

# PERFORMANT FINANCIAL CORP

## **FORM 8-K** (Current report filing)

Filed 08/01/16 for the Period Ending 07/26/16

|           |   |
|-----------|---|
| Address   | 333 North Cayons Parkway<br>Livermore, CA 94551 |
| Telephone | 925-960-4800                                    |
| CIK       | 0001550695                                      |
| Symbol    | PFMT  |
| SIC Code  | 7380 - Miscellaneous Business Services          |
| Industry  | Business Services                               |
| Sector    | Services  |

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, 2016

**Performant Financial Corporation**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-35628**  
(Commission  
File Number)

**20-0484934**  
(IRS Employer  
Identification No.)

**333 North Canyons Parkway**  
**Livermore, California 94551**  
(Address of principal executive offices) (Zip Code)

**Registrant's telephone number, including area code: (925) 960-4800**

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

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

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

On July 26, 2016, Performant Business Services, Inc., which is a wholly-owned subsidiary of Performant Financial Corporation (the "Company") and is the borrower under that certain Credit Agreement dated as March 19, 2012 with Madison Capital Funding LLC, as agent (the "Agent") and the lenders party thereto from time to time (as amended, the "Credit Agreement"), entered into Amendment No. 5 to the Credit Agreement (the "Fifth Amendment"). The Company and certain other of its subsidiaries are guarantors of the obligations under the Credit Agreement.

Pursuant to the Fifth Amendment, the Company's financial covenants were modified as follows:

- The total debt to EBITDA ratio of 3.25 to 1.0, which was in effect for the computation period ending as of September 30, 2017, has been revised under the Fifth Amendment to be 4.75 to 1.0 for that period.
- The interest coverage ratio, which was not in effect for the computation period ending as of September 30, 2017, has been revised under the Fifth Amendment to be 1.75 to 1.0 for that period.
- The fixed charge coverage ratio of 1.20 to 1.0, which was in effect for the computation period ending as of September 30, 2017, has been revised under the Fifth Amendment to no longer apply to that period.

The Company's obligation to apply, on an annual basis, a percentage, which may fluctuate between 25% and 75% (determined based upon the Company's total debt to EBITDA ratio), of its annual excess cash flow as a mandatory prepayment of the loans under the Credit Agreement has also been modified. Pursuant to the Fifth Amendment, the Company will be required to apply 75% of its excess cash flow each quarter as a mandatory prepayment of the loans under the Credit Agreement. In addition, without the consent of the Agent and lenders holding more than 50% of the revolving loan commitments under the Credit Agreement, the Company will no longer be permitted to request revolving loans; however, this will not affect the Company's ability to utilize the letter of credit sub-facility under Credit Agreement.

In connection with Amendment No. 4 to the Credit Agreement dated as of February 19, 2016, the Company deposited \$7.5 million into a deposit account which is subject to the exclusive control of the Agent. Pursuant to the Fifth Amendment, the date on which these funds will be remitted to the Agent for application to the term loans or other obligations, as applicable, under the Credit Agreement has been extended by one month, to October 31, 2016 (or such later date not more than thirty (30) days thereafter as may be agreed by Agent in its sole discretion); however, all or a portion of these funds may also be returned to the Company if the Agent and the requisite lenders under the Credit Agreement elect otherwise in their sole discretion. These funds may also be remitted in accordance with the foregoing sentence prior to October 31, 2016 if an event of default has occurred and is continuing under the Credit Agreement.

The foregoing summary of the Fifth Amendment does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Fifth Amendment, a copy of which is filed as Exhibit 10.1 hereto and incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

(d) **Exhibits**

- 10.1 Amendment No. 5 to Credit Agreement, dated as of July 26, 2016, by and among Performant Business Services, Inc., the Lenders party hereto, and Madison Capital Funding LLC.

**SIGNATURE**

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.

Dated: August 1, 2016

PERFORMANT FINANCIAL CORPORATION

By: /s/ Hakan Orvell

Orvell

Financial Officer

Hakan

Chief

## AMENDMENT NO. 5 TO CREDIT AGREEMENT

This AMENDMENT NO. 5 TO CREDIT AGREEMENT ("Amendment") is dated as of July 26, 2016, and is entered into by and among PERFORMANT BUSINESS SERVICES, INC. (formerly known as DCS Business Services, Inc.), a Nevada corporation ("Borrower"), the Lenders (as defined in the Credit Agreement as hereafter defined) party hereto, and MADISON CAPITAL FUNDING LLC, as Agent for all Lenders.

