Agreement, dated as of June 20, 2024 (as amended, supplemented, restated or otherwise modified, the "Credit Agreement"), by and among ACV Capital Funding II LLC, as Borrower (the "Borrower"), the Funding Agents from time to time party thereto, the Conduit Lenders from time to time party thereto, the Committed Lenders from time to time party thereto, and Citibank, N.A., as Administrative Agent (the "Administrative Agent"), in connection with a Release to occur on or about the date hereof. Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Credit Agreement.

Attached as Schedule I is a statement of (i) the amount on deposit in the Collection Account (x) as of the immediately preceding Business Day and (y) immediately after giving effect to the proposed Release and (ii) the aggregate amount of the proposed Release. Attached as Schedule II is a Borrowing Base Certificate demonstrating that the Borrowing Base Test will be satisfied after giving effect to such Release.

The undersigned, being a Responsible Officer of the Borrower, hereby certifies that (i) each of the representations and warranties set forth in Section 4.01 of the Credit Agreement is true and correct with respect to the Borrower as of the date hereof, (ii) after giving effect to such Release, the Borrowing Base Test will be satisfied and (iii) each of the other Recycling Conditions identified in the Credit Agreement have been satisfied.

ACV CAPITAL FUNDING II LLC, as the Borrower

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE I**  
**ACCOUNT STATEMENTS**  
(Attached)

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**SCHEDULE II**  
**BORROWING BASE CERTIFICATE**  
(Attached)

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WEIL:199621584\14\35899.0654

ACV Capital LLC,  
as Seller

and

ACV Capital Funding II LLC,  
as Purchaser

Purchase and Sale Agreement

Dated June 20, 2024

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This Purchase and Sale Agreement, dated as of June 20, 2024, by and between ACV Capital LLC, a Delaware limited liability company (the “*Seller*”), and ACV Capital Funding II LLC, a Delaware limited liability company (the “*Purchaser*”).

### **Recitals:**

Whereas, the Purchaser desires to purchase from the Seller from time to time certain Receivables and the related rights and assets owned by the Seller; and

Whereas, the Seller desires to sell to the Purchaser from time to time certain Receivables and the related rights and assets owned by the Seller.

Now, therefore, it is hereby agreed as follows:

### **Article I**

#### **Definitions**

*Section 1.1. Definitions.* The following words and phrases shall have the following meanings:

“*Addition Date*” shall have the meaning specified in Section 2.1(b).

“*Additional Receivable*” shall have the meaning specified in Section 2.1(b).

“*Administrative Agent*” shall mean Citibank, N.A., in its capacity as administrative agent pursuant to the Credit Agreement.

“*Advance*” shall have the meaning specified in the Credit Agreement.

“*Adverse Claim*” shall mean any valid claim of ownership or any lien, other than any lien created pursuant to or permitted by the Transaction Documents.

“*Affiliate*” shall have the meaning specified in the Credit Agreement.

“*Agreement*” shall mean this Purchase and Sale Agreement and all amendments hereof and supplements hereto.

“*Asset List*” shall mean, with respect to any Addition Date, the list of any Additional Receivables transferred from the Seller to the Purchaser, which shall identify (i) each related Receivable, (ii) the related Purchase Price, (iii) the origination date of such Receivable, and (iv) the related Addition Date.

“*Assigned Agreements*” shall mean all Portfolio Documents relating to the Purchased Assets, and all other instruments, certificates, documents and agreements executed and/or

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delivered in connection therewith, relating to any Purchased Asset, including, without limitation, all data necessary or reasonably useful in the servicing of Receivables purchased by Purchaser.

“*Business Day*” shall have the meaning specified in the Credit Agreement.

“*Closing Date*” shall mean June 20, 2024.

“*Code*” shall have the meaning specified in the Credit Agreement.

“*Collections*” shall mean, with respect to any Receivable, all Scheduled Payments, prepayments (both voluntary and mandatory) and other amounts received of any and every description payable to the holder of such Receivable by or on behalf of the related Obligor pursuant thereto or the related Portfolio Documents.

“*Conveyance*” shall mean any sale, transfer, assignment or conveyance to the Purchaser of Purchased Assets pursuant to this Agreement.

“*Conveyance Documents*” shall mean this Agreement, each Asset List and any other document or instrument delivered pursuant hereto and thereto.

“*Credit Agreement*” shall mean the Revolving Credit and Security Agreement, dated as of June 20, 2024, by and among the Purchaser, as borrower, the funding agents from time to time parties thereto, the committed lenders from time to time parties thereto, the conduit lenders from time to time parties thereto, and the Administrative Agent.

“*Eligible Receivable*” shall have the meaning specified in the Credit Agreement.

“*ERISA Affiliate*” shall mean any trade or business (whether or not incorporated) under common control with the Seller within the meaning of Section 414(b) or (c) of the Code (and Section 414(m) or (o) of the Code for purposes of provisions relating to Section 412, 430 or 431 of the Code).

“*GAAP*” shall have the meaning specified in the Credit Agreement.

“*Governmental Authority*” shall have the meaning specified in the Credit Agreement.

“*Indemnified Person*” shall have the meaning specified in Section 7.1.

“*Initial Purchased Assets*” shall have the meaning set forth in Section 2.1(a).

“*Initial Receivables*” shall mean the Receivables set forth in Schedule I attached hereto.

“*Material Adverse Effect*” means any development, event, condition, obligation, liability or circumstance or set of events, conditions, obligations, liabilities or circumstances or any change(s) which (i) has been or reasonably could be expected to be material and adverse to the value of any of the Purchased Assets or to the business, operations, properties, assets, liabilities

or condition (financial or otherwise) of Seller; or (ii) has materially impaired or reasonably could be expected to materially impair the ability of Seller to perform any of its obligations, or to consummate the transactions, under this Agreement.

“*Person*” shall have the meaning specified in the Credit Agreement.

“*Portfolio Documents*” shall have the meaning specified in the Credit Agreement.

“*Purchase Price*” shall mean, with respect to any Purchased Assets conveyed by the Seller to the Purchaser hereunder on any Transfer Date, an amount equal to the aggregate sum of the outstanding principal balance of all Receivables being conveyed on such Transfer Date.

“*Purchased Assets*” shall mean all Initial Purchased Assets and Subsequent Purchased Assets.

“*Purchaser*” shall have the meaning specified in the preamble.

“*Obligor*” shall have the meaning specified in the Credit Agreement.

“*Receivable*” shall have the meaning specified in the Credit Agreement.

“*Release*” shall have the meaning specified in the Credit Agreement.

“*Request for Advance*” shall have the meaning specified in the Credit Agreement.

“*Scheduled Payments*” shall mean the scheduled payments as set forth in the applicable Portfolio Documents (whether of principal, interest, fees, or otherwise) by or on behalf of an Obligor on a Receivable.

“*Seller*” shall have the meaning specified in the preamble.

“*Solvent*” shall mean, with respect to any Person, at any date, that, on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“*Subsequent Purchased Assets*” shall have the meaning specified in Section 2.1(b).

“*Transaction Documents*” shall mean this Agreement, the Credit Agreement, the Facility Documents, and all other documents executed or delivered by the parties hereto or Administrative Agent pursuant to this Agreement or in connection herewith, as each such document may be amended, restated, supplemented, or otherwise modified from time to time.

“*Transfer Date*” shall mean the Closing Date and each Addition Date, as applicable.

*Section 1.2. Other Definitional Provisions.* All terms defined in this Agreement, when used in any other document made or delivered pursuant hereto, including any certificate or Conveyance Document, shall have the meanings defined herein, unless otherwise defined therein. Capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Credit Agreement.

## **Article II**

### **Purchase and Sale of Receivables**

*Section 2.1. Purchases.* (a) The Seller does hereby sell, transfer, assign, set over and otherwise convey to the Purchaser, without recourse, except as otherwise set forth herein, on the Closing Date, all of its right, title and interest in, to and under (i) each Initial Receivable, (ii) all Collections and other proceeds of the Initial Receivables received, collected or otherwise recovered on or after the Closing Date, (iii) all Portfolio Documents relating to the Initial Receivables, (iv) all property that is related to any Initial Receivable, (v) all guaranties, letters of credit, letter-of-credit rights, supporting obligations and other agreements or arrangements of whatever character from time to time supporting or securing payment of any Initial Receivable whether pursuant to the Portfolio Documents related to such Initial Receivable or otherwise, (vi) all insurance policies that relate to any Initial Receivable or any property securing an Initial Receivable, (vii) all of the Seller’s rights (but none of its obligations) under the Assigned Agreements, in each case to the extent relating to the Initial Receivables, including, without limitation, (A) all monies due and to become due to the Seller under the Assigned Agreements, whether in respect of repurchase prices, Scheduled Payments, fees, expenses, costs, indemnities, damages for the breach thereof or otherwise, (B) all property otherwise related to the Assigned Agreements, (C) all rights of the Seller to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Assigned Agreements and (D) all rights, remedies, powers, privileges and claims of Seller in relation to the Purchased Assets, in each case, whether arising pursuant to the terms of Assigned Agreements or as otherwise available at law or in equity, and (viii) all proceeds (including, without limitation, “proceeds” as defined in Article 9 of the UCC as in effect in the State of New York), profits, rents and products of any of the foregoing (collectively, the “*Initial Purchased Assets*”). The Purchase Price for the Initial Purchased Assets shall be as set forth on Schedule I attached hereto, and shall be due and payable in cash on the date of this Agreement.

(b) From time to time during the term of this Agreement, upon approval by Administrative Agent of a Request for Advance in accordance with the terms of the Credit Agreement or in accordance with a Release in accordance with the terms of the Credit

Agreement, the Seller shall sell, transfer, assign, set over and otherwise convey to the Purchaser, and the Purchaser shall purchase and accept from the Seller, such additional Receivables presented in such Request for Advance or Release (any Receivable that the Purchaser so agrees to purchase being an “*Additional Receivable*”) on the terms and conditions set forth in this Section 2.1 and Article VII. In the event the Purchaser acquires an Additional Receivable from the Seller, the Purchaser and the Seller shall execute and deliver to the Administrative Agent an Asset List using such methods as the Seller and the Purchaser may mutually agree (which may include an email or other agreed upon electronic method). The Asset List shall specify the Additional Receivables which are the subject of such Conveyance and the effective date of such Conveyance (such date, the “*Addition Date*”). Effective as of the Addition Date for each Additional Receivable, the Seller does hereby sell, transfer, assign, set over and otherwise convey to the Purchaser, without recourse, except as otherwise set forth herein, all of its right, title and interest in, to and under (i) such Additional Receivable, (ii) all Collections and other proceeds of such Additional Receivable received, collected or otherwise recovered on or after such Addition Date (or such earlier date, if any, as may be specified in the related Asset List), (iii) all Portfolio Documents relating to such Additional Receivable, (iv) all property that is related to such Additional Receivable, (v) all guaranties, letters of credit, letter-of-credit rights, supporting obligations and other agreements or arrangements of whatever character from time to time supporting or securing payment of such Additional Receivable whether pursuant to the Portfolio Documents related to such Additional Receivable or otherwise, (vi) all insurance policies that relate to such Additional Receivable or any property securing such Additional Receivable, (vii) all of the Seller’s rights (but none of its obligations) under the Assigned Agreements, in each case to the extent relating to such Additional Receivable, including, without limitation, (A) all monies due and to become due to the Seller under the Assigned Agreements, whether in respect of repurchase prices, Scheduled Payments, fees, expenses, costs, indemnities, damages for the breach thereof or otherwise, (B) all property otherwise related to the Assigned Agreements, (C) all rights of the Seller to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Assigned Agreements and (D) all rights, remedies, powers, privileges and claims of Seller in relation to the Purchased Assets, in each case, whether arising pursuant to the terms of Assigned Agreements or as otherwise available at law or in equity, and (viii) all proceeds (including, without limitation, “proceeds” as defined in Article 9 of the UCC as in effect in the State of New York), profits, rents and products of any of the foregoing (collectively, the “*Subsequent Purchased Assets*”). The Purchase Price for each Subsequent Purchased Asset shall be as set forth on the Asset List related to it, and shall be due and payable in cash immediately upon the transfer of title to such Subsequent Purchased Asset from the Seller to the Purchaser.

(c) It is the intention of the parties hereto that each Conveyance of a Receivable to be made hereunder shall constitute a true sale and absolute conveyance, and not a loan secured by such Receivable and that each Conveyance to the Purchaser hereunder is absolute and irrevocable, without reservation or retention of any interest whatsoever by the Seller. Except as otherwise provided in this Agreement, each Conveyance is made without recourse to the Seller; *provided, however*, that (i) the Seller shall be liable to the Purchaser for all representations, warranties, covenants and other agreements made by the Seller pursuant to the terms of this Agreement, and (ii) such Conveyance does not constitute and is not intended to result in an assumption by the Purchaser or any assignee thereof of any obligation of the Seller or any other

Person, whether arising under the Assigned Agreements or otherwise existing. The Seller agrees to note in its books and records that the Purchased Assets have been conveyed to the Purchaser, and the Purchaser agrees to note in its books and records that it has purchased such Purchased Assets and has not loaned the Seller funds secured by such Receivables. If, notwithstanding the intention of the parties, the Seller shall be deemed for any reason to have retained any right, title or interest in or to any Purchased Asset that is or was purported to be the subject of any Conveyance hereunder, then the Seller shall be deemed to have granted, and the Seller hereby does grant, to the Purchaser a security interest in all of the Seller's right, title and interest in, to and under all Purchased Assets now existing or hereafter arising, which security interest shall secure all present and future obligations of the Seller hereunder and all amounts paid by the Purchaser to the Seller hereunder plus interest and other charges that accrue on all Purchased Assets and which security interest shall be expressly subordinate, junior and inferior in all respects to the security interest of Administrative Agent in such Purchased Assets pursuant to the Credit Agreement. It is the intention of the Seller and the Purchaser that the Purchased Assets transferred by the Seller to the Purchaser pursuant to this Agreement shall not be part of the Seller's estate in the event of the filing of a bankruptcy petition by or against the Seller under any bankruptcy or similar law.

*Section 2.2. Documentation.* (a) Each Conveyance of a Receivable hereunder shall include the collateral assignment to the Purchaser of all of the Seller's right and title to and interest in, to and under the Assigned Agreements and the Seller hereby agrees that such collateral assignment shall be effected automatically with each such Conveyance, without any further documentation.

(b) The Seller shall take all action necessary or appropriate, or that the Purchaser may reasonably request, to cause the Purchaser to become the owner of record of each Purchased Asset. The Purchaser is hereby appointed as the attorney-in-fact of the Seller with the power to prepare, execute and record assignments, endorsements to instruments and other instruments, documents and agreements necessary or appropriate to evidence or further effectuate the Conveyances made hereunder. Such power, coupled with an interest, is irrevocable.

(c) The Seller, in consultation with the Purchaser, shall ensure that all financing statements or similar instruments or documents necessary under the UCC (or comparable law) of all appropriate jurisdictions to perfect the Purchaser's ownership interest in the Purchased Assets (to the extent that an ownership interest therein can be perfected by the filing of a financing statement and other than the ownership interest in any such Purchased Assets which has been released in accordance with the terms of the Credit Agreement) have been duly filed.

(d) The Seller shall provide any other data requested by Purchaser and in the Seller's possession or control with respect to the Receivables purchased by the Purchaser.

(e) On and after each Transfer Date hereunder, the Purchaser shall own the Purchased Assets conveyed by the Seller to the Purchaser on such Transfer Date and the Seller shall not take any action inconsistent with such ownership and shall not claim any ownership interest in such Purchased Assets, *provided*, that the parties hereto agree that the Assigned Agreements have only been collaterally assigned to Purchaser hereunder and such assignment shall not be



absolute in nature or cause the Purchaser to become the party-in-interest under any of the Assigned Agreements.

### **Article III**

#### **Consideration and Payment**

*Section 3.1. Purchase Price.* The Purchase Price for the Purchased Assets to be conveyed hereunder on any Transfer Date shall be payable by the Purchaser on such Transfer Date. Such Purchase Price shall be paid in cash by wire transfer of funds to the account of the Seller specified for such purpose. To the extent that the cash amount received for any Purchased Assets conveyed by the Seller to the Purchaser hereunder is less than the Purchase Price of such Purchased Assets at the time of the applicable sale, the shortfall shall be deemed to have been contributed by the Seller to the capital of the Purchaser on the applicable Transfer Date. The Seller and the Purchaser intend that the Purchase Price for any Conveyed Assets conveyed by the Seller to the Purchaser hereunder reflect the fair market value which would be obtained in an arm's-length transaction with an unaffiliated party of such Purchased Assets, at the time of the applicable sale.

