

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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): July 26, 2019

Fusion Connect, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

001-32421

58-2342021

(State or Other Jurisdiction of Incorporation)

(Commission File Number)

(IRS Employer Identification No.)

210 Interstate North Parkway, Suite 300, Atlanta, Georgia 30339
(Address of Principal Executive Offices, including Zip Code)

(212) 201-2400

(Registrant's Telephone Number, Including Area Code)

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act: None

Title of each class

Trading Symbol(s)

Name of each exchange on which registered

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Item 8.01. Other Events.

As previously reported, Fusion Connect, Inc. ("Fusion") and its direct and indirect U.S. subsidiaries (collectively, including Fusion, the "Company") entered into that certain Restructuring Support Agreement, dated June 3, 2019, as amended by that certain First Amendment, dated as of June 17, 2019, that certain Second Amendment, dated as of June 24, 2019, that certain Third Amendment, dated as of June 28, 2019, that certain Fourth Amendment, dated as of July 19, 2019, and as further amended, restated, supplemented, or otherwise modified from time to time (the "RSA"), and certain holders of claims under that certain First Lien Credit and Guaranty Agreement, dated as of May 4, 2018. On July 26, 2019, the Company entered into the fifth amendment to the RSA (the "Fifth Amendment") to extend the milestone dates relating to the filing of certain applications, petitions or other requests with required state governmental authorities, other than for the states of California, New York, New Jersey, Pennsylvania and West Virginia, to August 9, 2019. A copy of the Fifth Amendment is filed as Exhibit 99.1 hereto and is incorporated herein by reference.

As previously reported, the Company entered into that certain Superpriority Secured Debtor-in-Possession Credit and Guaranty Agreement, dated as of June 7, 2019, as amended by that certain Amendment No.1, dated as of June 17, 2019, that certain Amendment No. 2, dated as of June 24, 2019, that certain Amendment No. 3, dated as of June 28, 2019, that certain Amendment No. 4, dated as of July 17, 2019, that certain Amendment No. 5, dated as of July 19, 2019, and as further amended, restated, supplemented, amended and restated or otherwise modified from time to time (the "DIP Credit Agreement"), by and among Fusion, as borrower, certain subsidiaries of Fusion, as guarantors, the lenders party thereto from time to time and Wilmington Trust, National Association, as administrative agent and collateral agent. On July 26, 2019, Fusion entered into the sixth amendment to the DIP Credit Agreement ("Amendment No. 6") to reflect that the RSA had been further amended. A copy of Amendment No. 6 is filed as Exhibit 99.2 hereto and is incorporated herein by reference.

The foregoing descriptions of the Fifth Amendment and Amendment No. 6 do not purport to be complete and are subject to, and qualified in its entirety by, the full text of the Fifth Amendment and Amendment No. 6, a copy of each of which is filed as Exhibits 99.1 and 99.2 hereto, respectively.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

See Exhibit Index.

EXHIBIT INDEX

Exhibit Number	Description
99.1	Fifth Amendment to Restructuring Support Agreement, dated July 26, 2019, by and among Fusion Connect, Inc., certain subsidiaries of Fusion Connect, Inc. and the Consenting First Lien Lenders.
99.2	Amendment No. 6 to Superpriority Secured Debtor-in-Possession Credit and Guaranty Agreement, dated July 26, 2019, by and among Fusion Connect, Inc., as borrower, certain subsidiaries of Fusion Connect, Inc., as guarantors, the lenders from time to time party thereto and Wilmington Trust, National Association, as administrative agent and collateral agent.

SIGNATURES

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

Fusion Connect, Inc.

Date: July 30, 2019

By: /s/ James P. Prenetta, Jr.

Name: James P. Prenetta, Jr.

Title: Executive Vice President and General Counsel

FIFTH AMENDMENT TO RESTRUCTURING SUPPORT AGREEMENT

This **FIFTH AMENDMENT TO RESTRUCTURING SUPPORT AGREEMENT**, dated as of July 26, 2019 (this "**Amendment**"), is made and entered into by and among: (i) Fusion Connect, Inc. ("**Fusion**") and its direct and indirect U.S. subsidiaries (each, a "**Company Party**" and collectively, including Fusion, the "**Company Parties**"); and (ii) the undersigned holders of claims (and together with their respective successors and permitted assigns, the "**Consenting First Lien Lenders**") under that certain First Lien Credit and Guaranty Agreement, dated as of May 4, 2018 (the "**Credit Agreement**"), and amends that certain Restructuring Support Agreement, dated as of June 3, 2019, by and among the Company Parties and the Consenting First Lien Lenders (as amended, restated, supplemented or otherwise modified from time to time, the "**Restructuring Support Agreement**"). Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Restructuring Support Agreement.

