

# ENERNOC INC

## FORM 10-Q (Quarterly Report)

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

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**FORM 10-Q**

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(Mark One)

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

For the quarterly period ended September 30, 2016  
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: 001-33471

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**EnerNOC, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

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Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

One Marina Park Drive  
Suite 400  
Boston, Massachusetts  
(Address of Principal Executive Offices)

87-0698303  
(IRS Employer  
Identification No.)

02210  
(Zip Code)

(617) 224-9900  
(Registrant's Telephone Number, Including Area Code)

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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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes  No

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

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

There were 30,906,610 shares of the registrant's common stock, \$0.001 par value per share, outstanding as of November 1, 2016 .

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EnerNOC, Inc.

FORM 10-Q

For the Quarterly Period Ended September 30, 2016

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**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**EnerNOC, Inc.**  
**UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS**  
(in thousands, except par value and share data)

	<u>September 30, 2016</u>	<u>December 31, 2015</u>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 81,499	\$ 138,120
Restricted cash	732	464
Trade accounts receivable, net of allowance for doubtful accounts of \$946 and \$947 at September 30, 2016 and December 31, 2015, respectively	56,967	43,355
Unbilled revenue	72,123	70,101
Capitalized incremental direct customer contract costs	1,389	33,917
Prepaid expenses and other current assets	15,147	7,654
Total current assets	<u>227,857</u>	<u>293,611</u>
Property and equipment, net of accumulated depreciation of \$127,762 and \$114,828 at September 30, 2016 and December 31, 2015, respectively	43,098	49,653
Goodwill	38,258	39,747
Intangible assets, net	40,391	54,352
Deposits and other assets	3,852	6,351
Total assets	<u>\$ 353,456</u>	<u>\$ 443,714</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 973	\$ 6,002
Accrued capacity payments	80,582	104,278
Accrued payroll and related expenses	16,699	18,058
Accrued expenses and other current liabilities	13,419	20,734
Deferred revenue	9,436	55,631
Total current liabilities	<u>121,109</u>	<u>204,703</u>
Deferred revenue	3,305	3,696
Other liabilities	7,415	9,118
Convertible senior notes	114,205	111,254
Stockholders' equity:		
Undesignated preferred stock, \$0.001 par value; 5,000,000 shares authorized; no shares issued	—	—
Common stock, \$0.001 par value; 50,000,000 shares authorized, 31,098,291 and 30,797,289 shares issued and outstanding at September 30, 2016 and December 31, 2015, respectively	31	30
Additional paid-in capital	385,071	377,473
Accumulated other comprehensive loss	(3,790)	(8,524)
Accumulated deficit	(274,146)	(254,335)
Total EnerNOC, Inc. stockholders' equity	<u>107,166</u>	<u>114,644</u>
Noncontrolling interest	256	299
Total stockholders' equity	<u>107,422</u>	<u>114,943</u>
Total liabilities and stockholders' equity	<u>\$ 353,456</u>	<u>\$ 443,714</u>

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

**EnerNOC, Inc.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except share and per share data)

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2016	2015	2016	2015
<b>Revenues:</b>				
Software	\$ 18,729	\$ 18,028	\$ 51,994	\$ 55,353
Demand Response	149,052	199,296	301,861	285,022
Total revenues	167,781	217,324	353,855	340,375
Cost of revenues	96,965	143,146	211,090	208,645
Gross profit	70,816	74,178	142,765	131,730
<b>Operating expenses:</b>				
Selling and marketing	20,008	22,397	70,540	74,563
General and administrative	20,331	26,707	75,688	83,450
Research and development	6,352	6,626	22,029	21,812
Gains on sale of businesses (Note 4)	(2,229)	—	(19,605)	(2,991)
Restructuring charges (Note 3)	2,933	—	6,627	—
Total operating expenses	47,395	55,730	155,279	176,834
Income (loss) from operations	23,421	18,448	(12,514)	(45,104)
Other expense, net	(279)	(2,814)	(613)	(5,766)
Interest expense	(1,835)	(2,253)	(5,456)	(6,785)
Income (loss) before income tax	21,307	13,381	(18,583)	(57,655)
Benefit from (provision for) income tax	(689)	(417)	(1,271)	1,523
Net income (loss)	20,618	12,964	(19,854)	(56,132)
Net loss attributable to noncontrolling interest	(7)	(23)	(43)	(37)
Net income (loss) attributable to EnerNOC, Inc.	\$ 20,625	\$ 12,987	\$ (19,811)	\$ (56,095)
Net income (loss) attributable to EnerNOC, Inc. per common share				
Basic	\$ 0.70	\$ 0.46	\$ (0.68)	\$ (1.98)
Diluted	\$ 0.65	\$ 0.44	\$ (0.68)	\$ (1.98)
Weighted average number of common shares used in computing net income (loss) per common share				
Basic	29,349,772	28,507,939	29,188,693	28,282,647
Diluted	34,326,256	34,623,574	29,188,693	28,282,647

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

**EnerNOC, Inc.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**  
**(in thousands)**

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2016	2015	2016	2015
Net income (loss)	\$ 20,618	\$ 12,964	\$ (19,854)	\$ (56,132)
Foreign currency translation adjustments	575	(2,069)	2,331	(4,719)
Reclassification of cumulative translation adjustments due to liquidation of a foreign entity (Note 4)	2,403	—	2,403	—
Comprehensive income (loss)	23,596	10,895	(15,120)	(60,851)
Comprehensive loss attributable to noncontrolling interest	(7)	(24)	(43)	(43)
Comprehensive income (loss) attributable to EnerNOC, Inc.	<u>\$ 23,603</u>	<u>\$ 10,919</u>	<u>\$ (15,077)</u>	<u>\$ (60,808)</u>

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

**EnerNOC, Inc.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

	Nine Months Ended	
	September 30,	
	2016	2015
<b>Cash flows from operating activities</b>		
Net loss	\$ (19,854)	\$ (56,132)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	17,095	17,652
Amortization of acquired intangible assets	8,694	11,607
Stock-based compensation	10,236	10,890
Gains on sale of businesses, excluding transaction costs	(20,405)	(2,991)
Impairment of property and equipment	2,593	495
Unrealized foreign exchange (gain) loss	(766)	6,010
Deferred income taxes	(80)	(2,271)
Non-cash interest expense	3,007	3,791
Other, net	818	547
Changes in operating assets and liabilities, net of effects of acquisitions and divestitures:		
Trade accounts receivable	(14,873)	(13,199)
Unbilled revenue	(1,189)	(14,429)
Prepaid expenses and other current assets	(4,166)	(7,353)
Capitalized incremental direct customer contract costs	32,644	(12,766)
Other noncurrent assets	737	(844)
Deferred revenue	(42,000)	23,017
Accrued capacity payments	(24,466)	39,367
Accrued payroll and related expenses	(1,481)	(2,692)
Accounts payable, accrued expenses and other current liabilities	(10,476)	(19,462)
Other noncurrent liabilities	(956)	537
Net cash used in operating activities	(64,888)	(18,226)
<b>Cash flows from investing activities</b>		
Purchases of property and equipment and capitalization of internal use software costs	(13,688)	(17,724)
Payments made for acquisitions, net of cash acquired	(840)	(77,559)
Proceeds from sale of businesses	23,157	2,991
Change in restricted cash and deposits	212	3,411
Net cash provided by (used in) investing activities	8,841	(88,881)
<b>Cash flows from financing activities</b>		
Proceeds from convertible debt offering	—	400
Proceeds from exercises of stock options	10	1,074
Payments made for employee restricted stock minimum tax withholdings	(1,937)	(3,805)
Debt issuance costs	(75)	—
Net cash used in financing activities	(2,002)	(2,331)
Effects of exchange rate changes on cash and cash equivalents	1,428	(2,973)
Net change in cash and cash equivalents	(56,621)	(112,411)
Cash and cash equivalents at beginning of period	138,120	254,351
Cash and cash equivalents at end of period	\$ 81,499	\$ 141,940
<b>Supplemental disclosure of cash flow information</b>		
Cash paid for interest	\$ 2,497	\$ 2,993
Cash paid for income taxes	\$ 1,977	\$ 4,046
<b>Non-cash investing and financing activities</b>		
Issuance of common stock in connection with acquisitions	\$ —	\$ 103
Issuance of common stock in satisfaction of bonuses	\$ 265	\$ 865
Acquisition of property and equipment in accrued expenses	\$ 483	\$ 1,940



**EnerNOC, Inc.**  
**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(in thousands, except share and per share data)**

**1. Description of Business and Basis of Presentation**

***Description of Business***

EnerNOC, Inc. (the Company) is a leading provider of energy intelligence software (EIS) and demand response solutions to enterprises, utilities, and electric power grid operators.

The Company's EIS provides enterprises with a Software-as-a-Service (SaaS) energy management application that enables them to better manage and control energy costs for their organizations. The Company offers premium professional services that support the implementation of its EIS and help its enterprise customers set their energy management strategy. The Company's professional services offerings also include energy audits and retro-commissioning.

The Company's demand response solutions provide utilities and electric power grid operators with a managed service demand response resource that matches obligation in the form of megawatts (MWs) that the Company agrees to deliver to utilities and/or electric power grid operators, with supply, in the form of MWs that are curtailed from the electric power grid through the Company's arrangements with commercial and industrial end-users of energy (C&I end-users). The Company's demand response solutions are also capable of providing utilities with the underlying technology to manage their own utility-sponsored demand response programs and secure reliable demand-side resources.

***Reclassifications***

Effective during the first quarter of 2016, the Company began operating as two reportable segments: Software and Demand Response. The Company updated the presentation of the revenue categories on its consolidated statements of operations for the three and nine months ended September 30, 2016 to present revenue for each of these segments. The Company has reclassified prior period revenue categories to conform to the current period presentation. This reclassification had no impact on total revenue or any other income statement result. For further discussion regarding the Company's reorganization and the impact on segment reporting, please refer to Note 2.

***Basis of Presentation***

The accompanying unaudited condensed consolidated financial statements of the Company include the accounts of its wholly-owned subsidiaries and have been prepared by the Company in accordance with accounting principles generally accepted in the United States (GAAP) for interim financial information pursuant to Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and notes required by GAAP for complete financial statements. Intercompany transactions and balances are eliminated in consolidation. All adjustments, which, in the opinion of management, are considered necessary for a fair presentation of the results of operations for the periods shown are of a normal recurring nature and have been reflected in the unaudited condensed consolidated financial statements and accompanying notes. The Company owns 60% of EnerNOC Japan K.K., for which it consolidates the results of operations and financial position in the accompanying financial statements. The remaining 40% represents a noncontrolling interest in the accompanying unaudited condensed consolidated balance sheets and statements of operations.

***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and accompanying notes. Significant estimates made by management relate to revenue recognition reserves, allowances for doubtful accounts, expected future cash flows used to evaluate the recoverability of long-lived assets, amortization methods and periods, valuation of cost-method investments, certain accrued expenses and other related charges, stock-based compensation, contingent liabilities, tax reserves and the recoverability of the Company's net deferred tax assets and related valuation allowance. While the Company believes that such estimates are fair when considered in conjunction with the condensed consolidated financial position and results of operations taken as a whole, the actual amounts of such items, when known, may vary from these estimates.

***Summary of Significant Accounting Policies***

The Company's significant accounting policies are described in Note 1, "Description of Business, Basis of Presentation and Summary of Significant Accounting Policies," in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2015 (2015 Form 10-K).

***Recently Adopted Accounting Standards***

In April 2015, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2015-05, *Customer's Accounting for Fees Paid in a Cloud Computing Arrangement* (ASU 2015-05). ASU 2015-05 amends Accounting Standards Codification (ASC) 350-40, *Internal Use Software*, to exclude cloud-computing arrangements from its scope. The guidance was effective as of January 1, 2016 for arrangements entered into or materially modified after the effective date. The

Company adopted this standard prospectively on January 1, 2016 and the adoption of ASU 2015-05 did not have a material impact on the Company's consolidated financial statements.

## **2. Segment Information**

Effective in the first quarter of 2016, the Company began operating as two reportable segments: Software and Demand Response. The Company's Chief Operating Decision Maker (CODM), who is the Company's Chief Executive Officer, primarily evaluates the business and assesses performance based on the revenue and adjusted EBITDA of the Company's Software and Demand Response segments. The Company defines segment adjusted EBITDA as segment income (loss) from operations excluding depreciation, amortization and asset impairments; stock-based compensation and restructuring charges. In addition, the Company does not allocate to its operating segments certain corporate level expenses; gains on the sale of businesses; and direct and incremental expenses and gains associated with acquisitions, divestitures, reorganizations and settlements. Management considers segment adjusted EBITDA to be an important indicator of the segments' operational strength and the performance of its businesses.

The financial results of each segment are based on revenues from external customers, cost of revenues and operating expenses that are directly attributable to the segment and an allocation of costs from shared functions. These shared functions include, but are not limited to, facilities, human resources, information technology, and engineering. Allocations are made based on management's judgment of the most relevant cost drivers, such as head count, number of customer sites, or other operational data that contributes to the shared costs. Certain corporate level expenses, including executive, legal, and finance, have not been allocated as they are not attributable to either segment. Segment level asset information has not been provided as such information is not reviewed by the CODM for purposes of assessing segment performance and allocating resources. There are no intersegment sales or transactions. The accounting policies of the reportable segments are consistent with those described in Note 1, "Description of Business, Basis of Presentation and Summary of Significant Accounting Policies," in the Company's 2015 Form 10-K.

### *Software Segment*

The Software segment provides enterprises with the Company's EIS, which includes subscription software, energy procurement solutions, and professional services. The Software segment is responsible for developing and maintaining the Company's software platform; selling and marketing to enterprise customers; supporting customer relationships and managing customer projects; delivering software implementations, trainings, and other professional services; and managing contracts, invoicing and collection activities related to Software customer contracts.

### *Demand Response Segment*

The Demand Response segment provides utilities and electric power grid operators with the Company's demand response solutions. The Demand Response segment is responsible for developing and shaping demand response markets and securing future demand response obligations; procuring MWs that are available for curtailment through arrangements with C&I end-users; installing and maintaining a network of EnerNOC site servers to collect energy data for use in the management of demand response programs and to support the Company's subscription software offerings; providing C&I end-users and certain utility customers with software tools to manage their demand response activities; coordinating the curtailment of MWs for delivery to utilities and electric power grid operators when called upon; and financially settling with utilities, electric power grid operators, and C&I end-users.

The following table presents segment revenue and segment adjusted EBITDA, along with the reconciliation of segment adjusted EBITDA to consolidated income (loss) before income tax:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
<b>Revenues:</b>				
Software				
Subscription software	\$ 7,221	\$ 4,916	\$ 18,966	\$ 14,234
Procurement solutions	9,840	8,398	27,568	25,874
Professional services	1,668	4,714	5,460	15,245
Total Software Revenue	18,729	18,028	51,994	55,353
Demand Response				
Grid operator	121,500	171,928	252,985	237,281
Utility	27,552	27,368	48,876	47,741
Total Demand Response Revenue	149,052	199,296	301,861	285,022
<b>Consolidated Revenue</b>	<b>\$ 167,781</b>	<b>\$ 217,324</b>	<b>\$ 353,855</b>	<b>\$ 340,375</b>
<b>Segment Adjusted EBITDA:</b>				
Software adjusted EBITDA	\$ (10,583)	\$ (13,842)	\$ (48,620)	\$ (49,088)
Demand Response adjusted EBITDA	46,299	49,433	70,780	56,630
Total Segment adjusted EBITDA	35,716	35,591	22,160	7,542
<b>Reconciliation to consolidated income (loss) before income tax</b>				
Corporate unallocated expenses	(4,239)	(3,884)	(14,446)	(12,043)
Depreciation, amortization and asset impairments <sup>(1)</sup>	(7,418)	(9,511)	(25,888)	(29,259)
Stock-based compensation	(3,452)	(3,655)	(10,236)	(11,385)
Restructuring charges (Note 3)	(2,933)	—	(6,627)	—
Gains on sale of businesses (Note 4)	2,229	—	19,605	2,991
Direct and incremental (expenses) gains associated with acquisitions, divestitures, reorganizations and settlements <sup>(2)</sup>	3,525	(70)	2,961	(2,913)
Noncontrolling interest expense	(7)	(23)	(43)	(37)
Interest and other income (expense), net	(2,114)	(5,067)	(6,069)	(12,551)
<b>Consolidated income (loss) before income tax</b>	<b>\$ 21,307</b>	<b>\$ 13,381</b>	<b>\$ (18,583)</b>	<b>\$ (57,655)</b>

<sup>(1)</sup> Includes impairments of equipment excluded from restructuring charges.

<sup>(2)</sup> Includes expenses that are direct and incremental to business acquisitions and divestitures, including third party professional fees for legal, accounting and valuation services; employee related costs associated with reorganizing the business; and a gain recorded in the three and nine months ended September 30, 2016 associated with the recovery of an escrow settlement claim as further described in Note 9.

### 3. Restructuring Activities

On May 23, 2016, the Board of Directors of the Company approved a restructuring plan (the Q2 2016 Restructuring Plan) to reduce its North American workforce by approximately 5% in order to enhance the Company's strategic focus, deliver operational and cost efficiencies, and hold its utility customer engagement (UCE) business for sale. On September 21, 2016, the Board of Directors of the Company approved a restructuring plan (the Q3 2016 Restructuring Plan) to reduce the Company's global workforce by approximately 15% in order to materially reduce operating expenses, primarily related to the Company's subscription-based energy intelligence software business.

#### **Workforce Reduction**

The Q2 2016 Restructuring Plan resulted in employee related charges of \$271 and \$1,146 for the three and nine months ended September 30, 2016. Specifically, the charges represent severance for terminated employees and retention costs for employees who remained with the Company until the UCE business was sold. These expenses were all paid by September 30, 2016 and no

further costs are expected related to the Q2 2016 Restructuring Plan. In addition, as a result of the sale of an additional component of the business (see Note 4), the Company incurred \$325 in incremental retention bonuses that are included in restructuring charges for the nine months ended September 30, 2016.

The Q3 2016 Restructuring Plan resulted in employee related charges of \$1,983 for the three and nine months ended September 30, 2016. The Company expects to complete the Q3 2016 Restructuring Plan by December 31, 2016, incurring a total aggregate expense of approximately \$2,200. Unpaid severance benefits associated with these charges was \$1,616 as of September 30, 2016.

#### **Contract Terminations**

During the three months ended September 30, 2016, the Company terminated certain vendor contracts primarily associated with annual trade shows and conferences. As a result, the Company recognized a \$679 charge for termination fees and non-refundable deposits.

#### **Asset Impairments**

During the three months ended June 30, 2016, the Company modified a non-cancelable sublease agreement with a third party for excess office space in its corporate headquarters. In connection with this sublease, the Company determined that the carrying value for the associated leasehold improvements and furniture and fixtures would not be recovered, resulting in a \$2,494 impairment charge. As the Company evaluates future cost savings, additional facility charges may be incurred.

The following table summarizes the current year restructuring activities. These charges are included in "restructuring charges" on the consolidated statements of operations. As discussed in Note 2, these charges are excluded from the Company's segment adjusted EBITDA.

	<b>Employee Related</b>	<b>Contract Terminations</b>	<b>Asset Impairments</b>	<b>Total</b>
<b>Accrued restructuring liability at January 1, 2016</b>	\$ —	\$ —	\$ —	\$ —
Charges for the three and six months ended June 30, 2016	1,200	—	2,494	3,694
Cash payments	(1,082)	—	—	(1,082)
Adjustments for non-cash items	—	—	(2,494)	(2,494)
<b>Accrued restructuring liability at June 30, 2016</b>	<b>118</b>	<b>—</b>	<b>—</b>	<b>118</b>
Charges for the three months ended September 30, 2016	2,254	679	—	2,933
Cash payments	(756)	(679)	—	(1,435)
<b>Accrued restructuring liability at September 30, 2016</b>	<b>\$ 1,616</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 1,616</b>
<b>Total restructuring charges for the nine months ended September 30, 2016</b>	<b>\$ 3,454</b>	<b>\$ 679</b>	<b>\$ 2,494</b>	<b>\$ 6,627</b>

#### **4. Gains on Sale of Businesses**

On August 31, 2016, the Company entered into a definitive stock purchase agreement with a 9% shareholder to sell the UCE business, which was a component of the Software segment. On August 31, 2016 the Company completed the sale of the UCE business for \$11,500. In accordance with the agreement, \$1,500 of the purchase price has been placed in escrow to cover general representations and warranties and is included in "prepaid expenses and other current assets" on the consolidated balance sheet. Other than amounts held in escrow, there were no significant amounts due to or from the buyer as of September 30, 2016.

In connection with the sale of the UCE business, all of the Company's equity interest in a wholly-owned foreign subsidiary was transferred to the buyer and, following the sale, the Company had no retained investment or interest in the subsidiary. Accordingly, the net assets of the subsidiary were deconsolidated and the associated cumulative currency translation adjustments, which were in an unrealized loss position prior to the sale, were reclassified from accumulated other comprehensive loss and included as a reduction to the gain on the sale of the business.

On May 31, 2016, the Company sold the utility programs group (UPG) business, which provided professional services to utilities with an emphasis on energy efficiency initiatives and was a component of the Software segment. The UPG business was sold to a third party for \$14,471 in cash, of which \$1,600 was placed in escrow to cover general representations and

warranties and is included in "prepaid expenses and other current assets" on the consolidated balance sheet. The purchase price reflects a working capital adjustment of \$286 that was accrued as of September 30, 2016 and settled in October 2016.

The Company concluded that the sales of the UCE and UPG businesses did not qualify as discontinued operations as the disposals did not represent a strategic shift that will have a major effect on the Company's operations and financial results. The following table summarizes the preliminary calculation of the gains associated with each transaction as well as the net assets and liabilities that were transferred to the respective buyers and derecognized as of the respective closing dates of the sales of these businesses.