### **Article IV**

#### **Representations and Warranties**

*Section 4.1. Seller Representations and Warranties.* The Seller hereby represents and warrants to, and agrees with, the Purchaser as of the Closing Date and as of each Addition Date, that:

(a) *Existence; Compliance with Law.* The Seller (i) is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware; (ii) is duly qualified to conduct business and is in good standing in each other jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except where the absence of such qualification, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; (iii) has the requisite power and authority and the legal right to own, pledge, mortgage or otherwise encumber and operate its properties, to lease the property it operates under lease, and to conduct its business as now, heretofore and proposed to be conducted; (iv) has all licenses, permits, consents or approvals from or by, and has made all filings with, and has given all notices to, all Governmental Authorities having jurisdiction, to the extent required for such ownership, operation and conduct, except where the absence of such licenses, permits, consents or approvals, individually or in the aggregate, would not be reasonably likely to have a Material Adverse Effect; (v) is in compliance with its organizational documents in all material respects; and (vi) is in compliance with all applicable provisions of law, except where the failure to comply, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) *Executive Offices; Purchased Assets Locations; Corporate or Other Names; FEIN.* The Seller's chief executive office, principal place of business, other offices, the warehouses and premises within which any documentation pertaining to the Purchased Assets is stored or located, and the locations of its records concerning the Purchased Assets are located at the addresses set forth in Schedule II hereto (or at such other locations as to which the notice and other requirements set forth in Section 5.1(i) shall have been satisfied). Except as set forth in Schedule II hereto, during the prior five years, the Seller has not been known as or used any company, fictitious or trade name other than the name of the Seller appearing on the signature page hereto. In addition, Schedule II hereto lists the federal employer identification number of the Seller.

(c) *Power, Authorization, Enforceable Obligations.* The execution, delivery and performance by the Seller of this Agreement and the other Transaction Documents to which it is a party, the creation and perfection of the ownership interests provided for herein: (i) are within the Seller's corporate powers; (ii) have been duly authorized by all necessary or proper limited liability company action; (iii) do not contravene any provision of the Seller's certificate of formation, limited liability company agreement or other organizational documents; (iv) do not violate any law or regulation, or any order or decree of any court or governmental authority; (v) do not conflict with or result in the breach or termination of, constitute a default under or accelerate or permit the acceleration of any performance required by, any Receivable or any material indenture, mortgage, deed of trust, lease, agreement or other instrument to which the Seller is a party or by which the Seller or any of the property of the Seller is bound; (vi) do not result in the creation or imposition of any Adverse Claim upon any of the property of the Seller (other than any right of the Seller hereunder); and (vii) do not require the consent or approval of any Governmental Authority or any other Person, except consents to the sale of Receivables, to the extent required by the Portfolio Documents applicable thereto (all of which have been or will be obtained prior to the applicable Transfer Date). On or prior to the Closing Date, each of the Transaction Documents to which the Seller is a party shall have been duly executed and delivered by the Seller and each such Transaction Document shall then constitute a legal, valid and binding obligation of the Seller enforceable against it 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.

(d) *No Litigation.* No litigation is now pending or, to the knowledge of the Seller, threatened against the Seller that (i) challenges the Seller's right or power to enter into or perform any of its obligations under the Transaction Documents to which it is a party, or the validity or enforceability of any Transaction Document or any action taken thereunder, (ii) seeks to prevent any sale contemplated by this Agreement or the consummation of any of the other transactions contemplated under this Agreement or the other Transaction Documents, or (iii) could reasonably be expected have a Material Adverse Effect.

(e) *Solvency; Value Given.* Both before and after giving effect to (i) the transactions contemplated by this Agreement and the other Transaction Documents and (ii) the payment and accrual of all transaction costs in connection with the foregoing, the Seller is and will be Solvent. The Seller has received reasonably equivalent value in consideration for the transfer of the Transferred Receivables and no such transfer was made for or on account of an antecedent debt owed by the Seller to the Purchaser.

(f) *Good Title; Perfection.* Immediately prior to each Conveyance hereunder, the Seller was the legal and beneficial owner of each Receivable and all related security interests and other property rights, that is the subject of such Conveyance, free and clear of any Adverse Claim. After giving effect to each Conveyance hereunder, the Purchaser shall have good and marketable title to each Purchased Asset purported to be conveyed to the Purchaser, free and clear of any Adverse Claim. As of the Transfer Date pertaining thereto, the Purchaser shall have good and marketable title to all security interests and other property rights relating to such Receivable.

(g) *Taxes.* The Seller has filed all material tax returns (federal, state and local) which it reasonably believes are required to be filed by it and has paid or made adequate provision for the payment of all material taxes, assessments and other governmental charges due from the Seller except to the extent that the Seller is contesting any such tax, assessment or other governmental charge in good faith through appropriate proceedings and has adequately reserved against the obligation to pay such amount in accordance and to the extent required by GAAP.

(h) *Full Disclosure.* No report or other written statement furnished by or on behalf of the Seller to the Purchaser pursuant to the terms of this Agreement or any of the other Transaction Document (other than any information provided to the Seller by an Obligor on or prior to the Transfer Date of the Receivable) contains any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which and at the time they were made.

(i) *ERISA.* The Seller and any ERISA Affiliate has not adopted, maintained, contributed to or incurred by any of its own actions or assumed and will not adopt, maintain, contribute to or incur by any of its own actions or assume any legal obligation with respect to any “employee benefit plan” as defined in Section 3(3) of ERISA or any “multiemployer plan” as defined in Section 4001(a)(3) of ERISA.

(j) *Investment Company Act.* The Seller is not, and is not required to be, registered as an “investment company” under the Investment Company Act of 1940, as amended.

(k) *Eligible Assets.* As of the Addition Date with respect to each Receivable, each Receivable sold to the Purchaser pursuant to this Agreement is an Eligible Receivable, validly executed and enforceable by its terms against each respective Obligor, 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.

(l) *Conveyances from Others.* All actions (including, without limitation, the filing of all financing statements or other similar instruments or documents under the UCC of all applicable jurisdictions and the giving of all notices that may be required under the laws of any applicable jurisdiction) required in order to perfect and protect the Purchaser's interest in the Purchased Assets as against any purchasers from, or creditors of, the Seller or any Person from whom the Seller acquired such Purchased Asset have been duly taken.

(m) *No Adverse Selection.* No procedures believed by the Seller to be adverse to the interests of the Purchaser were utilized in identifying and/or selecting the Receivables to be sold to the Purchaser.

(o) *No Material Adverse Effect.* To the Seller's knowledge, there is no event, fact, condition or circumstance which has resulted in a Material Adverse Effect.

(p) *Investment Company Act.* The Seller is not required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(q) *Ownership Interest.* This Agreement creates a valid and continuing perfected security interest (within the meaning of the applicable UCC) in the Purchased Assets in favor of the Purchaser, which interest is prior to all Liens (except for Permitted Liens), and is enforceable as such against creditors of and purchasers from the Seller.

(r) *Separate Entity.* The Seller is operated as an entity with assets and liabilities distinct from those of the Purchaser, and the Seller hereby acknowledges that the Administrative Agent and the Secured Parties under the Credit Agreement are entering into the transactions contemplated by the Credit Agreement in reliance upon the Seller's identity as a separate legal entity from the Purchaser and the Purchaser's undertakings (in its capacity as the borrower under the Credit Agreement) in Section 5.03(vii) of the Credit Agreement.

(s) *Taxes.* The Seller has filed all federal income tax returns and all other material tax returns which are required to be filed by it, if any, and has paid all taxes shown to be due and payable (taking into account extensions) on such returns, if any, or pursuant to any assessment by a valid taxing authority received by any such Person, except for any taxes or assessments (i) which are being contested in good faith by appropriate proceedings and with respect thereto adequate reserves have been established in accordance with GAAP and (ii) the failure to file or the non-payment of which would not reasonably be expected to give rise to a Material Adverse Effect.

(t) *Bulk Sales.* No transaction contemplated in this Agreement or the other Facility Documents requires compliance with any bulk sales act or similar law.

(u) *Accuracy of Information.* All written information which was furnished by or on behalf of the Seller in writing to the Purchaser or its assignees for purposes of or in connection with this Agreement or any transaction contemplated hereby is true and accurate in all material respects on and as of the date such information was furnished (except to the extent that such furnished information relates solely to an earlier date, in which case such information was true and accurate in all material respects on and as of such earlier date).

(v) *All Payments Made in Ordinary Course of Business.* In the event the sale of the Purchased Assets from the Seller to the Purchaser is recharacterized by any court as a secured lending rather than a sale, each remittance of Collections of Purchased Assets to the Purchaser in accordance with this Agreement and the Servicing Agreement will have been (i) in payment of a debt incurred by the Seller in the ordinary course of business or financial affairs of the Seller and the Purchaser, and (ii) made in the ordinary course of business or financial affairs of the Seller and the Purchaser.

(w) *Anti-Corruption Laws; Sanctions.* The Seller and its subsidiaries are conducting and will continue to conduct their business in compliance with Anti-Corruption Laws. The Seller and its subsidiaries have implemented, maintain, and will continue to maintain in effect policies and procedures to ensure compliance by the Seller and its subsidiaries and its directors, officers, employees, and agents, with Anti-Corruption Laws. Neither the Seller nor any of its parents or subsidiaries, or any of their directors, officers, or employees, or to the knowledge of the Seller, the affiliates or agents of the Seller or any of its subsidiaries, is a Sanctioned Person, or located, organized, or resident in a Sanctioned Jurisdiction.

(x) *Anti-Money Laundering.* The operations of the Seller and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, as amended, the applicable money laundering statutes of all jurisdictions where the Seller or any of its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental or regulatory agency (collectively, the “*Anti-Money Laundering Laws*”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Seller or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of any Seller, threatened.

*Section 4.2. Representations and Warranties of the Purchaser.* The Purchaser hereby represents and warrants to, and agrees with the Seller as of the Closing Date and as of each Addition Date, that:

(a) *Existence.* The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) *Power, Authorization, Enforceable Obligations.* The execution, delivery and performance by the Purchaser of this Agreement and the other Transaction

Documents to which it is a party: (i) are within the Purchaser's limited liability company powers; (ii) have been duly authorized by all necessary or proper limited liability company action; and (iii) do not contravene any provision of the Purchaser's certificate of formation, limited liability company agreement or other organizational documents. On or prior to the Closing Date, each of the Transaction Documents to which the Purchaser is a party shall have been duly executed and delivered by the Purchaser and each such Transaction Document shall then constitute a legal, valid and binding obligation of the Purchaser enforceable against it 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.

The representations and warranties set forth in this Article IV shall survive the Conveyance of the Purchased Assets to the Purchaser and termination of the rights and obligations of the Purchaser and the Seller under this Agreement.

## **Article V**

### **Covenants of the Seller**

*Section 5.1. Seller Covenants.* The Seller hereby covenants and agrees with the Purchaser as follows:

(a) *Compliance with Agreements and Applicable Laws.* The Seller shall perform each of its obligations under this Agreement and the other Transaction Documents and comply in all material respects with all federal, state and local laws and regulations applicable to it and the Purchased Assets, including those relating to truth in lending, fair credit reporting, equal credit opportunity, fair debt collection practices, privacy, licensing, taxation, ERISA and labor matters and all applicable federal, state and local environmental statutory and regulatory requirements, except to the extent that the failure to so comply, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) *Maintenance of Existence and Conduct of Business.* The Seller shall: (i) do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence and its rights and franchises; (ii) continue to conduct its business substantially as now conducted or as otherwise permitted hereunder and in accordance with the terms of its certificate of incorporation and bylaws; and (iii) transact business only in such names as set forth on Schedule III attached hereto.

(c) *ERISA; Plan Assets.* The Seller shall give the Purchaser prompt written notice of any event that could result in the imposition of a lien under Section 412 of the Code or Section 302 or 4068 of ERISA. The Seller shall not, directly or indirectly, engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code), and the Seller and its ERISA Affiliates shall not, directly or

indirectly, (a) incur any “accumulated funding deficiency” as such term is defined in Section 302 of ERISA with respect to any Employee Plan, (b) permit any “employee benefit plan” as defined in Section 3(3) of ERISA to be subject to involuntary termination proceedings pursuant to Title IV of ERISA, or (c) fully or partially withdraw from any “multiemployer plan” as defined in Section 4001(a)(3) of ERISA.

(d) *Modifications of Purchased Assets.* Consistent with the Purchaser’s ownership of the Purchased Assets, except as permitted under the Credit Agreement, the Seller shall not extend, amend, forgive, discharge, compromise, waive, cancel or otherwise modify the terms of any Purchased Asset.

(e) *Amendments to Receivables or Assigned Agreements.* The Seller shall not, without the prior written consent of the Purchaser and Administrative Agent, (i) cancel or terminate any Receivable or Assigned Agreement, (ii) give any consent, waiver, directive or approval under any Receivable or Assigned Agreement, (iii) waive any default, action, omission or breach under any Receivable or Assigned Agreement, or otherwise grant any indulgence or forbearance thereunder, or (iv) amend, supplement or otherwise modify any of the terms of any Receivable or Assigned Agreement.

(f) *ERISA.* The Seller shall not, and shall not cause or permit any of its ERISA Affiliates to, cause or permit to occur an event that could result in the imposition of a Lien under Section 412 of the Code or Section 302 or 4068 of ERISA.

(g) *Adverse Claims.* The Seller shall not sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, or create or suffer to exist any Adverse Claim upon (including, without limitation, the filing of any financing statement) or with respect to, any Purchased Asset or assign any right to receive income in respect thereof except to the Purchaser pursuant to this Agreement, and the Seller shall defend the right, title and interest of the Purchaser in, to and under any of the foregoing property, against all claims of third parties claiming through or under the Seller.

(h) *Sale Treatment.* The Seller will not account for or treat (whether in financial statements or otherwise) the transactions contemplated by this Agreement in any manner other than a sale and absolute assignment of the applicable Receivables to the Purchaser constituting a “true sale” for bankruptcy purposes. If a third party, including a potential purchaser of the Purchased Assets, should inquire, the Seller shall promptly indicate that the Purchased Assets have been sold or contributed to the Purchaser and will claim no ownership interest in such assets.

(i) *Name Changes; Organizational Changes; Offices and Records.* The Seller shall not change its legal name, identity, company structure or jurisdiction of organization in any manner, unless it shall have given the Purchaser at least 30 days’ prior written notice thereof. The Seller shall maintain its principal place of business and chief executive office at the location specified herein or, upon thirty (30) days’ prior written

notice to the Purchaser, at such other location in a jurisdiction where all action reasonably requested by the Purchaser pursuant to Section 10.13 shall have been taken.

(j) *Capital Structure and Business.* The Seller shall not (i) make any changes in any of its business objectives, purposes or operations that result, or that will result, in a Material Adverse Effect or (ii) amend its organizational documents in a manner that results, or that will result, in a Material Adverse Effect.

(k) *Information.* The Seller shall deliver or cause to be delivered to the Purchaser information and documents related to the Purchased Assets as the Purchaser may reasonably request, promptly upon the Purchaser's request therefor.

(l) The Seller shall maintain its computer systems so that, from and after the time of Conveyance under this Agreement of Purchased Assets to the Purchaser and the grant of a security interest in such Purchased Assets by the Purchaser to the Administrative Agent, the Seller's master computer records (including archives) that shall refer to such a Purchased Asset indicate clearly that such Purchased Asset has been Conveyed to the Purchaser hereunder and pledged by the Purchaser to the Administrative Agent. Indication of the security interest of the Administrative Agent in a Purchased Asset transferred hereunder shall be deleted from or modified on the Seller's computer systems when, and only when, such Purchased Asset shall be (i) subject to payoff with respect to the underlying Receivable by the related Obligor or (ii) released by the Administrative Agent pursuant to the Credit Agreement.

(m) *Delivery of Collections.* Consistent with the Purchaser's ownership of the Purchased Assets, in the event the Seller shall receive any Collections in respect of any Purchased Assets on or after the Transfer Date therefor, the Seller agrees to promptly remit such Collections to the Collection Account (but in no event later than two (2) Business Days after receipt thereof).