## WITNESSETH:

WHEREAS, Borrower, Agent and the Lenders from time to time party thereto are parties to that certain Credit Agreement dated as of March 19, 2012 (as the same has been or may be from time to time amended, restated, supplemented or otherwise modified, the "Credit Agreement"; capitalized terms not otherwise defined herein have the definitions provided therefor in the Credit Agreement, as amended hereby); and

WHEREAS, Borrower, Agent, Required Lenders, and Lenders holding a majority of the outstanding Term Loans have agreed to amend the Credit Agreement in certain respects, in each case subject to the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual conditions and agreements set forth in the Credit Agreement and this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Amendments to the Credit Agreement**. Subject to the satisfaction of the conditions set forth in Section 3 below, and in reliance on the representations and warranties set forth in Section 4 below, the Credit Agreement is hereby amended as follows:

(a) Section 1.1 of the Credit Agreement is amended by inserting new defined terms "Fifth Amendment Closing Date" and "September 2017 Compliance Date" therein in their appropriate alphabetical order as follows:

Fifth Amendment Closing Date means July 26, 2016.

September 2017 Compliance Date means the date (if any) upon which the Borrower delivers to Agent financial statements in respect of the Fiscal Quarter ending September 30, 2017 pursuant to Section 6.1.2 together with a Compliance Certificate in respect of such period pursuant to Section 6.1.3 that demonstrates compliance with each of the financial ratios and restrictions set forth in Sections 7.14.2, 7.14.4, 7.14.5 and 7.14.6 for such period and certifies that no other Default or Event of Default has occurred and is continuing as of the date of delivery of such Compliance Certificate.

(b) Section 1.1 of the Credit Agreement is amended by deleting the definitions of the terms "ECF Percentage", "Excess ECF Amount" and "June 2017 Compliance Date" therefrom in its entirety.

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(c) Section 1.1 of the Credit Agreement is amended by amending the definition of the term "EBITDA" set forth therein by replacing the reference to "costs, fees or expenses incurred in connection with the Amendment No. 4 to Credit Agreement dated as of the Fourth Amendment Closing Date" set forth therein with a reference to "costs, fees or expenses incurred in connection with the Amendment No. 4 to Credit Agreement dated as of the Fourth Amendment Closing Date and the Amendment No. 5 to Credit Agreement dated as of the Fifth Amendment Closing Date".

(d) Section 2.10.2(a)(ii) of the Credit Agreement is amended and restated in its entirety as follows:

(ii) (x) within 120 days after the end of the Fiscal Year ending December 31, 2016, in an amount equal to (A) 75% of Excess Cash Flow for such Fiscal Year minus (B) voluntary prepayments of the Term Loans pursuant to Section 2.10.1 made after the Fifth Amendment Closing Date (excluding any prepayment made with funds from the Cash Reserve Account as contemplated by Section 6.11) during such period, and (y) within 45 days after the end of each Fiscal Quarter, commencing with the Fiscal Quarter ending March 31, 2017, in an amount equal to the lesser of (A) (1) 75% of Excess Cash Flow for such Fiscal Quarter minus (2) voluntary prepayments of the Term Loans pursuant to Section 2.10.1 made during such period, and (B) (1) 75% of Excess Cash Flow for the period commencing on the first day of the current Fiscal Year and ending on the last day of such Fiscal Quarter minus (2) the sum of all previous prepayments (if any) made pursuant to this Section 2.10.2(a)(ii)(y) (but not Section 2.10.2(a)(ii)(x)) during such Fiscal Year and all voluntary prepayments of the Term Loans pursuant to Section 2.10.1 made during such Fiscal Year;

(e) Section 6.1.1 of the Credit Agreement is amended by replacing the reference to "within 150 days" set forth therein with a reference to "within 120 days".

(f) Section 6.1.3 of the Credit Agreement is amended by (i) deleting the reference to "and" prior to the reference to "(b)" set forth therein, and (ii) inserting the following at the end thereof:

, and (c) contemporaneously with the furnishing of each set of financial statements pursuant to Section 6.1.2 that corresponds to the last month of a Fiscal Quarter commencing with the Fiscal Quarter ending March 31, 2017, an Excess Cash Flow Certificate.

(g) Section 6.11 of the Credit Agreement is amended by replacing the reference to "September 30, 2016" set forth therein with a reference to "October 31, 2016".

(h) Section 7.5(a) of the Credit Agreement is amended by replacing the reference to "June 2017 Compliance Date" set forth therein with a reference to "September 2017 Compliance Date".