RECITALS

WHEREAS, Section 9 of the Restructuring Support Agreement permits certain modifications and amendments of the Restructuring Support Agreement by written agreement executed by the Company Parties and the Requisite First Lien Lenders;

WHEREAS, the parties amended the Restructuring Support Agreement pursuant to that certain First Amendment to Restructuring Support Agreement, dated June 17, 2019 (the "**First Amendment**"), that certain Second Amendment to Restructuring Support Agreement, dated June 24, 2019 (the "**Second Amendment**"), that certain Third Amendment to Restructuring Support Agreement, dated June 28, 2019 (the "**Third Amendment**"), and that certain Fourth Amendment to Restructuring Support Agreement, dated July 19, 2019 (together with the First Amendment the Second Amendment, and the Third Amendment the "**Previous Amendments**"); and

WHEREAS, pursuant to Section 9 of the Restructuring Support Agreement, the parties hereto desire to amend the Restructuring Support Agreement as set forth in this Amendment.

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

AGREEMENT

Section 1. Amendment to the Restructuring Support Agreement

Subject to the satisfaction of the conditions precedent specified in Section 3 hereof, but effective as of the date hereof, Section 5(b) of the Restructuring Support Agreement shall be amended by adding the following words immediately after ";" at the end of clause (xii): "provided, however, that the deadline for the Company Parties to have completed the filing of any material applications, petitions or other requests to be filed with any state Governmental Authority, other than any state Governmental Authority for the states of California, New York, New Jersey, Pennsylvania or West Virginia, that are required to obtain the Governmental Approvals for such state Governmental Authority shall be 11:59 p.m. prevailing Eastern Time on August 9, 2019;".

Section 2. Ratification

Except as specifically provided for in (a) the Previous Amendments and (b) this Amendment, no waivers, releases, changes, amendments, or other modifications have been made on or prior to the date hereof or are being made to the terms of the Restructuring Support Agreement or the rights and obligations of the parties thereunder, all of which such terms are hereby ratified and confirmed and remain in full force and effect.

Section 3. Effectiveness

This Amendment shall become effective and binding on the Parties on the date counterpart signatures to this Amendment shall have been executed by (a) the Company Parties, and (b) the Requisite First Lien Lenders.

Section 4. Headings

Titles and headings in this Amendment are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit, or aid in the construction or interpretation of any term or provision hereof.

Section 5. Execution of Amendment

This Amendment may be executed and delivered (by facsimile, electronic mail, or otherwise) in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement.

Section 6. Governing Law; Jurisdiction; Selection of Forum; Waiver of Trial By Jury

THIS AMENDMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. Each party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Amendment in the Bankruptcy Court, and solely in connection with claims arising under this Amendment (a) irrevocably submits to the exclusive jurisdiction of the Bankruptcy Court, (b) waives any objection to laying venue in any such action or proceeding in the Bankruptcy Court, and (c) waives any objection that the Bankruptcy Court are an inconvenient forum or do not have jurisdiction over any party hereto. Each party hereto irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Amendment or the transactions contemplated hereby.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered by their respective duly authorized officers or other agents, solely in their respective capacity as officers or other agents of the undersigned and not in any other capacity, as of the date first set forth above.

FUSION CONNECT, INC.

On its own behalf and on behalf of its direct and indirect domestic subsidiaries

By: /s/ Keith A. Soldan

Name: Keith A. Soldan

Title: Chief Financial Officer

[Signature Page to Amendment to Restructuring Support Agreement]

CONSENTING FIRST LIEN LENDER

[LENDER]

By: [●]

Name: [●]

Title: [●]

Principal Amount of First Lien Loans: \$

Notice Address:

[●]

Fax: [●]

Attention: [●]

Email: [●]

[Signature Page to Amendment to Restructuring Support Agreement]

This AMENDMENT No. 6 (this “**Amendment**”), dated as of July 26, 2019, is entered into by and among Fusion Connect, Inc., a Delaware corporation and a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code (the “**Borrower**”), certain subsidiaries of the Borrower party hereto, each a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code, as Guarantor Subsidiaries and the Lenders party hereto, which collectively constitute the Requisite Lenders, and acknowledged by the Administrative Agent (each, a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, reference is made to that certain Superpriority Secured Debtor-in-Possession Credit and Guaranty Agreement, dated as of June 7, 2019, among the Borrower, the Guarantor Subsidiaries, the lenders from time to time party thereto (the “**Lenders**”) and Wilmington Trust, National Association, as Administrative Agent and Collateral Agent (as amended, restated, supplemented or otherwise modified prior to the date hereof, the “**Credit Agreement**” and, as amended by this Amendment, the “**Amended Credit Agreement**”); and

WHEREAS, the Parties wish to amend the Credit Agreement on the terms set forth herein.