(n) *Nonconsolidation.* The Seller shall take all actions required to maintain the Purchaser's status as a separate legal entity, including, without limitation, (i) not holding the Purchaser out to third parties as an entity other than an entity with assets and liabilities distinct from the Seller and the Seller's other subsidiaries; provided that the assets of the Purchaser may be consolidated into the assets of the Seller for tax and accounting purposes and may be included in the financial statements of the Seller; (ii) not holding itself out to be responsible for any indebtedness or other liability of the Purchaser or, other than by reason of owning equity interests of the Purchaser, for any decisions or actions relating to the Purchaser; (iii) taking such other actions as are necessary on its part to ensure that all corporate procedures required by its and the Purchaser's respective Constituent Documents are duly and validly taken; (iv) not acting in any manner that would foreseeably mislead others with respect to the Purchaser's separate identity and (v) observing and complying with each assumption supporting the nonconsolidation opinion issued by counsel to the Seller and the Purchaser on the date hereof, except where the failure to do so would not prevent counsel to the Seller and the Purchaser, when



considering such failure, from reaching the same conclusions in its nonconsolidation opinion as when such failure is not considered.

(o) *Further Assurances.* It will promptly, and promptly upon the reasonable request of the Purchaser or the Administrative Agent shall, at the Seller's expense, execute and deliver such further instruments and take such further action in order to maintain and protect the Purchaser's ownership interest (or if the transactions contemplated hereby are deemed not to be a sale, the Purchaser's perfected security interest) in the Purchased Assets pledged by the Seller hereunder free and clear of any Liens (other than Permitted Liens), including all further actions which are necessary to (x) enable the Purchaser to enforce its rights and remedies under this Agreement and the other Facility Documents, and (y) effectuate the intent and purpose of, and to carry out the terms of, the Facility Documents. Without limiting its obligation to maintain and protect the Purchaser's ownership interest in the Purchased Assets, the Seller authorizes the Purchaser or the Administrative Agent to file or record financing statements and other filing or recording documents or instruments with respect to the Purchased Assets in such form and in such offices as are necessary to perfect the ownership interests of the Purchaser under this Agreement under each method of perfection required herein with respect to the Purchased Assets. The Seller will, in connection therewith, deliver such proof of corporate action, incumbency of officers or other documents as are reasonably requested by the Purchaser or the Administrative Agent to evidence appropriate authority of the officers signing or authorizing any such documents, instruments or filings.

(p) *Costs and Expenses.* The Seller shall pay all reasonable, documented costs and disbursements incurred by it in connection with this Agreement and the performance of its obligations hereunder.

(q) *Access to Records and Documents; Audit Rights.* The Seller shall, subject to Section 5.01(d) of the Credit Agreement, permit the Administrative Agent or any of its agents, officers or representatives to enter and attend at its offices during normal office hours for the purposes of monitoring its compliance with this Agreement and the other Facility Documents, including (A) to the maximum extent permitted by law, to examine, make and take with them copies of all books of account, records and documents (including computerized information) relating to the Purchased Assets and computer printouts of Purchased Assets, records or other information as the Administrative Agent may reasonably require from time to time and (B) to visit the offices and properties of Seller for the purpose of examining such records, and to discuss matters relating to the Receivables or the Seller's performance under the Facility Documents with any of the officers or employees of the Seller having knowledge of such matters. Such access and materials shall be provided not more than once in any calendar year unless (i) an Early Amortization Event or Event of Default has occurred but is no longer continuing, in which case such access and materials shall be provided one additional time with respect to each such Early Amortization Event or Event of Default in any such calendar year or (ii) an Event of Default or an Early Amortization Event has occurred and is continuing, in which case such access and materials shall be provided at any time upon request. If no Event of Default or Early Amortization Event has occurred, such access and materials

shall be provided immediately upon request by the Administrative Agent upon ten (10) Business Days' prior notice to the Seller if the Administrative Agent or a Lender has formed the opinion that such access and materials are required for the purposes of monitoring compliance with the Facility Documents. Such access and materials shall be provided immediately upon request by the Administrative Agent at any time following an Event of Default or Early Amortization Event, whether or not any such Early Amortization Event has been cured. Notwithstanding anything to the contrary, any audit or inspection rights under this Agreement or any other Facility Document that are at the expense of the Seller shall be capped at \$75,000 per annum; provided that such cap shall not apply following the occurrence of an Event of Default or an Early Amortization Event.

## **Article VI**

### **Repurchase Obligations**

*Section 6.1. Repurchase Obligation.* Upon discovery by the Seller or receipt of notice by the Seller from the Purchaser or the Administrative Agent of a breach of any representation or warranty set forth in Section 4.1(k), the Seller shall promptly notify the Purchaser and the Administrative Agent. The Seller shall, on the Payment Date immediately following the Seller's discovery or receipt of notice of such breach, either cure such breach or purchase the affected Receivable from the Purchaser at an amount equal to the outstanding principal balance of such Receivable plus accrued and unpaid interest thereon as of the date of such repurchase. The Purchaser shall execute and deliver such instruments of transfer or assignment as reasonably determined by the Seller to give effect to such repurchase, in each case without representation, warranty, or recourse. Each of the parties hereto agrees that this Section 6.1 shall constitute the sole remedy of the Purchaser with respect to any breach of the representations and warranties set forth in Section 4.1(k) with respect to any Receivable included in the Purchased Assets hereunder.

## **Article VII**

### **Indemnities**

*Section 7.1. Indemnities.* The Seller hereby agrees to indemnify the Purchaser, the Servicer, the Backup Servicer, each Secured Party, each Funding Agent and each of their Affiliates and their respective officers, directors, employees, agents, and representatives (each an "*Indemnified Person*") for any and all claims, damages, losses, liabilities, obligations, expenses, penalties, actions, suits, judgments and disbursements of any kind or nature whatsoever, (including the reasonable and documented fees and disbursements of outside counsel) that may be incurred by or asserted or awarded against any Indemnified Person, in each case arising out of or in connection with or by reason of the execution, delivery, enforcement, performance, administration of or otherwise arising out of or incurred in connection with this Agreement, any other Facility Document, any Related Document or any transaction contemplated hereby or

thereby (collectively, the “*Liabilities*”), including, without limitation, any such Liability that is incurred or arises out of or in connection with, or by reason of any one or more of the following:

- (i) preparation for a defense of any investigation, litigation or proceeding arising out of, related to or in connection with this Agreement or any other Facility Document or any of the transactions contemplated hereby or thereby;
- (ii) any representation or warranty (other than the representations and warranties contained in Section 4.1(k)) made or deemed made by the Seller under or in connection with this Agreement or the other Facility Documents to which it is a party, which shall have been false when made or deemed made or delivered;
- (iii) the failure by the Seller to comply with any term, provision or covenant contained in this Agreement or the other Facility Documents to which it is a party, or with any Applicable Law, with respect to any Purchased Assets or the nonconformity of any Purchased Assets with any such Applicable Law;
- (iv) the failure to vest and maintain vested in the Purchaser a perfected security interest in the Purchased Assets free and clear of any Lien (other than Permitted Liens) whether existing at the time of sale hereunder or at any time thereafter;
- (v) any dispute, claim, offset or defense (other than discharge in bankruptcy of the Obligor) of the Obligor to the payment of any Purchased Asset (including, without limitation, a defense based on such Purchased Asset Receivable or the related contract not being a legal, valid and binding obligation of such Obligor enforceable against it in accordance with its terms);
- (vi) any products liability claim or personal injury or property damage suit or other similar or related claim or action of whatever sort, arising out of or in connection with any Purchased Asset or any other suit, claim or action of whatever sort relating to any of the Facility Documents;
- (vii) the commingling of any Collections of Purchased Assets with any other funds except to the extent expressly permitted under the Facility Documents;
- (viii) the failure by the Seller to pay when due any taxes for which the Seller is liable, including without limitation, sales, excise or personal property taxes payable in connection with the Purchased Assets; and
- (ix) the Seller’s fraud, gross negligence or willful misconduct in the performance of its duties under this Agreement;

provided, that the Seller shall not be liable pursuant to this indemnity for any Liabilities suffered by any Indemnified Person (A) arising due to the deterioration in the credit quality or market value of the Purchased Assets to the extent that such credit quality or market value was not misrepresented in any material respect by the Seller or any of its

Affiliates and such deterioration was not caused by any action of the Seller, (B) arising from the failure of any Obligor to pay amounts due and owing under any Purchased Asset, or (C) to the extent that a court having competent jurisdiction shall have determined by a final judgment (not subject to further appeal) that such Liability resulted from (i) the fraud, gross negligence or willful misconduct of such Indemnified Person or (ii) a material breach of any Facility Document by such Indemnified Person.

## **Article VIII**

### **Conditions Precedent**

*Section 8.1. Conditions to the Purchaser's Obligations.* Without limiting any provision set forth herein, neither Purchaser nor Seller shall have any obligation to purchase any Receivable, or to sell any Receivable on any Transfer Date, respectively, in the event that:

- (a) any representation and warranty in this Agreement shall not be true or any covenant in this Agreement shall not have been performed;
- (b) the Purchaser shall not have received a duly executed and completed Asset List; or
- (c) all of the Assigned Agreements and other Collateral required to be delivered to Purchaser or Administrative Agent pursuant to Section 2.2 hereof (if any) shall not have been delivered.

The conditions set forth in this Section 8.1 may be waived by the Seller and the Purchaser.

## **Article IX**

### **Term & Purchase Termination**

*Section 9.1. Term.* This Agreement shall commence as of the date of execution and delivery hereof and shall continue until the earlier of (a) the date specified by the Seller upon ninety (90) days' prior written notice to the Purchaser as the termination date or (b) the repayment in full of the Obligations and the termination of the Credit Agreement as provided therein; *provided, however,* that the rights and remedies with respect to (i) any breach of any representation and warranty made by the Seller pursuant to Article IV, (ii) the repurchase obligation of Article VI, and (iii) the indemnification and payment provisions of Article VII and the provisions of Sections 10.12 and 10.13 shall be continuing and shall survive any termination of this Agreement.

*Section 9.2. Purchase Termination.* Upon termination of this Agreement, the Seller acknowledges and agrees that no further Conveyances of Purchased Assets may be made to the Purchaser hereunder. Notwithstanding any cessation of Conveyances hereunder, Purchased

Assets transferred to the Purchaser prior to the termination of this Agreement and Collections and other proceeds in respect of such Purchased Assets whenever received, shall continue to be property of the Purchaser.

## Article X

### Miscellaneous Provisions

*Section 10.1. Waivers and Amendment.* No failure or delay on the part of Purchaser or any Indemnified Person in exercising any power, right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or remedy preclude any other further exercise thereof or the exercise of any other power, right or remedy. The rights and remedies herein provided shall be cumulative and nonexclusive of any rights or remedies provided by law. Any waiver of this Agreement shall be effective only in the specific instance and for the specific purpose for which given. No provision of this Agreement or any other Conveyance Document may be amended, supplemented, modified or waived except in writing signed by Seller and the Purchaser, and with the prior written consent of the Administrative Agent.

*Section 10.2. Governing Law.* This Agreement is governed by the laws of the State of New York in reliance on New York General Obligations Law Section 5-1401, without giving effect to its choice of law provisions that would result in application of the laws of a different jurisdiction. To the fullest extent permitted by law, each party hereby unconditionally and irrevocably waives any claim to assert that the law of any other jurisdiction governs this Agreement and the other loan documents. Each of the parties hereto waives personal service of process and irrevocably consents to service of process in the manner provided for notices in Section 10.4. 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 10.3. Consent to Jurisdiction.* By execution and delivery of this Agreement, each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive 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. Nothing in this Agreement shall affect any right that Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against Purchaser, Seller or its respective properties in the courts of any jurisdiction. Purchaser and Seller each hereby irrevocably and unconditionally waive, 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 this Section 10.3. 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.

*Section 10.4. Notices.* Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other parties, or whenever any of the parties desires to give or serve upon any other parties any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be deemed to have been validly served, given or delivered (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the United States Mail, registered or certified mail, return receipt requested, with proper postage prepaid, (b) upon confirmation of receipt by the transmitting machine and telephonic advice of the transmission, when sent by telecopy or other similar facsimile transmission, (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid, (d) when delivered, if hand-delivered by messenger, and (e) upon confirmation of receipt by return e-mail when sent by e-mail, all of which shall be addressed to the party to be notified and sent to the address or facsimile number set forth under its name on Schedule II or to such other address (or facsimile number) as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to any Person designated in any written notice provided hereunder to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication. Notwithstanding the foregoing, whenever it is provided herein that a notice is to be given to any other party hereto by a specific time, such notice shall only be effective if actually received by such party prior to such time, and if such notice is received after such time or on a day other than a Business Day, such notice shall only be effective on the immediately succeeding Business Day.

*Section 10.5. Severability of Provisions.* Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

*Section 10.6. No Set-Off.* No amounts payable to the Purchaser by the Seller shall be subject to set-off or deduction against any obligation of the Purchaser to the Seller, and the Seller hereby waives any such right of set-off or deduction.

*Section 10.7. Counterparts.* The parties hereto agree that this Agreement, and any other documents to be delivered in connection herewith and therewith, may be electronically signed, that any digital or electronic signatures (including Portable Document Format (PDF), facsimile or electronically imaged signatures provided by DocuSign or similar service) appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of

validity, enforceability and admissibility, and that delivery of any such electronic signature to, or a signed copy of, this Agreement and such other documents may be made by facsimile, email or other electronic transmission. Delivery of an executed counterpart of a signature page of this Agreement in a PDF shall be effective as delivery of a manually executed original counterpart of this Agreement. The words “execution”, “execute”, “signed”, “signature”, and words of like import in or related to any document to be signed in connection with this Agreement hereto shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

*Section 10.8. Binding Effect; Third-Party Beneficiaries.* Notwithstanding anything to the contrary contained herein, this Agreement may not be assigned by the Purchaser or the Seller except as permitted by this Section 10.8. Simultaneously with the execution and delivery of this Agreement, the Purchaser shall assign all of its right, title and interest herein (including any right to indemnification) to the Administrative Agent as agent for the Secured Parties under the Credit Agreement as provided in the Credit Agreement, to which assignment the Seller hereby expressly consents. The Seller agrees that the Administrative Agent, as agent for the Secured Parties under the Credit Agreement, the Servicer and the Backup Servicer shall be third party beneficiaries hereof. The Administrative Agent as agent for the Secured Parties under the Credit Agreement may enforce the provisions of this Agreement, exercise the rights of the Purchaser and enforce the obligations of the Seller hereunder following an Event of Default and as provided in the Credit Agreement.

*Section 10.9. Merger and Integration.* Except as specifically stated otherwise herein, this Agreement and the other Transaction Documents set forth the entire understanding of the parties relating to the subject matter hereof, and all prior understandings, written or oral, are superseded by this Agreement and the other Transaction Documents.

*Section 10.10. Headings.* The headings are for purposes of reference only and shall not otherwise affect the meaning or interpretation of any provision hereof.

*Section 10.11. Schedules and Exhibits.* The schedules and exhibits attached hereto and referred to herein shall constitute a part of this Agreement and are incorporated into this Agreement for all purposes.

*Section 10.12. Survival of Representations and Warranties.* All representations, warranties and agreements contained in this Agreement or any other Conveyance Document, or contained in certificates of officers of any Seller submitted pursuant hereto, or contained in any assignment permitted hereunder, shall remain operative and in full force and effect and shall survive conveyance of, or grant of a security interest in, the related Purchased Assets by the Purchaser to any other Person.

*Section 10.13. Protection of Ownership Interests of Purchaser.* (a) The Seller agrees that from time to time, at its expense, it will promptly execute and deliver all instruments and documents (including, without limitation, assignment agreements, title documents, financing statements and endorsements of instruments), and take all actions, that may be necessary, or that the Purchaser may reasonably request, to perfect, protect, defend or more fully evidence the ownership interest of the Purchaser in the Purchased Assets, or to enable the Purchaser to exercise and enforce its rights and remedies hereunder (including, without limitation, to enforce any of the Purchased Assets).