	UCE	UPG	Total
Sale price	\$ 11,500	\$ 14,471	\$ 25,971
Less:			
Net working capital deficit <sup>(1)</sup>	(648)	(4,337)	(4,985)
Fixed assets	128	—	128
Intangible assets	5,655	—	5,655
Goodwill	1,025	1,357	2,382
Net deferred tax liabilities	(92)	—	(92)
Net assets (liabilities) sold	6,068	(2,980)	3,088
Cumulative translation adjustments reclassified from accumulated other comprehensive loss	2,403	—	2,403
Direct and incremental transaction costs	800	75	875
Gains on sale of businesses	<u>\$ 2,229</u>	<u>\$ 17,376</u>	<u>\$ 19,605</u>

<sup>(1)</sup> Net working capital deficit primarily includes deferred revenue partially offset by accounts receivable.

## 5. Goodwill and Intangible Assets

### Goodwill

As discussed in Note 1, in January 2016 the Company reorganized its reporting structure and began operating as two reportable segments: Software and Demand Response. Accordingly, goodwill was reallocated from the Company's prior reporting units, which were defined as i) North America Software and Services and ii) International, to the new reporting units within the Software and Demand Response segments, as shown in the following table within "transfers". During 2016, the Company sold two business components that were part of the Software segment, as discussed in Note 4. Goodwill was allocated to these business components based on their fair value relative to the overall reporting unit prior to the divestitures.

The following table rolls forward goodwill for the nine months ended September 30, 2016 :

	EnerNOC, Inc.	Demand Response	Software	Total Goodwill <sup>1</sup>
<b>Balance at December 31, 2015</b>	\$ 39,747	\$ —	\$ —	\$ 39,747
Transfers	(39,747)	27,391	12,356	—
Foreign exchange	—	918	(25)	893
Sale of business components (Note 4)	—	—	(2,382)	(2,382)
<b>Balance at September 30, 2016</b>	<u>\$ —</u>	<u>\$ 28,309</u>	<u>\$ 9,949</u>	<u>\$ 38,258</u>

<sup>1</sup> Accumulated impairment losses as of December 31, 2015 and September 30, 2016 was \$108,763.

The Company tests goodwill for impairment at the reporting unit level annually as of November 30. In addition, as part of its ongoing assessment as to the existence of goodwill impairment indicators, the Company considers factors such as updated long-range financial forecasts, current economic conditions, the Company's market capitalization as well as other qualitative factors. As a result of this assessment for the period ended September 30, 2016, no impairment indicators were identified. In future periods, the Company may be subject to factors that constitute a change in circumstances, indicating that the carrying value of goodwill could exceed fair value. These changes may consist of, but are not limited to, a sustained decline in the Company's market capitalization, reduced future cash flow estimates, an adverse action or assessment by a regulatory agency, and slower growth rates in the Company's industry. Any of these factors, or others, could require the Company to record a

charge to earnings in the consolidated financial statements during the period in which any impairment of goodwill is determined, negatively impacting the Company's results of operations.

### **Intangible Assets**

The following table provides the gross carrying amount and related accumulated amortization of the Company's definite-lived intangible assets as of September 30, 2016 and December 31, 2015 :

	As of September 30, 2016		As of December 31, 2015	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
Customer relationships	\$ 60,635	\$ (31,642)	\$ 60,938	\$ (26,043)
Customer contracts	8,228	(7,755)	8,042	(6,786)
Employment and non-compete agreements	2,530	(2,309)	3,055	(2,283)
Software	170	(170)	170	(170)
Developed technology	17,133	(6,492)	24,168	(6,867)
Trade name	1,057	(1,057)	1,087	(1,035)
Patents	180	(117)	180	(104)
Total	\$ 89,933	\$ (49,542)	\$ 97,640	\$ (43,288)

The decrease in the gross carrying amount of intangible assets as of September 30, 2016 as compared to December 31, 2015 , is primarily due to \$5,655 of net intangible assets, including gross carrying amounts of \$8,804 and accumulated amortization of \$3,149 , associated with the UCE business that was sold during the period as discussed in Note 4.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Amortization expense included in cost of revenues	\$ 364	\$ 923	\$ 1,853	\$ 2,848
Amortization expense included in operating expenses	2,150	2,739	6,841	8,759
Total amortization expense	\$ 2,514	\$ 3,662	\$ 8,694	\$ 11,607

Definite-lived intangible asset lives range from 1 to 15 years and have a weighted average remaining life of 4.6 years at September 30, 2016 .

In accordance with ASC 360, *Impairment and Disposals of Long-Lived Assets* , the Company records impairment losses on long-lived assets, including intangible assets, that are used in operations when events or circumstances indicate that these long-lived assets might be impaired. As a result of the Company's restructuring actions initiated in the third quarter of 2016, the Company reviewed the undiscounted cash flows and indicators of fair value associated with its intangible assets. Although the Company's analysis indicated that the fair value of its intangible assets exceeded their carrying amounts as of September 30, 2016, and therefore no impairment charge was required for the current period, changes in circumstances and changes to the Company's assumptions, estimates, or use of these intangible assets may result in an impairment charge in the near term.

## 6. Net Income (Loss) Per Share

The computation of basic and diluted net income (loss) per share is as follows (in thousands, except share and per share information):

Numerator:	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net income (loss) for basic earnings per share	\$ 20,625	\$ 12,987	\$ (19,811)	\$ (56,095)
ADD: Interest expense related to convertible notes	1,715	2,118	—	—
Net income (loss) for diluted earnings per share	\$ 22,340	\$ 15,105	\$ (19,811)	\$ (56,095)
<b>Denominator:</b>				
Basic weighted average common shares outstanding	29,349,772	28,507,939	29,188,693	28,282,647
Weighted average common stock equivalents	399,854	340,707	—	—
Incremental shares from assumed conversion of convertible notes	4,576,630	5,774,928	—	—
Diluted weighted average common shares outstanding	34,326,256	34,623,574	29,188,693	28,282,647
Basic net income (loss) per share	\$ 0.70	\$ 0.46	\$ (0.68)	\$ (1.98)
Diluted net income (loss) per share	\$ 0.65	\$ 0.44	\$ (0.68)	\$ (1.98)

### Weighted average anti-dilutive shares related to:

Incremental shares from assumed conversion of convertible notes	—	—	4,576,630	5,774,928
Stock options	292,916	473,848	292,749	418,024
Nonvested restricted stock	1,812,661	2,285,100	1,925,246	2,228,630
Restricted stock units	183,668	72,261	658,668	72,261

On May 27, 2015, the Company received stockholder approval to elect to settle conversions of the aggregate outstanding principal amount of its 2.25% convertible senior notes due August 15, 2019 (the Convertible Notes) by paying or delivering cash, shares of common stock or a combination of cash and shares of common stock. However, for purposes of the calculation of diluted net income per share, it is assumed that conversion would be settled entirely in shares of common stock. For the three months ended September 30, 2016, the Convertible Notes are assumed to be converted as the impact is dilutive. For the nine months ended September 30, 2016, the Convertible Notes are not assumed to be converted as the impact of conversion is anti-dilutive. For further information regarding the Convertible Notes, please refer to Note 8.

Restricted stock awards are excluded from the calculation of basic weighted-average common shares outstanding until they vest. For restricted stock awards that vest based on achievement of performance conditions, the number of contingently issuable common shares included in diluted weighted-average common shares outstanding is based on the number of common shares, if any, that would be issuable under the terms of the arrangement if the end of the reporting period were the end of the contingency period, assuming the result would be dilutive.

The Company includes 254,654 shares of common stock related to a component of the deferred purchase price consideration for a business acquired in 2011 in the calculation of both the basic and diluted weighted-average common shares outstanding as the shares are not subject to adjustment and the issuance of such shares is not subject to any contingency. These shares are expected to be issued in 2018.

The Company excludes common shares held in escrow pursuant to business combinations from the calculation of basic weighted average shares outstanding where the release of such shares is contingent upon an event not solely subject to the passage of time. During the three months ended September 30, 2016, in accordance with a settlement agreement as further described in Note 9, the Company received 87,483 shares of common stock that had been held in escrow related to the acquisition of Pulse Energy Inc. As these shares were delivered to the Company and subsequently retired, they are excluded from basic weighted average shares for the period. As of September 30, 2016, there were no further common shares held in escrow.

## 7. Fair Value Measurements

The Company measures the fair value of financial instruments pursuant to the guidelines of ASC 820, *Fair Value Measurement*, which establishes a fair value hierarchy that prioritizes the inputs used to measure fair value. The hierarchy gives the highest priority to quoted market prices in active markets for identical assets and liabilities (Level 1); then to quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant assumptions are observable in the market (Level 2); and then to model-based techniques that use significant assumptions that are not observable in the market (Level 3).

### *Financial Instruments and Investments*

The Company's financial instruments mainly consist of cash and cash equivalents, restricted cash, accounts receivable and accounts payable. The carrying amounts of such financial instruments approximate their fair value due to their short-term nature. In addition, the Company has long-term investments in non-marketable equity securities that are accounted for as cost-method investments. These investments are not adjusted to fair value on a recurring basis but are periodically assessed for indications of a reduction in fair value that is other-than-temporary. The Company's financial instruments also include its Convertible Notes for which fair value is disclosed.

### *Recurring Fair Value Measurements*

The table below presents the assets and liabilities measured at fair value on a recurring basis at September 30, 2016 and December 31, 2015 :

	Fair Value Measured and Recorded Using			
	Totals	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)
<b>As of September 30, 2016</b>				
Assets: Money market funds	\$ 63,331	\$ 63,331	\$ —	\$ —
<b>As of December 31, 2015</b>				
Assets: Money market funds	\$ 115,847	\$ 115,847	\$ —	\$ —
Liabilities: Contingent purchase price consideration <sup>(1)</sup>	\$ 840	\$ —	\$ —	\$ 840

<sup>(1)</sup>The contingent purchase price consideration as of December 31, 2015 relates to the Company's 2014 acquisition of Activation Energy DSU Limited and was reflected in accrued expense and other current liabilities as of December 31, 2015. The amount was paid in full in February 2016.

The following table rolls forward liabilities measured at fair value on a recurring basis for which the measurement is categorized as Level 3:

	Liabilities
Balance January 1, 2016	\$ 840
Cash payment during the period	(840)
Balance September 30, 2016	\$ —

### *Non-Recurring Fair Value Measurements*

Cost method investments and non-financial assets, such as intangible assets, property and equipment, and assets and liabilities held for sale, are adjusted to fair value only if an impairment is recognized. There were no assets or liabilities measured at fair value on a non-recurring basis at either September 30, 2016 or December 31, 2015.

During the three months ended June 30, 2016, the Company recorded an impairment loss of \$1,200, included in "other income (expense), net", to adjust the carrying amount of cost method investments due to a decline in fair value that was deemed to be other-than-temporary. In assessing the fair value of these investments, the Company evaluated all available information, both qualitative and quantitative, including current financial forecasts, recent or pending rounds of financing activity, and other available market data. The fair value of the investments, for which the inputs are categorized as Level 3 on the fair value hierarchy, was determined based on a probability-weighted assessment of liquidation scenarios. As of September 30, 2016, the carrying value of these investments was \$1,300 and no further impairment indicators were noted.

As discussed in Note 3, during the second quarter of 2016 the Company recorded a \$2,494 impairment charge related to leasehold improvements and furniture and fixtures associated with subleased office space. The fair value of the asset group, for which the inputs are categorized as Level 3 on the fair value hierarchy, was determined based on the discrete cash flows of the asset group and incorporated assumptions relative to how a market participant would value the group.

*Assets and Liabilities for which Fair Value Disclosure is Required*

The Company had \$126,800 of principal outstanding on its Convertible Notes at September 30, 2016 and December 31, 2015 . The carrying value of the Convertible Notes, which includes the unamortized debt discount and issuance costs, was \$114,205 and \$111,254 as of September 30, 2016 and December 31, 2015 , respectively, and the fair value of the Convertible Notes was approximately \$91,930 and \$73,624 as of September 30, 2016 and December 31, 2015 , respectively. The fair value was determined based on the quoted market price of the Convertible Notes as of those dates and is classified as a Level 1 measurement.

**8. Borrowings and Credit Arrangements**

*Credit Agreement*

In August 2014, the Company entered into a \$30,000 senior secured revolving credit facility (the 2014 credit facility) with Silicon Valley Bank (SVB) pursuant to a loan and security agreement, as amended, which is available for issuances of letters of credit and revolving loans. In August 2016, the Company and SVB entered into a third amendment to the 2014 credit facility for a fee of \$75 to extend the maturity date from August 9, 2016 to August 8, 2017. The 2014 credit facility is subject to continued covenant compliance and borrowing base requirements. As of September 30, 2016 , the Company was in compliance with all of its covenants, had no outstanding borrowings and had outstanding letters of credit totaling \$23,287 under the 2014 credit facility. As of September 30, 2016 , there was \$6,713 available under the 2014 credit facility for future borrowings or additional issuances of letters of credit. In the event of termination or default, the Company may be required to cash collateralize any outstanding letters of credit up to 105% of their face amount.

*Convertible Notes*

On August 12, 2014, the Company sold \$160,000 aggregate principal amount of Convertible Notes due August 15, 2019. The Convertible Notes include customary terms and covenants, including certain events of default after which they may be declared or become due and payable immediately. The Convertible Notes are convertible at an initial conversion rate of 36.0933 shares of common stock per \$1 principal amount (equivalent to an initial conversion price of approximately \$27.71 per share of common stock). The Company may elect to settle conversions by paying or delivering, as the case may be, cash, shares of common stock or a combination of cash and shares of common stock.

Upon issuance, the Company accounted for the liability and equity components of the Convertible Notes separately to reflect a non-convertible borrowing rate. The estimated fair value of the liability component at issuance of \$137,430 was determined using a discounted cash flow technique. The excess proceeds of \$22,570 were allocated to the conversion feature (equity component) with a corresponding offset recognized as a discount to reduce the net carrying value. In addition, debt issuance costs were allocated to the liability and equity components. The amounts allocated to the liability component are included as part of the debt discount, which is being amortized to interest expense over a five -year period ending August 15, 2019 (the expected life of the liability component) using the effective interest method.

In December 2015, in privately negotiated transactions, the Company repurchased in cash \$33,200 in aggregate principal amount of the outstanding Convertible Notes for a total purchase price of \$19,733 plus accrued interest. The consideration was allocated to the fair value of the liability component of the repurchased Convertible Notes immediately before extinguishment. Following the repurchases, the remaining principal outstanding was \$126,800 .

The following table shows the gross and net carrying amount of the Convertible Notes at September 30, 2016 and December 31, 2015 :

	September 30, 2016	December 31, 2015
Convertible Notes, principal amount	\$ 126,800	\$ 126,800
Less: debt discount and issuance costs	(12,595)	(15,546)
Convertible Notes, net	<u>\$ 114,205</u>	<u>\$ 111,254</u>

Interest expense under the Convertible Notes is as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Accretion of debt discount and issuance costs	\$ 1,002	\$ 1,218	\$ 2,951	\$ 3,571
2.25% accrued interest	713	900	2,131	2,680
Total interest expense from Convertible Notes	\$ 1,715	\$ 2,118	\$ 5,082	\$ 6,251

## 9. Commitments and Contingencies

### *Performance Guarantees*

The Company is subject to performance guarantee requirements under certain utility and electric power grid operator customer contracts and open market bidding program participation rules, which may be secured by cash or letters of credit. Performance guarantees as of September 30, 2016 were \$21,790 and included deposits held by certain customers of \$212. These amounts primarily represent upfront payments required by utility and electric power grid operator customers as a condition of participation in certain demand response programs and to ensure that the Company will deliver its committed capacity amounts in those programs. If the Company fails to meet its minimum committed capacity requirements, a portion or all of the deposits may be forfeited. The Company assessed the probability of default under these customer contracts and open market bidding programs and determined the likelihood of default and loss of deposits to be remote. In addition, under certain utility and electric power grid operator customer contracts, if the Company does not achieve the required performance guarantee requirements, the customer can terminate the arrangement and the Company would potentially be subject to termination penalties. Under these arrangements, the Company defers all fees received up to the amount of the potential termination penalty until the Company has concluded that it can reliably determine that the potential termination penalty will not be incurred or the termination penalty lapses. As of September 30, 2016, the Company had \$600 in deferred fees for these arrangements, which were included in deferred revenues. As of September 30, 2016, the maximum termination penalty to which the Company could be subject under these arrangements, which the Company has deemed not probable of being incurred, was approximately \$3,364.

### *Lease Arrangements*

The Company leases office space under various operating leases. The Company has entered into sublease arrangements for certain excess space related to these leased facilities. As of September 30, 2016, future non-cancelable sublease payments were \$7,964 over the next four years.

### *Contingencies and Indemnifications*

The Company is currently involved in an ongoing matter related to a review of certain services provided under a contractual arrangement with an enterprise customer. No lawsuit has been filed and the Company does not currently believe it is probable that a loss has been incurred and therefore, no amounts have been accrued related to this matter. However, the Company has determined that it is reasonably possible that a loss may have been incurred related to this matter. The potential amount of such a loss is not currently estimable because the matter involves unresolved questions of fact.

In August 2016, a former employee filed a complaint and demand for a trial jury in state court in the Commonwealth of Massachusetts against the Company related to the payment of commissions and other claims. In September 2016, the Company answered the complaint, denying the claims. The Company does not currently believe it is probable that a loss has been incurred and therefore, no amounts have been accrued related to this matter. However, the Company has determined that it is reasonably possible that a loss may have been incurred related to this matter. The potential amount of such a loss is not currently estimable because the matter is in its early stages and involves unresolved questions of fact.

### *Escrow Settlement*

On July 27, 2016, the Company and the former shareholders of Pulse Energy Inc. (Pulse) reached a settlement with respect to claims made by the Company related to certain general representations and warranties made by the former shareholders related to the stock purchase agreement pursuant to which the Company acquired Pulse in December 2014. In accordance with the settlement agreement, \$2,900 of the cash and 87,483 shares of the Company's common stock that were held in escrow as security for indemnification obligations were released to the Company in settlement of the claims. As a result, the Company recorded a gain of \$3,535 for the three and nine months ended September 30, 2016, which is included in the consolidated statement of operations within general and administrative expenses. The gain includes the \$2,900 of cash and \$635, which represents the fair value of the 87,483 common shares as of the date of the settlement. The fair value of the shares, which were subsequently retired, was recorded as an adjustment to additional paid-in capital.

### General Contingencies

The Company is subject to legal proceedings, claims and litigation arising in the ordinary course of business. The Company does not expect the ultimate costs to resolve such matters to have a material adverse effect on its consolidated financial condition, results of operations or cash flows.

## 10. Stockholder's Equity

### Stock-Based Compensation

The Company grants share-based awards to employees, consultants, members of the board of directors and advisory board members. All share-based awards granted, including grants of stock options, restricted stock and restricted stock units, are recognized in the statement of operations based on their fair value as of the date of grant.

Stock-based compensation recorded in the consolidated statements of operations was as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Selling and marketing	\$ 975	\$ 1,243	\$ 2,767	\$ 3,194
General and administrative	2,147	2,061	6,466	7,187
Research and development	330	351	1,003	1,004
Total stock-based compensation <sup>(1)</sup>	\$ 3,452	\$ 3,655	\$ 10,236	\$ 11,385

<sup>(1)</sup> Stock-based compensation expense for the three and nine months ended September 30, 2015 includes \$2 and \$495 related to the Company's acquisition of World Energy Solutions, Inc. that was settled with equivalent cash payments.

The Company's Chief Executive Officer is required to receive his performance-based bonus, if achieved, in shares of the Company's common stock. During the nine months ended September 30, 2016 and 2015, the Company recorded \$324 and \$380 of stock based compensation, respectively, related to this performance based bonus.

### Stock Options

The following is a summary of the Company's stock option activity during the nine months ended September 30, 2016 :

	Nine Months Ended September 30,			
	Number of Shares Underlying Options	Weighted-Average Exercise Price Per Share	Aggregate Intrinsic Value	Weighted Average Remaining Life (in years)
Outstanding at December 31, 2015	610,855	\$ 18.93		
Granted	—	—		
Exercised	(19,426)	0.51		
Cancelled	(206,074)	25.20		
Outstanding at September 30, 2016	385,355	\$ 16.52	\$ 452	
Exercisable at end of period	379,249	\$ 16.60	\$ 452	1.6
Vested or expected to vest at September 30, 2016	384,818	\$ 16.52	\$ 452	1.6

The aggregate intrinsic value as of September 30, 2016 in the preceding table represents the total pre-tax intrinsic value, based on the Company's closing stock price of \$5.41 on September 30, 2016, that would have been received by the option holders had all option holders exercised their "in-the-money" options as of that date. The total number of shares issuable upon the exercise of "in-the-money" options exercisable as of September 30, 2016 was approximately 92,241. The total intrinsic value of options exercised during the nine months ended September 30, 2016 was \$127. For unvested stock options outstanding as of September 30, 2016, the Company had \$52 of unrecognized stock-based compensation, which is expected to be recognized over a weighted average period of 1.3 years.

**Restricted Stock**

The following table summarizes the Company's restricted stock activity during the nine months ended September 30, 2016 :

	Number of Shares	Weighted Average Grant Date Fair Value Per Share
Nonvested at December 31, 2015	2,294,691	\$ 14.20
Granted	935,355	6.87
Vested	(857,303)	13.50
Cancelled	(391,599)	11.97
Nonvested at September 30, 2016	1,981,144	\$ 11.48

For unvested restricted stock outstanding as of September 30, 2016 , the Company had \$16,222 of unrecognized stock-based compensation expense, which is expected to be recognized over a weighted average period of 2.1 years.