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

Section 1. Definitions. Each capitalized term used and not otherwise defined in this Amendment shall have the meaning assigned to such term in the Amended Credit Agreement.

Section 2. Amendments to Credit Agreement. With effect as of the Amendment Effective Date, the Credit Agreement is hereby amended by replacing the words “(as defined in the Restructuring Support Agreement as in effect after giving effect to that certain First Amendment thereto, dated as of June 17, 2019, that certain Second Amendment thereto, dated as of June 24, 2019, that certain Third Amendment thereto, dated as of June 28, 2019, and that certain Fourth Amendment thereto, dated as of July 19, 2019)” in clause (n)(iv) of Section 8.1 thereof with “(as defined in the Restructuring Support Agreement as in effect after giving effect to that certain First Amendment thereto, dated as of June 17, 2019, that certain Second Amendment thereto, dated as of June 24, 2019, that certain Third Amendment thereto, dated as of June 28, 2019, that certain Fourth Amendment thereto, dated as of July 19, 2019, and that certain Fifth Amendment thereto, dated as of July 26, 2019)”.

Section 3. Representations and Warranties.

(a) Each of the Credit Parties, subject to the entry of the Orders and the terms thereof, has all requisite power and authority to execute and deliver this Amendment and to perform the transactions contemplated hereby.

(b) Subject to the entry of the Orders and the terms thereof, this Amendment and the transactions contemplated hereby have been duly authorized by all necessary corporate or other organizational action and, if required, stockholder, shareholder or other equityholder action on the part of each Credit Party.

(c) This Amendment and the transactions contemplated hereby do not and will not (i) other than violations arising as a result of the commencement of the Cases, subject to the entry of the Orders and the terms thereof and except as otherwise excused by the Bankruptcy Code, violate any applicable law, including any order of any Governmental Authority, except to the extent any such violation, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, (ii) violate the Organizational Documents of the Borrower or any Restricted Subsidiary, (iii) other than violations arising as a result of the commencement of the Cases and except as otherwise excused by the Bankruptcy Code, violate or result (alone or with notice or lapse of time, or both) in a default under any other Contractual Obligation of the Borrower or any Restricted Subsidiary, or give rise to a right thereunder to require any payment, repurchase or redemption to be made by the Borrower or any Restricted Subsidiary, or give rise to a right of, or result in, any termination, cancelation or acceleration or right of renegotiation of any obligation thereunder, except to the extent any such violation, default, right or result, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, or (iv) except for Liens created under the Credit Documents, result in or require the creation or imposition of any Lien on any asset of the Borrower or any Restricted Subsidiary.

(d) Subject to the Orders and the terms thereof, this Amendment and the transactions contemplated hereby do not and will not require any registration with, consent or approval of, notice to, or other action by any Governmental Authority (other than the entry of the Orders), except (i) such as have been obtained or made and are in full force and effect, (ii) filings and recordings with respect to the Collateral necessary to perfect Liens created under the Credit Documents, (iii) filings and registrations under applicable securities laws relating to the Disposition by the Collateral Agent pursuant to the Pledge and Security Agreement of Collateral that constitute Securities and (iv) Post-Petition filings with the SEC and applicable State PUCs relating to the Credit Parties' status as debtors and debtors-in-possession under Chapter 11 of the Bankruptcy Code.

(e) Subject to the Orders and the terms thereof, this Amendment has been duly executed and delivered by each Credit Party that is a Party and is, subject to the Orders and the terms thereof, the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability (other than with respect to the Debtors).

(f) The representations and warranties of each Credit Party set forth in the Credit Documents are true and correct (i) in the case of the representations and warranties qualified or modified as to materiality in the text thereof, in all respects and (ii) otherwise, in all material respects, in each case on and as of the Amendment Effective Date, except in the case of any such representation and warranty that expressly relates to an earlier date, in which case such representation and warranty shall be so true and correct on and as of such earlier date.

(g) No Default or Event of Default has occurred and is continuing or would result from this Amendment, other than Defaults and Events of Default that have been disclosed to the Administrative Agent on or prior to the date hereof.

Section 4. Effectiveness. This Amendment shall become effective on the date (such date, the "Amendment Effective Date") that the Administrative Agent shall have received fully executed counterparts of this Amendment from the Borrower and each other Credit Party, Lenders constituting the Requisite Lenders and the Administrative Agent.

Section 5. Entire Agreement. THIS AMENDMENT CONSTITUTES THE ENTIRE AGREEMENT AMONG THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF AND SUPERSEDES ANY AND ALL PREVIOUS AGREEMENTS AND UNDERSTANDINGS, ORAL OR WRITTEN, RELATING TO THE SUBJECT MATTER HEREOF (BUT DOES NOT SUPERSEDE ANY PROVISIONS OF ANY SEPARATE CONFIDENTIALITY AGREEMENT OR SIMILAR AGREEMENT OR FEE LETTER BETWEEN OR AMONG ANY CREDIT PARTIES AND ANY AGENT OR LENDER OR ANY AFFILIATE OF ANY OF THE FOREGOING, ALL OF WHICH PROVISIONS SHALL REMAIN IN FULL FORCE AND EFFECT).