(b) If the Seller fails to perform any of its obligations under Section 10.13(a), the Purchaser may (but shall not be required to) perform, or cause performance of, such obligations, and the Purchaser's reasonable out-of-pocket costs and expenses incurred in connection therewith shall be payable by the Seller. The Seller irrevocably authorizes the Purchaser at any time and from time to time in the sole discretion of the Purchaser, and appoints the Purchaser as its attorney-in-fact, to act on behalf of the Seller (i) to execute on behalf of the Seller and to file and record financing statements or any other filings necessary or desirable in the Purchaser's sole discretion to perfect and to maintain the perfection and priority of the interest of the Purchaser and its assigns in the Purchased Assets and (ii) to file a carbon, photographic or other reproduction of this Agreement or any financing statement with respect to the Purchased Assets as a financing statement in such offices as the Purchaser in its sole discretion deem necessary or desirable to perfect and to maintain the perfection and priority of the Purchaser's ownership interest in the Purchased Assets. This appointment is coupled with an interest and is irrevocable. The Seller hereby authorizes the Purchaser to file financing statements and other filing or recording documents with respect to the Purchased Assets (including any amendments thereto, or continuation or termination statements thereof), without the signature or other authorization of such Seller, in such form and in such offices as the Purchaser reasonably determines appropriate to perfect or maintain the perfection of the ownership interest of the Purchaser in the Purchased Assets. The Seller acknowledges and agrees that it is not authorized to, and will not, file financing statements or other filing or recording documents with respect to the Purchased Assets (including any amendments thereto, or continuation or termination statements thereof), without the express prior approval by the Purchaser, consenting to the form and substance of such filing or recording document. The Seller approves, authorizes and ratifies any filings or recordings made by or on behalf of the Purchaser in connection with the perfection of the ownership interests in favor of the Purchaser in the Purchased Assets.

*Section 10.14. Liability of the Seller.* The Seller shall be liable in accordance herewith only to the extent of the obligations in this Agreement specifically undertaken by the Seller (including its indemnification obligations) and with respect to its representations and warranties in this Agreement and in any Assigned Agreement.

[Remainder of Page Intentionally Left Blank]



In Witness Whereof, the Purchaser and the Seller have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

ACV Capital LLC, as Seller

By:

Name:

Title:

ACV Capital Funding II LLC, as Purchaser

By: ACV Capital LLC, as Member

By:

Name:

Title:

[Signature Page to Purchase and Sale Agreement]

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**Schedule I**

**List of Initial Receivables**

None.

Schedule I

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**Schedule II**

**Seller Names, Locations and FEIN**

The location of Seller's chief executive office, principal place of business is:

640 Ellicott Street  
Buffalo, NY 14203

The FEIN of Seller is: 47-2415221

Schedule II

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**Schedule III**

**Notice Address**

Seller: ACV Capital LLC

c/o ACV Auctions Inc.  
640 Ellicott Street  
Buffalo, NY 14203  
Attention: Michael Mohr  
Telephone: (716) 704-4611  
Facsimile: (716) 245-7531  
E-mail: mmohr@acvauctions.com

Purchaser: ACV Capital Funding II LLC

c/o ACV Auctions Inc.  
640 Ellicott Street  
Buffalo, NY 14203  
Attention: Michael Mohr  
Telephone: (716) 704-4611  
Facsimile: (716) 245-7531  
E-mail: mmohr@acvauctions.com

Administrative Agent: Citibank, N.A.

1 Penns Way, Ops 2 Floor 2  
New Castle, DE 19720  
Attention: Citi Global Loans / Conduit Operations  
E-mail: conduitoperations@citi.com

With a copy to: Citibank, N.A.

388 Greenwich Street 6th Floor Trading  
New York, NY 10013  
Attention: Citi Global ABS Financing & Securitization  
Email: CitiABSLendingNotices@citi.com

Schedule III

ACV Capital Funding II LLC,  
as Borrower

ACV Capital LLC,  
as Servicer

and

Citibank, N.A.,  
as Administrative Agent

Servicing Agreement

Dated June 20, 2024

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This Servicing Agreement (“*Agreement*”) is made and entered into as of June 20, 2024, between ACV Capital Funding II LLC, a Delaware limited liability company (“*Borrower*”), ACV Capital LLC, a Delaware limited liability company (“*Servicer*”), and Citibank, N.A. (“*Administrative Agent*”).

**Recitals:**

Whereas, pursuant to the terms of the Purchase and Sale Agreement, dated as of the date hereof (the “*Purchase and Sale Agreement*”), between the Borrower, as purchaser and the Servicer, as seller (the “*Seller*”), the Borrower has agreed to purchase from time to time certain Receivables and the related rights and assets owned by the Seller; and

Whereas, pursuant to the terms of this Agreement, the Servicer is willing to service such Receivables and such related rights and assets pursuant to the terms hereof.

Now, therefore, it is hereby agreed as follows:

Section 1. Definitions.

The capitalized terms used herein which are not otherwise defined in this Agreement shall have the meanings assigned to them in the Revolving Credit and Security Agreement, dated as of June 20, 2024 (the “*Credit Agreement*”), by and among the Borrower, the funding agents from time to time parties thereto, the committed lenders from time to time parties thereto, the conduit lenders from time to time parties thereto, and the Administrative Agent.

Section 2. Appointment of Servicer.

By this Agreement, the Borrower appoints Servicer, and Servicer accepts such appointment, to provide advice and services to the Borrower, in accordance with the terms and conditions of this Agreement. Servicer shall service all Receivables in accordance with the terms of this Servicing Agreement and not take any action that would be inconsistent in any way with the terms of any Backup Servicing Agreement.

Section 3. Nature of Services.

Servicer shall perform the following services in the context of the Credit Agreement (the “*Services*”):

*Section 3.1. Vehicle Title Administration.* Servicer shall coordinate and manage all certificate of title documents for each Eligible Vehicle in accordance with the Servicing Standard. Servicer will physically hold the titles for the Eligible Vehicles in a secure location at its headquarters in Buffalo, New York, or such other location as the parties may agree.

*Section 3.2. Collections.* Servicer shall cause the Obligor of each Receivable to pay all Collections directly to the Master Servicing Account in accordance with the Servicing Standard,

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this Agreement and the Portfolio Documents. The Servicer shall deposit into the Collection Account an amount equal to all Collections within two (2) Business Days of receipt thereof. In the event that Borrower, Servicer or an Affiliate of Borrower or Servicer receives any Collections directly from or on behalf of the Obligor thereof in a manner other than through a deposit into the Master Servicing Account or the Collection Account, such Person shall receive all such Collections in trust for the benefit of Administrative Agent as secured party hereunder, and Borrower, Servicer or such Affiliate shall promptly (and in any event within two (2) Business Days of its receipt and identification thereof) deliver such Collections to the Collection Account unless Administrative Agent shall have notified Borrower or Servicer to deliver (or cause to be delivered) directly to Administrative Agent all such Collections after the occurrence and during the continuance of an Event of Default, in which event all such Collections (in the form received) shall, if applicable, be endorsed by the applicable Person to Administrative Agent and delivered to Administrative Agent promptly upon such Person's receipt thereof.

*Section 3.3. Collateral Administration.* Servicer shall keep accurate and complete records of the Collateral and all payments and collections thereon and shall submit to Administrative Agent such records on such periodic basis as Administrative Agent may request in its reasonable discretion. Servicer shall deliver to Administrative Agent the control of such transferable electronic record in accordance with Applicable Law, including the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction. Servicer shall deposit all proceeds of the Collateral to the Collection Account.

*Section 3.4. Enforcement.* With respect to any Receivable which is in default, Servicer shall undertake such servicing and collection actions permitted by and in accordance with the Servicing Standard, this Agreement and the Portfolio Documents and shall coordinate and manage all enforcement activities with respect to the Receivables, Collections and Collateral, including, without limitation, the use of outside legal counsel.

*Section 3.5. Vehicle Repossession.* Servicer shall coordinate all activities related to the repossession of vehicles securing the Receivables in accordance with the Servicing Standard and Applicable Law. If repossession of a vehicle becomes necessary for any account, Servicer will either repossess the vehicle itself or outsource repossession to a state-recognized and bonded repossession agent to be selected by Servicer, all in accordance with the Servicing Standard and Applicable Law.

*Section 3.6. Inventory Audits.* Servicer will perform inventory audits of Obligor's lots to ensure collateral for the applicable Receivables is maintained at the lot until it is sold to a retail customer. The Servicer shall conduct at least one inventory audit for each Obligor in accordance with the Servicing Policy. Servicer may contract with one or more third parties for inventory audit services to be selected by Servicer.

*Section 3.7. Reporting.* Servicer shall prepare and deliver any reports or financial statements required pursuant to this Agreement, the Credit Agreement or any Backup Servicing Agreement.

*Section 3.8. Other Duties.* Servicer shall comply with such other duties and responsibilities as required of the Servicer by this Agreement and/or the Credit Agreement.

Where used in this Section 3, the “Servicing Standard” shall mean the prudent, customary and usual servicing standards for servicers servicing assets similar to the Receivables and, to the extent not inconsistent with the foregoing, exercised with a degree of skill and care consistent with the degree of skill and care that the Servicer exercises with respect to similar receivables, assets, and contracts owned or serviced by the Servicer and/or its affiliates and applying standards, policies and procedures consistent with the standards, policies and procedures that the Servicer applies with respect to similar receivables, assets and contracts owned or serviced by it.

#### Section 4. Status of Servicer.

Servicer and the Borrower expressly agree that Servicer is an independent contractor, and all Services performed under this Agreement are performed by Servicer as an independent contractor. Servicer shall control the time, manner, and place of performance of the Services. The Servicer may not delegate its duties and obligations as Servicer without the prior written consent of the Administrative Agent.

#### Section 5. Compliance with Rules and Policies.

The Servicer personnel performing Services hereunder shall observe all applicable rules and procedures of the Servicer, including compliance with cybersecurity, anti-money laundering, internal controls, disaster recovery and business continuity, information protection record retention, identity theft, and privacy policies (the “Policies”). The Servicer shall ensure that its personnel remain in compliance with such Policies during the term of this Agreement.

#### Section 6. Term of Agreement; Resignation; Servicer Default.

*Section 6.1. Term.* This Agreement, and the Services to be performed under it, shall commence on the date this Agreement is executed by both parties, and shall continue thereafter for the term of the Credit Agreement unless terminated earlier by mutual agreement by the parties hereto and the Administrative Agent.

*Section 6.2. Resignation.* The Servicer shall not resign from the obligations and duties hereby imposed on it except upon the Servicer’s determination that the performance of its duties hereunder is or becomes impermissible under Applicable Law. Any such determination permitting the resignation of the Servicer shall be evidenced by an opinion of counsel to such effect delivered to the Administrative Agent and each Lender. No such resignation shall become effective until a Successor Servicer shall have assumed the responsibilities and obligations of the Servicer in accordance with Section 7.1.

*Section 6.3. Assignment.* The Servicer may not assign its rights or obligations hereunder or any interest herein without the prior written consent of the Administrative Agent. Any attempted assignment in violation of this Section 6.3 is null and void. The Servicer acknowledges that all of the Borrower’s right, title and interest in, to and under this Agreement



and each other document, agreement or instrument executed in connection herewith or therewith, constitutes part of the collateral pledged to the Administrative Agent, and that, pursuant to and subject to the limitations contained in, and the terms and conditions of, the Credit Agreement, the Borrower has assigned to the Administrative Agent all benefits, rights and remedies exercisable by the Borrower under this Agreement and each other document, agreement or instrument executed in connection herewith or therewith. Such assignment includes (x) all monies due and to become due to the Borrower from the Servicer, whether in connection with forwarding Collections or any expenses, costs, indemnities, or damages for the breach of this Agreement or otherwise and (y) all rights, remedies, powers, privileges and claims of the Borrower against the Servicer under or with respect to this Agreement (whether arising pursuant to the terms of this Agreement or as otherwise available at law or in equity). The Servicer acknowledges that the Administrative Agent shall have the right to enforce the Borrower's rights and remedies under this Agreement to the extent permitted by the Credit Agreement (including, the right to give or withhold any consents or approvals of the Borrower to be given or withheld hereunder, and, in any case, without regard to whether specific reference is made to the Borrower's assigns in the provisions of this Agreement which set forth such rights and remedies) and the Servicer agrees to cooperate fully with the Administrative Agent in the exercise of such rights and remedies; provided, however, that the Administrative Agent shall not be obligated to perform any of the obligations of the Borrower under this Agreement. The Servicer further agrees to simultaneously give to the Administrative Agent copies of all notices and reports it is required to give to the Borrower hereunder.

*Section 6.4. Servicer Default.* Notwithstanding anything herein to the contrary, the Administrative Agent, upon written notice to the Servicer, may, in its sole discretion, terminate all of the rights and obligations of the Servicer as "Servicer" under this Agreement upon the occurrence of any of the following (each, a "Servicer Default"); provided that, in the case of clauses (f) and (g) below, such termination shall be deemed to have occurred automatically upon the occurrence of such event:

- (a) any failure by the Servicer to make any payment, transfer or deposit into the Collection Account as required by this Agreement, which failure continues unremedied for a period of two (2) Business Days;
- (b) any failure on the part of the Servicer to deliver the Monthly Report in accordance with the Credit Agreement;
- (c) the occurrence of an Event of Default;
- (d) any representation, warranty or certification made by the Servicer in any Facility Document or in any certificate delivered pursuant to any Facility Document shall prove to have been materially incorrect when made, which continues to be unremedied for a period of thirty (30) days;
- (e) any failure by the Servicer to comply with any covenant in any Facility Document, which failure materially and adversely affects the interests of the Administrative Agent or the Lenders and remains unremedied for thirty (30) days after

the Servicer shall have obtained actual knowledge thereof or received written notice thereof from the Administrative Agent;

(f) the Servicer shall fail generally to pay its debts as they come due, or shall make a general assignment for the benefit of creditors; or any case or other proceeding shall be instituted by the Servicer seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, reorganization, debt arrangement, dissolution, winding up, or composition or readjustment of debts of it or its debts under any Debtor Relief Law or seeking the entry of an order for relief or the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for the Servicer or all or substantially all of its assets; or the Servicer shall take any corporate, limited liability company or trust action to authorize any of such actions;

(g) a case or other proceeding shall be commenced, without the application or consent of the Servicer in any court seeking the liquidation, reorganization, debt arrangement, dissolution, winding up, or composition or readjustment of debts of the Servicer, the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for the Servicer or all or substantially all of its assets, or any similar action with respect to the Servicer under any Debtor Relief Law, and (i) such case or proceeding shall continue undismissed, or unstayed and in effect, for a period of sixty (60) consecutive days or (ii) an order for relief in respect of the Servicer shall be entered in such case or proceeding or a decree or order granting such other requested relief shall be entered; or

(h) the rendering against the Servicer of one or more final judgments, decrees or orders for the payment of money in excess of \$1,000,000 individually or \$2,500,000 in the aggregate, and the continuance of such judgment, decree or order unsatisfied and in effect for any period of more than thirty (30) consecutive days without a stay of execution.

#### Section 7. Appointment of Successor Servicer.

*Section 7.1. Appointment.* Upon resignation or termination of the Servicer pursuant to Section 6, the Administrative Agent may, in its sole discretion, assume or delegate the servicing, administering and collection of the Collateral; *provided* that, prior to any appointment of a successor Servicer (the “*Successor Servicer*”) hereunder, which for the avoidance of doubt may be the Administrative Agent or any Lender, Administrative Agent shall provide written notice to the Borrower. Such Successor Servicer shall accept its appointment by a written assumption or execution and delivery of a new servicing agreement, each in a form acceptable to the Administrative Agent. Until a Successor Servicer is appointed as set forth above, the Servicer shall (i) unless otherwise notified by the Administrative Agent, continue to act in such capacity in accordance with Section 3 and (ii) as requested by the Administrative Agent in its sole discretion (A) terminate some or all of its activities as Servicer hereunder by the Administrative Agent in its sole discretion as necessary or desirable, (B) provide such information as may be requested by the Administrative Agent to facilitate the transition of the performance of such activities to the Administrative Agent or any agent thereof and (C) take all other actions

reasonably requested by the Administrative Agent, in each case to facilitate the transition of the performance of such activities to the Administrative Agent or any agent thereof. The Servicer shall, at its own cost and expense, in a timely manner, cooperate with the Borrower, the Administrative Agent and such Successor Servicer in effecting the termination of the servicing responsibilities and rights hereunder and the transfer of the servicing functions and related files and documents, including without limitation, the transfer to such successor for administration by it of all cash amounts held by Servicer or thereafter received with respect to the Collateral Receivables.

*Section 7.2. Successor Duties.* Upon its appointment, the Successor Servicer shall be the successor in all respects to the Servicer with respect to collateral management functions under this Agreement and shall be subject to all the responsibilities, duties and liabilities relating thereto placed on the Servicer by the terms and provisions hereof, and all references in this Agreement to the Servicer shall be deemed to refer to the Successor Servicer; *provided* that the Successor Servicer shall have (i) no liability with respect to any action performed by the terminated Servicer prior to the date that the Successor Servicer becomes the successor to the Servicer or any claim of a third party based on any alleged action or inaction of the terminated Servicer, (ii) no obligation to pay any taxes required to be paid by the Servicer; *provided* that the Successor Servicer shall pay any income taxes for which it is liable, (iii) no obligation to pay any of the fees and expenses of any other party to the transactions contemplated hereby, and (iv) no liability or obligation with respect to any Servicer indemnification obligations of any prior Servicer, including the original Servicer.