**Restricted Stock Units**

The following table summarizes the Company's restricted stock unit activity during the nine months ended September 30, 2016 :

	Number of Shares	Weighted Average Grant Date Fair Value Per Share
Nonvested at December 31, 2015	258,983	\$ 15.27
Granted	710,750	6.15
Vested	(87,136)	7.39
Cancelled	(185,230)	9.78
Nonvested at September 30, 2016	697,367	\$ 8.42

For non-vested restricted stock units subject to service-based vesting conditions outstanding as of September 30, 2016 , the Company had \$2,976 of unrecognized stock-based compensation, which is expected to be recognized over a weighted average period of 2.4 years. For non-vested restricted stock units subject to outstanding performance-based vesting conditions that were not probable of vesting at September 30, 2016 , the Company had \$1,423 of unrecognized stock-based compensation expense. If and when any additional portion of these non-vested restricted stock units are deemed probable to vest, the Company will reflect the effect of the change in estimate in the period of change by recording a cumulative catch-up adjustment to stock-based compensation.

**Employee Stock Purchase Plan**

On May 26, 2016, the Company's shareholders approved an employee stock purchase plan (the 2016 ESPP). The 2016 ESPP permits eligible employees, through payroll withholdings, to purchase shares of the Company's common stock at a 15% discount from the fair market value of the stock as determined on specific dates at six month intervals. The maximum amount of shares issuable under the 2016 ESPP is 3,000,000 . In any six month period, the maximum amount of shares issuable is limited to 500 shares per participant and 350,000 shares for all participants. No offerings are expected to be made under the ESPP during 2016.

**Share Repurchase Activity**

In connection with the vesting of restricted stock and restricted stock units under its equity incentive plans, the Company withheld 302,301 shares of its common stock during the nine months ended September 30, 2016 to satisfy employee minimum statutory income tax withholding obligations which the Company pays in cash to the appropriate taxing authorities on behalf of its employees. All withheld shares became immediately available for future issuance under the Company's equity incentive plans.

**Accumulated Other Comprehensive Income (Loss)**

Changes in accumulated other comprehensive income (loss), which are entirely comprised of foreign currency translation adjustments, net of tax, are as follows:

	<b>Foreign Currency Translation Adjustments</b>
Balance at December 31, 2015	\$ 8,524
Other comprehensive loss (income) before reclassifications	(2,331)
Reclassification due to liquidation of a foreign entity (Note 4)	(2,403)
Balance at September 30, 2016	<u>\$ 3,790</u>

**11. Income Taxes**

Each interim period is considered an integral part of the annual period and tax expense is measured using an estimated annual effective tax rate. An enterprise is required, at the end of each interim reporting period, to make its best estimate of the effective tax rate for the full fiscal year and use that rate to provide for income taxes on a current year-to-date basis. However, if an enterprise is unable to make a reliable estimate of its annual effective tax rate, the actual effective tax rate for the year-to-date period may be the best estimate of the annual effective tax rate. For the nine months ended September 30, 2016, the Company determined that it was able to reliably estimate its annual effective tax rate in all jurisdictions in which it operates.

The Company recorded a worldwide income tax expense of \$689 and \$1,271 for the three and nine months ended September 30, 2016, respectively. The income tax expense for the nine months ended September 30, 2016 is driven by the mix of earnings from foreign operations and reflects changes relating to valuation allowances associated with deferred tax assets for certain foreign entities. The Company recorded an income tax expense of \$417 and an income tax benefit of \$1,523 for the three and nine months ended September 30, 2015, respectively, which included a \$2,268 benefit during the nine months ended September 30, 2015 due to the release of a portion of a U.S. valuation allowance in connection with the World Energy Solutions, Inc. acquisition.

ASC 740, *Income Taxes*, provides criteria for the recognition, measurement, presentation and disclosures of uncertain tax positions. A tax benefit from an uncertain tax position may be recognized if it is "more likely than not" that the position is sustainable based solely on its technical merits. During the three and nine months ended September 30, 2016, there were no material changes in the Company's uncertain tax positions.

The Company reviews all available evidence to evaluate the recovery of deferred tax assets, including the recent history of losses in all tax jurisdictions, as well as its ability to generate income in future periods. As of September 30, 2016, due to the uncertainty around the realizability of certain domestic and foreign deferred tax assets, the Company continues to maintain a valuation allowance.

**12. Concentration of Credit Risk**

For the three and nine months ended September 30, 2016, the Company had a large concentration of revenue with PJM Interconnection (PJM). PJM is an electric power grid operator in the mid-Atlantic region of the United States that is comprised of multiple utilities and was formed to control the operation of the regional power system, coordinate the supply of electricity, and establish a fair and efficient market. Revenues from PJM are included within the Demand Response operating segment. No other customer represented more than 10% of consolidated revenue for the three and nine months ended September 30, 2016 and 2015.

The following table presents PJM revenues for the three and nine months ended September 30, 2016 and 2015 :

	Three Months Ended September 30,			
	2016		2015	
	Revenues	% of Total Revenues	Revenues	% of Total Revenues
PJM	\$ 94,398	56%	\$ 143,804	66%

	Nine Months Ended September 30,			
	2016		2015	
	Revenues	% of Total Revenues	Revenues	% of Total Revenues
PJM	\$ 179,179	51%	\$ 161,618	47%

The Company has accounts receivable balances from certain customers that represent more than 10% of the Company's total accounts receivable balance of September 30, 2016 . These customers include Southern California Edison and Korea Power Exchange representing 12% and 11% of total accounts receivable, respectively.

The Company currently participates in three PJM programs, which the Company refers to as Limited, Extended and Annual. Each program has a different delivery period, but the Company receives payments for all three programs ratably throughout PJM's fiscal year, which ends May 31. The delivery period for the Limited program is June through September. The delivery period for the Extended program is June through October and then the following May. The delivery period for the Annual program is June through May. In all three programs, revenues earned could potentially be subject to retroactive adjustment or refund based on performance during the delivery period and, therefore, the price is not considered fixed or determinable until the end of the program period. Accordingly, revenues from all three programs are deferred and recognized at the end of the applicable delivery period.

In the case of the Limited program, because the delivery period ends before the end of PJM's fiscal year, throughout which the Company receives payments, a portion of the revenues earned are recorded and accrued as unbilled revenue. Unbilled revenue related to PJM was \$69,838 and \$68,859 at September 30, 2016 and December 31, 2015 , respectively.

In the event the Company completely eliminates its obligation in a program through portfolio management, including participation in PJM incremental auctions, revenues related to such activity are recognized at the beginning of the delivery period.

### 13. Recent Accounting Pronouncements

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)* (ASU 2014-09). ASU 2014-09 provides that revenue should be recognized when an entity transfers promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. In addition, the standard requires disclosure of the nature, amount, timing and uncertainty of revenue and cash flow arising from contracts with customers. The FASB has issued several amendments and updates to the new revenue standard, including guidance related to when an entity should recognize revenue gross as a principal or net as an agent and how an entity should identify performance obligations. As amended, the new guidance is effective for annual and interim periods beginning after December 15, 2017, with early adoption permitted no earlier than the original effective date of the standard, which is the first quarter of fiscal 2017 for the Company. The new guidance allows for full retrospective adoption applied to all periods presented or a modified retrospective adoption with the cumulative effect of initially applying the new guidance recognized at the date of initial application.

The Company is continuing to evaluate the future impact and method of adoption of ASU 2014-09 and related amendments on its consolidated financial statements and related disclosures. The Company is considering early adoption of the new standard using the modified retrospective method in the first quarter of 2017. The Company's ability to early adopt the standard is dependent on system readiness and the completion of analysis necessary to meet the requirements under ASU 2014-09. While management continues to assess all potential impacts of the new standard, the Company currently believes that the most significant impact of adoption relates to the enhanced level of disclosures related to revenue from contracts with customers, the accounting for demand response programs, and the timing of revenue recognition related to procurement auctions. The Company anticipates that revenue for certain demand response programs, for which revenue is currently deferred until the end of the program period, will be recognized ratably over the program delivery period under the new revenue guidance. The Company also anticipates that revenue for certain procurement auctions, for which revenue is currently recognized as fees

become payable based on energy usage, will be recognized when the Company's performance obligation relative to the auction is complete.

In August 2014, the FASB issued ASU 2014-15, *Presentation of Financial Statements - Going Concern: Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern* (ASU 2014-15). ASU 2014-15 requires that the Company evaluate, at each interim and annual reporting period, whether there are conditions or events that raise substantial doubt about its ability to continue as a going concern within one year after the date the financial statements are issued, and provide related disclosures. ASU 2014-15 is effective for annual and interim periods ending after December 15, 2016, and early adoption is permitted. The Company does not expect to early adopt ASU 2014-15 and does not believe the standard will have a material impact on its consolidated financial statements and related disclosures.

In January 2016, the FASB issued ASU 2016-01, *Recognition and Measurement of Financial Assets and Financial Liabilities* (ASU 2016-01), which provides new guidance on the recognition and measurement of financial assets and financial liabilities. ASU 2016-01 will impact the accounting for equity investments and financial liabilities under the fair value option, and the presentation and disclosure requirements for financial instruments. All equity investments in unconsolidated entities (other than those accounted for under the equity method of accounting) will generally be measured at fair value with changes in fair value recognized in earnings. There will no longer be an "available-for-sale" classification for equity securities with readily determinable fair values. In general, the new guidance will require modified retrospective application to all outstanding instruments, with a cumulative effect adjustment recorded to opening retained earnings. This guidance is effective January 1, 2018. The Company is currently evaluating the effect of this standard on its consolidated financial statements and related disclosures.

In February 2016, the FASB issued ASU 2016-02, *Leases* (ASU 2016-02). ASU 2016-02 requires lessees to recognize the assets and liabilities on their balance sheet for the rights and obligations created by most leases and continue to recognize expenses on their income statements over the lease term. The standard will also require disclosures designed to give financial statement users information on the amount, timing, and uncertainty of cash flows arising from leases. The guidance is effective for annual reporting periods beginning after December 15, 2018 and interim periods within those fiscal years, with early adoption permitted. The Company does not anticipate that it will early adopt the new standard. The Company is currently evaluating the effect of the standard on its consolidated financial statements and related disclosures.

In March 2016, the FASB issued ASU 2016-09, *Improvements to Employee Share-Based Payment Accounting* (ASU 2016-09). ASU 2016-09 simplifies several aspects of the accounting for share-based payment award transactions, including income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. ASU 2016-09 is effective for the Company's fiscal year ending December 31, 2017 and interim periods therein. While the Company is continuing to evaluate the impact of the standard on its consolidated financial statements and related disclosures, the Company does not expect that the adoption of the new standard in 2017 will have a significant impact on its provision for income taxes or cash flow presentation.

In August 2016, the FASB issued ASU 2016-15, *Classification of Certain Cash Receipts and Cash Payments* (ASU 2016-15). ASU 2016-15 provides guidance on the classification of certain transactions in the statement of cash flows, such as contingent consideration payments made in connection with a business combination and debt prepayment or extinguishment costs. The new guidance is effective for the Company's fiscal year ending December 31, 2018 and interim periods therein and early adoption is permitted. When adopted, the new guidance will be applied retrospectively. The Company expects that the adoption of ASU 2016-15 will primarily impact the cash flow classification of payments related to contingent consideration from business combinations and changes in restricted cash.

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

*The following discussion should be read in conjunction with our unaudited condensed consolidated financial statements and related notes thereto included elsewhere in this Quarterly Report on Form 10-Q, as well as our audited financial statements and notes thereto and Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2015, as filed with the Securities and Exchange Commission, or the SEC, on March 10, 2016, or our 2015 Form 10-K. 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. Without limiting the foregoing, the words "may," "will," "should," "could," "expect," "plan," "intend," "anticipate," "believe," "estimate," "predict," "potential," "continue," "likely," "target" and variations of those terms or the negatives of those terms and similar expressions are intended to identify forward-looking statements. All forward-looking statements included in this Quarterly Report on Form 10-Q are based on current expectations, estimates, forecasts and projections and the beliefs and assumptions of our management including, without limitation, our expectations regarding our results of operations, operating expenses and the sufficiency of our cash for future operations. We assume no obligation to revise or update any such forward-looking statements. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain important factors, including those set forth below under this Item 2 - "Management's Discussion and Analysis of Financial Condition and Results of Operations," Part II, Item 1A - "Risk Factors" and elsewhere in this Quarterly Report on Form 10-Q, as well as in our 2015 Form 10-K. You should carefully review those factors and also carefully review the risks outlined in other documents that we file from time to time with the SEC.*

### **Overview**

We are a leading provider of energy intelligence software, or EIS, and demand response solutions to enterprises, utilities and electric power grid operators.

#### ***Energy Intelligence Software***

Our EIS includes our subscription software, energy procurement solutions, and professional services.

##### *Subscription Software*

Our EIS provides enterprises with a Software-as-a-Service, or SaaS, energy management application that enables them to address their most important energy challenges, including:

- energy cost visualization, budgets, forecasts, and accruals;
- utility bill validation and payment;
- facility optimization, including benchmarking facilities and identifying cost savings opportunities;
- energy project tracking;
- reporting for energy and sustainability disclosure and compliance; and
- peak energy demand and the related cost impacts.

Our EIS helps enterprises quickly analyze data, achieve real-time visibility into and intelligence about their organization's energy usage, reduce operational costs, comply and report on sustainability requirements, and drive better business decisions.

##### *Energy Procurement Solutions*

Our EIS also provides enterprises and utilities located in restructured or deregulated markets with the ability to more effectively manage energy supplier selection and the energy procurement process by providing highly-structured auction events designed to yield transparent and competitive energy pricing. Our energy procurement application consists of an online auction platform that helps enterprises and utilities realize the best price for electricity, natural gas and other energy resources by having energy suppliers compete for their business. Our procurement application also includes supplier contract management and price alert tools.

##### *Professional Services*

We offer premium professional services that support the implementation of our EIS and help our enterprise customers set their energy management strategies. Our professional services offerings also include energy audits and retro-commissioning. Professional services are offered to our customers as a means to further implement and extend our technology across their organizations.

### ***Demand Response Solutions***

Our demand response solutions provide utilities and electric power grid operators with a managed service demand response resource where we match obligation, in the form of megawatts, or MWs, that we agree to deliver to utilities and/or electric power grid operators, with supply, in the form of MWs, that we are able to curtail from the electric power grid through our arrangements with C&I end-users. When we are called upon by utilities and electric power grid operators to deliver contracted capacity, we use our Network Operations Center, or NOC, to remotely manage and reduce electricity consumption across our network of C&I end-user sites, making demand response capacity available to utilities and electric power grid operators on demand, while helping C&I end-users achieve energy savings, improve financial results and realize environmental benefits. We receive payments from utilities and electric power grid operators for providing our demand response solutions, and we share those payments with C&I end-users in exchange for those C&I end-users reducing their power consumption when called upon by us to do so. Our demand response solutions are also capable of providing utilities with the underlying technology to manage their own utility sponsored demand response programs and secure reliable demand side resources. This product consists of long-term contracts with utilities for a technology enabled managed service that provides utilities with real time load monitoring, dispatching applications, customizable reports, and measurement and verification tools.

### **Non-Financial Business and Operational Data**

We utilize certain non-financial business and operational data to provide additional insight into factors and opportunities relevant to our business. This non-financial business and operational data does not necessarily have any direct correlation to our financial performance. However, the non-financial business and operational data may provide observations as to the scope of, and trends related to, our operations and therefore, we believe the utilization of such data can provide insights into certain aspects of our business, such as market share and penetration, and customer adoption and depth.

The following table outlines certain non-financial business and operational data utilized as of September 30, 2016 and December 31, 2015 :

	September 30, 2016		December 31, 2015	
Subscription Software Customers (rounded to nearest hundred) <sup>(1)</sup>		1,000		1,100
Subscription Software ARR (in millions) <sup>(2)</sup>	\$	28	\$	27
Procurement Solutions Customers (rounded to nearest hundred) <sup>(3)</sup>		2,100		2,800
Procurement Solutions ARR (in millions) <sup>(4)</sup>	\$	34	\$	35

<sup>(1)</sup> Number of customers that purchase our EIS subscription software offerings.

<sup>(2)</sup> Annual Recurring Revenue, or ARR, from contracts with subscription software customers. ARR is defined as contracted, active (non-expired or terminated as of the end of the reporting period, or within a renewal grace period) subscription-based expected billings, normalized for a one-year period, regardless of contract length. ARR is exclusive of non-recurring or one-time fees, which include professional service fees, site installation or set up, software implementation, and consulting or project-based fees.

<sup>(3)</sup> Number of customers that purchase our EIS procurement solutions including our energy procurement auction platform, supplier management and price alert tools, and supply procurement advisory services.

<sup>(4)</sup> ARR from contracts with Procurement Solutions Customers. Procurement Solutions ARR is exclusive of non-recurring or one-time fees which include professional services fees, consulting or project-based fees, and wholesale procurement fees.

The number of Subscription Software Customers at September 30, 2016 and December 31, 2015 was approximately 1,000 and 1,100 , respectively. Subscription Software ARR at September 30, 2016 was \$28 million compared to \$27 million at December 31, 2015 . The increase in Subscription Software ARR reflects the addition of new subscription software contracts from new customers as well as expansion from existing customers, net of churned ARR from non-renewed or terminated contracts.

The number of Procurement Solutions customers at September 30, 2016 was approximately 2,100 compared to approximately 2,800 at December 31, 2015 . The decrease in Procurement Solutions Customers is consistent with our strategy to not renew certain smaller or unprofitable customers acquired through our acquisition of World Energy Solutions, Inc., or World Energy, in 2015. Procurement Solutions ARR at September 30, 2016 was approximately \$34 million , compared to approximately \$35 million at December 31, 2015 .

We continually evaluate the non-financial business and operational data that we review and the relevance of this data as our business continues to evolve and, as a result, such data and information may change over time.

## Consolidated Results of Operations

Three and Nine Months Ended September 30, 2016 Compared to the Three and Nine Months Ended September 30, 2015

### Revenues

The following table summarizes our consolidated revenues for the three and nine months ended September 30, 2016 and 2015 (in thousands):

	Three Months Ended September 30,		Dollar Change	Percentage Change
	2016	2015		
Revenues:				
Software	\$ 18,729	\$ 18,028	\$ 701	3.9%
Demand Response	149,052	199,296	(50,244)	(25.2)%
Total	\$ 167,781	\$ 217,324	\$ (49,543)	(22.8)%
	Nine Months Ended September 30,		Dollar Change	Percentage Change
	2016	2015		
Revenues:				
Software	\$ 51,994	\$ 55,353	\$ (3,359)	(6.1)%
Demand Response	301,861	285,022	16,839	5.9%
Total	\$ 353,855	\$ 340,375	\$ 13,480	4.0%

For discussion and analysis of quarterly and year to date revenue as compared to the prior year, please refer to Segment Results of Operations below.

### Gross Profit and Gross Margin

The following table summarizes our consolidated gross profit and gross margin percentages for the three and nine months ended September 30, 2016 and 2015 (dollars in thousands):

Three Months Ended September 30,			
2016		2015	
Gross Profit	Gross Margin	Gross Profit	Gross Margin
\$ 70,816	42.2%	\$ 74,178	34.1%
Nine Months Ended September 30,			
2016		2015	
Gross Profit	Gross Margin	Gross Profit	Gross Margin
\$ 142,765	40.3%	\$ 131,730	38.7%

The decrease in consolidated gross profit for the three months ended September 30, 2016, as compared to the same period in 2015, was principally due to a decline in PJM pricing and a decrease in revenues associated with our divested professional services businesses. The increase in consolidated gross profit for the nine months ended September 30, 2016, as compared to the same period in 2015, was primarily due to increased revenue from our participation in the 2015/2016 PJM Extended program for which revenue was recognized in May 2016. The increase in consolidated gross margin for the three and nine months ended September 30, 2016 as compared to the same periods in 2015, was primarily due to increased high margin revenue from our participation in incremental auctions and improved management of our demand response portfolios. We currently expect our consolidated gross profit in fiscal 2016 to be slightly higher, as compared to 2015, primarily as a result of relatively consistent year-over-year consolidated revenue expectations with slightly higher year-over-year gross margins.

### Operating Expenses

The following table summarizes our consolidated operating expenses for the three and nine months ended September 30, 2016 and 2015 (in thousands):

Operating expenses:	Three Months Ended September 30,		Percentage
	2016	2015	Change
Selling and marketing	\$ 20,008	\$ 22,397	(10.7)%
General and administrative	20,331	26,707	(23.9)%
Research and development	6,352	6,626	(4.1)%
Gains on sale of businesses	(2,229)	—	n/m
Restructuring charges	2,933	—	n/m
Total operating expenses	\$ 47,395	\$ 55,730	(15.0)%
	Nine Months Ended September 30,		Percentage
	2016	2015	Change
Selling and marketing	\$ 70,540	\$ 74,563	(5.4)%
General and administrative	75,688	83,450	(9.3)%
Research and development	22,029	21,812	1.0 %
Gains on sale of businesses	(19,605)	(2,991)	n/m
Restructuring charges	6,627	—	n/m
Total operating expenses	\$ 155,279	\$ 176,834	(12.2)%

### Selling and Marketing Expenses

The following table summarizes our consolidated selling and marketing expenses for the three and nine months ended September 30, 2016 and 2015 (in thousands):

	Three Months Ended September 30,		Percentage
	2016	2015	Change
Payroll and related costs	\$ 13,204	\$ 14,707	(10.2)%
Stock-based compensation	975	1,243	(21.6)%
Amortization of intangible assets	2,100	2,421	(13.3)%
Other	3,729	4,026	(7.4)%
Total selling and marketing expenses	\$ 20,008	\$ 22,397	(10.7)%
	Nine Months Ended September 30,		Percentage
	2016	2015	Change
Payroll and related costs	\$ 45,413	\$ 47,553	(4.5)%
Stock-based compensation	2,767	3,194	(13.4)%
Amortization of intangible assets	6,477	7,738	(16.3)%
Other	15,883	16,078	(1.2)%
Total selling and marketing expenses	\$ 70,540	\$ 74,563	(5.4)%

The decrease in payroll and related costs for the three and nine months ended September 30, 2016 as compared to the same periods in 2015, was primarily due to the divestiture of the utility customer engagement, or UCE, business and the restructuring actions completed in the third quarter of 2016, which contributed to a reduction in the number of selling and marketing full-time employees from 335 at September 30, 2015 to 222 at September 30, 2016. The full effect of this reduction is not reflected in the current period as the reduction occurred near the end of the quarter. Stock-based compensation for the current year three and nine month periods was lower as compared to the same periods in 2015 due to a decline in the grant date fair value of stock-based awards. Amortization of intangible assets decreased in both the three and nine month periods due to customer relationship intangible assets becoming fully amortized or retired as part of the UCE sale. Other selling and marketing expenses, which include advertising, marketing, professional services, and a company-wide overhead cost allocation, were relatively consistent in both the three and nine month periods. We currently expect a decrease in sales and marketing expenses in fiscal 2016, as compared to 2015, primarily as a result of our divestitures and restructuring activities.