(i) Section 7.14.1 of the Credit Agreement is amended and restated in its entirety as follows:

7.14.1. Fixed Charge Coverage Ratio.

Not permit the Fixed Charge Coverage Ratio as calculated on the last day of the Computation Period ending December 31, 2017 and the last day of each Computation Period ending thereafter, to be less than 1.20:1.0.

(j) Section 7.14.2. of the Credit Agreement is amended and restated in its entirety as follows:

7.14.2 Total Debt to EBITDA Ratio.

Not permit the Total Debt to EBITDA Ratio as of the last day of any Computation Period to exceed the applicable ratio set forth below for such Computation Period:

| <u>Computation<br/>Period Ending</u>  | <u>Total Debt to<br/>EBITDA Ratio</u> |
|---|---------------------------------------|
| December 31, 2015   | 5.00:1.0                              |
| March 31, 2016, June 30, 2016, September 30, 2016<br>December 31, 2016, March 31, 2017, June 30, 2017<br>and September 30, 2017 | 4.75:1.0                              |
| December 31, 2017 and each Computation Period<br>ending thereafter  | 3.25:1.0                              |

(k) Section 7.14.3 of the Credit Agreement is amended by amending and restating clause (d) thereof in its entirety as follows:

(d) Notwithstanding anything to the contrary set forth in this Agreement, Borrower may not utilize the equity cure right set forth in this Section 7.14.3 with respect to any Computation Period ending prior to the Computation Period ending March 31, 2018.

(l) Section 7.14.4 of the Credit Agreement is amended and restated in its entirety as follows:

7.14.4. Interest Coverage Ratio.

Not permit the Interest Coverage Ratio for any Computation Period set forth below to be less than the applicable ratio set forth below for such Computation Period:

| <u>Computation<br/>Period Ending</u>                 | <u>Interest<br/>Coverage Ratio</u> |
|--|------------------------------------|
| December 31, 2015                                    | 2.25:1.0                           |
| March 31, 2016, June 30, 2016 and September 30, 2016 | 2.50:1.0                           |
| December 31, 2016                                    | 2.00:1.0                           |
| March 31, 2017, June 30, 2017 and September 30, 2017 | 1.75:1.0                           |

(m) Exhibit B to the Credit Agreement is amended and restated in its entirety in the form attached as Exhibit B to this Amendment.

(n) Exhibit F to the Credit Agreement is amended and restated in its entirety in the form attached as Exhibit F to this Amendment.

2. **No Further Revolving Loans Absent Consent**. Notwithstanding anything to the contrary set forth in the Credit Agreement or any other Loan Documents, Borrower hereby acknowledges and agrees that, absent the express written consent of Agent or Lenders holding more than 50% of the Revolving Loan Commitment following the date hereof, Borrower may not request (and Lenders holding Revolving Loan Commitments shall have no obligation to fund, and Agent and Lenders may disregard any such request) any additional Revolving Loans under the Credit Agreement from and after the date hereof. For the avoidance of doubt, this Section 2 shall not affect or limit the ability of Borrower to request the issuance of Letters of Credit from time to time in accordance with the terms of the Credit Agreement, and shall not impact or limit the amount of or the Borrower's obligation to pay the Commitment Fee pursuant to Section 2.8.1 of the Credit Agreement.

3. **Conditions to Effectiveness of Amendment**. The effectiveness of this Amendment is subject to satisfaction of the following conditions precedent:

(a) Agent shall have received a copy of this Amendment (including the Consent and Reaffirmation attached hereto), executed by Borrower, each Loan Party Required Lenders, and Lenders holding a majority of the outstanding amount of the Term Loans;

(b) No Default or Event of Default shall have occurred and be continuing as of the date of this Amendment; and

(c) Agent shall have received the Amendment Fee (as defined below) for the benefit of the applicable Lenders, and Borrower shall have paid all other fees and expenses (including fees and expenses of counsel to the extent invoiced) of Agent due and payable as of the date hereof in connection with this Amendment, the Credit Agreement and the other Loan Documents.

4. **Representations and Warranties**. To induce Agent and the Required Lenders to enter into this Amendment, Borrower represents and warrants to Agent and Lenders that:

(a) the execution, delivery and performance of this Amendment has been duly authorized by all requisite corporate action on the part of Borrower and each other Loan Party and that this Amendment has been duly executed and delivered by Borrower and each other Loan Party;

(b) this Amendment and the Borrower's obligations under the Credit Agreement as amended hereby constitute the legal, valid and binding obligation of Borrower and are enforceable against Borrower in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditor's rights generally and to general principles of equity;

(c) the execution and delivery by Borrower and the other Loan Parties of this Amendment does not require the consent or approval of any Person, except such consents and approvals as have been obtained;

(d) after giving effect to this Amendment, the representations and warranties of Borrower and each other Loan Party set forth in the Credit Agreement and the other Loan Documents are true and correct in all material respects with the same effect as if made on the date hereof (except to the extent such representations and warranties are stated to relate to a specific earlier date, in which case such representations and warranties are true and correct in all material respects as of such earlier date); and

(e) no Default or Event of Default has occurred and is continuing.