#### Section 8. Representations and Warranties of the Servicer.

The Servicer hereby represents and warrants to the Company, as of the date hereof, as follows:

*Section 8.1. Formation.* The Servicer is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its assets and to transact the business in which it is currently engaged, and is duly qualified to do business and is in good standing under the laws of each jurisdiction where the performance of this Agreement and any other Loan Document to which it is a party would require such qualification, except for those jurisdictions in which the failure to be so qualified, authorized or licensed would not have a material adverse effect on the ability of the Servicer to perform its obligations under this Agreement, or on the validity or enforceability of this Agreement.

*Section 8.2. Authorization.* The Servicer has full power and authority to execute and deliver this Agreement and any other Loan Document to which it is a party and to perform all of its required obligations hereunder, and has taken all necessary action to authorize this Agreement and any other Loan Document to which it is a party on the terms and conditions hereof and thereof and the execution and delivery of this Agreement and any other Loan Document to which it is a party and the performance of all obligations required hereunder and thereunder applicable to the Servicer. No consent of any other Person, including, without limitation, members, managers, officers and creditors of the Servicer, and no license, permit, approval or authorization

of, exemption by, notice or report to, or registration, filing or declaration with, any Governmental Authority is required by the Servicer in connection with the execution, delivery, performance, validity or enforceability of this Agreement. This Agreement has been executed and delivered by a duly authorized officer of the Servicer, and this Agreement and any other Loan Document to which it is a party constitutes the valid and legally binding obligation of the Servicer enforceable against the Servicer in accordance with its terms, subject, as to enforcement, (A) to the effect of bankruptcy, insolvency, winding-up or similar laws affecting generally the enforcement of creditors' rights as such laws would apply in the event of any bankruptcy, receivership, insolvency, winding-up or similar event applicable to the Servicer and (B) to general equitable principles (whether enforceability of such principles is considered in a proceeding at law or in equity).

*Section 8.3. No Conflicts.* The execution, delivery and performance of this Agreement will not violate any provision of any Applicable Law binding on the Servicer, or any order, judgment, award or decree of any court, arbitrator or Governmental Authority binding on the Servicer, or the certificate of formation or operating agreement of, or any securities issued by, the Servicer or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Servicer is a party or by which the Servicer or any of its assets may be bound, the violation of which, in the case of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking, would have a Material Adverse Effect.

*Section 8.4. Proceedings.* There is no charge, investigation, action, suit or proceeding before or by any court pending or, to the actual knowledge of the Servicer, threatened that, if determined adversely to the Servicer, would have a Material Adverse Effect.

*Section 8.5. Accuracy of Information.* All information, exhibits, financial statements, documents, books, records or reports relating to the Borrower or the Servicer furnished or to be furnished by the Servicer to the Borrower, Administrative Agent, the Backup Servicer or any Lender in connection with this Agreement are true, complete and correct in all material respects.

*Section 8.6. Insolvency.* The Servicer is not the subject of any insolvency proceeding or proceeding for the appointment of a receiver, trustee, liquidator or conservator. The Servicer is solvent and transactions under the Loan Documents to which the Servicer is a party do not and will not cause the Servicer to cease being solvent.

*Section 8.7. Taxes.* The Servicer has timely filed or caused to be timely filed (taking into account valid extensions of the time for filing) all tax returns required to be filed by it and has timely paid all Taxes due, except Taxes that are being contested in good faith by appropriate proceedings and for which it has set aside on its books adequate reserves in accordance with GAAP.

*Section 8.8. Compliance with Laws.* The Servicer has complied with all Applicable Law to which it may be subject, and no item of Collateral contravenes any Applicable Law in each case, except for instances of non-compliance or contravention that could not reasonably be expected to have a Material Adverse Effect. No event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect.

*Section 8.9. Anti-Corruption Laws; Sanctions.* The Servicer is conducting and will continue to conduct its business in compliance with Anti-Corruption Laws. The Servicer has implemented, maintained, and will continue to maintain in effect policies and procedures to ensure compliance by the Servicer and its directors, officers, employees, and agents, with Anti-Corruption Laws. Neither the Servicer nor its parent, or any of their respective directors, officers, or employees, or to the knowledge of the Servicer, the affiliates or agents of the Servicer or any of their subsidiaries, is a Sanctioned Person, or located, organized, or resident in a Sanctioned Jurisdiction.

*Section 8.10. Anti-Money Laundering.* The operations of the Servicer are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, as amended, the applicable money laundering statutes of all jurisdictions where the Servicer conducts business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental or regulatory agency (collectively, the “*Anti-Money Laundering Laws*”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Servicer with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Servicer, threatened.

#### Section 9. Compensation; Expenses; Indemnification.

*Section 9.1. Servicing Fee.* Servicer will be entitled to payment by Borrower on a monthly basis of a “servicing fee” for the performance for services. “*Servicing Fee*” shall mean, for each calendar month, an aggregate amount equal to one-twelfth multiplied by an amount equal to two percent (2.0%) of the average daily Receivable Balance of the Receivables owned by Borrower during such month, unless otherwise agreed to by Administrative Agent in its sole discretion. The foregoing servicing fee shall be paid solely to the extent of funds available pursuant to Section 9.01 of the Credit Agreement.

*Section 9.2. Reimbursement of Expenses.* Servicer shall not be entitled to reimbursement of expenses except as agreed by the parties.

*Section 9.3. Servicer Indemnification.* Without limiting any other rights which the Borrower or any Indemnified Party (as defined in the Credit Agreement) may have hereunder or under Applicable Law (including the right to recover damages for breach of contract), the Servicer hereby agrees to indemnify the Borrower and each Indemnified Party from and against any and all damages, losses, claims, liabilities, penalties, and related costs and expenses (including reasonable attorneys’ fees and court costs) that may be incurred by or asserted or awarded against any Indemnified Party (all the foregoing being collectively referred to as “*Indemnified Amounts*”) suffered or sustained by reason of the breach by Servicer of its representations, warranties or covenants under this Agreement or any other agreement, instrument, or document executed in connection with this Agreement, including the failure to be in material compliance with Applicable Law, or by reason of the Servicer’s fraud, gross negligence or willful misconduct in the performance of its duties under this Agreement; *provided, however*, that the Servicer shall not be required to indemnify the Borrower or any Indemnified Party for any Indemnified Amounts (A) arising due to the deterioration in the credit

quality or market value of the Receivables to the extent that such credit quality or market value was not misrepresented in any material respect by the Servicer or any of its Affiliates and such deterioration was not caused by any action of the Servicer, (B) arising from the failure of any Obligor to pay amounts due and owing under any Collateral Receivable, or (C) to the extent that a court having competent jurisdiction shall have determined by a final judgment (not subject to further appeal) that such Indemnified Amounts resulted from (i) the fraud, gross negligence or willful misconduct of such Indemnified Party or (ii) a material breach of any Facility Document by such Indemnified Party..

Section 10. General Provisions.

*Section 10.1. Notices.* Any notices to be given under this Agreement shall be in writing, hand delivered or sent by express carrier, or by registered or certified mail, postage prepaid, return receipt requested, or by telegram or facsimile, followed by a confirmation letter sent as provided above, addressed to such party as follows:

Notices to the Borrower:

ACV Capital Funding II LLC  
640 Ellicott St., Suite 321  
Buffalo, NY 14203  
Attn.: Michael Mohr

With a copy to: The Legal Department

Notices to Servicer:

ACV Capital LLC  
640 Ellicott St., Suite 321  
Buffalo, NY 14203  
Attn.: Michael Mohr

With a copy to: The Legal Department

Notices to Administrative Agent:

Citibank, N.A.  
1 Penns Way, Ops 2 Floor 2  
New Castle, DE 19720  
Attention: Citi Global Loans / Conduit Operations  
Telephone: 302-323-5492  
Email: conduitoperations@citi.com

With a copy to:

Citibank, N.A.

388 Greenwich Street, 6th Floor Trading  
New York, NY 10013  
Attention: Citi Global ABS Financing & Securitization  
Telephone: 212-723-3716  
Email: CitiABSLendingNotices@citi.com

Notices sent in accordance with this Section shall be deemed effective on the date of receipt. Any changes in the information set forth in this Section shall be upon notice to the other party delivered in the manner set forth above.

*Section 10.2. Entire Agreement.* This Agreement constitutes the entire understanding between the parties, and supersedes all prior agreements and negotiations, whether oral or written with respect to the subject matter of this Agreement. No supplement, modification, or waiver of this Agreement shall be binding unless in writing and executed by all parties to this Agreement.

*Section 10.3. Assignment; Binding Effect.* Neither this Agreement nor any rights, benefits, or obligations under it may be assigned by any party to this Agreement without the prior express written consent of the other party. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon all of the parties to this Agreement and their respective executors, administrators, successors, and permitted assigns.

*Section 10.4. Severability.* In the event any of the provisions of this Agreement are found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected.

*Section 10.5. Construction.* The headings of the Sections contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. The parties have been advised by counsel in connection with this Agreement. This Agreement shall be construed and interpreted in accordance with the plain meaning of its language, and not for or against either party, and as a whole, giving effect to all of the terms, conditions, and provisions of this Agreement.

*Section 10.6. Governing Law; Jurisdiction, Venue.*

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive 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 this Section 10.6. 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 of the parties hereto waives personal service of process and irrevocably consents to service of process in the manner provided for notices in Section 10. 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 10.7. Counterparts; Place of Execution.* The parties hereto agree that this Agreement, and any other documents to be delivered in connection herewith and therewith, may be electronically signed, that any digital or electronic signatures (including Portable Document Format (PDF), facsimile or electronically imaged signatures provided by DocuSign or similar service) appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability and admissibility, and that delivery of any such electronic signature to, or a signed copy of, this Agreement and such other documents may be made by facsimile, email or other electronic transmission. Delivery of an executed counterpart of a signature page of this Agreement in a PDF shall be effective as delivery of a manually executed original counterpart of this Agreement. The words "execution", "execute", "signed", "signature", and words of like import in or related to any document to be signed in connection with this Agreement hereto shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. This Agreement has been negotiated and entered into in, and the obligations of the parties to this Agreement are to be performed primarily in Erie County, New York, regardless of the place of execution of any of such counterparts.

*Section 10.8. No Third-Party Benefit.* Nothing contained in this Agreement shall be deemed to confer any right or benefit on any person who is not a party to this Agreement.

*Section 10.9. Non-Petition Covenant.* Notwithstanding any prior termination of this Agreement, the Servicer, by entering into this Agreement hereby agrees that it will not institute any petition against the Borrower under the Bankruptcy Code or any other Debtor Relief Law so long as any Obligations shall be outstanding or there shall not have elapsed one year plus one



day since the payment of all Obligations. This Section 10.9 shall survive the termination of this Agreement and any termination of the Servicer under this Agreement.

[Signatures on Following Page]

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

ACV Capital Funding II LLC

By: ACV Capital LLC, as Member

By:

Name:

Title:

ACV Capital LLC

By:

Name:

Title:

Citibank, N.A., as Administrative Agent

By:

Name:

Title:

[Signature Page to Servicing Agreement]

Execution Version

**Limited Indemnity Agreement**

This Indemnity Agreement, dated as of June 20, 2024 (this “*Indemnity*”), is made by ACV Auctions Inc., a corporation organized under the laws of Delaware (“*Indemnitor*”), in favor of Citibank, N.A., as administrative agent for the Secured Parties (in such capacities, “*Administrative Agent*”).

**Witnesseth**

Whereas, ACV Capital Funding II LLC, a Delaware limited liability company (“*Borrower*”), has entered into that certain Revolving Credit and Security Agreement of even date herewith (as amended, amended and restated, supplemented or otherwise modified from time to time, the “*Credit Agreement*”; capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement) with the Administrative Agent and each of the financial institutions from time to time party thereto (each a “*Lender*” and collectively, the “*Lenders*”), pursuant to which the Lenders have agreed to extend a revolving credit facility to the Borrower, subject to the terms and conditions set forth in the Credit Agreement;

Whereas, Indemnitor indirectly or directly owns 100% of the Equity Interests of the Borrower and hereby acknowledges that it will benefit from the transactions contemplated by the Credit Agreement; and

Whereas, the Lenders are unwilling to make the Loans unless Indemnitor unconditionally guarantees to the Administrative Agent, for itself and for the benefit of the Lenders, the payment and performance of the Guaranteed Obligations (as defined herein).

Now, Therefore, in consideration of the promises contained herein, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, and to induce the Lenders to enter into the Credit Agreement and to make the Loans to the Borrower thereunder, the Indemnitor hereby agrees as follows:

**Section 1. Indemnity.**

(a) The Indemnitor hereby unconditionally and irrevocably (i) guarantees to the Administrative Agent, for the ratable benefit of the Lenders, the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of all of the Guaranteed Obligations and (ii) agrees to pay all documented out-of-pocket costs and expenses incurred by the Administrative Agent (including all reasonable and documented out-of-pocket fees and disbursements of counsel and other professionals) in connection with (A) enforcing or defending its rights under or in respect of this Indemnity or (B) collecting the Guaranteed Obligations or otherwise administering this Indemnity (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code,

11 U.S.C., §§ 362(a)). Indemnitor hereby irrevocably and unconditionally covenants and agrees that it is liable for the Guaranteed Obligations as a primary obligor.

(b) Subject to Section 6, the Indemnitor hereby agrees, in furtherance of the foregoing and not in limitation of any other right which the Administrative Agent or any Lender may have at law or in equity against the Indemnitor by virtue hereof, that, upon the failure of the Borrower to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C., §§ 362(a)), the Indemnitor will within three (3) Business Days upon demand pay, or cause to be paid, in cash, to the Administrative Agent for the ratable benefit of the Lenders, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, any accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for the Borrower becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against the Borrower for such interest in the related bankruptcy case). The Indemnitor hereby agrees that all payments hereunder will be paid to the Administrative Agent without setoff, deduction or counterclaim at the office of the Administrative Agent located at the address specified in Section 12 in U.S. dollars and in immediately available funds.

## Section 2. Definition of Guaranteed Obligations.

As used herein, the term “Guaranteed Obligations” means:

(a) any loss, damage, settlement, judgment, cost, expense, liability, claim or other obligation incurred by the Administrative Agent or any Lender (including, without limitation, reasonable and documented out-of-pocket attorneys’ fees and costs incurred) arising out of or in connection with the following:

(i) any willful or intentional misrepresentation, or gross negligence by the Borrower, ACV Capital LLC or the Indemnitor (each individually and collectively referred to herein as a “*Credit Party*”) in connection with the Loans or any Facility Document;

(ii) any acts of fraud, intentional misappropriation of funds or theft by any Credit Party;

(iii) any Change of Control not expressly approved in writing by the Administrative Agent, in its sole discretion;

(iv) any unauthorized and intentional sale, transfer, assignment or encumbrance of the Collateral by the Borrower, the Servicer or Indemnitor in violation of the Facility Documents;

(v) any failure of the Borrower directed, permitted (to the extent the Indemnitee has the contractual or organizational power to prevent) or caused by the Indemnitee to own the Receivables pledged as Collateral free and clear of all liens, security interests or encumbrances (other than Permitted Liens);

(vi) the intentional interference by the Borrower, the Servicer or Indemnitee with the Administrative Agent's or any of its representatives' or assigns' access to or ability to access any location of the Borrower and/or any Collateral, *provided* in each case such access is being sought in accordance with Applicable Law and the express rights of the Administrative Agent under the Facility Documents;

(vii) the failure of the Borrower to comply with the provisions of Section 5.03 of the Credit Agreement;

(viii) in any judicial proceeding, any Credit Party makes application to a court to declare that (A) all or any portion of the lien of the Administrative Agent or the obligations of the Borrower to pay principal and interest as specified in the Facility Documents be rescinded, set aside, or determined to be void or unenforceable or (B) any of the terms of any of the Facility Documents be modified without the Administrative Agent's consent or the consent of each Person whose consent is required by the terms of such Facility Document;

(ix) the voluntary dissolution or liquidation of the Borrower by or consented to by any Credit Party;

(x) the assertion by any Credit Party of any claim, defense, or offset against the Administrative Agent or any Lender that such Person has waived or agreed not to assert; provided that the foregoing shall not include mandatory counter-claims asserted by any Credit Party;

(xi) the Indemnitee directs, permits (to the extent the Indemnitee has the contractual or organizational power to prevent) or causes the incurrence of indebtedness by the Borrower other than pursuant to the Credit Agreement or as permitted under the Facility Documents;

(xii) the failure to vest, or delay in vesting, in the Administrative Agent (for the benefit of the Secured Parties) a perfected security interest in the Collateral free and clear of liens (other than pursuant to the Facility Documents or as permitted under the Facility Documents) to the extent that such failure is caused by or at the direction of the Indemnitee;

(xiii) Borrower (i) becoming taxable as a partnership, corporation or publicly traded partnership taxable as a corporation for U.S. federal income tax purposes; or (ii) being subject to any taxes (other than franchise taxes) or incurring liability for failure to withhold taxes;

(xiv) the Indemnitator directs, permits (to the extent the Indemnitator has the contractual or organizational power to prevent) or causes any amendment of any constituent documents of Borrower in violation of the Facility Documents;

(xv) the voluntary dissolution or liquidation of Borrower by or consented to by any Credit Party;

(xvi) the Borrower files a voluntary petition under the Bankruptcy Code or any other Debtor Relief Law, or any Credit Party consents to any such filing, or any Credit Party commences a proceeding for the appointment of a receiver, trustee, liquidator or conservator of the Borrower or of the whole or any substantial part of the Collateral;

(xvii) any Credit Party files, or joins in the filing of, an involuntary petition against the Borrower under the Bankruptcy Code or any Debtor Relief Law, which is not dismissed within sixty (60) days of the date of its filing, or solicits or causes to be solicited petitioning creditors for any involuntary petition against the Borrower from any Person; and

(xviii) any Credit Party files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against the Borrower, by any other Person under the Bankruptcy Code or any other Debtor Relief Law, which is not dismissed within sixty (60) days of the date of its filing, or solicits or causes to be solicited petitioning creditors for any involuntary petition against the Borrower from any Person.