### General and Administrative Expenses

The following table summarizes our consolidated general and administrative expenses for the three and nine months ended September 30, 2016 and 2015 (in thousands):

	Three Months Ended September 30,		Percentage
	2016	2015	Change
Payroll and related costs	\$ 14,081	\$ 14,497	(2.9)%
Stock-based compensation	2,147	2,061	4.2 %
Gain on escrow settlement (Note 9)	(3,535)	—	— %
Other	7,638	10,149	(24.7)%
Total general and administrative expenses	\$ 20,331	\$ 26,707	(23.9)%

	Nine Months Ended September 30,		Percentage
	2016	2015	Change
Payroll and related costs	\$ 47,537	\$ 48,028	(1.0)%
Stock-based compensation	6,466	7,187	(10.0)%
Gain on escrow settlement (Note 9)	(3,535)	—	— %
Other	25,220	28,235	(10.7)%
Total general and administrative expenses	\$ 75,688	\$ 83,450	(9.3)%

Payroll and related costs were down slightly in the three and nine months ended September 30, 2016, as compared to the same periods in 2015. Although the number of general and administrative full time employees declined from 567 at September 30, 2015 to 472 at September 30, 2016, primarily as a result of our restructuring actions in the third quarter of 2016, the full effect of this reduction is not reflected in the current period as the reduction occurred near the end of the quarter. Stock-based compensation was relatively consistent across the three month periods in the current and prior year, and lower in the current nine month period as compared to the prior nine month period due to a decline in the grant date fair value of the awards. During the three months ended September 30, 2016, we received \$3.5 million for the settlement of claims against the former shareholders of an acquired entity, which is further described in Note 9 to the accompanying financial statements. Other general and administrative expenses, which include professional services, rent, depreciation and a company-wide overhead cost allocation declined in the three and nine month periods, due to lower external legal costs, lower facility costs as a result of subleasing arrangements, and lower costs related to acquisitions and divestitures. We currently expect a decrease in general and administrative expenses in fiscal 2016, as compared to 2015, primarily as a result of our divestitures and restructuring activities.

### Research and Development Expenses

The following table summarizes our consolidated research and development expenses for the three and nine months ended September 30, 2016 and 2015 (in thousands):

	Three Months Ended September 30,		Percentage
	2016	2015	Change
Payroll and related costs	\$ 3,627	\$ 3,785	(4.2)%
Stock-based compensation	330	351	(6.0)%
Other	2,395	2,490	(3.8)%
Total research and development marketing expenses	\$ 6,352	\$ 6,626	(4.1)%

	Nine Months Ended September 30,		Percentage
	2016	2015	Change
Payroll and related costs	\$ 13,518	\$ 12,767	5.9 %
Stock-based compensation	1,003	1,004	(0.1)%
Other	7,508	8,041	(6.6)%
Total research and development expenses	\$ 22,029	\$ 21,812	1.0 %

The slight decrease in payroll and related costs for the three months ended September 30, 2016 as compared to 2015 was due to a decrease in headcount. Although the number of research and development full time employees decreased from 199 at September 30, 2015 to 110 at September 30, 2016, primarily as a result of the sale of the UCE business in August 2016 and our restructuring activities completed in the third quarter of 2016, the full effect of this reduction is not reflected in current period as the reduction occurred near the end of the quarter. The increase in payroll and related costs for the nine month period as

compared to the prior year was primarily driven by an increase in the average salary and bonus expense per research and development full time employee, partially offset by an increase in the capitalization of internal use software development costs in the current year. Other research and development expenses, which include technology expenses, professional services, facilities and a company-wide overhead cost allocation, declined in the current three and nine month periods, as compared to the prior year, as a result of a reduction in third party software and data storage costs. We currently expect a decrease in research and development expenses in fiscal 2016 as compared to 2015, primarily as a result of our divestitures and restructuring activities.

#### **Gains on Sale of Businesses**

The following table summarizes our consolidated gains on sale of businesses and demand response capacity resources for the three and nine months ended September 30, 2016 and 2015 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Sale of Utility Programs Group, or UPG	\$ —	\$ —	\$ 17,376	\$ —
Sale of UCE	2,229	—	2,229	—
Sale of demand response capacity resource	—	—	—	2,991
Gains on sale of businesses	\$ 2,229	\$ —	\$ 19,605	\$ 2,991

As discussed in Note 4 to the accompanying financial statements, during the three months ended September 30, 2016, we sold our UCE business for approximately \$11.5 million in cash and recognized a gain of \$2.2 million, net of direct transaction costs of \$0.8 million. Gains on the sale of businesses for the nine months ended September 30, 2016 also includes the \$17.4 million gain related to the sale of our UPG business.

#### **Restructuring Charges**

On May 23, 2016, our Board of Directors approved a restructuring plan, or the Q2 2016 Restructuring Plan, in order to enhance our strategic focus, deliver operational and cost efficiencies, and hold our UCE business for sale. The Q2 2016 Restructuring Plan included a reduction in our North American workforce of approximately 5%, and office space consolidations. On September 21, 2016, our Board of Directors approved an additional restructuring plan, or the Q3 2016 Restructuring Plan, to reduce our global workforce by approximately 15% in order to materially reduce operating expenses primarily related to our subscription-based energy intelligence software business. We expect to complete all actions related to these plans in the fourth quarter of 2016 and we expect that additional charges of up to \$0.2 million may be incurred.

The following table summarizes restructuring activities for the three and nine months ended September 30, 2016 (in thousands):

	Three Months Ended September 30, 2016	Nine Months Ended September 30, 2016
Employee related	\$ 2,254	\$ 3,454
Contract terminations	679	679
Asset impairments	—	2,494
Total	\$ 2,933	\$ 6,627

We expect that these restructuring activities will result in annual savings, through lower personnel related and operating costs, of approximately \$30 million to \$35 million starting in the fourth quarter of 2016.

#### **Other Expense, Net and Interest Expense**

Other expense for the three months ended September 30, 2016 was \$0.3 million as compared to \$2.8 million for the three months ended September 30, 2015. Other expense includes net unrealized foreign currency gains and losses on intercompany loans and receivables. The decrease for the three months ended September 30, 2016 as compared to the prior year was largely due to changes in foreign currencies relative to the U.S. dollar, including the Great Britain Pound (GBP). Other expense for the nine months ended September 30, 2016 was \$0.6 million as compared to other expense of \$5.8 million for the nine months ended September 30, 2015. Other expense in the current nine month period includes a \$1.2 million impairment to cost-method investments due to a decline in fair value of the investment, offset by foreign currency gains on intercompany balances.

Interest expense was \$1.8 million and \$5.5 million for the three and nine months ended September 30, 2016 , respectively, compared to \$2.3 million and \$6.8 million for the three and nine months ended September 30, 2015 , respectively. The decrease in interest expense in the current three and nine month periods as compared to the prior year was due to the early retirement of a portion of our convertible notes in the fourth quarter of 2015.

### **Income Taxes**

For the three and nine months ended September 30, 2016 , we recorded a worldwide tax provision of \$0.7 million and \$1.3 million , respectively. Income tax expense for the three and nine months ended September 30, 2016 is driven by the mix of earnings from foreign operations and reflects changes relating to valuation allowances associated with deferred tax assets for certain foreign entities. For the three and nine months ended September 30, 2015 , we recorded a tax expense of \$0.4 million and tax benefit of \$1.5 million , respectively, primarily due to a \$2.3 million release of a portion of the U.S. valuation allowance in connection with the World Energy acquisition in the nine months ended September 30, 2015 .

### **Segment Results of Operations**

Effective in the first quarter of 2016 , we began operating as two reportable segments: Software and Demand Response. We evaluate and assess the performance of our operating segments based on revenues and adjusted EBITDA, which is the measure of segment profit or loss that is reported to our Chief Operating Decision Maker for purposes of making decisions about allocating resources to each segment and assessing segment performance. Please refer to Note 2 to the accompanying financial statements for a reconciliation of segment income (loss) to consolidated income (loss) before income taxes. We define segment adjusted EBITDA as segment income (loss) from operations excluding depreciation, amortization and asset impairments; stock-based compensation; and restructuring charges. In addition, we do not allocate to our operating segments certain corporate level expenses, gains on sale of businesses, and direct and incremental expenses and gains associated with acquisitions, divestitures, reorganizations and settlements.

### **Three and Nine Months Ended September 30, 2016 Compared to the Three and Nine Months Ended September 30, 2015**

#### **Revenues**

##### *Software Segment Revenues*

The following table summarizes our Software segment revenues for the three and nine months ended September 30, 2016 and 2015 (in thousands):

	<b>Three Months Ended September 30,</b>		<b>Dollar</b>	<b>Percentage</b>
	<b>2016</b>	<b>2015</b>	<b>Change</b>	<b>Change</b>
Revenues:				
Subscription software	\$ 7,221	\$ 4,916	\$ 2,305	46.9 %
Procurement solutions	9,840	8,398	1,442	17.2 %
Professional services	1,668	4,714	(3,046)	(64.6)%
Total Software Revenues	\$ 18,729	\$ 18,028	\$ 701	3.9 %
	<b>Nine Months Ended September 30,</b>		<b>Dollar</b>	<b>Percentage</b>
	<b>2016</b>	<b>2015</b>	<b>Change</b>	<b>Change</b>
Revenues:				
Subscription software	\$ 18,966	\$ 14,234	\$ 4,732	33.2 %
Procurement solutions	27,568	25,874	1,694	6.5 %
Professional services	5,460	15,245	(9,785)	(64.2)%
Total Software Revenues	\$ 51,994	\$ 55,353	\$ (3,359)	(6.1)%

Subscription software revenues increased during the three and nine months ended September 30, 2016 primarily due to revenues generated from increased site volume and our strategic partnerships. Procurement solutions revenue also increased during the three and nine months ended September 30, 2016 due primarily to increased wholesale procurement auction activity. The decline in professional services revenues, for both the three and nine months ended September 30, 2016, was due to the divestiture of our World Energy efficiency business in the fourth quarter of 2015 and our UPG business in the second quarter of 2016. We currently expect our Software segment revenues in fiscal 2016 to be lower, as compared to 2015, due to the aforementioned divestitures and the divestiture of our UCE business in the third quarter of 2016, partially offset by organic growth in our subscription software revenues.

### Demand Response Segment Revenues

The following table summarizes our Demand Response segment revenues for the three and nine months ended September 30, 2016 and 2015 (in thousands):

	Three Months Ended September 30,		Dollar Change	Percentage Change
	2016	2015		
<b>Revenues:</b>				
Grid Operator	\$ 121,500	\$ 171,928	\$ (50,428)	(29.3)%
Utility	27,552	27,368	184	0.7 %
Total Demand Response Revenues	\$ 149,052	\$ 199,296	\$ (50,244)	(25.2)%
	Nine Months Ended September 30,		Dollar Change	Percentage Change
	2016	2015		
<b>Revenues:</b>				
Grid Operator	\$ 252,985	\$ 237,281	\$ 15,704	6.6 %
Utility	48,876	47,741	1,135	2.4 %
Total Demand Response Revenues	\$ 301,861	\$ 285,022	\$ 16,839	5.9 %

The significant changes in our Demand Response segment revenues from grid operators and utilities for the three and nine months ended September 30, 2016, as compared to the same periods in 2015, are highlighted in the following tables (in thousands):

	Increase (Decrease)	
	Three Months Ended September 30, 2015 to September 30, 2016	Nine Months Ended September 30, 2015 to September 30, 2016
PJM	\$ (49,405)	\$ 17,561
South Korea (KPX)	3,192	10,102
New York (NYISO)	(707)	(1,826)
Texas (ERCOT)	(2,189)	(2,114)
New England (ISO-NE)	(1,147)	(3,315)
Alberta (AESO)	(252)	(5,504)
Other <sup>(1)</sup>	80	800
Total (decrease) increase in Grid Operator Demand Response revenues	\$ (50,428)	\$ 15,704

<sup>(1)</sup> The amounts included in 'other' relate to net increases (decreases) in various demand response programs, domestic and international, none of which are individually material.

The decrease in PJM revenues for the three month period ended September 30, 2016 as compared to the same period in 2015 was primarily due to lower pricing in connection with our participation in the PJM Limited program. The increase in PJM revenues for the current nine month period, as compared to the same period in 2015, was primarily due to the prior year's increased participation in the 2015/2016 PJM Extended program, for which revenue was recognized in May 2016. The increase in revenues associated with our South Korea program was primarily due to an increase in enrolled MWs in the current year. Other changes across the three and nine month periods include lower pricing and fewer enrolled MWs in our New York, Texas and Alberta programs and lower MW obligations in our New England program.

	Increase (Decrease)	
	Three Months Ended September 30, 2015 to September 30, 2016	Nine Months Ended September 30, 2015 to September 30, 2016
Consolidated Edison (Con Ed)	\$ 1,277	\$ 2,488
Pacific Gas and Electric (PG&E)	(2,006)	(1,249)
New Zealand	319	1,108
Salt River Project	—	(1,167)
Other <sup>(1)</sup>	594	(45)
Total increase in Utility Demand Response revenues	\$ 184	\$ 1,135

<sup>(1)</sup> The amounts included in 'other' primarily relate to various utility demand response programs and services, none of which are individually material.

The increase in revenues associated with our Con Ed program was primarily due to a performance-based bonus payment recognized during the first quarter of 2016 as well as an increase in pricing during the second and third quarters of 2016. The

increase in our New Zealand program revenues was the result of higher pricing. These increases were partially offset in the nine month period by the conclusion of the Salt River Project program in the second quarter of 2015. In addition, our performance in the PG&E program resulted in a further revenue reduction for the three and nine months ended September 30, 2016 .

We currently expect our Demand Response segment revenues in fiscal 2016 to be slightly higher as compared to 2015 .

**Segment adjusted EBITDA:**

The following table summarizes segment adjusted EBITDA for the three and nine months ended September 30, 2016 and 2015 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Software adjusted EBITDA	\$ (10,583)	\$ (13,842)	\$ (48,620)	\$ (49,088)
Demand Response adjusted EBITDA	\$ 46,299	\$ 49,433	\$ 70,780	\$ 56,630

**Software Segment adjusted EBITDA**

For the three and nine months ended September 30, 2016 , as compared to the prior year periods, Software segment adjusted EBITDA increased \$3.3 million and \$0.5 million , respectively. The increases were a result of a more favorable mix of revenue due to increased subscription software revenue and a decline in professional services revenue related to divested businesses, as well as reduced operating expenses partially attributable to our restructuring actions. We currently expect our Software segment adjusted EBITDA for fiscal 2016 to be relatively comparable to 2015.

**Demand Response Segment adjusted EBITDA**

Demand Response segment adjusted EBITDA decreased \$3.1 million for the three months ended September 30, 2016 as compared to the prior year. This was due to a decrease in grid operator revenues of \$50.4 million , primarily related to a reduction in PJM pricing, partially offset by higher gross margin due to our participation in PJM incremental auctions and effective portfolio management. For the nine months ended September 30, 2016 as compared to the prior year, Demand Response segment adjusted EBITDA increased \$14.2 million , primarily due to higher revenue from our increased participation in the 2015/2016 PJM Extended program as noted above, expanded gross margins and reduced operating expenses. We currently expect our Demand Response segment adjusted EBITDA for fiscal 2016 to increase, as compared to 2015 driven by improved gross margin on modestly higher revenue and lower operating expenses.

**Liquidity and Capital Resources**

**Overview**

We have generated significant cumulative losses since inception. As of September 30, 2016 , we had an accumulated deficit of \$274.1 million . As of September 30, 2016 , our principal sources of liquidity were our cash and cash equivalents totaling \$81.5 million and our \$30.0 million senior secured revolving credit facility. The decrease in cash and cash equivalents of \$56.6 million from the December 31, 2015 balance of \$138.1 million was principally driven by net losses of \$19.9 million and a \$66.2 million increase in working capital, as further described below, partially offset by \$23.2 million of cash received from the sales of businesses and the settlement of an escrow claim. At September 30, 2016 , the majority of our excess cash was invested in money market funds.

**Cash Flows**

The following table summarizes our consolidated cash flows for the nine months ended September 30, 2016 and 2015 (in thousands):

	Nine Months Ended September 30,	
	2016	2015
Cash used in operating activities	\$ (64,888)	\$ (18,226)
Cash provided by (used in) investing activities	8,841	(88,881)
Cash used in financing activities	(2,002)	(2,331)
Effects of exchange rate changes on cash and cash equivalents	1,428	(2,973)
Net change in cash and cash equivalents	\$ (56,621)	\$ (112,411)

### *Cash Used in Operating Activities*

The following table summarizes our consolidated cash flows used in operating activities for the nine months ended September 30, 2016 and 2015 (in thousands):

	Nine Months Ended September 30,	
	2016	2015
Net loss	\$ (19,854)	\$ (56,132)
Non-cash items	41,597	48,721
Gains on sale of businesses, excluding transaction costs (Note 4)	(20,405)	(2,991)
Change in working capital and other activities	(66,226)	(7,824)
Net cash used in operating activities	\$ (64,888)	\$ (18,226)

Cash used in operating activities for the nine months ended September 30, 2016 and 2015 reflect net losses adjusted for non-cash activity, gains on the sale of businesses, and the impact of changes in our working capital balances relative to the beginning of the year.

The working capital accounts are largely impacted by our participation in PJM and other demand response programs. For instance, in PJM we receive cash payments ratably June through May, but typically recognize the corresponding revenues in September and/or in the following May. This dynamic, and similar dynamics in other demand response programs, account for the majority of the quarterly changes in the working capital accounts described in greater detail below.

- Cash collections from demand response customers and payments to C&I end-users, in advance of recognition in the statement of operations, increase our “deferred revenue” and “capitalized incremental direct customer contract costs” balances, respectively. These balances reverse through our statement of operations upon recognition of revenues and the corresponding cost of revenues.
- Recognition of revenues and cost of revenues, in advance of cash collections and payments, increase our “unbilled revenue” and “accrued capacity payments” balances, respectively. These balances decline as cash is collected and payments are disbursed.

Further impacting our cash flows is the timing of inbound receipts from demand response customers as compared to the timing of outbound disbursements to C&I end-users. For instance, PJM remits cash every week, while we disburse C&I payments on a quarterly basis, 45 days in arrears.

The \$64.9 million of cash used in operations for the nine months ended September 30, 2016 compares to \$18.2 million used for the same period in the prior year. The \$46.7 million change is primarily due to the decline in PJM pricing for the 2016/2017 program year relative to the 2015/2016 program year. More specifically, PJM cash inflows for the nine months ended September 30, 2016, reflect five months of collections from the 2015/2016 program year and four months of collections for the lower priced 2016/2017 program year. PJM cash outflows to C&I end-users over the same period reflect eight months of payments for the higher priced 2015/2016 program year and only one month of payments for the lower priced 2016/2017 program year. The PJM impact was partially offset by cash received for the recovery of an escrow settlement claim (Note 9 to the accompanying financial statements), improved management of our demand response portfolios, year-over-year increases in our subscription software and procurement solutions revenues, and a reduction in our spend for operating expenses.

### *Cash Provided By (Used In) Investing Activities*

Cash provided by investing activities was \$8.8 million for the nine months ended September 30, 2016, which consisted primarily of \$23.2 million in cash received for the sale of the UPG and UCE businesses, partially offset by capital expenditures of \$13.7 million including \$6.2 million for the capitalization of internal-use software development costs.

Cash used in investing activities was \$88.9 million for the nine months ended September 30, 2015. During the nine months ended September 30, 2015, we made net payments of \$77.6 million for acquisitions, consisting primarily of the purchase of World Energy. In addition, during the nine months ended September 30, 2015, we incurred \$17.7 million of capital expenditures.

### *Cash Used in Financing Activities*

Cash used in financing activities was \$2.0 million for the nine months ended September 30, 2016 and consisted primarily of payments made for employee restricted stock minimum tax withholdings. Cash used in financing activities was \$2.3 million for the nine months ended September 30, 2015 and consisted of payments made for employee restricted stock minimum tax withholdings totaling \$3.8 million, partially offset by \$1.1 million of cash received from the exercise of stock options.

## Borrowing and Credit Arrangements

### *Credit Agreement*

In August 2014, we entered into a \$30 million senior secured revolving credit facility, or the 2014 credit facility, with Silicon Valley Bank, or SVB, pursuant to a loan and security agreement, as amended, which is available for issuances of letters of credit and revolving loans. In August 2016, we and SVB entered into a third amendment to the 2014 credit facility to extend the maturity from August 9, 2016 to August 8, 2017. The 2014 credit facility is subject to continued covenant compliance and borrowing base requirements. As of September 30, 2016, we were in compliance with all covenants, had no outstanding borrowings and had outstanding letters of credit totaling \$23.3 million under the 2014 credit facility. As of September 30, 2016, there was \$6.7 million available under the 2014 credit facility for future borrowings or additional issuances of letters of credit. In the event of termination or default, we may be required to cash collateralize any outstanding letters of credit up to 105% of their face amount.