5. **Severability**. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

6. **References**. Any reference to the Credit Agreement contained in any document, instrument or Credit Agreement executed in connection with the Credit Agreement shall be deemed to be a reference to the Credit Agreement as modified by this Amendment.

7. **Amendment Fee**. In consideration of the agreements set forth herein, upon the effectiveness of this Amendment in accordance with, and subject to all of the conditions specified in Section 3 hereof (other than Section 3(c)), Borrower agrees to pay to Agent, for the ratable benefit of the respective Lenders that executed and sent signature pages to this Amendment to the Agent (including pages that were delivered in escrow) on or before 5:00 p.m. (Chicago time) on July 25, 2016 (such Lenders, the "**Consenting Lenders**"), an amendment fee equal to 0.375% of the sum of the Revolving Loan Commitments and outstanding principal amount of the Term Loans of the Consenting Lenders as of the date hereof.

8. **Counterparts; Electronic Transmission**. This Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall be one and the same instrument. Facsimile signatures and other electronic signatures shall also constitute originals.



9. **Release**.

(a) In consideration of the agreements of Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of Borrower and each other Loan Party (by such other Loan Party's execution and delivery of the attached Consent and Reaffirmation), on behalf of itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent and Lenders, and their successors and assigns, and their present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (Agent, each Lender and all such other Persons being hereinafter referred to collectively as the "Releasees" and individually as a "Releasee"), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a "Claim" and collectively, "Claims") of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, Borrower or such Loan Party or any of their successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Amendment, for or on account of, or in relation to, or in any way in connection with any of the Credit Agreement, or any of the other Loan Documents or transactions thereunder or related thereto.

(b) Each of Borrower and each other Loan Party understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(c) Each of Borrower and each other Loan Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth herein.

10. **Ratification**. The terms and provisions set forth in this Amendment shall modify and supersede all inconsistent terms and provisions of the Credit Agreement and shall not be deemed to be a consent to the modification or waiver of any other term or condition of the Credit Agreement. Except as expressly modified and superseded by this Amendment, the terms and provisions of the Credit Agreement and each of the other Loan Documents are ratified and confirmed and shall continue in full force and effect.

11. **Governing Law**. THIS AMENDMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

[ Signature Pages Follow ]

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

PERFORMANT BUSINESS SERVICES, INC.  
(formerly known as DCS Business Services, Inc.)

By: /s/ Hakan Orvell  
Name: Hakan Orvell  
Title: CFO

MADISON CAPITAL FUNDING LLC,  
as Agent and a Lender

By: /s/ Craig Dugan  
Name: Craig Dugan  
Title: VP

MCF CLO I LLC,  
as a Lender

By: Madison Capital Funding LLC, as successor to  
MCF Capital Management LLC, as collateral  
manager

By: /s/ Brian Ternes  
Name: Brian Ternes  
Title: Vice President

MCF CLO II LLC,  
as a Lender

By: Madison Capital Funding LLC, as successor to  
MCF Capital Management LLC, as collateral  
manager

By: /s/ Brian Ternes  
Name: Brian Ternes  
Title: Vice President

MCF CLO IV

LLC,  
as a Lender

By: Madison Capital Funding LLC, as successor to  
MCF Capital Management LLC, as collateral  
manager

By: /s/ Brian Ternes  
Name: Brian Ternes  
Title: Vice President

ING CAPITAL LLC,  
as a Lender

By: /s/ Marilyn Densel Fulton  
Name: Marilyn Densel Fulton  
Title: Managing Director

By: /s/ Marilyn Densel Fulton  
Name: Naresh Purohit  
Title: Vice President

Amalgamated Bank,  
as a Lender

By: /s/ Melony Heh  
Name: Melony Heh  
Title: First Vice President

EMPORIA PREFERRED FUNDING II, LTD.,  
as a Lender  
By: Ivy Hill Asset Management, L.P., as Collateral  
Manager

By: /s/ Kevin R. Braddish  
Name: Kevin R. Braddish  
Title: Duly Authorized Signatory