### Section 3. Guaranty Absolute.

The Indemnitator guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Credit Agreement and the other Facility Documents. The Indemnitator agrees that this Indemnity is a guaranty of payment and performance when due and not of collectability. This Indemnity is a primary obligation of the Indemnitator and not merely a contract of surety. The liability of the Indemnitator under this Indemnity shall be absolute, irrevocable and unconditional irrespective of:

(a) any lack of validity, regularity or enforceability of the Credit Agreement or any other Facility Document;

(b) any lack of validity, regularity or enforceability of this Indemnity;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to departure from the Credit Agreement or any other Facility Document;

(d) any exchange, release or non-perfection of any security interest in any collateral, or any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Obligations;

(e) any failure on the part of the Administrative Agent or any other Person to exercise, or any delay in exercising, any right under the Credit Agreement or any other Facility Document; or

(f) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Borrower, the Indemnitor or any other guarantor with respect to the Guaranteed Obligations (including, without limitation, all defenses based on suretyship or impairment of collateral, and all defenses that the Borrower may assert to the repayment of the Guaranteed Obligations, including, without limitation, failure of consideration, breach of warranty, payment, statute of frauds, bankruptcy, lack of legal capacity, statute of limitations, lender liability, accord and satisfaction, and usury, other than, in each case, any defense that the Guaranteed Obligations have been paid in full), this Indemnity and the obligations of the Indemnitor under this Indemnity.

The Indemnitor hereby agrees that if the Borrower or any other guarantor of all or a portion of the Guaranteed Obligations is the subject of a bankruptcy case under the Bankruptcy Code, it will not assert the pendency of such case or any order entered therein as a defense to the timely payment of the Guaranteed Obligations. The Indemnitor hereby waives notice of or proof of reliance by the Administrative Agent or any Lender upon this Indemnity, and the Guaranteed Obligations shall conclusively be deemed to have been created, contracted, incurred, renewed, extended, amended or reduced (as to the Borrower only) in reliance upon this Indemnity. The Indemnitor hereby agrees that this Indemnity is a guaranty of payment and not collection.

#### Section 4. Interests.

The Indemnitor hereby acknowledges that certain of the rates of interest applicable to the Guaranteed Obligations shall be computed on the basis of a year of 360 days, and paid for the actual number of days elapsed in accordance with Section 2.03 of the Credit Agreement.

#### Section 5. Taxes.

(a) The Indemnitor shall make all payments hereunder free and clear of and without deduction for any Taxes to the extent such Taxes would be payable by the Borrower to Lender or the Administrative Agent in accordance with the Credit Agreement. If the Indemnitor shall be required by law to deduct or withhold any Taxes from or in respect of any sum payable hereunder to or for the benefit of the Administrative Agent or any Lender, (A) the sum payable shall be increased as may be necessary so that after making all required deductions or withholdings of Taxes (including deductions or withholdings of Taxes applicable to additional sums payable under Section 11.03 of the Credit Agreement) the Administrative Agent or such Lender receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (B) the Indemnitor shall make such deductions or withholdings and

(C) the Indemnitor shall pay the full amount so deducted or withheld to the relevant taxation authority or other Governmental Authority in accordance with applicable law.

(b) The Indemnitor agrees to indemnify each party for the full amount of Indemnified Taxes not deducted or withheld or paid by the Indemnitor in accordance with Subsection 5(a) or (b) hereof to the relevant taxation or other authority and any Indemnified Taxes imposed by any jurisdiction on the amounts payable by the Indemnitor under this Indemnity and paid by any party, and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not any such Indemnified Taxes were correctly or legally asserted. Payment under this indemnification shall be made within fifteen (15) Business Days from the date the Administrative Agent makes written demand therefor. A certificate as to the amount of such Indemnified Taxes and evidence of payment thereof submitted to the Indemnitor by the Administrative Agent shall be prima facie evidence of the amount due from the Indemnitor to a party.

(c) The Indemnitor shall furnish to the Administrative Agent the original or a certified copy of a receipt evidencing any payment of Indemnified Taxes made by the Indemnitor as soon as such receipt becomes available, together with a certificate of an officer of the Indemnitor, which certificate indicates the amount of Indemnified Taxes deducted or withheld by the Indemnitor in respect of payments made hereunder.

(d) Without prejudice to the survival of any other agreement or obligation of the Indemnitor hereunder, the obligations of the Indemnitor under this Section 5 shall survive the termination of this Indemnity and the payment of the Guaranteed Obligations.

#### Section 6. Fraudulent Conveyance.

Notwithstanding any provision of this Indemnity to the contrary, it is intended that this Indemnity, and any Liens granted by Indemnitor to secure the obligations and liabilities arising pursuant to this Indemnity, not constitute a "Fraudulent Conveyance" (as defined below). Consequently, the Indemnitor agrees that if this Indemnity, or any Liens securing the obligations and liabilities arising pursuant to this Indemnity, would, but for the application of this sentence, constitute a Fraudulent Conveyance, this Indemnity and each such Lien shall be valid and enforceable only to the maximum extent that would not cause this Indemnity or such Lien to constitute a Fraudulent Conveyance, and this Indemnity shall automatically be deemed to have been amended accordingly at all relevant times. For purposes hereof, "Fraudulent Conveyance" means a fraudulent conveyance or fraudulent transfer under Section 548 of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the provisions of any applicable fraudulent conveyance or fraudulent transfer law or similar law of any state of the United States, as in effect from time to time.

#### Section 7. Waiver.

The Indemnitor hereby waives, for the benefit of the Administrative Agent and the Lenders, (a) any right to require any the Administrative Agent or any Lender, as a condition of payment or performance by the Indemnitor, to (i) proceed against the Borrower, any other



guarantor of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from the Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of the Administrative Agent or any Lender in favor of the Borrower or any other Person or (iv) pursue any other remedy in the power of the Administrative Agent or any Lender whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Borrower or any other indemnitor, including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Borrower or any other indemnitor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon the Administrative Agent or any Lender's errors or omissions in the administration of the Guaranteed Obligations, except errors and omissions resulting from the Administrative Agent or any Lender's gross negligence or willful misconduct; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of the Indemnitor's obligations hereunder, (ii) the benefit of any statute of limitations affecting the Indemnitor's liability hereunder or the enforcement hereof, (iii) any rights to setoffs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Lender protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, or any other Facility Document, notices of any renewal, extension or modification of the Guaranteed Obligations or any Facility Document, notices of any extension of credit to the Borrower and notices of any of the matters referred to in Section 3 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

#### Section 8. Subrogation; Subordination.

The Indemnitor hereby agrees that it will not exercise or assert any rights or claims which it may acquire against the Borrower or any other guarantor of all or part of the Guaranteed Obligations that arise from the existence, payment, performance or enforcement of its obligations hereunder (including, without limitation, any rights or claims of subrogation, reimbursement or contribution), until the Termination Date. If any amount shall be paid to the Indemnitor in violation of the immediately preceding sentence, such amount shall be held in trust for the benefit of the Administrative Agent and shall forthwith be paid to the Administrative Agent for the ratable benefit of the Lenders to be credited and applied against the Guaranteed Obligations and all other amounts payable under Section 1(a)(ii), whether matured or unmatured, in such order as the Administrative Agent may determine. Any Indebtedness of the Borrower now or hereafter held by the Indemnitor is hereby subordinated in right of payment to the Guaranteed Obligations, and any such indebtedness collected or received by the Indemnitor after an Event of Default has occurred and is continuing shall be held in trust for the Administrative Agent on behalf of the Lenders and shall forthwith be paid over to the Administrative Agent for the benefit of the Lenders to be credited and applied against the Guaranteed Obligations but without

affecting, impairing or limiting in any manner the liability of the Indemnitor under any other provision hereof.

Section 9. Representations and Warranties.

(a) The Indemnitor has, independently and without reliance upon the Administrative Agent or any Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Indemnity.

(b) In addition to and without limitation of any of the foregoing, this Indemnity shall be deemed to be a Facility Document.

Section 10. Intentionally Omitted.

Section 11. Right of Setoff.

In addition to and not in limitation of all rights of offset that the Administrative Agent and each Lender or any of their respective Affiliates may have under applicable law, and whether or not the Administrative Agent or any Lender has made any demand or the obligations of the Indemnitor have matured, the Administrative Agent and each Lender shall have the right to set off and apply any and all deposits (general or special, time or demand, provisional or final, or any other type) at any time held and any other Indebtedness at any time owing by the Administrative Agent or any Lender to or for the credit or the account of the Indemnitor against any and all of the Guaranteed Obligations then due and payable hereunder. If the Administrative Agent or any Lender exercises any of its rights under this Section 11, the Administrative Agent or such Lender, as the case may be, shall provide notice to the Indemnitor of such exercise, *provided* that the failure to give such notice shall not affect the validity of the exercise of such rights.

Section 12. Termination Survival of Provisions.

All payment obligations, covenants, representations, warranties and waivers and indemnities made by the Indemnitor under this Indemnity shall terminate on the earlier of the date upon which (a) all Guaranteed Obligations are performed and paid in full in cash, and (b) the Facility Documents are terminated and the Obligations (other than indemnity obligations under the Facility Documents that are not then due and payable or for which any events or claims that would give rise thereto are not then pending) have been fully performed and paid in full in cash (such date, the "*Termination Date*"), *provided*, that, to the extent that the Administrative Agent has made a claim hereunder prior to the Termination Date, the Termination Date solely with respect to such claim shall be extended until such claim has been resolved (i) to the satisfaction of the Administrative Agent or (ii) by a court of competent jurisdiction on a final and non-appealable basis. Notwithstanding anything to the contrary contained herein, in the event any payment made to or other amount or value received by the Administrative Agent with respect to the Obligations or Guaranteed Obligations is voided, rescinded or set aside, or must otherwise be returned or repaid by the Administrative Agent, whether in any bankruptcy,

reorganization, insolvency or similar proceeding involving the Borrower, Indemnitor or otherwise, the Guaranteed Obligations shall be reinstated (without any further action by any party) and shall be enforceable against Indemnitor and its respective successors or assigns.

#### Section 13. Notices.

All notices and other communications hereunder shall be in writing and sent by certified or registered mail, return receipt requested, by overnight delivery service, with all charges prepaid, by hand delivery, or by telecopier followed by a hard copy sent by regular mail, if to the Administrative Agent, then to Citibank, N.A., 1 Penns Way, Ops 2 Floor 2, New Castle, DE 19720, E-mail: [conduitoperations@citi.com](mailto:conduitoperations@citi.com), Attention: Citi Global Loans / Conduit, with a copy to Citibank, N.A., 388 Greenwich Street, 6th Floor Trading, New York, NY 10013, E-mail: [CitiABSLendingNotices@citi.com](mailto:CitiABSLendingNotices@citi.com), Attention: Citi Global ABS Financing & Securitization, and if to the Indemnitor, then to ACV Auctions Inc., 640 Ellicott Street, Buffalo, NY 14203, Telecopy: (716) 845-7531, E-mail: [mmohr@acvauctions.com](mailto:mmohr@acvauctions.com), Attention: Michael Mohr, with a copy to [notices@acvauctions.com](mailto:notices@acvauctions.com), or, in each case, to such other address as the Indemnitor or the Administrative Agent may specify to the other party in the manner required hereunder. All such notices and correspondence shall be deemed given (i) if sent by certified or registered mail, three (3) Business Days after being postmarked, (ii) if sent by overnight delivery service or by hand delivery, when received at the above-stated addresses or when delivery is refused, (iii) if sent by telecopier transmission, when such transmission is confirmed or (iv) if sent by e-mail, upon confirmation of receipt by return e-mail.

#### Section 14. Amendments, Waivers and Consents.

No amendment or waiver of any provision of this Indemnity, or consent to any departure by the Indemnitor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Administrative Agent and, in the case of an amendment, the Indemnitor, and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

#### Section 15. Delays; Partial Exercise of Remedies.

No delay or omission of the Administrative Agent to exercise any right or remedy hereunder shall impair any such right or operate as a waiver thereof. No single or partial exercise by the Administrative Agent of any right or remedy shall preclude any other or further exercise thereof, or preclude any other right or remedy.

#### Section 16. Electronic Signatures.

This Indemnity may be electronically signed, any digital or electronic signatures (including Portable Document Format (PDF), facsimile or electronically imaged signatures provided by DocuSign or similar service) appearing on this Indemnity or such other documents are the same as handwritten signatures for the purposes of validity, enforceability and admissibility, and delivery of any such electronic signature to, or a signed copy of, this

Indemnity and such other documents may be made by facsimile, email or other electronic transmission. Delivery of an executed counterpart of a signature page of this Indemnity in a PDF shall be effective as delivery of a manually executed original counterpart of this Indemnity. The words “execution”, “execute”, “signed”, “signature”, and words of like import in or related to any document to be signed in connection with this Indemnity hereto shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 17. Severability.

In case any provision in or obligation under this Indemnity shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 18. Interpretation.

To the extent a term or provision of this Indemnity conflicts with the Credit Agreement and is not addressed herein with more specificity, the Credit Agreement shall control with respect to the subject matter of such term or provision.

Section 19. Continuing Guaranty; Assignments of Guaranteed Debt.

This Indemnity is a continuing guaranty and shall (a) remain in full force and effect until the Termination Date, (b) be binding upon the Indemnitor and its successors and assigns, and (c) inure, together with the rights and remedies of the Administrative Agent hereunder, to its own benefit and to its successors and assigns. Without limiting the generality of the foregoing clause (c), the Administrative Agent may, in accordance with the terms of the Credit Agreement, assign or otherwise transfer all or any portion of its rights and obligations under the Credit Agreement to any successor agent, and such successor agent shall thereupon become vested with all the benefits in respect hereof granted to the Administrative Agent herein or otherwise, in each case as provided in the Credit Agreement.

Section 20. Reinstatement.

To the extent permitted by law, this Indemnity shall continue to be effective or be reinstated if at any time any amount received by the Administrative Agent or any Lender in respect of the Obligations is rescinded or must otherwise be restored or returned by the Administrative Agent or such Lender upon the occurrence or during the pendency of any bankruptcy, reorganization or other similar proceeding applicable to the Indemnitor, or upon or

during the occurrence of any dissolution, liquidation or winding up of the Indemnitor, all as though such amount had not been received.

Section 21. Bankruptcy, Etc.

(a) The obligations of the Indemnitor hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Borrower or any other indemnitor or by any defense which the Borrower or any other indemnitor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) The Indemnitor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of the Indemnitor and the Lenders that the Guaranteed Obligations which are guaranteed by the Indemnitor pursuant hereto should be determined without regard to any rule of law or order which may relieve the Borrower of any portion of such Guaranteed Obligations. The Indemnitor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay the Administrative Agent, or allow the claim of the Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

Section 22. Financial Condition of the Borrower.