### *Convertible Notes*

In August 2014, we sold \$160 million aggregate principal amount of 2.25% convertible senior notes, or Convertible Notes, due August 15, 2019. The Convertible Notes include customary terms and covenants, including certain events of default after which they may be declared or become due and payable immediately. The Convertible Notes are convertible at an initial conversion rate of 36.0933 shares of the common stock per \$1,000 principal amount (equivalent to an initial conversion price of approximately \$27.71 per share of common stock). We may elect to settle conversions of the Convertible Notes by paying or delivering, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock.

In December 2015, in privately negotiated transactions, we completed repurchases in cash of \$33.2 million in aggregate principal amount of the outstanding Convertible Notes for a total purchase price of \$19.7 million plus accrued interest. We may from time to time seek to retire or repurchase additional outstanding Convertible Notes through cash purchases and/or exchanges for equity securities, in open market purchases, privately negotiated transactions or otherwise. Such repurchases or exchanges, if any, will depend on prevailing market conditions, our liquidity requirements, contractual restrictions and other factors.

For further discussion of the Convertible Notes, please refer to Note 8 to the accompanying financial statements.

Interest expense under the Convertible Notes is as follows (dollars in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Accretion of debt discount and issuance costs	\$ 1,002	\$ 1,218	\$ 2,951	\$ 3,571
2.25% accrued interest	713	900	2,131	2,680
Total interest expense from Convertible Notes	\$ 1,715	\$ 2,118	\$ 5,082	\$ 6,251

### **Contractual Commitments and Obligations**

The disclosure of our contractual obligations and commitments was reported in our Annual Report on Form 10-K for the year ended December 31, 2015. There have been no material changes from the contractual commitments and obligations previously disclosed in our Annual Report on Form 10-K other than the changes described in Note 9 to the accompanying financial statements.

### **Capital Spending**

We have made capital expenditures primarily for general corporate purposes to support growth and for equipment installations related to our business. Our capital expenditures totaled \$13.7 million and \$17.7 million during the nine months ended September 30, 2016 and 2015, respectively. We expect our capital expenditures for fiscal 2016 to be lower, as compared to 2015.

### **Off-Balance Sheet Arrangements**

As of September 30, 2016, we did not have any off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of Regulation S-K, that have or are reasonably likely to have a current or future material effect on our financial condition, changes in our financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. We have issued letters of credit in the ordinary course of our business in order to participate in certain demand response programs. As of September 30, 2016, we had outstanding letters of credit totaling \$23.3 million. For information on these commitments and contingent obligations, please refer to "Liquidity and Capital Resources- Borrowings and Credit Arrangements" above and Note 8 to the accompanying financial statements.

## **Additional Information**

### ***Non-GAAP Financial Measures***

To supplement our consolidated financial statements presented on a GAAP basis, we disclose certain non-GAAP measures, including consolidated adjusted EBITDA and free cash flow. These non-GAAP measures are not in accordance with, or an alternative for, generally accepted accounting principles in the United States.

The GAAP measure most comparable to consolidated adjusted EBITDA is GAAP net income (loss) attributable to EnerNOC, Inc. and the GAAP measure most comparable to free cash flow is cash flow provided by (used in) operating activities. Reconciliations of each of these non-GAAP financial measures to the corresponding GAAP measures are included below.

### ***Use and Economic Substance of Non-GAAP Financial Measures***

We use these non-GAAP measures when evaluating our operating performance and for internal planning and forecasting purposes. We believe that such measures help indicate underlying trends in our business, are important in comparing current results with prior period results, and are useful to investors and financial analysts in assessing our operating performance. For example, we consider consolidated adjusted EBITDA to be an important indicator of our operational strength and the performance of our business and a good measure of our historical operating trend. In addition, we consider free cash flow to be an indicator of our liquidity trend and the performance of our business.

The following is an explanation of the non-GAAP measures that we utilize, including the adjustments we make as part of the non-GAAP measures:

- Management defines consolidated adjusted EBITDA as net income (loss) attributable to EnerNOC, Inc., excluding depreciation, amortization and asset impairments; stock-based compensation; gains on the sale of businesses; direct and incremental expenses/gains associated with acquisitions, divestitures, reorganizations and settlements; restructuring charges; interest and other income (expense), net; and benefit from (provision for) income tax.
- Management defines free cash flow as net cash provided by (used in) operating activities less capital expenditures. Management defines capital expenditures as purchases of property and equipment, which includes capitalization of internal-use software development costs.

### ***Material Limitations Associated with the Use of Non-GAAP Financial Measures***

Consolidated adjusted EBITDA and free cash flow may have limitations as analytical tools. The non-GAAP financial information presented here should be considered in conjunction with, and not as a substitute for, or superior to, the financial information presented in accordance with GAAP, and should not be considered as measures of our liquidity. There are significant limitations associated with the use of non-GAAP financial measures. Further, these measures may differ from the non-GAAP information used by other companies, even where similarly titled, and therefore should not be used to compare our performance to that of other companies.

### ***Consolidated Adjusted EBITDA***

Consolidated adjusted EBITDA was \$31.5 million and \$31.7 million for the three months ended September 30, 2016 and 2015, respectively. Consolidated adjusted EBITDA was \$7.7 million and \$(4.5) million for the nine months ended September 30, 2016 and 2015, respectively.

The reconciliation of consolidated adjusted EBITDA to net loss attributable to EnerNOC, Inc. is set forth below (dollars in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Software adjusted EBITDA	\$ (10,583)	\$ (13,842)	\$ (48,620)	\$ (49,088)
Demand Response adjusted EBITDA	46,299	49,433	70,780	56,630
Corporate unallocated expenses	(4,239)	(3,884)	(14,446)	(12,043)
<b>Consolidated adjusted EBITDA <sup>(1)</sup></b>	<b>31,477</b>	<b>31,707</b>	<b>7,714</b>	<b>(4,501)</b>
Depreciation, amortization and asset impairments <sup>(5)</sup>	(7,418)	(9,511)	(25,888)	(29,259)
Stock-based compensation	(3,452)	(3,655)	(10,236)	(11,385)
Restructuring charges <sup>(2)</sup>	(2,933)	—	(6,627)	—
Gains on sale of businesses <sup>(3)</sup>	2,229	—	19,605	2,991
Direct and incremental (expenses) gains associated with acquisitions, divestitures, reorganizations and settlements <sup>(4)</sup>	3,525	(70)	2,961	(2,913)
Interest and other income (expense), net	(2,114)	(5,067)	(6,069)	(12,551)
Benefit from (provision for) income tax	(689)	(417)	(1,271)	1,523
<b>Net income (loss) attributable to EnerNOC, Inc.</b>	<b>\$ 20,625</b>	<b>\$ 12,987</b>	<b>\$ (19,811)</b>	<b>\$ (56,095)</b>

<sup>(1)</sup> Consolidated adjusted EBITDA excludes gains on the sale of businesses. Prior period results have been updated to conform to current period presentation.

<sup>(2)</sup> Restructuring charges include employee related severance and retention costs, asset impairments, and contract termination costs.

<sup>(3)</sup> The nine month period ended September 30, 2016 includes gains on the sale of a professional services business and a utility customer engagement software business. Prior year periods include a gain on the sale of a demand response resource.

<sup>(4)</sup> Includes expenses that are direct and incremental to business acquisitions and divestitures, including third party professional fees for legal, accounting and valuation services; employee related costs associated with reorganizing the business; and a gain recorded in the three and nine months ended September 30, 2016 for a settlement related to an escrow account as further described in Note 9 to the accompanying financial statements.

<sup>(5)</sup> Includes impairments of equipment excluded from restructuring charges.

### Free Cash Flow

We had negative free cash flow of \$23.3 million for the three months ended September 30, 2016 compared to negative free cash flow of \$1.0 million for the three months ended September 30, 2015. We had negative free cash flow of \$78.6 million for the nine months ended September 30, 2016 compared to negative free cash flow of \$36.0 million for the nine months ended September 30, 2015. The decreases in free cash flow were primarily attributable to the decline in cash flows from operations as discussed above. The reconciliation of cash flows from operating activities to free cash flow is set forth below (in thousands):

	Three months ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net cash provided by (used in) operating activities	\$ (18,738)	\$ 5,442	\$ (64,888)	\$ (18,226)
Subtract: Purchases of property and equipment and capitalization of internal use software	(4,577)	(6,434)	(13,688)	(17,724)
Free cash flow <sup>(1)</sup>	<b>\$ (23,315)</b>	<b>\$ (992)</b>	<b>\$ (78,576)</b>	<b>\$ (35,950)</b>

<sup>(1)</sup> Free cash flow does not include cash received from the sale of businesses. Prior period results have been updated to conform to current period presentation.

### Critical Accounting Policies and Use of Estimates

The discussion and analysis of our financial condition and results of operations are based upon our interim unaudited condensed consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities.

As described in our Form 2015 10-K, the most critical accounting policies and estimates upon which our consolidated financial statements were prepared were those relating to revenue recognition, assumptions used to determine fair value of goodwill and intangible assets, capitalization of software development costs, deferred tax assets and related valuation allowance, and stock-based compensation. We have reviewed our policies and estimates and determined that these remain the most critical accounting policies and estimates for the nine months ended September 30, 2016 . Readers should refer to our 2015 Form 10-K under “Management’s Discussion and Analysis of Financial Condition and Results of Operation—Critical Accounting Policies and Use of Estimates” and Note 1 to the accompanying financial statements for descriptions of these policies and estimates.

**Recent Accounting Pronouncements**

For discussion of recent accounting pronouncements, please refer to Note 13 to the accompanying financial statements.

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

Except as disclosed herein, there have been no material changes during the nine months ended September 30, 2016 in the foreign exchange risk information and interest rate risk information disclosed in the “Quantitative and Qualitative Disclosures About Market Risk” subsection of the section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our 2015 Form 10-K.

#### ***Foreign Currency Exchange Risk***

Our international business is subject to risks, including, but not limited to, unique economic conditions, changes in political climate, differing tax structures, other regulations and restrictions, and foreign exchange rate volatility. Accordingly, our future results could be materially adversely impacted by changes in these or other factors.

A majority of our foreign expense and revenue activities are transacted in local currencies, including Australian dollars, Euros, Brazilian real, British pounds, Canadian dollars, Indian rupee, Japanese yen, South Korean won and New Zealand dollars. Fluctuations in foreign currency rates could affect our sales, cost of revenues and profit margins and could result in exchange losses. In addition, currency fluctuations can result in a loss if we maintain deposits or receivables (third party or intercompany) in a foreign currency. During the three and nine months ended September 30, 2016 our sales generated outside the United States as a percentage of consolidated sales were 15% and 19% , respectively, as compared to the three and nine months ended September 30, 2015 for which our sales generated outside the United States were 10% and 19% , respectively. We anticipate that sales generated outside the United States will continue to represent greater than 10% of our consolidated sales.

The operating expenses of our international subsidiaries that are incurred in local currencies did not have a material adverse effect on our business, results of operations or financial condition for the three and nine months ended September 30, 2016 . Our operating results and certain assets and liabilities that are denominated in foreign currencies are affected by changes in the relative strength of the U.S. dollar against applicable foreign currencies. Our operating expenses denominated in foreign currencies are positively affected when the U.S. dollar strengthens against the applicable foreign currency and adversely affected when the U.S. dollar weakens.

In June 2016, the citizens of the United Kingdom (UK) voted to leave the European Union (EU), an event that is commonly referred to as "Brexit." A near-term effect of Brexit was a weakening of the British Pound (GBP) relative to the U.S. Dollar and other currencies. Our operations in the UK are not significant and comprise less than 1% of our revenue and less than 2% of our operating expenses. We maintain intercompany loans and receivables with our UK affiliates. The weakening of the GBP resulted in unrealized foreign exchange losses of approximately \$2 million for the nine months ended September 30, 2016 .

During the three and nine months ended September 30, 2016 , we recognized foreign exchange (losses) gains of (\$0.4) million and \$0.1 million , respectively. These gains and losses primarily relate to intercompany loans, largely driven by fluctuations in the Canadian dollar, Euro, Australian dollar and British pound.

We currently do not have a program in place that is designed to mitigate our exposure to changes in foreign currency exchange rates. From time to time we evaluate potential programs, including the use of derivative financial instruments, to reduce our exposure to foreign exchange gains and losses, and the volatility of future cash flows caused by changes in currency exchange rates. The utilization of forward foreign currency contracts could reduce, but not eliminate, the impact of currency exchange rate movements.

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

We incur interest expense on borrowings outstanding under our Convertible Notes and 2014 credit facility. The Convertible Notes have a fixed interest rate. The interest on revolving loans under the 2014 credit facility accrue, at our election, at either (i) the LIBOR (determined based on the per annum rate of interest at which deposits in United States dollars are offered to SVB in the London interbank market) plus 2.00%, or (ii) the “prime rate” as quoted in the Wall Street Journal with respect to the relevant interest period plus 1.00%.

As of September 30, 2016 , we had no outstanding borrowings and had outstanding letters of credit totaling \$23.3 million under the 2014 credit facility.

The return we earn from cash and cash equivalents will vary as short-term interest rates change. A hypothetical 10% increase or decrease in interest rates would not have a material effect on our financial condition.

**Item 4. Controls and Procedures**

***Disclosure Controls and Procedures***

Our principal executive officer and principal financial officer, after evaluating the effectiveness of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) as of the end of the period covered by this Quarterly Report on Form 10-Q, have concluded that, based on such evaluation, our disclosure controls and procedures were effective to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and is accumulated and communicated to our management, including our principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

***Internal Control over Financial Reporting***

During the period covered by this report, there were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II — OTHER INFORMATION**

### **Item 1. Legal Proceedings**

We are subject to legal proceedings, claims and litigation arising in the ordinary course of business. We do not expect the ultimate costs to resolve such matters to have a material adverse effect on our consolidated financial condition, results of operations or cash flows.

### **Item 1A. Risk Factors**

We operate in a rapidly changing environment that involves a number of risks that could materially affect our business, financial condition or future results, some of which are beyond our control. In addition to the other information set forth in this Quarterly Report on Form 10-Q, the risks and uncertainties that we believe are most important for you to consider are discussed in Part I-Item 1A under the heading “Risk Factors” in our 2015 Form 10-K. During the nine months ended September 30, 2016, there were no material changes to the risk factors that were disclosed in our 2015 Form 10-K other than as set forth below.

#### ***Our restructuring activities could result in management distractions, operational disruptions and other difficulties.***

In September 2016, our Board approved an approximate 15% reduction in our global workforce as part of a broader restructuring plan designed to materially reduce our operating expenses primarily related to our subscription-based energy intelligence software business. This reduction will result in reallocations of duties and may reduce employee morale, which could lead to unintended attrition or performance issues. Any restructuring effort could also cause disruptions with customers and other business partners, divert the attention of our management away from our operations and business objectives, harm our reputation, and expose us to increased risk of legal claims by terminated employees. We cannot guarantee that we will be able to realize sufficient cost savings and other anticipated benefits from such restructuring activities, or that we will not have to undertake future restructuring and cost control activities.

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

**Issuer's Purchases of Equity Securities**

The following table provides information about our purchases of our common stock during the three months ended September 30, 2016 :

<b>Fiscal Period</b>	<b>Total Number of Shares Purchased (1)</b>	<b>Average Price Paid per Share (2)</b>	<b>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</b>
July 1, 2016 - July 31, 2016	46,412	\$ 6.39	—
August 1, 2016 - August 31, 2016	4,063	7.40	—
September 1, 2016 - September 30, 2016	18,091	5.61	—
Total for the third quarter of 2016	68,566	\$ 6.24	—

- (1) In connection with the vesting of restricted stock under our equity incentive plans, we repurchased a total of 68,566 shares of our common stock in the third quarter of fiscal 2016 to cover employee minimum statutory income tax withholding obligations, which we pay in cash to the appropriate taxing authorities on behalf of our employees. Shares withheld (or not issued) to satisfy a tax withholding obligation in connection with an award will immediately be added to the share reserve and become available for issuance.
- (2) Average price paid per share is calculated based on the average price per share paid for the repurchase of shares under our publicly announced share repurchase program and the average price per share related to shares repurchased to cover employee minimum statutory income tax withholding obligations in connection with the vesting of restricted stock under our equity incentive plans. Amounts disclosed are rounded to the nearest two decimal places.

**Item 6. Exhibits**

- 10.1\* Loan and Security Agreement, dated as of August 11, 2014, between Silicon Valley Bank and EnerNOC, Inc., as amended on October 23, 2014, August 11, 2015, and August 3, 2016.
- 31.1\* Certification of Chief Executive Officer of EnerNOC, Inc. pursuant to Rule 13a-14(a) or Rule 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
- 31.2\* Certification of Chief Financial Officer of EnerNOC, Inc. pursuant to Rule 13a-14(a) or Rule 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
- 32.1\* Certification of the Chief Executive Officer and Chief Financial Officer of EnerNOC, Inc. pursuant to Rule 13a-14(b) promulgated under the Securities Exchange Act of 1934, as amended, and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 101\* The following materials from EnerNOC, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2016, formatted in XBRL (Extensible Business Reporting Language): (i) the Unaudited Condensed Consolidated Balance Sheets, (ii) the Unaudited Condensed Consolidated Statements of Operations, (iii) the Unaudited Condensed Consolidated Statements of Comprehensive Income (Loss), (iv) the Unaudited Condensed Consolidated Statements of Cash Flows, and (v) Notes to Unaudited Condensed Consolidated Financial Statements.

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\* Filed herewith

**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.

EnerNOC, Inc.

Date: November 4, 2016

By: /s/ Timothy G. Healy

Timothy G. Healy  
Chief Executive Officer  
(principal executive officer)

Date: November 4, 2016

By: /s/ William G. Sorenson

William G. Sorenson  
Chief Financial Officer (principal financial and accounting officer)

## LOAN AND SECURITY AGREEMENT

**THIS LOAN AND SECURITY AGREEMENT** (this “**Agreement**”) dated as of August 11, 2014 (the “**Effective Date**”) between (a) **SILICON VALLEY BANK**, a California corporation with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054 and with a loan production office located at 275 Grove Street, Suite 2-200, Newton, Massachusetts 02466 (“**Bank**”), and (b) **ENERNOC, INC.**, a Delaware corporation (“**Borrower**”), provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank. The parties agree as follows:

### 1 **ACCOUNTING AND OTHER TERMS; AGENTED LOAN ARRANGEMENT.**

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP. Notwithstanding the foregoing, all financial covenant calculations shall be computed with respect to the Borrower only, and not on a consolidated basis. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

### 2 **LOAN AND TERMS OF PAYMENT**

**2.1 Promise to Pay**. Borrower hereby unconditionally promises to pay Bank the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

#### **2.1.1 Revolving Advances**

(a) **Availability**. Subject to the terms and conditions of this Agreement, Bank shall make Advances in an aggregate original principal amount not exceeding the Availability Amount. Amounts borrowed under the Revolving Line may be repaid and, prior to the Revolving Line Maturity Date, reborrowed, from time to time, subject to the applicable terms and conditions precedent herein.

(b) **Termination; Repayment**. The Revolving Line terminates on the Revolving Line Maturity Date, when the principal amount of all Advances, the accrued but unpaid interest thereon, and all other Obligations relating to the Revolving Line shall be immediately due and payable.

#### **2.1.2 Letters of Credit**

(a) As part of the Revolving Line, Bank shall issue or have issued Letters of Credit for Borrower’s account. Such aggregate amounts utilized hereunder shall at all times reduce the amount otherwise available for Advances under the Revolving Line. The face amount of outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit) may not exceed Thirty Million Dollars (\$30,000,000.00), inclusive of Credit Extensions relating to Sections 2.1.1.

(b) If, on the Revolving Line Maturity Date, (or the effective date of any termination of this Agreement) there are any outstanding Letters of Credit, then on such date Borrower shall provide to Bank cash collateral in an amount equal to 105% of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment), to secure all of the Obligations relating to said Letters of Credit. All Letters of Credit shall be in form and substance acceptable to Bank in its sole discretion and shall be subject to the terms and conditions of Bank’s standard Application and Letter of Credit Agreement (the “**Letter of Credit Application**”). Borrower agrees to execute any further documentation in connection with the Letters of Credit as Bank may reasonably request. Borrower further agrees to be bound by the regulations and interpretations of the issuer of any Letters of Credit guaranteed by Bank and opened for Borrower’s account or by Bank’s interpretations of any Letter of Credit issued by Bank for Borrower’s account, and Borrower understands and agrees that Bank shall not be liable for any error, negligence (other than gross negligence or willful misconduct), or mistake, whether of omission or commission, in following Borrower’s instructions or those contained in the Letters of Credit or any modifications, amendments, or supplements thereto.

(c) The obligation of Borrower to immediately reimburse Bank for drawings made under Letters of Credit shall be absolute, unconditional, and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, such Letters of Credit, and the Letter of Credit Application.

(d) Borrower may request that Bank issue a Letter of Credit payable in a Foreign Currency. If a demand for payment is made under any such Letter of Credit, Bank shall treat such demand as an Advance to Borrower of the amount thereof (plus fees and charges in connection therewith such as wire, cable, SWIFT or similar charges) at the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

**2.2 Overadvances** . If, at any time, the sum of (a) the outstanding principal amount of any Advances, plus (b) the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit) exceeds the lesser of either the Revolving Line or the Borrowing Base, Borrower shall immediately pay to Bank in cash the amount of such excess (such excess, the “**Overadvance**”). Without limiting Borrower’s obligation to repay Bank any Overadvance, Borrower agrees to pay Bank interest on the outstanding amount of any Overadvance, on demand, at the Default Rate.

**2.3 General Provisions Relating to the Credit Extensions** . Each Credit Extension shall, at Borrower’s option in accordance with the terms of this Agreement, be either in the form of a Prime Rate Credit Extension or a LIBOR Credit Extension; *provided* that in no event shall Borrower maintain at any time LIBOR Credit Extension having more than five (5) different Interest Periods. Borrower shall pay interest accrued on the Credit Extensions at the rates and in the manner set forth in Section 2.4.