EMPORIA PREFERRED FUNDING III, LTD.,  
as a Lender  
By: Ivy Hill Asset Management, L.P., as Collateral  
Manager

By: /s/ Kevin R. Braddish  
Name: Kevin R. Braddish  
Title: Duly Authorized Signatory

IVY HILL MIDDLE MARKET CREDIT FUND  
IV, LTD.,  
as a Lender  
By: Ivy Hill Asset Management, L.P., as Collateral  
Manager

By: /s/ Kevin R. Braddish  
Name: Kevin R. Braddish  
Title: Duly Authorized Signatory

IVY HILL MIDDLE MARKET CREDIT FUND  
V, LTD.,  
as a Lender  
By: Ivy Hill Asset Management, L.P., as Collateral  
Manager

By: /s/ Kevin R. Braddish  
Name: Kevin R. Braddish  
Title: Duly Authorized Signatory

IVY HILL MIDDLE MARKET CREDIT FUND  
VII, LTD.,  
as a Lender  
By: Ivy Hill Asset Management, L.P., as Collateral  
Manager

By: /s/ Kevin R. Braddish  
Name: Kevin R. Braddish  
Title: Duly Authorized Signatory

Signature Page to Amendment No. 5 to Credit Agreement

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IVY HILL MIDDLE MARKET CREDIT FUND  
IX, LTD.,  
as a Lender  
By: Ivy Hill Asset Management, L.P., as Collateral  
Manager

By: /s/ Kevin R. Braddish  
Name: Kevin R. Braddish  
Title: Duly Authorized Signatory

MC Funding, Ltd.,  
By: Monroe Capital Management, LLC, as  
Collateral Manager

By: /s/ Jeffrey Williams  
Name: Jeffrey Williams  
Title: Managing Director

PennantPark Floating Rate Funding I, LLC,  
as a Lender

PennantPark Floating Rate Capital Ltd., as  
Designated Manager

By: /s/ Arthur H. Penn  
Name: Arthur H. Penn  
Title: Chief Executive Officers

BancAlliance Inc.  
By: AP Commercial LLC, its attorney-in-fact,  
as a Lender

By: /s/ John Gray  
Name: John Gray  
Title: Executive Vice President

BancAlliance Inc.  
By: AP Commercial LLC, its attorney-in-fact  
as a Lender

By: /s/ John Gray  
Name: John Gray  
Title: Executive Vice President

FTP Credit Holdings, LLC  
By: AP Commercial LLC, its attorney-in-fact  
as a Lender

By: /s/ John Gray  
Name: John Gray  
Title: Executive Vice President

AUDAX CREDIT OPPORTUNITIES  
OFFSHORE LTD., as a Lender

By: /s/ Michael P. McGonigle  
Name: Michael P. McGonigle  
Title: Authorized Signatory

AUDAX SENIOR DEBT (WCTPT) SPV, LLC,  
as a Lender

By: /s/ Michael P. McGonigle  
Name: Michael P. McGonigle  
Title: Authorized Signatory

AUDAX CREDIT OPPORTUNITIES (SBA),  
LLC,  
as a Lender

By: /s/ Michael P. McGonigle  
Name: Michael P. McGonigle  
Title: Authorized Signatory

A CMFG LIFE INSURANCE COMPANY,  
by Audax Management (NY), LLC, its subadvisor  
as a Lender

By: /s/ Michael P. McGonigle  
Name: Michael P. McGonigle  
Title: Authorized Signatory