Any Advance may be made to the Borrower or continued from time to time, without notice to or authorization from the Indemnitor regardless of the financial or other condition of the Borrower at the time of any such grant or continuation. Neither the Administrative Agent nor any Lender shall have any obligation to disclose or discuss with the Indemnitor its assessment, or the Indemnitor's assessment, of the financial condition of the Borrower. The Indemnitor has adequate means to obtain information from the Borrower on a continuing basis concerning the financial condition of any the Borrower and its ability to perform their respective obligations under the Facility Documents, and the Indemnitor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. The Indemnitor hereby waives and relinquishes any duty on the part of the Administrative Agent or any Lender to disclose any matter, fact or thing relating to the business, operations or conditions of the Borrower now known or hereafter known by the Administrative Agent or any Lender.

Section 23. Entire Agreement; Successors and Assigns; Joint and Several.

This Indemnity constitutes the entire agreement between the parties hereto, supersedes any prior written and verbal agreements between them, and shall bind and benefit the parties

hereto and their respective successors and permitted assigns. If Indemnitor consists of more than one person or party, the obligations and liabilities of each such person or party shall be joint and several.

Section 24. Governing Law.

The validity, interpretation and enforcement of this Agreement and the other Facility Documents and any dispute arising out of or in connection with this Agreement or any of the other Facility Documents, whether sounding in contract, tort, equity or otherwise, shall be governed by the internal laws (as opposed to the conflicts of law provisions other than Section 5-1401 of the New York General Obligations Law) and decisions of the State of New York.

Section 25. Submission to Jurisdiction.

All disputes between or among the Indemnitor, the Administrative Agent and the Lenders, whether sounding in contract, tort, equity or otherwise, shall be resolved only by state and federal courts located in New York, New York, and the courts to which an appeal therefrom may be taken; *provided, however*; that the Administrative Agent shall have the right, to the extent permitted by applicable law, to proceed against the Indemnitor or its property in (a) any courts of competent jurisdiction and venue and (b) any location selected by the Administrative Agent to enable the Administrative Agent to realize on such property, or to enforce a judgment or other court order in favor of the Administrative Agent. The Indemnitor agrees that it will not assert any permissive counterclaims, setoffs or cross-claims in any proceeding brought by the Administrative Agent. The Indemnitor waives any objection that it may have to the location of the court in which the Administrative Agent has commenced a proceeding, including, without limitation, any objection to the laying of venue or based on *forum non conveniens*. By execution and delivery of each Facility Document to which it is a party, the Indemnitor (i) accepts the non-exclusive jurisdiction of the aforesaid courts and irrevocably agrees to be bound by any judgment rendered thereby, (ii) waives personal service of process, and (iii) agrees that service of process upon it may be made by certified or registered mail, return receipt requested, pursuant to Section 11.02 of the Credit Agreement.

Section 26. Jury Trial.

The Indemnitor (and, by its receipt hereof, the Administrative Agent) hereby waives to the fullest extent permitted by law any right to a trial by jury in any action or proceeding based upon, arising out of, or in any way relating to (i) this Indemnity or (ii) any conduct, acts or omissions of the Indemnitor, the Administrative Agent, any Lender or any of their respective directors, officers, employees, agents, attorneys or other affiliates, in each case whether sounding in contract, tort, equity or otherwise.

Section 27. Limitation of Liability.

Neither the Administrative Agent nor any Lender shall have any liability to the Indemnitor (whether sounding in tort, contract, or otherwise) for losses suffered by the Indemnitor in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Indemnity, or any act, omission or event occurring in connection therewith, unless it is determined by a final and non-appealable judgment or court order binding on the Administrative Agent or such Lender that the losses were the result of acts or omissions constituting gross negligence or willful misconduct of the Administrative Agent or such Lender. The Indemnitor hereby waives all future claims against the Administrative Agent and each Lender for special, indirect, consequential or punitive damages.

Section 28. Counterparts.

This Indemnity may be executed in any number of counterparts and by the different parties hereto on separate counterparts, and each such counterpart shall be deemed an original but all such counterparts shall together constitute but one and the same Indemnity.

[Signature Page Follows]

In Witness Whereof, the Indemnitor has caused this Limited Indemnity to be executed by its proper and duly authorized officer as of the date first set forth above.

ACV Auctions Inc., a corporation organized under the laws of Delaware

By:

Name:

Title:

[Signature Page to Limited Indemnity Agreement]



### Performance Guaranty

This Performance Guaranty (this "*Guaranty*") is made as of June 20, 2024, by ACV Auctions Inc., a Delaware corporation (the "*Guarantor*"), in favor of Citibank, N.A., as administrative agent (together with its successors and assigns in such capacity, the "*Administrative Agent*") for the benefit of the Secured Parties under the Credit Agreement (as defined below) and the Facility Documents (as defined in such Credit Agreement) executed in connection therewith.

### Recitals

Whereas, ACV Capital Funding II LLC, a Delaware limited liability company ("*Borrower*"), has entered into that certain Revolving Credit and Security Agreement of even date herewith (as amended, amended and restated, supplemented or otherwise modified from time to time, the "*Credit Agreement*") with the Administrative Agent and each of the financial institutions from time to time party thereto (each a "*Lender*" and collectively, the "*Lenders*"), pursuant to which the Lenders have agreed to extend a revolving credit facility to the Borrower, subject to the terms and conditions set forth in the Credit Agreement;

Whereas, the Guarantor indirectly or directly owns 100% of the Equity Interests of the ACV Capital LLC, a Delaware limited liability company ("*ACV Capital*");

Whereas, ACV Capital has entered into that certain Purchase and Sale Agreement, dated as of even date herewith (as amended, amended and restated, supplemented or otherwise modified from time to time, the "*Purchase Agreement*"), between the Borrower, as purchaser, and ACV Capital, as seller, pursuant to which the Borrower has agreed to purchase from time to time certain Receivables and the related rights and assets owned by ACV Capital;

Whereas, ACV Capital has entered into that certain Servicing Agreement, dated as of even date herewith (as amended, amended and restated, supplemented or otherwise modified from time to time, the "*Servicing Agreement*"), among the Borrower, ACV Capital, as servicer, and the Administrative Agent, pursuant to which the Servicer has agreed to service Receivables and the related rights and assets purchased pursuant to the Purchase Agreement;

Whereas, the Lenders are unwilling to make the Loans unless Guarantor unconditionally guarantees to the Administrative Agent, for itself and for the benefit of the Lenders, the performance of the Guaranteed Obligations (as defined herein).

Now, therefore, in consideration of the promises contained herein, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, and to induce the Lenders to enter into the Credit Agreement and to make the Loans to the Borrower thereunder, the Guarantor hereby agrees as follows:

Section 1. Definitions.

Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Credit Agreement.

Section 2. Guaranty.

For value received and in consideration of the transactions contemplated by the Facility Documents, the Guarantor unconditionally guarantees for the benefit of the Administrative Agent on behalf of and for the benefit of the Secured Parties the due and punctual performance by ACV Capital of the undertakings and obligations on the part of ACV Capital to be performed or observed by ACV Capital under each of the Facility Documents to which ACV Capital is a party (collectively, the "*Guaranteed Obligations*"). Without limiting the generality of the foregoing, the Guarantor agrees that if ACV Capital shall fail in any manner whatsoever to perform or observe any of the Guaranteed Obligations when the same shall be required to be performed or observed by it under any applicable Facility Document, then the Guarantor will itself duly and punctually perform or observe or cause to be performed or observed the Guaranteed Obligations.

Section 3. Obligations Unconditional.

The Guarantor hereby agrees that its obligations under this Guaranty shall be unconditional, irrespective of:

- (i) the validity, enforceability, avoidance or subordination of any of the Guaranteed Obligations or any of the Facility Documents;
- (ii) the absence of any attempt by, or on behalf of, the Administrative Agent or any other Secured Party to collect, or to take any other action to enforce, all or any part of the Guaranteed Obligations whether from or against ACV Capital, any other guarantor of the Guaranteed Obligations or any other party;
- (iii) the election of any remedy by, or on behalf of, the Administrative Agent or any other Secured Party with respect to all or any part of the Guaranteed Obligations;
- (iv) the waiver, amendment, consent, extension, forbearance or granting of any indulgence by, or on behalf of, the Administrative Agent or any other Secured Party with respect to any provision of any of the Facility Documents;
- (v) the failure of the Administrative Agent or any other Secured Party to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Guaranteed Obligations or any rights as against any other guarantor of the Guaranteed Obligations or any release of any collateral security for or release of any other guarantor in respect of the Guaranteed Obligations;

(vi) the election by, or on behalf of, the Administrative Agent or any other Secured Party, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. 101 et seq.) (the "*Bankruptcy Code*"), of the application of Section 1111(b) (2) of the Bankruptcy Code;

(vii) any borrowing or grant of a security interest by ACV Capital, as a debtor-in-possession, under Section 364 of the Bankruptcy Code;

(viii) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of the claims of the Administrative Agent or any other Secured Party for repayment of all or any part of the Guaranteed Obligations, including any amount due hereunder;

(ix) any actual or alleged fraud by any party (other than the Administrative Agent or the other Secured Parties);

(x) the existence of any claim, setoff or other rights which the Performance Guarantor may have at any time against ACV Capital in connection herewith or any unrelated transaction; or

(xi) any other circumstance which might otherwise constitute a legal or equitable discharge or defense of ACV Capital or a guarantor (other than the defense of payment or performance).

#### Section 4. Enforcement.

The obligations of Guarantor hereunder are those of a primary obligor, and not merely as surety, and are independent of the obligations of ACV Capital or any other Person, and a separate demand or action may be brought against Guarantor to collect payment of the Guaranteed Obligations as and when due under the stated terms of any applicable Facility Documents or hereunder, whether or not a demand or action is brought against ACV Capital or any other Person thereunder or in connection therewith or any other right or remedy has been exercised by the Administrative Agent or any Lender with respect thereto.

#### Section 5. Waivers.

(a) Guarantor hereby irrevocably waives, to the fullest extent permitted by law and this Guaranty, (i) any defense of ACV Capital to the payment of the Guaranteed Obligations, or the cessation from any cause whatsoever, including any act or omission of the Administrative Agent or any Secured Party, of the liability of ACV Capital with respect to the Guaranteed Obligations; (ii) any defense based on any claim that Guarantor's obligations exceed or are more burdensome than those of ACV Capital or any other party; (iii) the benefit of any statute of limitations; (iv) any right to require the Administrative Agent or any Secured Party to proceed against ACV Capital or any other party, proceed against or exhaust any collateral or security for the Guaranteed Obligations (including the Collateral), or pursue any other remedy whatsoever; (v) any defense based upon the doctrines of marshalling of assets or of election of remedies; (vi) any

benefit of and any right to participate in any security now or hereafter held by the Administrative Agent or any Secured Party; (vii) any fact or circumstance related to the Guaranteed Obligations that might otherwise constitute a defense to the obligations of a guarantor or surety; and (viii) any and all other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties, other than the defense that the Guaranteed Obligations have been fully performed and indefeasibly paid in full in cash.

(b) Guarantor hereby irrevocably agrees, to the fullest extent permitted by law, that it shall not at any time insist upon, plead or in any manner whatever claim or take the benefit or advantage of, any right of appraisal, valuation, stay, extension, or marshaling of assets or any other rights and benefits under any redemption laws or exemptions, whether now or at any time hereafter in force.

(c) Guarantor hereby consents to, irrevocably waives any defenses based on, and agrees that its obligations hereunder are fully enforceable irrespective of, and are unaffected by: (i) any amendment, supplement, modification, or restatement of, or change in, any of the Guaranteed Obligations or any Facility Documents; (ii) any renewal, extension, acceleration, increase in the liability under, or change in the time, place, manner or terms of payment of any of the Guaranteed Obligations or any Facility Documents; (iii) any settlement, compromise, release or discharge, or acceptance or refusal of any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any Facility Documents; (iv) change in nature, form or amount of the Guaranteed Obligations or any Facility Documents, acceptance or release of existing or additional security, or any composition or agreement arrived at as to the amount of, or the terms of, the Guaranteed Obligations; (v) any request for and acceptance of other guaranties of the Guaranteed Obligations; (vi) the absence of any action to enforce or the failure to preserve and protect and right to enforce any Facility Documents or any other guaranties or collateral granted with respect to the Guaranteed Obligations; (vii) the existence, validity, enforceability, perfection, non-perfection or extent of any collateral securing the Guaranteed Obligations or any related liabilities of any Person; and (viii) any failure to bring or join any action against ACV Capital or any other guarantor, any collateral grantor, or any other Person with respect to or in connection with the Guaranteed Obligations, the Collateral, or any related liabilities of any Person.

(d) The Administrative Agent is hereby authorized, without notice or demand and without affecting the liability of the Guarantor hereunder, from time to time, (i) to renew, extend, accelerate or otherwise change the time for payment of, or other terms relating to, all or any part of the Guaranteed Obligations, or to otherwise modify, amend or change the terms of any of the Facility Documents; (ii) to accept partial payments on all or any part of the Guaranteed Obligations; (iii) to take and hold security or collateral for the payment of all or any part of the Guaranteed Obligations, this Guaranty, or any other guaranties of all or any part of the Guaranteed Obligations or other liabilities of ACV Capital, (iv) to exchange, enforce, waive and release any such security or collateral; (v) to apply such security or collateral and direct the order or manner of sale thereof as in its discretion it may determine; and (vi) to settle, release, exchange, enforce, waive, compromise or collect or otherwise liquidate all or any part of the Guaranteed Obligations, this Guaranty, any other guaranty of all or any part of the Guaranteed Obligations, and any security or collateral for the Guaranteed Obligations or for any such

guaranty. Any of the foregoing may be done in any manner, without affecting or impairing the obligations of the Guarantor hereunder.

#### Section 6. Unenforceability of Guaranteed Obligations Against ACV Capital.

Notwithstanding (a) any change of ownership of ACV Capital or the insolvency, bankruptcy or any other Bankruptcy Event or other change in the legal status of ACV Capital; (b) the change in or the imposition of any law, decree, regulation or other governmental act which does or might impair, delay or in any way affect the validity, enforceability or the payment when due of the Guaranteed Obligations; (c) the failure of ACV Capital or the Guarantor to maintain in full force, validity or effect or to obtain or renew when required all governmental and other approvals, licenses or consents required in connection with the Guaranteed Obligations or this Guaranty, or to take any other action required in connection with the performance of all obligations pursuant to the Guaranteed Obligations or this Guaranty; or (d) if any of the moneys included in the Guaranteed Obligations have become irrecoverable from ACV Capital for any other reason other than final payment in full of the payment obligations in accordance with their terms, this Guaranty shall nevertheless be binding on the Guarantor. This Guaranty shall be in addition to any other guaranty or other security for the Guaranteed Obligations, and it shall not be rendered unenforceable by the invalidity of any such other guaranty or security. In the event that acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of ACV Capital or for any other reason with respect to ACV Capital, all such amounts then due and owing with respect to the Guaranteed Obligations under the terms of the Facility Documents, or any other document evidencing, securing or otherwise executed in connection with the Guaranteed Obligations, shall be immediately due and payable by the Guarantor.

#### Section 7. Representations, Warranties and Covenants.

The Guarantor hereby represents, warrants and covenants to the Administrative Agent and the Lenders, as of the Closing Date and as of each Borrowing Date as follows:

(a) *Existence and Power.* It is a corporation duly organized, validly existing and in good standing under the laws of its state of organization and has, in all material respects, all requisite corporate power and authority to own its properties and to conduct its business as presently conducted and to enter into and perform its obligations pursuant to this Guaranty. It has, in all material respects, the corporate power and authority to execute and deliver this Guaranty and each Facility Document to which it is a party and to carry out its terms. It has duly authorized the execution, delivery and performance of this Guaranty and each Facility Document to which it is a party by all requisite corporate action. It is qualified to do business as a corporation, is in good standing, and has obtained all licenses and approvals as required under the laws of all jurisdictions in which the ownership or lease of its property and or the conduct of its business and the performance of its obligations pursuant to this Guaranty requires such qualification, standing, license or approval, except to the extent that the failure to so qualify, maintain such standing or be so licensed or approved would not have a material adverse effect on the Guarantor or materially and adversely affect the ability of the Guarantor to perform its obligations under this Guaranty.

(b) *No Conflict.* The consummation of the transactions contemplated by, and the fulfillment of the terms of, this Guaranty and the other Facility Documents by the Guarantor (with or without notice or lapse of time) will not (i) conflict with, result in any breach of any of the terms or provisions of, or constitute a default under, the certificate or articles of incorporation or bylaws of the Guarantor, or any material contractual obligation to which the Guarantor is a party or by which it or any of its property is bound or (ii) violate, in any material respect, any applicable law. This Guaranty and each other Facility Document to which the Guarantor is a party has been duly authorized, executed and delivered by the Guarantor.