**2.4 Payment of Interest on the Credit Extensions** .

(a) Computation of Interest . Interest on the Credit Extensions and all fees payable hereunder shall be computed on the basis of a 360-day year and the actual number of days elapsed (except that, with respect to ABR Loans the rate of interest on which is calculated on the basis of the Prime Rate, the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed) in the period during which such interest accrues. In computing interest on any Credit Extension, the date of the making of such Credit Extension shall be included and the date of payment shall be excluded; *provided, however*, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension.

(b) Credit Extensions . Each Credit Extension shall bear interest on the outstanding principal amount thereof from the date when made, continued or converted until paid in full at a rate *per annum* equal to the Prime Rate plus the Prime Rate Margin or the LIBOR Rate plus the LIBOR Rate Margin, as the case may be. On and after the expiration of any Interest Period applicable to any LIBOR Credit Extension outstanding on the date of occurrence of an Event of Default or acceleration of the Obligations, the Effective Amount of such LIBOR Credit Extension shall, during the continuance of such Event of Default or after acceleration, bear interest at a rate *per annum* equal to the Prime Rate plus two percent (2.0%). Pursuant to the terms hereof, interest on each Credit Extension shall be paid in arrears on each Interest Payment Date. Accrued but unpaid Interest shall be paid on the date of any prepayment of any Credit Extension pursuant to this Agreement for the portion of any Credit Extension so prepaid and upon payment (including prepayment) in full thereof. All accrued but unpaid interest on the Credit Extensions shall be due and payable on the Revolving Line Maturity Date.

(c) Default Interest . Except as otherwise provided in Section 2.4(b), after (i) any Event of Default under Section 8.1 or Section 8.5, or (ii) any other Event of Default if requested by the Bank in its discretion, the outstanding Obligations shall bear interest two percent (2.0%) above the rate effective immediately before the Event of Default (the “**Default Rate**”). Payment or acceptance of the increased interest provided in this Section 2.4(c) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

(d) Prime Rate Credit Extensions . Each change in the interest rate of the Prime Rate Credit Extensions based on changes in the Prime Rate shall be effective on the effective date of such change and to the extent of such change. Bank shall use its best efforts to give Borrower prompt notice of any such change in the Prime Rate; *provided, however*, that any failure by Bank to provide Borrower with notice hereunder shall not affect Bank’s right to make changes in the interest rate of the Prime Rate Credit Extensions based on changes in the Prime Rate.

(e) LIBOR Credit Extensions . The interest rate applicable to each LIBOR Credit Extension shall be determined in accordance with Section 3.6(a) hereunder. Subject to Sections 3.6 and 3.7, such rate shall apply during the entire Interest Period applicable to such LIBOR Credit Extension, and interest calculated thereon shall be payable on the Interest Payment Date applicable to such LIBOR Credit Extension.

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(f) Debit of Accounts. Bank may debit the Designated Deposit Account for principal and interest payments or any other amounts Borrower owes Bank hereunder when due and owing hereunder. These debits shall not constitute a set-off.

(g) Payments. All payments to be made by Borrower under any Loan Document shall be made in immediately available funds in Dollars, without setoff or counterclaim, before 1:00 p.m. Eastern time on the date when due. Unless otherwise provided, interest is payable monthly in arrears on the first calendar day of each month. Payments of principal and/or interest or any other payment received after 1:00 p.m. Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue.

**2.5 Fees**. Borrower shall pay to Bank:

(a) Commitment Fee. A fully earned, non-refundable commitment fee of Seventy-Five Thousand Dollars (\$75,000.00) on the Effective Date;

(b) Letter of Credit Fees. With respect to each outstanding Letter of Credit issued for the account of (or at the request of) Borrower, (i) a fronting fee of 0.125% per annum on the drawable amount of such Letter of Credit to Bank (a “**Letter of Credit Fronting Fee**”), and (ii) a fee of 1.50% of the drawable amount of such Letter of Credit to Bank (“**Letter of Credit Fee**”), and (iii) Bank’s standard and reasonable fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit issued for the account of (or at the request of) Borrower or processing of drawings thereunder (the fees in this clause (iii), collectively, the “**L/C Fees**”). The L/C Fees shall be paid when required by Bank, and the Letter of Credit Fronting Fee and the Letter of Credit Fee shall be payable quarterly in arrears on the last Business Day of March, June, September and December of each year after the issuance date of such Letter of Credit and on the Revolving Line Maturity Date. All fees pursuant to this Section 2.5(b) shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

(c) Unused Revolving Line Facility Fee. A fee (the “**Unused Revolving Line Facility Fee**”), payable quarterly, in arrears, on a calendar year basis, in an amount equal to one-quarter of one percent (0.25%) per annum of the average daily unused portion of the Revolving Line. Borrower shall not be entitled to any credit, rebate or repayment of any Unused Revolving Line Facility Fee previously earned by Bank pursuant to this Section notwithstanding any termination of the Agreement or the suspension or termination of Bank’s obligation to make loans and advances hereunder; and

(d) Bank Expenses. All Bank Expenses incurred through and after the Effective Date and invoiced to Borrower, when due.

(e) Fees Fully Earned. Unless otherwise provided in this Agreement or in a separate writing by Bank, Borrower shall not be entitled to any credit, rebate, or repayment of any fees earned by Bank pursuant to this Agreement notwithstanding any termination of this Agreement or the suspension or termination of Bank’s obligation to make loans and advances hereunder. Bank may deduct amounts owing by Borrower under the clauses of this Section 2.5 pursuant to the terms of Section 2.4(g). Bank shall provide Borrower prior written notice of deductions made from the Designated Deposit Account pursuant to the terms of the clauses of this Section 2.5.

**2.6 Withholding**. Payments received by Bank from Borrower under this Agreement will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to Bank, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, Bank receives a net sum equal to the sum which it would have received had no withholding or deduction been required, and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish Bank with proof reasonably satisfactory to Bank indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.6 shall survive the termination of this Agreement.

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**CONDITIONS OF LOANS**

**3.1 Conditions Precedent to Initial Credit Extension** . Bank's obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably request as being necessary or appropriate, including, without limitation:

(a) duly executed original signatures to the Loan Documents dated prior to or as of the Effective Date to which it is a party;

(b) duly executed original signatures to the Control Agreement(s);

(c) the Operating Documents and long-form good standing certificates of Borrower and each Guarantor certified by the Secretary of State (or equivalent agency) of Borrower's and such Guarantor's jurisdiction of organization or formation and each jurisdiction in which Borrower and each Guarantor is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;

(d) duly executed original signatures to the completed Borrowing Resolutions for Borrower;

(e) certified copies, dated as of a recent date, of financing statement searches, as Bank shall reasonably request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(f) [Reserved];

(g) a fully-executed bailee's waiver with respect to Borrower's leased location at One Summer Street, Boston, Massachusetts 02110, in favor of Bank;

(h) the Perfection Certificate of Borrower and the Guarantors, together with the duly executed original signatures thereto;

(i) a legal opinion of Borrower's counsel dated as of the Effective Date together with the duly executed original signatures thereto;

(j) evidence satisfactory to Bank that the insurance policies and endorsements required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Bank; and

(k) payment of the fees and Bank Expenses then due and invoiced to Borrower as specified in Section 2.5 hereof.

**3.2 Conditions Precedent to all Credit Extensions** . Bank's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) timely receipt of a Notice of Borrowing;

(b) the representations and warranties in Section 5 shall be true and correct in all material respects on the date of the Notice of Borrowing and on the effective date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true and correct in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Section 5 are true and correct in all material respects as of the date thereof; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall have been true and correct in all material respects as of such date; and

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(c) in Bank's reasonable discretion, there has not been a Material Adverse Change, or any material adverse deviation by Borrower from the most recent business plan of Borrower presented to Bank.

**3.3 Covenant to Deliver** . Borrower agrees to deliver to Bank each item required to be delivered to Bank under this Agreement as a condition to any Credit Extension. Borrower expressly agrees that the extension of a Credit Extension prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower's obligation to deliver such item, and any such Credit Extension in the absence of a required item shall be in Bank's sole discretion.

**3.4 Procedure for the Borrowing of Credit Extensions** .

(a) Subject to the prior satisfaction of all other applicable conditions to the making of a Credit Extension set forth in this Agreement, each Credit Extension shall be made upon Borrower's irrevocable written notice delivered to Bank in the form of a Notice of Borrowing, each executed by a Responsible Officer of Borrower or his or her designee or without instructions if the Credit Extensions are necessary to meet Obligations which have become due. Bank may rely on any telephone notice given by a person whom Bank reasonably believes is a Responsible Officer or designee. Borrower will indemnify Bank for any loss Bank suffers due to such reliance. Such Notice of Borrowing must be received by Bank prior to 11:00 a.m. Pacific time, (i) at least three (3) Business Days prior to the requested Funding Date, in the case of LIBOR Credit Extensions, and (ii) at least one (1) Business Day prior to the requested Funding Date, in the case of Prime Rate Credit Extensions, specifying:

(1) the amount of the Credit Extension, which, if a LIBOR Credit Extension is requested, shall be in an aggregate minimum principal amount of \$1,000,000 or in any integral multiple of \$100,000 in excess thereof;

(2) the requested Funding Date;

(3) whether the Credit Extension is to be comprised of LIBOR Credit Extensions or Prime Rate Credit Extensions; and

(4) the duration of the Interest Period applicable to any such LIBOR Credit Extensions included in such notice; *provided* that if the Notice of Borrowing shall fail to specify the duration of the Interest Period for any Credit Extension comprised of LIBOR Credit Extensions, such Interest Period shall be one (1) month.

(b) The proceeds of all such Credit Extensions will then be made available to Borrower on the Funding Date by Bank by transfer to the Designated Deposit Account and, subsequently, by wire transfer to such other account as Borrower may instruct in the Notice of Borrowing. No Credit Extensions shall be deemed made to Borrower, and no interest shall accrue on any such Credit Extension, until the related funds have been deposited in the Designated Deposit Account.

**3.5 Conversion and Continuation Elections** .

(a) So long as (i) no Event of Default or Default exists; (ii) Borrower shall not have sent any notice of termination of this Agreement; and (iii) Borrower shall have complied with such customary procedures as Bank has established from time to time upon notice to Borrower for Borrower's requests for LIBOR Credit Extensions, Borrower may, upon irrevocable written notice to Bank:

(1) elect to convert on any Business Day, Prime Rate Credit Extensions in an amount equal to One Million Dollars (\$1,000,000.00) or any integral multiple of One Hundred Thousand Dollars (\$100,000.00) in excess thereof into LIBOR Credit Extensions;

(2) elect to continue on any Interest Payment Date any LIBOR Credit Extensions maturing on such Interest Payment Date (or any part thereof in an amount equal to One Million Dollars (\$1,000,000.00) or any integral multiple of One Hundred Thousand Dollars (\$100,000.00) in excess thereof); *provided* , that if the aggregate amount of LIBOR Credit Extensions shall have been reduced, by payment, prepayment, or conversion of part thereof, to be less than One Million Dollars (\$1,000,000.00), such LIBOR Credit Extensions shall automatically convert into Prime Rate Credit Extensions, and on and after such date the right of Borrower to continue such Credit Extensions as, and convert such Credit Extensions into, LIBOR Credit Extensions shall terminate; or

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(3) elect to convert on any Interest Payment Date any LIBOR Credit Extensions maturing on such Interest Payment Date (or any part thereof in an amount equal to One Million Dollars (\$1,000,000.00) or any integral multiple of One Hundred Thousand Dollars (\$100,000.00) in excess thereof) into Prime Rate Credit Extensions.

(b) Borrower shall deliver a Notice of Conversion/Continuation in accordance with Section 10 to be received by Bank prior to 11:00 a.m. Pacific time at least (i) three (3) Business Days in advance of the Conversion Date or Continuation Date, if any Credit Extensions are to be converted into or continued as LIBOR Credit Extensions; and (ii) one (1) Business Day in advance of the Conversion Date, if any Credit Extensions are to be converted into Prime Rate Credit Extensions, in each case specifying the:

(1) proposed Conversion Date or Continuation Date;

(2) aggregate amount of the Credit Extensions to be converted or continued which, if any Credit Extensions are to be converted into or continued as LIBOR Credit Extensions, shall be in an aggregate minimum principal amount of One Million Dollars (\$1,000,000.00) or in any integral multiple of One Hundred Thousand Dollars (\$100,000.00) in excess thereof;

(3) nature of the proposed conversion or continuation; and

(4) duration of the requested Interest Period, if applicable.

(c) If upon the expiration of any Interest Period applicable to any LIBOR Credit Extensions, Borrower shall have failed to timely select a new Interest Period to be applicable to such LIBOR Credit Extensions, Borrower shall be deemed to have elected to convert such LIBOR Credit Extensions into Prime Rate Credit Extensions.

(d) Any LIBOR Credit Extensions shall, at Bank's option, convert into Prime Rate Credit Extensions in the event that (i) an Event of Default or Default shall exist, or (ii) the aggregate principal amount of the Prime Rate Credit Extensions which have been previously converted to LIBOR Credit Extensions, or the aggregate principal amount of existing LIBOR Credit Extensions continued, as the case may be, at the beginning of an Interest Period shall at any time during such Interest Period exceed the lesser of the Revolving Line and the Borrowing Base. Borrower agrees to pay Bank, upon demand by Bank (or Bank may, at its option, charge the Designated Deposit Account or any other account (other than any payroll, trust, or escrow accounts) Borrower maintains with Bank) any amounts required to compensate Bank for any loss (including loss of anticipated profits), cost, or expense incurred by Bank, as a result of the conversion of LIBOR Credit Extensions to Prime Rate Credit Extensions pursuant to this Section 3.5(d).

(e) Notwithstanding anything to the contrary contained herein, Bank shall not be required to purchase United States Dollar deposits in the London interbank market or other applicable LIBOR market to fund any LIBOR Credit Extensions, but the provisions hereof shall be deemed to apply as if Bank had purchased such deposits to fund the LIBOR Credit Extensions.

### **3.6 Special Provisions Governing LIBOR Credit Extensions .**

Notwithstanding any other provision of this Agreement to the contrary, the following provisions shall govern with respect to LIBOR Credit Extensions as to the matters covered:

(a) Determination of Applicable Interest Rate. As soon as practicable on each Interest Rate Determination Date, Bank shall determine (which determination shall, absent manifest error in calculation, be final, conclusive and binding upon all parties) the interest rate that shall apply to the LIBOR Credit Extensions for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to Borrower.

(b) Inability to Determine Applicable Interest Rate. In the event that Bank shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any LIBOR Credit Extension, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Credit Extension on the basis provided for in the definition of LIBOR, Bank shall on such date give notice (by facsimile or by telephone confirmed in writing) to Borrower of such determination, whereupon (i) no Credit Extensions may be made as, or converted to, LIBOR Credit Extensions until such time as Bank notifies Borrower that the circumstances giving rise to such notice no longer

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exist, and (ii) any Notice of Borrowing or Notice of Conversion/Continuation given by Borrower with respect to Credit Extensions in respect of which such determination was made shall be deemed to be rescinded by Borrower.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Borrower shall compensate Bank, upon written request by Bank (which request shall set forth the manner and method of computing such compensation), for all reasonable losses, expenses and liabilities, if any (including any interest paid by Bank to lenders of funds borrowed by it to make or carry its LIBOR Credit Extensions and any loss, expense or liability incurred by Bank in connection with the liquidation or re-employment of such funds) such that Bank may incur: (i) if for any reason (other than a default by Bank or due to any failure of Bank to fund LIBOR Credit Extensions due to inability to determine the applicable interest rate under Section 3.6(b) or impracticability or illegality under Sections 3.7(d) and 3.7(e)) a borrowing or a conversion to or continuation of any LIBOR Credit Extension does not occur on a date specified in a Notice of Borrowing or a Notice of Conversion/Continuation, as the case may be, or (ii) if any principal payment or any conversion of any of its LIBOR Credit Extensions occurs on a date prior to the last day of an Interest Period applicable to that Credit Extension.

(d) Assumptions Concerning Funding of LIBOR Credit Extensions. Calculation of all amounts payable to Bank under this Section 3.6 and under Section 3.4 shall be made as though Bank had actually funded each of its relevant LIBOR Credit Extensions through the purchase of a Eurodollar deposit bearing interest at the rate obtained pursuant to the definition of LIBOR Rate in an amount equal to the amount of such LIBOR Credit Extension and having a maturity comparable to the relevant Interest Period; *provided, however*, that Bank may fund each of its LIBOR Credit Extensions in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 3.6 and under Section 3.4.

(e) LIBOR Credit Extensions After Default. After the occurrence and during the continuance of an Event of Default, (i) Borrower may not elect to have a Credit Extension be made or continued as, or converted to, a LIBOR Credit Extension after the expiration of any Interest Period then in effect for such Credit Extension and (ii) subject to the provisions of Section 3.6(c), any Notice of Conversion/Continuation given by Borrower with respect to a requested conversion/continuation that has not yet occurred shall be deemed to be rescinded by Borrower and be deemed a request to convert or continue Credit Extensions referred to therein as Prime Rate Credit Extensions.

### 3.7 Additional Requirements/Provisions Regarding LIBOR Credit Extensions .

(a) If for any reason (including voluntary or mandatory prepayment or acceleration), Borrower pays to Bank all or part of the principal amount of a LIBOR Credit Extension prior to the last day of the Interest Period for such Credit Extension, Borrower shall immediately notify Borrower's account officer at Bank and, on demand by Bank, pay Bank the amount (if any) by which (i) the additional interest which would have been payable on the amount so received had it not been received until the last day of such Interest Period exceeds (ii) the interest which would have been recoverable by Bank by placing the amount so received on deposit in the certificate of deposit markets, the offshore currency markets, or United States Treasury investment products, as the case may be, for a period starting on the date on which it was so received and ending on the last day of such Interest Period at the interest rate determined by Bank in its reasonable discretion. Bank's determination as to such amount shall be conclusive absent manifest error.

(b) Borrower shall pay Bank, upon demand by Bank, from time to time such amounts as Bank may reasonably determine to be necessary to compensate it for any costs incurred by Bank that Bank reasonably determines are attributable to its making or maintaining of any amount receivable by Bank hereunder in respect of any Credit Extensions relating thereto (such increases in costs and reductions in amounts receivable being herein called "**Additional Costs**"), in each case resulting from any Regulatory Change which:

(i) changes the basis of taxation of any amounts payable to Bank by Borrower under this Agreement in respect of any Credit Extensions (other than changes which affect taxes measured by or imposed on the overall net income or gross receipts of Bank by any jurisdiction in which Bank has its principal office);

(ii) imposes or modifies any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with, or other liabilities of Bank relating to Borrower or this Agreement (including any Credit Extensions or any deposits referred to in the definition of LIBOR); or

(iii) imposes any other condition affecting this Agreement (or any of such extensions of credit or liabilities relating to Borrower).

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Bank will notify Borrower of any event occurring after the Effective Date which will entitle Bank to compensation pursuant to this Section 3.7 as promptly as practicable after it obtains knowledge thereof and determines to request such compensation. Bank will furnish Borrower with a statement setting forth in reasonable detail the basis and amount of each request by Bank for compensation under this Section 3.7. Determinations and allocations by Bank for purposes of this Section 3.7 of the effect of any Regulatory Change on its costs of maintaining its obligations to make Credit Extensions, of making or maintaining Credit Extensions, or on amounts receivable by it in respect of Credit Extensions, and of the additional amounts required to compensate Bank in respect of any Additional Costs, shall be conclusive absent manifest error.

(c) If Bank shall determine that the adoption or implementation of any applicable law, rule, regulation, or treaty regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank, or comparable agency charged with the interpretation or administration thereof, or compliance by Bank (or its applicable lending office) with any respect or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank, or comparable agency, has or would have the effect of reducing the rate of return on capital of Bank or any person or entity controlling Bank (a “**Parent**”) as a consequence of its obligations hereunder to a level below that which Bank (or its Parent) could have achieved but for such adoption, change, or compliance (taking into consideration policies with respect to capital adequacy) by an amount deemed by Bank to be material, then from time to time, within thirty (30) days after demand by Bank (made by Bank as promptly as practicable after it obtains knowledge thereof and determines to request such compensation), Borrower shall pay to Bank such additional amount or amounts as will compensate Bank for such reduction. A statement of Bank claiming compensation under this Section 3.7(c) and setting forth in reasonable detail the additional amount or amounts to be paid to it hereunder shall be conclusive absent manifest error.

(d) If, at any time, Bank, in its sole and absolute discretion, determines that (i) the amount of LIBOR Credit Extensions for periods equal to the corresponding Interest Periods are not available to Bank in the offshore currency interbank markets, or (ii) LIBOR does not accurately reflect the cost to Bank of lending the LIBOR Credit Extensions, then Bank shall promptly give notice thereof to Borrower. Upon the giving of such notice, Bank’s obligation to make the LIBOR Credit Extensions shall terminate; *provided, however*, Credit Extensions shall not terminate if Bank and Borrower agree in writing to a different interest rate applicable to LIBOR Credit Extensions.

(e) If it shall become unlawful for Bank to continue to fund or maintain any LIBOR Credit Extensions, or to perform its obligations hereunder, upon demand by Bank, Borrower shall either prepay the LIBOR Credit Extensions in full with accrued interest thereon and all other amounts payable by Borrower hereunder (including, without limitation, any amount payable in connection with such prepayment pursuant to Section 3.7(a)) or convert such LIBOR Credit Extensions to Prime Rate Credit Extensions. Notwithstanding the foregoing, to the extent a determination by Bank as described above relates to a LIBOR Credit Extension then being requested by Borrower pursuant to a Notice of Borrowing or a Notice of Conversion/Continuation, Borrower shall have the option, subject to the provisions of Section 3.6(c), to (i) rescind such Notice of Borrowing or Notice of Conversion/Continuation by giving notice (by facsimile or by telephone confirmed in writing) to Bank of such rescission on the date on which Bank gives notice of its determination as described above, or (ii) modify such Notice of Borrowing or Notice of Conversion/Continuation to obtain a Prime Rate Credit Extension or to have outstanding Credit Extensions converted into or continued as Prime Rate Credit Extensions by giving notice (by facsimile or by telephone confirmed in writing) to Bank of such modification on the date on which Bank gives notice of its determination as described above.