NEWSTAR COMMERCIAL LOAN FUNDING  
2012-2 LLC, as a Lender

By: NewStar Financial, Inc., its Designated  
Manager

By: /s/ Andres Alev  
Name: Andres Alev  
Title: Director

NEWSTAR COMMERCIAL LOAN FUNDING  
2014-1 LLC, as a Lender

By: NewStar Financial, Inc., its Designated  
Manager

By: /s/ Andres Alev  
Name: Andres Alev  
Title: Director



Saratoga Investment Corp CLO 2013-1, Ltd., as a  
Lender

By: /s/ Pavel Antonov

Name: Pavel Antonov

Title: Attorney In Fact

## CONSENT AND REAFFIRMATION

Each of Performant Financial Corporation, Performant Recovery, Inc. (formerly known as Diversified Collection Services, Inc.) and Performant Technologies, Inc. (formerly known as Vista Financial, Inc.) (collectively, the "Companies") hereby (i) acknowledges receipt of a copy of the foregoing Amendment No. 5 to Credit Agreement dated as of July 26, 2016 (the "Amendment"); (ii) consents to Borrower's execution and delivery of the Amendment and the consummation of the transactions contemplated thereby; (iii) agrees to be bound by the Amendment (including by Section 9 of the Amendment); (iv) affirms that nothing contained in the Amendment shall modify in any respect whatsoever any Loan Document to which it is a party; and (v) reaffirms that such Loan Documents shall continue to remain in full force and effect and that its guaranty of the Obligations and grant of security interests in its assets to secure such guaranty of the Obligations shall remain in effect in all respects. Although the Companies have been informed of the matters set forth herein and has acknowledged and agreed to same, each of the Companies understands that Agent and Lenders have no obligation to inform either Company of such matters in the future or to seek acknowledgment of either Company or agreement to future amendments, waivers or consents, and nothing herein shall create such a duty.

IN WITNESS WHEREOF, the parties hereto have caused this Consent and Reaffirmation to be duly executed under seal and delivered by their respective duly authorized officers on and as of the date of the Amendment.

[ **Signature Page Follows** ]

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PERFORMANT FINANCIAL CORPORATION

By: /s/ Hakan Orvell  
Name: Hakan Orvell  
Title: CFO

PERFORMANT RECOVERY, INC.  
(formerly known as Diversified Collection  
Services, Inc.)

By: /s/ Hakan Orvell  
Name: Hakan Orvell  
Title: CFO

PERFORMANT TECHNOLOGIES, INC.  
(formerly known as Vista Financial, Inc.)

By: /s/ Hakan Orvell  
Name: Hakan Orvell  
Title: CFO

## Exhibit B

### Form of Compliance Certificate

Please refer to the Credit Agreement dated as of March 19, 2012 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among the undersigned ("Borrower"), the lenders party thereto from time to time, as Lenders, and Madison Capital Funding LLC, as administrative agent ("Agent"). This certificate (this "Certificate"), together with supporting calculations attached hereto, is delivered to Agent and Lenders pursuant to the terms of the Credit Agreement. Terms used but not otherwise defined herein are used herein as defined in the Credit Agreement.

[ **Enclosed herewith is a copy of the [annual audited/quarterly/monthly] report of Borrower as at \_\_\_\_\_ (the "Computation Date"), which report fairly presents in all material respects the financial condition and results of operations [(subject to the absence of footnotes and to normal year-end adjustments)] of Borrower as of the Computation Date and has been prepared in accordance with GAAP consistently applied. ]**

Borrower hereby certifies and warrants that the computations set forth on the schedule attached hereto correspond to the ratios contained in the Credit Agreement and such computations are true and correct as at the [ **Computation Date** ] [ **date hereof, after giving pro forma effect to the Acquisition (and related Loans) pursuant to which this certificate is delivered** ].

Borrower further certifies that no Event of Default or Default has occurred and is continuing as of the date hereof [ **except as described on the Schedule attached hereto** ].

PERFORMANT BUSINESS SERVICES, INC.  
(formerly known as DCS Business Services, Inc.)

By:  
Title:

Schedule to Compliance Certificate

Dated as of \_\_\_\_\_

A. Section 7.14.1 - Minimum Fixed Charge Coverage Ratio

|  |          |
|--|----------|
| 1. Consolidated Net Income   | \$ _____ |
| 2. Plus: Losses from Dispositions, extraordinary items, discontinued operations, | \$ _____ |
| reappraisal, revaluation or write-down of assets                                 | \$ _____ |
| interest expense and the Agent's fee   | \$ _____ |
| income tax expense   | \$ _____ |
| depreciation   | \$ _____ |
| amortization   | \$ _____ |
| charges for impairment of goodwill and   | \$ _____ |
| other intangibles  | \$ _____ |
| management fees and reimbursable expenses  | \$ _____ |
| amortization of debt discounts and commissions                                   | \$ _____ |
| 3. Plus: Transaction fees and expenses in connection with this agreement         | \$ _____ |
| Non-cash expenses in connection with   | \$ _____ |
| options, deferred compensation and stock options                                 | \$ _____ |
| Transaction Fees in connection with Permitted Acquisitions and                   | \$ _____ |
| Investments permitted under <u>Sections 7.11(q)</u> and <u>7.11(s)</u>           | \$ _____ |
| Transaction fees and expenses in connection with a                               | \$ _____ |
| successful Qualified IPO   | \$ _____ |
| Transaction fees and expenses in connection with an                              | \$ _____ |
| unsuccessful Qualified IPO   | \$ _____ |
| Costs and expenses related to Permitted Debt or equity                           | \$ _____ |
| issuances  | \$ _____ |
| Non-cash expenses in the form of options granted to                              | \$ _____ |
| Borrower or Holdings and other non-cash expense with                             | \$ _____ |
| respect to deferred compensation and stock options                               | \$ _____ |
| severance expenses approved by the Agent   | \$ _____ |
| business interruption insurance proceeds   | \$ _____ |
| Non-cash adjustment to the valuation of earnout payments or                      | \$ _____ |
| other consideration relating to Investments permitted                            | \$ _____ |
| hereunder  | \$ _____ |