(c) *Governmental Authorization.* No material consent, approval, authorization, order, registration, filing, qualification, license or permit of or with any Governmental Authority having jurisdiction over the Guarantor or any of its properties is required to be obtained by or with respect to the Guarantor in order for the Guarantor to enter into this Guaranty or any Facility Document to which it is a party or perform its obligations hereunder or thereunder, that have not been so obtained.

(d) *Binding Effect.* This Guaranty and the other Facility Documents to which the Guarantor is a party constitutes the Guarantor's legal, valid and binding obligations enforceable against the Guarantor in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws relating to or limiting creditors' rights generally and by equitable limitations on the availability of specific remedies, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(e) *Actions, Suits.* There are no proceedings or investigations pending or threatened against the Guarantor or, to the best knowledge of the Guarantor, any of its subsidiaries, before any Governmental Authority (i) asserting the invalidity of this Guaranty, (ii) seeking to prevent the consummation of any of the transactions contemplated by this Guaranty or (iii) seeking any determination or ruling that might (in the reasonable judgment of the Guarantor) have a material adverse effect on the Guarantor.

(f) *Ownership of ACV Capital.* The Guarantor owns, directly or indirectly, one hundred percent (100%) of the outstanding membership interests and other equity of, and voting rights with respect to ACV Capital.

(g) *Anti-Corruption Laws and Sanctions.* The Guarantor is conducting and will continue to conduct its business in compliance with Anti-Corruption Laws in all material respects. The Guarantor has implemented, maintained, and will continue to maintain in effect policies and procedures designed to promote compliance by the Guarantor and its directors, officers, employees, and agents, with Anti-Corruption Laws. Neither the Guarantor, or to the knowledge of the Guarantor, any of its directors, officers, employees, affiliates or agents, is a Sanctioned Person, or located, organized, or resident in a Sanctioned Jurisdiction.

(h) *Anti-Money Laundering.* The Guarantor's operations and the operations of its subsidiaries, if any, and consolidated Affiliates are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, including without limitation, Anti-Money Laundering Laws, and no action, suit or proceeding by or before

any court or governmental agency, authority or body or any arbitrator involving it or any of its subsidiaries, if any, and consolidated Affiliates with respect to Anti-Money Laundering Laws is pending or, to its knowledge, threatened.

#### Section 8. Financial Information.

The Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of ACV Capital and any and all endorsers and/or other guarantors of all or any part of the Guaranteed Obligations, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations, or any part thereof, that diligent inquiry would reveal, and the Guarantor hereby agrees that none of the Administrative Agent nor the Secured Parties shall have any duty to advise the Guarantor of information known to it regarding such condition or any such circumstances. In the event any of the Administrative Agent or the other Secured Parties, in their sole discretion, undertakes at any time or from time to time to provide any such information to the Guarantor, none of the Administrative Agent nor the Secured Parties shall be under any obligation (i) to undertake any investigation not a part of its regular business routine, (ii) to disclose any information which the Administrative Agent or the other Secured Parties, pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (iii) to make any other or future disclosures of such information or any other information to the Guarantor.

#### Section 9. No Marshalling; Reinstatement.

The Guarantor consents and agrees that none of the Administrative Agent, the Secured Parties nor any party acting for or on behalf of the Administrative Agent or the other Secured Parties shall be under any obligation to marshal any assets in favor of the Guarantor or against or in payment of any or all of the Guaranteed Obligations. The Guarantor further agrees that, to the extent that ACV Capital or any other guarantor of all or any part of the Guaranteed Obligations makes a payment or payments to the Administrative Agent or the other Secured Parties, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to ACV Capital, such other guarantor or any other party, or their respective estates, trustees, receivers or any other party, including, without limitation, the Guarantor, under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or repayment, the part of the Guaranteed Obligations which has been paid, reduced or satisfied by such amount shall be reinstated and continued in full force and effect as of the time immediately preceding such initial payment, reduction or satisfaction.

#### Section 10. Subrogation; Subordination.

(a) Until the Guaranteed Obligations (other than contingent obligations) have been paid in full, the Guarantor (i) shall have no right of subrogation with respect to such Guaranteed Obligations and (ii) waives any right to enforce any remedy which the Administrative Agent or the other Secured Parties now has or may hereafter have against ACV Capital, any endorser or any guarantor of all or any part of the Guaranteed Obligations or any other party, and the Guarantor waives, until the Guaranteed Obligations (other than contingent obligations) have

been paid in full, any benefit of, and any right to participate in, any security or collateral given to the Borrower or the Administrative Agent to secure the payment or performance of all or any part of the Guaranteed Obligations or any other liability of ACV Capital to the Administrative Agent or the other Secured Parties.

(b) Guarantor hereby subordinates the payment of all obligations and indebtedness of ACV Capital owing to Guarantor, whether now existing or hereafter arising, including but not limited to any obligation of ACV Capital to Guarantor as subrogee of the Administrative Agent or other Secured Parties or resulting from Guarantor's payment or performance under this Guaranty, to the indefeasible payment in full in cash of all Guaranteed Obligations.

#### Section 11. Enforcement; Amendments; Waivers.

No delay on the part of the Administrative Agent or the other Secured Parties in the exercise of any right or remedy arising under this Guaranty, the Credit Agreement, any of the other Facility Documents or otherwise with respect to all or any part of the Guaranteed Obligations, the Collateral or any other guaranty of or security for all or any part of the Guaranteed Obligations, shall operate as a waiver thereof, and no single or partial exercise by the Administrative Agent or the other Secured Parties of any such right or remedy shall preclude any further exercise thereof. No modification or waiver of any of the provisions of this Guaranty shall be binding upon the Administrative Agent or the other Secured Parties, except as expressly set forth in a writing duly signed and delivered by the Administrative Agent or the other Secured Parties (as applicable). Failure by the Administrative Agent or the other Secured Parties at any time or times hereafter to require strict performance by ACV Capital, any other guarantor of all or any part of the Guaranteed Obligations or any other party of any of the provisions, warranties, terms and conditions contained in any of the Facility Documents now or at any time or times hereafter executed by such parties and delivered to the Administrative Agent or the other Secured Parties shall not waive, affect or diminish any right of the Administrative Agent or the other Secured Parties at any time or times hereafter to demand strict performance thereof and such right shall not be deemed to have been waived by any act or knowledge of the Administrative Agent or the other Secured Parties, or their respective agents, officers or employees, unless such waiver is contained in an instrument in writing, directed and delivered to ACV Capital, specifying such waiver, and is signed by the Administrative Agent or the other Secured Parties (as applicable). No action by the Administrative Agent or the other Secured Parties permitted hereunder shall in any way affect or impair the Administrative Agent's or the other Secured Parties' rights and remedies or the obligations of the Guarantor under this Guaranty. Any determination by a court of competent jurisdiction of the amount of any principal and/or interest owing by ACV Capital to the Administrative Agent or the other Secured Parties shall be conclusive and binding on the Guarantor irrespective of whether the Guarantor was a party to the suit or action in which such determination was made.

#### Section 12. Effectiveness; Termination; Reinstatement.

This Guaranty shall become effective upon its execution by the Guarantor and shall continue in full force and effect and may not be terminated or otherwise revoked until all Borrower Obligations have been paid in full and all commitments under the Credit Agreement



have been terminated. If, notwithstanding the foregoing, the Guarantor shall have any right under applicable law to terminate or revoke this Guaranty, the Guarantor agrees that such termination or revocation shall not be effective until a written notice of such revocation or termination, specifically referring hereto, signed by the Guarantor, is actually received by the Administrative Agent. Such notice shall not affect the right and power the Administrative Agent or the other Secured Parties to enforce rights arising prior to receipt thereof by the Administrative Agent. If the Lenders grant loans or takes other action after the Guarantor terminates or revokes this Guaranty but before the Administrative Agent receives such written notice, the rights of the Administrative Agent or the Lenders with respect thereto shall be the same as if such termination or revocation had not occurred. If any payment by or on behalf of ACV Capital, Guarantor or any other Party is made, or the Administrative Agent or any other Secured Party exercises any right of setoff in respect of the Guaranteed Obligations, and such payment or the proceeds of any such setoff (or any part thereof) is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or any Secured Party in their discretion) to be returned, repaid or paid over to ACV Capital, Guarantor, a trustee, receiver or any other Person, in connection with any proceeding under any Debtor Relief Laws or otherwise, then this Guaranty shall continue in full force and effect to apply to such Guaranteed Obligations as if such payment had not been made or such setoff had not occurred, and to the extent that this Guaranty has been terminated or deemed terminated, this Guaranty shall be revived and reinstated with respect thereto, whether or not the Administrative Agent or any other Secured Party are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction hereof or hereunder. The obligations of the Guarantor under this Section shall survive termination of this Guaranty.

#### Section 13. Successors and Assigns.

This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of the Administrative Agent and the other Secured Parties and their respective successors and assigns; all references herein to the Borrower, to ACV Capital, to the Administrative Agent or the Secured Parties and to the Guarantor shall be deemed to include their respective successors and assigns; provided that the Guarantor may not assign any of its rights or obligations hereunder without the prior written consent of the Administrative Agent. The successors of ACV Capital shall include, without limitation, its receivers, trustees, debtors-in-possession or successor trustees.

#### Section 14. Governing Law.

The validity, interpretation and enforcement of this Guaranty and the other Facility Documents and any dispute arising out of or in connection with this Guaranty or any of the other Facility Documents, whether sounding in contract, tort, equity or otherwise, shall be governed by the internal laws (as opposed to the conflicts of law provisions other than Section 5-1401 of the New York General Obligations Law) and decisions of the State of New York.

Section 15. Submission to Jurisdiction.

All disputes between or among the Guarantor, the Administrative Agent and the Lenders, whether sounding in contract, tort, equity or otherwise, shall be resolved only by state and federal courts located in New York, New York, and the courts to which an appeal therefrom may be taken; *provided, however*, that the Administrative Agent shall have the right, to the extent permitted by applicable law, to proceed against the Guarantor or its property in (a) any courts of competent jurisdiction and venue and (b) any location selected by the Administrative Agent to enable the Administrative Agent to realize on such property, or to enforce a judgment or other court order in favor of the Administrative Agent. The Guarantor agrees that it will not assert any permissive counterclaims, setoffs or cross-claims in any proceeding brought by the Administrative Agent. The Guarantor waives any objection that it may have to the location of the court in which the Administrative Agent has commenced a proceeding, including, without limitation, any objection to the laying of venue or based on *forum non conveniens*. By execution and delivery of each Facility Document to which it is a party, the Guarantor (i) accepts the non-exclusive jurisdiction of the aforesaid courts and irrevocably agrees to be bound by any judgment rendered thereby, (ii) waives personal service of process, and (iii) agrees that service of process upon it may be made by certified or registered mail, return receipt requested, pursuant to Section 11.02 of the Credit Agreement.

Section 16. Jury Trial.

The Guarantor (and, by its receipt hereof, the Administrative Agent) hereby waives to the fullest extent permitted by law any right to a trial by jury in any action or proceeding based upon, arising out of, or in any way relating to (i) this Guaranty or (ii) any conduct, acts or omissions of the Guarantor, the Administrative Agent, any Lender or any of their respective directors, officers, employees, agents, attorneys or other affiliates, in each case whether sounding in contract, tort, equity or otherwise.

Section 17. Further Assurances.

If the Guarantor fails to perform any of its obligations hereunder, the Administrative Agent may (but shall not be required to) perform, or cause performance of, such obligation; and the Administrative Agent's reasonable costs and expenses incurred in connection therewith shall be payable by the Guarantor.

Section 18. Waiver of Bond.

The Guarantor waives the posting of any bond otherwise required of the Administrative Agent in connection with any judicial process or proceeding to enforce any judgment or other court order entered in favor of the Administrative Agent, or to enforce by specific performance, temporary restraining order, or preliminary or permanent injunction, this Guaranty or any other agreement or document among the Guarantor and any of the Administrative Agent.

Section 19. Advice of Counsel.

The Guarantor represents and warrants to the Administrative Agent that it has discussed this Guaranty and, specifically, the provisions of Sections 14 through 17 hereof, with its lawyers.

Section 20. Notices.

All notices and other communications hereunder shall be in writing and sent by certified or registered mail, return receipt requested, by overnight delivery service, with all charges prepaid, by hand delivery, or by telecopier followed by a hard copy sent by regular mail, if to the Administrative Agent, then to Citibank, N.A., 1 Penns Way, Ops 2 Floor 2, New Castle, DE 19720, E-mail: [conduitoperations@citi.com](mailto:conduitoperations@citi.com), Attention: Citi Global Loans / Conduit, with a copy to Citibank, N.A., 388 Greenwich Street, 6th Floor Trading, New York, NY 10013, E-mail: [CitiABSLendingNotices@citi.com](mailto:CitiABSLendingNotices@citi.com), Attention: Citi Global ABS Financing & Securitization, and if to the Guarantor, then to ACV Auctions Inc., 640 Ellicott Street, Buffalo, NY 14203, Telecopy: (716) 845-7531, E-mail: [mmohr@acvauctions.com](mailto:mmohr@acvauctions.com), Attention: Michael Mohr, with a copy to [notices@acvauctions.com](mailto:notices@acvauctions.com), or, in each case, to such other address as the Guarantor or the Administrative Agent may specify to the other party in the manner required hereunder. All such notices and correspondence shall be deemed given (i) if sent by certified or registered mail, three (3) Business Days after being postmarked, (ii) if sent by overnight delivery service or by hand delivery, when received at the above-stated addresses or when delivery is refused, (iii) if sent by telecopier transmission, when such transmission is confirmed and (iv) if sent by e-mail, upon confirmation of receipt by return e-mail.

Section 21. Severability.

In case any provision in or obligation under this Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 22. Entire Agreement; Successors and Assigns; Joint and Several.

This Guaranty constitutes the entire agreement between the parties hereto, supersedes any prior written and verbal agreements between them, and shall bind and benefit the parties hereto and their respective successors and permitted assigns. If the Guarantor consists of more than one person or party, the obligations and liabilities of each such person or party shall be joint and several.

Section 23. Electronic Signatures.

This Guaranty may be electronically signed, any digital or electronic signatures (including Portable Document Format (PDF), facsimile or electronically imaged signatures provided by DocuSign or similar service) appearing on this Guaranty or such other documents are the same as handwritten signatures for the purposes of validity, enforceability and

admissibility, and delivery of any such electronic signature to, or a signed copy of, this Guaranty and such other documents may be made by facsimile, email or other electronic transmission. Delivery of an executed counterpart of a signature page of this Guaranty in a PDF shall be effective as delivery of a manually executed original counterpart of this Guaranty. The words “execution”, “execute”, “signed”, “signature”, and words of like import in or related to any document to be signed in connection with this Guaranty hereto shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

[Remainder of this page intentionally left blank]

In Witness Whereof, this Guaranty has been duly executed by the as of the day and year first set forth above.

ACV Auctions Inc., a corporation organized under the laws of Delaware

By:  
Name:  
Title:

[Signature Page to Performance Guaranty]

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Acknowledged and agreed to as of the date and year first above written:

Citibank, N.A., as Administrative Agent

By:\_\_\_

Name:

Title:

[Signature Page to Performance Guaranty]

**CERTIFICATION BY THE CHIEF EXECUTIVE OFFICER PURSUANT TO  
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, George Chamoun, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of ACV Auctions Inc. (the "registrant") for the fiscal quarter ended June 30, 2024;
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:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth 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):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: Aug 7, 2024

By: \_\_\_\_\_  
/s/ George Chamoun  
**George Chamoun**  
**Chief Executive Officer and Director**  
**(Principal Executive Officer)**

**CERTIFICATION BY THE CHIEF FINANCIAL OFFICER PURSUANT TO  
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, William Zerella, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of ACV Auctions Inc. (the "registrant") for the fiscal quarter ended June 30, 2024;
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:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth 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):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: Aug 7, 2024

By: \_\_\_\_\_  
/s/ William Zerella  
**William Zerella**  
**Chief Financial Officer**  
**(Principal Financial Officer)**



**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of ACV Auctions Inc. (the "Company") on Form 10-Q for the period ending June 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Aug 7, 2024

By:

/s/ George Chamoun

**George Chamoun**  
**Chief Executive Officer**  
**(Principal Executive Officer)**

This certification accompanies the Quarterly Report, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of ACV Auctions Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Quarterly Report on Form 10-Q), irrespective of any general incorporation language contained in such filing.