(f) For purposes of this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, or directives in connection therewith are deemed to have gone into effect and been adopted after the date of this Agreement, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in any Requirement of Law, regardless of the date enacted, adopted or issued.

#### **4 CREATION OF SECURITY INTEREST**

**4.1 Grant of Security Interest** . Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens that are permitted by the terms of this Agreement to have

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superior priority to Bank's Lien under this Agreement). If Borrower shall acquire a commercial tort claim in excess of \$250,000, Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof and grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Bank's Lien in this Agreement).

If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations or other obligations which, by their terms, survive termination of this Agreement for which no claim has been made) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations or other obligations which, by their terms, survive termination of this Agreement for which no claim has been made) and at such time as Bank's obligation to make Credit Extensions has terminated, Bank shall, at the sole cost and expense of Borrower, execute and deliver such documents as reasonably requested by Borrower to evidence the termination and release of its Liens in the Collateral and all rights therein shall revert to Borrower. In the event (x) all Obligations (other than inchoate indemnity obligations or other obligations which, by their terms, survive termination of this Agreement for which no claim has been made), except for Bank Services, are satisfied in full, and (y) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to at least one hundred five percent (105.0%) of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its business judgment), to secure all of the Obligations relating to such Letters of Credit.

**4.2 Authorization to File Financing Statements** . Borrower hereby authorizes Bank to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Bank's interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate the rights of Bank under the Code. Such financing statements may indicate the Collateral as "all assets of the Debtor" or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Bank's discretion. Upon Borrower's request, Bank will provide Borrower with copies of all UCC financing statements filed by Bank against Borrower.

## 5 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as to itself and each of its Subsidiaries (other than Immaterial Subsidiaries) as follows:

**5.1 Due Organization, Authorization; Power and Authority** . Borrower and each of its Subsidiaries (other than Immaterial Subsidiaries) are duly existing and in good standing as Registered Organizations in their jurisdiction of formation and are qualified and licensed to do business and are in good standing in any jurisdiction in which the conduct of their business or its ownership of property requires that they be qualified except where the failure to do so could not reasonably be expected to result in a Material Adverse Change. In connection with this Agreement, Borrower has delivered to Bank a completed certificate signed by Borrower on behalf of itself and each Guarantor (the "**Perfection Certificate**"). Borrower represents and warrants to Bank that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's and each Guarantor's organizational identification number or accurately states that Borrower or such Guarantor has none; (d) the Perfection Certificate accurately sets forth Borrower's and each Guarantor's place of business, or, if more than one, its chief executive office as well as Borrower's and each Guarantor's mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) and each Guarantor has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete in all material respects taken as a whole (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one

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or more specific provisions in this Agreement). If Borrower or any Guarantor is not now a Registered Organization but later becomes one, Borrower shall promptly notify Bank of such occurrence and provide Bank with Borrower's or such Guarantor's organizational identification number.

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) contravene, conflict with, constitute a default under or violate in any material respect any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) constitute a material event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default would reasonably be expected to result in a Material Adverse Change.

**5.2 Collateral** . Borrower has good title to, has rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no deposit accounts other than the deposit accounts with Bank, the deposit accounts, if any, described in the Perfection Certificate delivered to Bank in connection herewith, or of which Borrower has given Bank notice and taken such actions as are necessary to give Bank a perfected security interest therein, to the extent required by Section 6.6(b). The Accounts are bona fide, existing obligations of the Account Debtors.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate. Other than mobile equipment in the possession of Borrower's employees or agents, none of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2. In the event that Borrower, after the date hereof, intends to store or otherwise deliver any portion of the Collateral with an aggregate value in excess of Five Hundred Thousand Dollars (\$500,000.00) to a bailee, then Borrower will use its commercially reasonable efforts to cause such bailee to execute and deliver a bailee agreement in form and substance satisfactory to Bank in its reasonable discretion. The forgoing is not intended to limit Borrower's obligations set forth in Section 6.13 hereof. With respect to such locations or warehouse space leased or owned as of the Effective Date and thereafter, if Bank has not received a landlord's agreement or bailee letter as of the Effective Date (or, if later, as of the date such location is acquired or leased), then the Eligible Fixed Assets at that location shall, in Bank's Permitted Discretion, be excluded from the Borrowing Base or be subject to such Reserves as may be established by Bank in its Permitted Discretion.

Except as noted on the Perfection Certificate, Borrower is not a party to, nor is bound by, any material license or other agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with the Bank's right to sell any Collateral. Borrower shall provide written notice to Bank within thirty (30) days of entering or becoming bound by any such license or agreement (other than over-the-counter software that is commercially available to the public). Borrower shall take such steps as Bank reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (x) all such licenses or agreements to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such license or agreement, whether now existing or entered into in the future, and (y) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank's rights and remedies under this Agreement and the other Loan Documents.

**5.3 Litigation** . There are no actions or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries which, if adversely determined, would reasonably be expected to result in a Material Adverse Change.

**5.4 No Material Deterioration in Financial Statements** . All consolidated financial statements for Borrower and its Subsidiaries delivered to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations as of the date thereof. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements of Borrower submitted to Bank by Borrower.

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**5.5 Solvency** . The fair salable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

**5.6 Regulatory Compliance** . Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower (a) has complied in all material respects with all Requirements of Law and (b) has not violated any Requirements of Law, the violation of which could reasonably be expected to result in a Material Adverse Change. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Government Authorities that are necessary to continue their respective businesses as currently conducted except where the failure to do so would not reasonably be expected to result in a Material Adverse Change.

**5.7 Subsidiaries; Investments** . Borrower does not own any stock, partnership interest or other equity securities except for Permitted Investments.

**5.8 Tax Returns and Payments; Pension Contributions** . Borrower has timely filed all required tax returns and reports, and Borrower and its Subsidiaries have timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower. Borrower may defer payment of any contested taxes, provided that Borrower (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Bank in writing of the commencement of, and any material development in, the proceedings, (c) posts bonds or takes any other steps required to prevent the governmental authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien". Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower. Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any material liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

**5.9 Use of Proceeds** . Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements and not for personal, family, household or agricultural purposes.

**5.10 Full Disclosure** . No written representation, warranty or other statement of Borrower in any certificate or written statement given to Bank in connection with the Loan Documents, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Bank in connection with the Loan Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements, in light of the circumstances in which they were made, not misleading in light of the circumstances under which they were made (it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ materially from the projected or forecasted results).

**5.11 Accounts Receivable** .

(a) For any Eligible Account in any Borrowing Base Certificate, all statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing such Eligible Accounts are and shall be true and correct and all such invoices, instruments and other documents, and all of Borrower's Books are genuine and in all respects what they purport to be.

(b) All sales and other transactions underlying or giving rise to each Eligible Account shall comply in all material respects with all applicable laws and governmental rules and regulations. Borrower has no knowledge of any actual or imminent Insolvency Proceeding of any Account Debtor whose accounts are Eligible Accounts in any Borrowing Base Certificate. To Borrower's knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all Eligible Accounts are genuine, and all such documents, instruments and agreements are legally enforceable in accordance with their terms.

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## 6 AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

### 6.1 Government Compliance .

(a) Except as permitted by Section 7.3, maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect. Borrower shall comply, and have each Subsidiary comply, with all laws, ordinances and regulations to which it is subject, the noncompliance with which would reasonably be expected to result in a Material Adverse Change.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Bank in all of the Collateral. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank.

### 6.2 Financial Statements, Reports, Certificates .

(a) Borrowing Base Reports . Within forty-five (45) days after the last day of each month at the end of which Borrower's Unrestricted Cash is less than \$40,000,000, (i) aged listings of accounts receivable (US domestic) and accounts payable (by invoice date) and (ii) cash reports of Borrower showing the cash balances of Borrower's cash and Cash Equivalents at all institutions in a form reasonably acceptable to Bank (the "**Borrowing Base Reports**");

(b) Borrowing Base Certificate . Within forty-five (45) days after the last day of each month at the end of which Borrower's Unrestricted Cash is less than \$40,000,000, a duly completed Borrowing Base Certificate signed by a Responsible Officer;

(c) Monthly Financial Statements . As soon as available, but no later than forty-five (45) days after the last day of each month (other than the last month of each fiscal year), a company prepared consolidated balance sheet and income statement covering Borrower's consolidated United States operations for such month certified by a Responsible Officer and in a form acceptable to Bank (the "**Monthly Financial Statements**");

(d) Annual Audited Financial Statements . As soon as available, but no later than ninety (90) days after the last day of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from Ernst & Young LLP, any "Big Four" accounting firm, or any other independent certified public accounting firm reasonably acceptable to Bank (the "**Annual Financial Statements**");

(e) Compliance Certificate . Within forty-five (45) days after the last day of each month (other than the last month of each fiscal year) and together with the Monthly Financial Statements and the Annual Financial Statements, a duly completed Compliance Certificate signed by a Responsible Officer, substantially in the form of Exhibit B;

(f) Other Reports . (i) Within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt; (ii) within five (5) days after filing, all reports on form 8-K, 10-K and 10-Q filed with the Securities and Exchange Commission; (iii) a prompt report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that, if adversely determined, would reasonably be expected to result in a Material Adverse Change; (iv) as soon as available, but no later than sixty (60) days after the last day of Borrower's fiscal year, and contemporaneously with any updates thereto, Borrower's board-approved projections for the subsequent fiscal year; and (v) budgets, sales projections, operating plans and other financial information of Borrower reasonably requested by Bank.

(g) Audits . Allow Bank to audit Borrower's Collateral at Borrower's expense. Such audits shall be conducted no more often than once every twelve (12) months unless an Event of Default has occurred and is continuing.

Borrower's 10-K, 10-Q, and 8-K reports required to be delivered pursuant to Section 6.2(f) shall be deemed to have been delivered on the date on which Borrower posts such report or provides a link thereto on Borrower's or another website on the internet. In the event that Borrower's Unrestricted Cash decreases to an amount less than \$40,000,000, Borrower shall

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deliver a completed Borrowing Base Report and Borrowing Base Certificate within ten (10) days of the date on which Borrower's Unrestricted Cash decreases to an amount less than \$40,000,000.

### **6.3 Intentionally omitted .**

**6.4 Taxes; Pensions .** Timely file, and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely file, all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and shall deliver to Bank, on its reasonable request, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

**6.5 Insurance .** Keep its business and the Collateral insured for risks and in amounts customary for companies in Borrower's industry and location and as Bank may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Bank, it being agreed that the insurance maintained by Borrower as of the Effective Date is satisfactory to Bank as of the Effective Date. All property policies shall have a lender's loss payable endorsement showing Bank as lender loss payee and waive subrogation against Bank, and all liability policies shall show, or have endorsements showing, Bank as an additional insured. All policies (or the loss payable and additional insured endorsements) shall provide that the insurer or its agent will endeavor to give Bank at least twenty (20) days' notice before canceling its policy. At Bank's reasonable request, Borrower shall deliver copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Bank's option, be payable to Bank on account of the Obligations then due. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Bank has been granted a first priority security interest (subject to Permitted Liens that have priority by operation of law), and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Bank, be payable to Bank on account of the Obligations. If Borrower fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may upon notice to Borrower make all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Bank deems prudent.

### **6.6 Operating Accounts .**

(a) Maintain its and its Subsidiaries' primary domestic operating and depository accounts with Bank (other than Excluded Accounts), which accounts shall at all times have aggregate deposits of Unrestricted Cash of at least \$40,000,000 (\$18,000,000 after the occurrence of a Liquidity Event).

(b) Provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or its Affiliates. In addition, for each Collateral Account that Borrower or any Guarantor at any time maintains, Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank's Lien in such Collateral Account in accordance with the terms hereunder, which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to Excluded Accounts.

### **6.7 Financial Covenants .**

Borrower shall maintain at all times, to be tested as of the last day of each month, unless otherwise noted:

(a) Quick Ratio. A Quick Ratio of at least 1.85 to 1.0 (1.25:1.00 for the months ending May 31 and June 30).

(b) Minimum Unrestricted Cash. Unrestricted Cash at all times of at least \$40,000,000 (\$18,000,000 after the occurrence of a Liquidity Event).

**6.8 Protection of Intellectual Property Rights .** Borrower shall: (a) protect, defend and maintain the validity and enforceability of the intellectual property owned or licensed by Borrower or any of its Subsidiaries that is material to Borrower's business; (b) promptly advise Bank in writing of material infringements of any material intellectual property owned or licensed by Borrower or any of its Subsidiaries or any other event that could reasonably be expected to

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materially and adversely affect the value of any material intellectual property owned or licensed by Borrower or any of its Subsidiaries; and (c) not allow any intellectual property owned or licensed by Borrower or any of its Subsidiaries that is material to Borrower's business to be abandoned, forfeited or dedicated to the public without Bank's written consent, unless Borrower deems such abandonment, forfeiture, or dedication to be necessary or appropriate in its reasonable business judgment.

**6.9 Litigation Cooperation** . From the date hereof and continuing through the termination of this Agreement, make available to Bank during regular business hours upon reasonable prior notice (provided that such limitations shall not apply after the occurrence and continuance of an Event of Default), without expense to Bank, Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Bank may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower.

**6.10 Access to Collateral; Books and Records** . Allow Bank, or its agents, at reasonable times during normal business hours, on one (1) Business Day's notice (provided no notice is required if an Event of Default has occurred and is continuing), to inspect the Collateral and audit and copy Borrower's Books. Such inspections or audits shall be conducted no more often than once every twelve (12) months unless an Event of Default has occurred and is continuing in which case such inspections and audits shall occur as often as Bank shall determine is necessary. The foregoing inspections and audits shall be at Borrower's expense, and the charge therefor shall be \$850 per person per day (or such higher amount as shall represent Bank's then-current standard charge for the same), plus reasonable documented out-of-pocket expenses.

**6.11 Formation or Acquisition of Subsidiaries** . Notwithstanding and without limiting the negative covenants contained in Sections 7.3 and 7.7 hereof, at the time that Borrower or any Guarantor forms any direct or indirect Domestic Subsidiary or acquires any direct or indirect Domestic Subsidiary after the Effective Date, Borrower and such Guarantor shall (a) cause such new Domestic Subsidiary to provide to Bank a joinder to the Loan Agreement or the Guaranty to cause such Domestic Subsidiary to become a co-borrower hereunder or a Guarantor under the Guaranty, together with such appropriate financing statements and/or Control Agreements, all in form and substance reasonably satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Domestic Subsidiary), (b) provide to Bank appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance reasonably satisfactory to Bank, and (c) provide to Bank all other documentation in form and substance reasonably satisfactory to Bank which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 6.11 shall be a Loan Document. The provisions of this Section 6.11 shall not apply to any Immaterial Subsidiary.

**6.12 Further Assurances** . Execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's Lien in the Collateral or to effect the purposes of this Agreement. Deliver to Bank, within five (5) days after the same are sent or received, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that could reasonably be expected to have a material effect on any of the Governmental Approvals or otherwise on the operations of Borrower or any of its Subsidiaries.

**6.13 Post - Closing Obligations** . Deliver to Bank within sixty (60) days of the Closing Date a fully executed landlord's consent with respect to Borrower's leased location at One Marina Park Drive, Suite 400, Boston, Massachusetts 02110, in favor of Bank.

## 7 NEGATIVE COVENANTS

Borrower shall not do any of the following without Bank's prior written consent:

**7.1 Dispositions** . Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for:

- (a) Transfers in the ordinary course of business for reasonably equivalent consideration;
  - (b) Transfers of property in connection with sale-leaseback transactions;
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(c) Transfers of property to the extent such property is exchanged for credit against, or proceeds are promptly applied to, the purchase price of other property used or useful in the business of Borrower or its Subsidiaries;

(d) Transfers constituting licenses and similar arrangements for the use of the property of Borrower or its Subsidiaries in the ordinary course of business; provided that Borrower and its Subsidiaries shall not make any exclusive license or Transfer of intellectual property that is material to Borrower's business to any Person (other than to a Guarantor or a Subsidiary of Borrower);

(e) Transfers otherwise permitted by the Loan Documents;

(f) sales or discounting of delinquent accounts in the ordinary course of business;

(g) Transfers associated with the making or disposition of Permitted Investments;

(h) Transfers in connection with a permitted acquisition of a portion of the assets or rights acquired;

(i) the Disposition of obsolete, worn out, or surplus property in the ordinary course of business;

(j) sale of Inventory in the ordinary course of business;

(k) subject to Section 7.2, the sale or issuance of Borrower's Capital Stock;

(l) subject to Section 6.8, Transfers of non-core intellectual property in the ordinary course of business;

(m) Other Transfers (other than the licensing or Transfer of intellectual property which is covered by clause (d) above), provided that before and after giving effect to such Transfer, no Event of Default has occurred and is continuing and Borrower is in compliance with the covenants set forth in Section 6.7 hereof.

**7.2 Changes in Business; Change in Control; Jurisdiction of Formation** . Engage in any material line of business other than those lines of business conducted by Borrower and its Subsidiaries on the date hereof and any businesses reasonably related, complementary or incidental thereto or reasonable extensions thereof; permit or suffer any Change in Control. Borrower will not, without prior written notice, change its jurisdiction of formation.

**7.3 Mergers or Acquisitions** . Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of any Person; provided that (i) a Subsidiary may merge or consolidate into another Subsidiary or into Borrower and (ii) Borrower and its Subsidiaries may make Permitted Investments provided that before and after giving effect to any such Permitted Investment, no Event of Default has occurred and is continuing and Borrower is in compliance with the financial covenants set forth in Section 6.7 hereof.

**7.4 Indebtedness** . Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness; provided that before and after giving effect to the incurrence of any such Permitted Indebtedness, no Event of Default has occurred and is continuing and Borrower is in compliance with the financial covenants set forth in Section 6.7 hereof.

**7.5 Encumbrance** . Create, incur, or allow any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (subject to Permitted Liens that have priority by operation of law), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's intellectual property, except as is otherwise permitted in Section 7.1 hereof and the definition of "Permitted Liens" herein.

**7.6 Maintenance of Collateral Accounts** . Maintain any Collateral Account except pursuant to the terms of Section 6.6(b) hereof.

**7.7 Distributions; Investments** . (a) Pay any dividends on or make any distribution or payment in respect of, or redeem, retire or purchase, any capital stock, other than Permitted Distributions; provided that before and after giving

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effect to any such Permitted Distribution, no Event of Default has occurred and is continuing and Borrower is in compliance with the financial covenants set forth in Section 6.7 hereof. or (b) directly or indirectly acquire or own any Person, or make any Investment in any Person, other than Permitted Investments provided that before and after giving effect to any such Permitted Investment, no Event of Default has occurred and is continuing and Borrower is in compliance with the financial covenants set forth in Section 6.7 hereof.

**7.8 Transactions with Affiliates** . Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower except for (a) transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person, and (b) reasonable and customary director, officer, and employee compensation (including bonuses) and other benefits (including retirement, health, stock option, and other benefit plans) and indemnification arrangements approved by the relevant board of directors, board of managers, or equivalent corporate body.

**7.9 Subordinated Debt** . (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would adversely affect the subordination thereof to Obligations owed to Bank.

**7.10 Compliance** . Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with applicable provisions of the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation would reasonably be expected to result in a Material Adverse Change, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which would reasonably be expected to result in any material liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

## **8** **EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an "**Event of Default** ") under this Agreement:

**8.1 Payment Default** . Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Revolving Line Maturity Date). During the cure period, the failure to cure the payment default is not an Event of Default (but no Credit Extension will be made during the cure period);

### **8.2 Covenant Default** .

(a) Borrower fails or neglects to perform any obligation in Sections 6.2 (other than Section 6.2(e)), 6.6, 6.7, or 6.10, or violates any covenant in Section 7;

(b) Borrower fails or neglects to perform any obligation in Section 6.2(e) and has failed to cure the default within ten (10) days after the occurrence thereof; or

(c) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within thirty (30) days and within such time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Grace periods provided under this Section 8.2 shall not apply, among other things, to financial covenants or any other covenants set forth in subsection (a) above;

### **8.3 [Reserved]** .

### **8.4 Attachment; Levy; Restraint on Business** .

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(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under control of Borrower (including a Subsidiary) on deposit with Bank or any Bank Affiliate, or (ii) a notice of lien, levy, or assessment is filed against any of Borrower's assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; and

(b) (i) any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting any part of its business;

**8.5 Insolvency** . (a) Borrower or any of its Subsidiaries is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while of any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

**8.6 Other Agreements** . If there is a default in any agreement to which Borrower or any Guarantor is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Five Hundred Thousand Dollars (\$500,000.00) or that could reasonably be expected to result in a Material Adverse Change.

**8.7 Judgments** . One or more fines, penalties or final judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand Dollars (\$500,000.00) (not covered by independent third-party insurance as to which liability has not been denied by such insurance carrier)

shall be rendered against Borrower or any Guarantor and the same are not, within ten (10) days after the entry, assessment or issuance thereof, discharged, satisfied, or paid, or after execution thereof, stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the satisfaction, payment, discharge, stay, or bonding of such fine, penalty, judgment, order or decree);

**8.8 Misrepresentations** . Borrower, any Guarantor or any Person acting for Borrower or any Guarantor makes any representation, warranty, or other statement in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

**8.9 Subordinated Debt** . A default or breach occurs under any agreement between Borrower and any creditor of Borrower that signed a subordination, intercreditor, or other similar agreement with Bank, or any creditor that has signed such an agreement with Bank breaches any terms of such agreement or contests in any manner the validity or enforceability thereof or denies that it has any further liability or obligation thereunder, or the subordinated obligations shall cease for any reason to be subordinated the Obligations;

**8.10 Guaranty** . Any Guaranty of any Obligations terminates or ceases for any reason (other than termination, discharge, or release by Bank) to be in full force and effect; or

**8.11 Governmental Approvals** . Any required Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in a material adverse manner or not renewed in the ordinary course for a full term or (b) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in clause (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal (i) has, or could reasonably be expected to have, a Material Adverse Change, or (ii) adversely affects the legal qualifications of Borrower or any of its Subsidiaries to hold such Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or non-renewal could reasonably be expected to materially adversely affect the status of or legal qualifications of Borrower or any of its Subsidiaries to hold any required Governmental Approval in any other jurisdiction.