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|   |          |
|---|----------|
| cash restructuring charges approved by the Agent in connection with Permitted Acquisitions and Investments permitted under <u>Sections 7.11(q) and 7.11(s)</u>  | \$ _____ |
| non-cash restructuring charges from Permitted Acquisitions or Investments permitted under <u>Sections 7.11(q) and 7.11(s)</u>   | \$ _____ |
| non-cash charges (or minus non-cash gains) relating to various accounting charges   | \$ _____ |
| other extraordinary costs and expenses satisfactory to Agent  | \$ _____ |
| non-cash adjustments relating to earn-outs and other investment consideration   | \$ _____ |
| any Cure Amount contributed pursuant to <u>Section 7.14.3</u> (solely for purpose of determining compliance with <u>Section 7.14.1</u> and <u>7.14.2</u> )  | \$ _____ |
| the result of (a) the amount collected during such period from the Department of Education for services performed and invoiced, but for which revenue has not yet been recognized in Consolidated Net Income, minus (b) revenue from the Department of Education recognized in Consolidated Net Income during such period for which cash was received in a prior period and where revenue was not previously recognized, all subject to the review and reasonable approval of Agent | \$ _____ |
| CMS Settlement Addback up to \$3,000,000 during term of Agreement   | \$ _____ |
| Fees, costs and expenses re Amendment No. 2   | \$ _____ |
| Fees, costs and expenses re Amendment No. 4 and Amendment No. 5   | \$ _____ |
| Permitted DOE Addbacks  | \$ _____ |

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4. Minus: Gains from Dispositions, extraordinary items, discontinued operations, reappraisal, revaluation or write-up of assets \$ \_\_\_\_\_
5. Total (EBITDA) \$ \_\_\_\_\_
6. Income taxes paid in cash (net of refunds) and tax distributions paid in cash \$ \_\_\_\_\_
7. other restricted payments made pursuant to Section 7.4 (other than restricted payments funded from an Increase Request, Additional Subordinated Debt or a Qualified IPO, and transaction expenses distributed pursuant to Section 7.4(iv)) \$ \_\_\_\_\_
8. Unfinanced Capital Expenditures paid in cash \$ \_\_\_\_\_
9. Sum of (6), (7) and (8) \$ \_\_\_\_\_
10. Remainder of (5) minus (9) \$ \_\_\_\_\_
11. Interest Expense paid in cash \$ \_\_\_\_\_
12. Required payments of principal of Debt (including Term Loans but excluding Revolving Loans) \$ \_\_\_\_\_
13. Scheduled installments for the purchase of licenses of software paid in cash \$ \_\_\_\_\_
14. Sum of (11), (12) and (13) \$ \_\_\_\_\_
15. Ratio of (10) to (14) \_\_\_\_\_:1.00

B. Section 7.14.2 - Maximum Total Debt to [ **Adjusted** ] EBITDA Ratio

1. Total Debt \$ \_\_\_\_\_
2. [ **Adjusted** ] EBITDA \$ \_\_\_\_\_  
 (from Item A(5) above[ , **plus Pro Forma EBITDA totaling \$ \_\_\_\_\_ in the aggregate for all applicable Permitted Acquisitions in such period (comprising of Pro Forma Adjusted EBITDA in the following individual amounts with respect to the following individual Permitted Acquisitions (x) \_\_\_\_\_, \$ \_\_\_\_\_, (y) \_\_\_\_\_, \$ \_\_\_\_\_ and (z) \_\_\_\_\_, \$ \_\_\_\_\_ ) ])**
3. Ratio of (1) to (2) \_\_\_\_\_ to 1
4. Maximum allowed \_\_\_\_\_ to 1

C. Section 7.14.4 – Minimum Interest Coverage Ratio

1. EBITDA (from Item [ ] above) \$ \_\_\_\_\_

2. Interest Expense paid in cash \$ \_\_\_\_\_

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3. Ratio of (1) to (2) \_\_\_\_\_ to 1