Section 6. Credit Document. Each Party acknowledges and agrees that this Amendment constitutes a "Credit Document" for all purposes of the Amended Credit Agreement and the other Credit Documents.

Section 7. Governing Law; Jurisdiction; Consent to Service of Process

(a) THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) 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 THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK AND TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(b) SUBJECT TO CLAUSE (V) BELOW, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENT, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT EXCLUSIVELY IN THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE, OR ABSTAINS FROM JURISDICTION, IN ANY FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AMENDMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS (SUBJECT TO CLAUSE (V) BELOW); (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1 OF THE AMENDED CREDIT AGREEMENT; (IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE CREDIT PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (V) AGREES THAT THE AGENTS AND THE LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY CREDIT DOCUMENT OR ANY EXERCISE OF REMEDIES IN RESPECT OF COLLATERAL OR THE ENFORCEMENT OF ANY JUDGMENT, AND HEREBY SUBMITS TO THE JURISDICTION OF, AND CONSENTS TO VENUE IN, ANY SUCH COURT.

Section 8. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HEREBY AGREES TO WAIVE ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP ESTABLISHED UNDER THE AMENDED CREDIT AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AMENDMENT, THAT EACH PARTY HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AMENDMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 8 AND EXECUTED BY EACH OF THE PARTIES), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE UNDER THE AMENDED CREDIT AGREEMENT. IN THE EVENT OF LITIGATION, THIS AMENDMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 9. Severability. In case any provision in or obligation hereunder 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 10. Counterparts. This Amendment may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or in electronic format (i.e., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Amendment.

Section 11. Headings. Section headings 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 12. Effect of Amendment. Except as expressly set forth herein, (i) this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders, the Collateral Agent or the Administrative Agent, in each case under the Credit Agreement or any other Credit Document, and (ii) shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other Credit Document. Each and every term, condition, obligation, covenant and agreement contained in the Credit Agreement or any other Credit Document is hereby ratified and re-affirmed in all respects and shall continue in full force and effect as expressly amended hereby. The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein or as provided in the exhibits hereto, operate as a waiver of any right, power or remedy of any Lender, the Collateral Agent or the Administrative Agent under any of the Credit Documents, or constitute a waiver of any provision of any of the Credit Documents. This Amendment shall not extinguish the obligations for the payment of money outstanding under the Credit Agreement. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Credit Agreement, which shall remain in full force and effect as expressly modified hereby or as provided in the exhibits hereto. Nothing implied in this Amendment or in any other document contemplated hereby shall be construed as a release or other discharge of any of the Credit Parties from the Credit Documents. From and after the Amendment Effective Date, all references to the Credit Agreement in any Credit Document and all references in the Credit Agreement to "this Agreement," "hereunder," "hereof" or words of like import referring to the Credit Agreement shall, unless expressly provided otherwise, be deemed to refer to the Amended Credit Agreement. Each of the Credit Parties hereby consents to this Amendment and confirms that all obligations of such Credit Party under the Credit Documents to which such Credit Party is a party shall continue to apply to the Amended Credit Agreement. Each Credit Party hereby ratifies and reaffirms (a) that each of the Credit Documents to which it is a party has been duly executed and delivered by such Credit Party to the Administrative Agent and to the Lenders and is in full force and effect as of the date hereof, (b) its grant of liens on or security interests in its properties pursuant to the Credit Documents as security for the Obligations under or with respect to the Amended Credit Agreement and confirms and agrees that such liens and security interests secure all of the Obligations; and (c) the Administrative Agent, the Collateral Agent and the Lenders are and shall be entitled to all of the rights, remedies and benefits provided for in the Credit Documents.

Section 13. Direction to Administrative Agent. The Lenders party hereto, constituting the Requisite Lenders, hereby (a) authorize and direct the Administrative Agent to acknowledge this Amendment, and (b) acknowledge and agree that (i) the direction in this Section 13 constitutes a direction from the Lenders under the provisions of Section 9 of the Credit Agreement and (ii) Sections 9.3 and 9.6 of the Credit Agreement (including as amended hereby) shall apply to any and all actions taken by the Administrative Agent and the Collateral Agent in accordance with such directions.

[Remainder of page left intentionally blank]

Acknowledged by:

**WILMINGTON TRUST,
NATIONAL ASSOCIATION,**
as Administrative Agent

By:

/s/ Jeffery Rose
Name: Jeffery Rose
Title: Vice President