4. Minimum required \_\_\_\_\_ to 1

D. Section 7.15.5 – Minimum EBITDA.

1. EBITDA (from Item [ ] above) \$ \_\_\_\_\_

2. Minimum required \$20,000,000

E. Section 7.14.6 - Capital Expenditures

1. Capital Expenditures for the Fiscal Year \$ \_\_\_\_\_

2. Maximum Permitted Capital Expenditures \$8,000,000

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**Exhibit F**

Form of Excess Cash Flow Certificate

Date: \_\_\_\_\_, 201\_\_

Please refer to the Credit Agreement dated as of March 19, 2012 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among the undersigned (the "Borrower"), the lenders party thereto from time to time, as Lenders, and Madison Capital Funding LLC, as administrative agent ("Agent"). This certificate (this "Certificate"), together with supporting calculations attached hereto, is delivered to Agent and Lenders pursuant to the terms of the Credit Agreement. Terms used but not otherwise defined herein are used herein as defined in the Credit Agreement.

The officer executing this Certificate is a chief financial officer of Borrower and as such is duly authorized to execute and deliver this Certificate on behalf of Borrower. By executing this Certificate such officer hereby certifies, solely in his capacity as chief financial officer of Borrower and not in any individual capacity, to Agent and Lenders that as of the date hereof:

(a) set forth on Schedule 1 attached hereto is a correct calculation of Excess Cash Flow for the [**Fiscal Year**] [**Fiscal Quarter**] ended [ **December 31** ] [**March 31**][**June 30**][**September 30**], 20\_\_ and a correct calculation of the required prepayment of

\$ \_\_\_\_\_;

(b) Schedule 1 attached hereto is based on the [**audited**][**unaudited quarterly**] financial statements which have been delivered to Agent in accordance with [ **Section 6.1.1**][**Section 6.1.2**] of the Credit Agreement.

IN WITNESS WHEREOF, Borrower has caused this Certificate to be executed by its chief financial officer this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

PERFORMANT BUSINESS SERVICES,  
INC.  
(formerly known as DCS Business  
Services, Inc.)

By:  
Title:

Schedule 1  
to  
Excess Cash Flow Certificate

Excess Cash Flow is defined as follows:

|   |          |
|---|----------|
| EBITDA (from item A(5) of Exhibit B)  | \$ _____ |
| Plus: Decrease in Adjusted Working Capital  | \$ _____ |
| Less: Scheduled principal payments made with respect to Term Loans and other permitted Debt   | \$ _____ |
| Cash payments (not financed by Debt) made with respect to Capital Expenditures  | \$ _____ |
| Federal, state, local and foreign income taxes paid in cash (net of cash refunds)   | \$ _____ |
| Interest Expense with respect to permitted Debt paid in cash  | \$ _____ |
| Management fees paid in cash to Sponsor and Affiliates to the extent permitted under <u>Section 7.4</u>                                 | \$ _____ |
| To the extent paid in cash during such period, any Legal Costs  | \$ _____ |
| Permitted Acquisitions, Investments and Restricted Payments not financed with the proceeds of equity or Debt other than Revolving Loans | \$ _____ |
| Any other cash expenses that are added back to Consolidated Net Income in the calculation of EBITDA                                     | \$ _____ |
| Cash payments with respect to installments owing for the purchase or license of software  | \$ _____ |
| Other cash payments added back to EBITDA in the definition thereof  | \$ _____ |
| Increase in Adjusted Working Capital  | \$ _____ |
| Excess Cash Flow  | \$ _____ |
| Prepayment percent  | 75%      |
| Prepayment amount   | \$ _____ |



Decrease (increase) in Adjusted Working Capital, for the purposes of the calculation of Excess Cash Flow, means the following:

|  | Beg. of Period | End of Period |
|--|----------------|---------------|
| Consolidated current assets:   | \$ _____       | \$ _____      |
| Less: cash   | _____          | _____         |
| cash equivalents   | _____          | _____         |
| Adjusted current assets  | \$ _____       | \$ _____      |
| Consolidated current liabilities(excluding accruals relating to management fees, accrued interest expense and income taxes payable): | \$ _____       | \$ _____      |
| Less: short-term Debt (including current portion of long-term Debt)  | _____          | _____         |
| Adjusted current liabilities   | \$ _____       | \$ _____      |
| Adjusted Working Capital (adjusted consolidated current assets minus adjusted consolidated current liabilities)                      | \$ _____       | \$ _____      |
| Decrease (Increase) in Adjusted Working Capital (beginning of period minus end of period Adjusted Working Capital)                   |                | \$ _____      |