## **9 BANK'S RIGHTS AND REMEDIES**

**9.1 Rights and Remedies** . While an Event of Default occurs and continues Bank may, without notice or demand, do any or all of the following, to the extent not prohibited by applicable law:

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(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Bank);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) demand that Borrower (i) deposits cash with Bank in an amount equal to the aggregate amount of any Letters of Credit remaining undrawn, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all Letter of Credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit;

(d) terminate any foreign exchange forward contracts;

(e) verify the amount of, demand payment of and performance under, and collect any Accounts and General Intangibles, settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, and notify any Person owing Borrower money of Bank's security interest in such funds;

(f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates that is reasonably convenient to Bank and Borrower. Bank may peaceably enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge by Borrower, to exercise any of Bank's rights or remedies;

(g) apply to the Obligations then due any (i) balances and deposits of Borrower it holds, or (ii) any amount held by Bank owing to or for the credit or the account of Borrower;

(h) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit;

(i) place a "hold" on any account (other than Excluded Accounts) maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower's Books; and

(k) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

**9.2 Power of Attorney** . Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, exercisable solely upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Bank determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Bank or a third party as the Code permits. Borrower hereby appoints Bank as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Bank's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations or other obligations which, by their terms, survive termination of this Agreement for which no claim has been made) have been satisfied in full and Bank is under no further obligation to make Credit Extensions hereunder. Bank's foregoing appointment as Borrower's attorney in fact, and all of Bank's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnification or other obligations which, by their terms, survive this Agreement for which no claim has been made) have been fully repaid and performed and Bank's obligation to provide Credit Extensions terminates.

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**9.3 Protective Payments** . If Borrower fails to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to timely pay any other amount which Borrower is obligated to timely pay under this Agreement or any other Loan Document, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest applicable rate charged by Bank, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

**9.4 Application of Payments and Proceeds** . Bank has the exclusive right to determine the order and manner in which all payments with respect to the Obligations may be applied. Borrower shall have no right to specify the order or the accounts to which Bank shall allocate or apply any payments required to be made by Borrower to Bank or otherwise received by Bank under this Agreement when any such allocation or application is not specified elsewhere in this Agreement. If an Event of Default has occurred and is continuing, Bank may apply any funds in its possession, whether from Borrower account balances (other than from deposit accounts exclusively used for payroll, payroll taxes, and other employee, wage, and benefit payments of Borrower's or any of its Subsidiaries' employees), payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations in such order as Bank shall determine in its sole discretion. Any surplus shall be paid to Borrower or other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. If Bank, in its good faith business judgment, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral pursuant to Section 9.1, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

**9.5 Bank's Liability for Collateral** . So long as Bank complies with applicable law and reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Bank, Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

**9.6 No Waiver; Remedies Cumulative** . Bank's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Bank and then is only effective for the specific instance and purpose for which it is given. Bank's rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay in exercising any remedy is not a waiver, election, or acquiescence.

**9.7 Demand Waiver** . Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

## **10            NOTICES**

All notices, consents, requests, approvals, demands, or other communication (collectively, "**Communication** ") by any party to this Agreement or any other Loan Document must 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 U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Bank or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

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If to Borrower: EnerNOC, Inc.  
One Marina Park Drive, Suite 400  
Boston, Massachusetts 02210  
Attention: Michael J. Berdik  
Facsimile No.: (617) 224-9910  
E-mail: mberdik@enernoc.com

with a copy to: Goodwin Procter LLP  
53 State Street  
Boston, Massachusetts 02109  
Attn: Mark D. Smith  
Fax: (617) 523-1231  
Email: marksmith@goodwinprocter.com

If to Bank: Silicon Valley Bank  
275 Grove Street, Suite 2-200  
Newton, Massachusetts 02466  
Attn: Mr. Jack Gaziano  
Fax: (617) 969-5478  
Email: Jgaziano@svb.com

with a copy to: Riemer & Braunstein LLP  
Three Center Plaza  
Boston, Massachusetts 02108  
Attn: David A. Ephraim, Esquire  
Fax: (617) 880-3456  
Email: DEphraim@riemerlaw.com

**11 CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER**

Massachusetts law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Bank each submit to the exclusive jurisdiction of the State and Federal courts in Massachusetts; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Bank. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL .**

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**GENERAL PROVISIONS**

**12.1 Successors and Assigns** . This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Bank's prior written consent (which may be granted or withheld in Bank's discretion). Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents.

**12.2 Indemnification** . Borrower agrees to indemnify, defend and hold Bank and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Bank (each, an "**Indemnified Person** ") harmless against: (i) all obligations, demands, claims, and liabilities (collectively, "**Claims** ") claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (ii) all losses or expenses (including Bank Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Bank and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct. This Section 12.2 shall survive until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

**12.3 Time of Essence** . Time is of the essence for the performance of all Obligations in this Agreement.

**12.4 Severability of Provisions** . Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**12.5 Correction of Loan Documents** . Bank may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties, and Bank shall deliver to Borrower copies of all Loan Documents so modified.

**12.6 Amendments in Writing; Waiver; Integration** . All amendments to this Agreement must be in writing signed by both Bank and Borrower. No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

**12.7 Counterparts** . This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, are an original, and all taken together, constitute one Agreement.

**12.8 [Reserved]** .

**12.9 Survival** . All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement for which no claim has been made) have been satisfied. The obligation of Borrower in Section 12.2 to indemnify Bank shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

**12.10 Confidentiality** . In handling any financial statements of Borrower or other confidential information, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank's Subsidiaries or Affiliates; (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, Bank shall use commercially reasonable efforts to obtain such prospective transferee's or purchaser's agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required in connection with Bank's examination or audit; (e) as Bank considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than

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those contained herein. Confidential information does not include information that either: (i) is in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain after disclosure to Bank; or (ii) is disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

Bank may use confidential information for the development of client databases, reporting purposes, and market analysis, so long as Bank does not disclose Borrower's identity or the identity of any person associated with Borrower unless otherwise expressly permitted by this Agreement. The provisions of the immediately preceding sentence shall survive the termination of this Agreement.

**12.11 Right of Set Off** . Borrower hereby grants to Bank, a lien, security interest and right of set off as security for all Obligations to Bank, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any entity under the control of Bank (including a Bank subsidiary) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Bank may set off the same or any part thereof and apply the same to any Obligation of Borrower then due regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

**12.12 Termination Prior to Revolving Line Maturity Date; Survival** . All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement for which no claim has been made) have been satisfied. So long as Borrower has satisfied the Obligations (other than inchoate indemnity obligations, any other obligations which, by their terms, are to survive the termination of this Agreement, and any Obligations under Bank Services Agreements that are cash collateralized in accordance with Section 4.1 of this Agreement), this Agreement may be terminated prior to the Revolving Line Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank. Those obligations that are expressly specified in this Agreement as surviving this Agreement's termination shall continue to survive notwithstanding this Agreement's termination.

## 13 DEFINITIONS

**13.1 Definitions** . As used in this Agreement, the following terms have the following meanings:

“ **Account** ” is any “account” as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

“ **Account Debtor** ” is any “account debtor” as defined in the Code with such additions to such term as may hereafter be made.

“ **Additional Costs** ” is defined in Section 3.7(b).

“ **Advance** ” or “ **Advances** ” means an advance (or advances) under the Revolving Line, including any Overadvance.

“ **Affiliate** ” of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

“ **Agreement** ” is defined in the preamble hereof.

“ **Annual Financial Statements** ” is defined in Section 6.2(d).

“ **Availability Amount** ” is (a) the lesser of (i) the Revolving Line or (ii) the amount available under the Borrowing Base minus (b) the outstanding principal balance of any Advances minus (c) the amount of all outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit).

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“ **Bank** ” is defined in the preamble hereof.

“ **Bank Expenses** ” are all reasonable documented out-of-pocket audit fees and expenses, and reasonable documented out-of-pocket costs, and expenses (including reasonable documented out-of-pocket attorneys’ fees and expenses for one outside counsel) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower.

“ **Bank Services** ” are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank’s various agreements related thereto (each, a “ **Bank Services Agreement** ”).

“ **Borrower** ” is defined in the preamble hereof.

“ **Borrower’s Books** ” are all Borrower’s books and records including ledgers, federal and state tax returns, records regarding Borrower’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“ **Borrowing Base** ” is (a) 80% of Eligible Accounts plus (b) 15% of Eligible Fixed Assets valued at the lower of cost or market, plus (c) 15% of Eligible Unbilled Accounts as of such date plus (d) 100% of Unrestricted Cash, as determined by Bank from Borrower’s most recent Borrowing Base Certificate; provided, however, that Bank has the right to decrease the foregoing percentages in its good faith business judgment to mitigate the impact of events, conditions, contingencies, or risks which may adversely affect the Collateral or its value.

“ **Borrowing Base Certificate** ” is that certain certificate in the form attached hereto as Exhibit D.

“ **Borrowing Base Report** ” is defined in Section 6.2(b).

“ **Borrowing Resolutions** ” are, with respect to any Person, those resolutions adopted by such Person’s Board of Directors and delivered by such Person to Bank approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its secretary on behalf of such Person certifying that (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that attached as Exhibit A to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Bank may conclusively rely on such certificate unless and until such Person shall have delivered to Bank a further certificate canceling or amending such prior certificate.

“ **Business Day** ” is any day other than a Saturday, Sunday or other day on which banking institutions in the State of California or Commonwealth of Massachusetts are authorized or required by law or other governmental action to close, except that if any determination of a “Business Day” shall relate to a LIBOR Credit Extension, the term “Business Day” shall also mean a day on which dealings are carried on in the London interbank market.

“ **Cash Equivalents** ” are (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of six months or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than \$250,000,000; (c) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody’s, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within six months from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than thirty (30) days, with respect to securities issued or fully guaranteed or insured by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or

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taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody's; (f) securities with maturities of six (6) months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition; (g) money market mutual or similar funds that invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition; or (h) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000.

“ **Change in Control** ” means any event, transaction, or occurrence as a result of which (a) any “person” (as such term is defined in Sections 3(a)(9) and 13(d)(3) of the Securities Exchange Act of 1934, as amended (the “ **Exchange Act** ”)), other than a trustee or other fiduciary holding securities under an employee benefit plan of Borrower, is or becomes a beneficial owner (within the meaning Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of Borrower, representing fifty percent (50.0%) or more of the combined voting power of Borrower's then outstanding securities; or (b) during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the Board of Directors of Borrower (together with any new directors whose election by the Board of Directors of Borrower was approved by a vote of at least a majority of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office.

“ **Claims** ” are defined in Section 12.2.

“ **Code** ” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the Commonwealth of Massachusetts; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the Commonwealth of Massachusetts, the term “ **Code** ” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes on the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“ **Collateral** ” is any and all properties, rights and assets of Borrower described on Exhibit A.

“ **Collateral Account** ” is any Deposit Account, Securities Account, or Commodity Account.

“ **Commodity Account** ” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“ **Communication** ” is defined in Section 10.

“ **Compliance Certificate** ” is that certain certificate in the form attached hereto as Exhibit B.

“ **Contingent Obligation** ” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“ **Continuation Date** ” means any date on which Borrower elects to continue a LIBOR Credit Extension into another Interest Period.

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“ **Control Agreement** ” is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

“ **Conversion Date** ” means any date on which Borrower elects to convert a Prime Rate Credit Extension to a LIBOR Credit Extension or a LIBOR Credit Extension to a Prime Rate Credit Extension.

“ **Convertible Notes** ” means those certain convertible senior notes due 2019, to be sold by the Borrower to the initial purchasers pursuant to that certain Purchase Agreement by and between the Borrower and Morgan Stanley & Co. LLC.

“ **Credit Extension** ” is any Advance, Letter of Credit, or any other extension of credit by Bank for Borrower’s benefit.

“ **Default Rate** ” is defined in Section 2.4(c).

“ **Deposit Account** ” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“ **Designated Deposit Account** ” is Borrower’s primary deposit account maintained with Bank.

“ **Dollars** , ” “ **dollars** ” and “ **\$** ” each mean lawful money of the United States.

“ **Domestic Subsidiary** ” means a Subsidiary organized under the laws of the United States or any state or territory thereof or the District of Columbia.

“ **Effective Amount** ” means with respect to any Credit Extension on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowing and prepayments or repayments thereof occurring on such date.

“ **Effective Date** ” is defined in the preamble of this Agreement.

“ **Eligible Accounts** ” means Accounts which arise in the ordinary course of Borrower’s business that meet all Borrower’s representations and warranties in Section 5.11. Bank shall have the right, at any time and from time to time after the Effective Date, in its Permitted Discretion to establish, modify or eliminate Reserves against Eligible Accounts, or, acting in its commercially reasonable good faith business judgment, to adjust or supplement any of the criteria set forth below, to establish new criteria, and to adjust advance rates with respect to Eligible Accounts, to reflect changes in the collectability or realization values of such Accounts arising or discovered by Bank after the Effective Date. Unless Bank otherwise agrees in writing, Eligible Accounts shall not include:

(a) Accounts for which the Account Debtor is Borrower’s Affiliate, officer, employee, or agent;

(b) Accounts that the Account Debtor has not paid within ninety (90) days of invoice date regardless of invoice payment period terms;

(c) Accounts with credit balances over ninety (90) days from invoice date;

(d) Accounts owing from an Account Debtor if fifty percent (50%) or more of the Accounts owing from such Account Debtor have not been paid within ninety (90) days of invoice date;

(e) Accounts owing from an Account Debtor which does not have its principal place of business in the United States, unless otherwise approved by Bank on a case-by-case basis in its good faith business discretion, or;

(f) Accounts billed from and/or payable to Borrower outside of the United States (sometimes called foreign invoiced accounts), unless otherwise approved by Bank on a case-by-case basis in its good faith business discretion;

(g) Accounts owing from an Account Debtor to the extent that Borrower is indebted or obligated in any manner to the Account Debtor (as creditor, lessor, supplier or otherwise - sometimes called “contra” accounts, accounts payable, customer deposits or credit accounts);

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(h) Accounts owing from an Account Debtor which is a United States government entity or any department, agency, or instrumentality thereof unless Borrower has assigned its payment rights to Bank and the assignment has been acknowledged under the Federal Assignment of Claims Act of 1940, as amended;

(i) Accounts for demonstration or promotional equipment, or in which goods are consigned, or sold on a “sale guaranteed”, “sale or return”, “sale on approval”, or other terms if Account Debtor’s payment may be conditional;

(j) Accounts owing from an Account Debtor where goods or services have not yet been rendered to the Account Debtor (sometimes called memo billings or pre-billings);

(k) Accounts subject to contractual arrangements between Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements where the Account Debtor has a right of offset for damages suffered as a result of Borrower’s failure to perform in accordance with the contract (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts);

(l) Accounts owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor’s satisfaction of Borrower’s complete performance (but only to the extent of the amount withheld; sometimes called retainage billings);

(m) Accounts subject to trust provisions, subrogation rights of a bonding company, or a statutory trust;

(n) Accounts owing from an Account Debtor that has been invoiced for goods that have not been shipped to the Account Debtor unless Bank, Borrower, and the Account Debtor have entered into an agreement acceptable to Bank in its good faith business discretion wherein the Account Debtor acknowledges that (i) it has title to and has ownership of the goods wherever located, (ii) a bona fide sale of the goods has occurred, and (iii) it owes payment for such goods in accordance with invoices from Borrower (sometimes called “bill and hold” accounts);

(o) Accounts for which the Account Debtor has not been invoiced other than Accounts from grid operators or utilities where services have been rendered and amounts are due where invoices are not submitted;

(p) Accounts that represent non-trade receivables or that are derived by means other than in the ordinary course of Borrower’s business;

(q) Accounts for which Borrower has permitted Account Debtor’s payment to extend beyond 90 days;

(r) Accounts arising from chargebacks, debit memos or other payment deductions taken by an Account Debtor;

(s) Accounts arising from product returns and/or exchanges (sometimes called “warranty” or “RMA” accounts);

(t) Accounts in which the Account Debtor disputes liability or makes any claim (but only up to the disputed or claimed amount), or if the Account Debtor is subject to an Insolvency Proceeding, or becomes insolvent, or goes out of business;

(u) Accounts owing from an Account Debtor with respect to which Borrower has received Deferred Revenue (but only to the extent of such Deferred Revenue);

(v) Accounts owing from an Account Debtor, whose total obligations to Borrower exceed twenty-five percent (25%) of all Accounts (excluding Accounts from PJM Interconnection), for the amounts that exceed that percentage, unless Bank approves in writing; and

(w) Accounts for which Bank in its good faith business judgment determines collection to be doubtful upon notice to Borrower, including, without limitation, accounts represented by “refreshed” or “recycled” invoices.

“**Eligible Fixed Assets**” is the net book value of fixed assets of the Borrower and its Subsidiaries as determined under GAAP and reflected in the Borrower’s consolidated financial statements.

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“**Eligible Unbilled Accounts**” are Accounts owned by Borrower and the Guarantors and reflected in the most recent Borrowing Base Certificate delivered by the Borrower to Bank that meet all of the criteria of an “Eligible Account” except such accounts (i) are not due and payable and (ii) have not been invoiced as required by the criteria set forth in clause (o) of the definition of “Eligible Accounts”, but in respect of which the Borrower is recognizing income in accordance with GAAP. Bank shall have the right, at any time and from time to time after the Effective Date, in its Permitted Discretion to establish, modify or eliminate Reserves against Eligible Unbilled Accounts, or, acting in its commercially reasonable good faith business judgment, to adjust or supplement any of the criteria set forth above, to establish new criteria, and to adjust advance rates with respect to Eligible Unbilled Accounts, to reflect changes in the collectability or realization values of such Accounts arising or discovered by Bank after the Effective Date.

“**EnerNOC**” is defined in the preamble of this Agreement.

“**Equipment**” is all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**ERISA**” is the Employee Retirement Income Security Act of 1974, and its regulations.

“**Event of Default**” is defined in Section 8.

“**Excluded Accounts**” are (a) Deposit Accounts used exclusively for payroll, payroll taxes, and other employee wage and benefit payments to or for the benefit of the Grantors’ employees; (b) withholding tax and fiduciary accounts; (c) any trust or escrow accounts; (d) zero balance accounts; (e) accounts maintained with institutions in jurisdictions outside of the United States of America, (f) deposit accounts owned by EnTech US, (g) the account at PNC Bank provided that amounts therein do not exceed \$300,000 at any time, and (h) the account at Blackrock provided that amounts therein do not exceed \$300,000 at any time.

“**Foreign Currency**” means lawful money of a country other than the United States.

“**Funding Date**” is any date on which a Credit Extension is made to or on account of Borrower which shall be a Business Day.

“**GAAP**” is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

“**General Intangibles**” is all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“**Governmental Approval**” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“**Governmental Authority**” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“**Guarantor**” is any present or future guarantor of the Obligations.

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“**Guaranty**” is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

“**Hostile Acquisition**” the acquisition of the capital stock or other equity interests of a Person through a tender offer or similar solicitation of the owners of such capital stock or other equity interests which has not been approved (prior to such acquisition) by resolutions of the Board of Directors of such Person or by similar action if such Person is not a corporation, or as to which such approval has been withdrawn.

“**Immaterial Subsidiary**” is each of Borrower’s Domestic Subsidiaries listed on Schedule 1.1 hereto as such Schedule may be revised or supplemented from time to time with the consent of Bank, provided that each such Domestic Subsidiary does not individually (a) at any time have total assets (excluding intangible assets (other than patents, patent licenses, copyrights, copyright licenses, trademarks, and trademark licenses) and goodwill) with a book value equal to or in excess of \$20,000,000 tested as of the last day of the fiscal quarter then most recently ended for the trailing twelve (12) months ended on such date, in each case as determined in accordance with GAAP, (b) have a month-end cash balance in excess of \$5,000,000, or (c) own any material intellectual property or any application therefor.”

“**Indebtedness**” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit (to the extent not cash collateralized), (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

“**Indemnified Person**” is defined in Section 12.2.

“**Insolvency Proceeding**” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“**Interest Expense**” means for any fiscal period, interest expense (whether cash or non-cash) determined in accordance with GAAP for the relevant period ending on such date, including, in any event, interest expense with respect to any Credit Extension and other Indebtedness of Borrower, including, without limitation or duplication, all commissions, discounts, or related amortization and other fees and charges with respect to letters of credit and bankers’ acceptance financing and the net costs associated with interest rate swap, cap, and similar arrangements, and the interest portion of any deferred payment obligation (including leases of all types).

“**Interest Payment Date**” means, (a) with respect to any LIBOR Credit Extension having an Interest Period of three months or less, the last Business Day of such Interest Period, (b) with respect to any LIBOR Credit Extension having an Interest Period longer than three months, each day that is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period, and, (c) with respect to Prime Rate Credit Extensions, the first (1<sup>st</sup>) calendar day of each month (or, if the first (1<sup>st</sup>) day of the month does not fall on a Business Day, then on the first Business Day following such date), and each date a Prime Rate Credit Extension is converted into a LIBOR Credit Extension to the extent of the amount converted to a LIBOR Credit Extension.

“**Interest Period**” means, as to any LIBOR Credit Extension, the period commencing on the date of such LIBOR Credit Extension, or on the conversion/continuation date on which the LIBOR Credit Extension is converted into or continued as a LIBOR Credit Extension, and ending on the date that is one (1), two (2), three (3), or six (6) months thereafter, in each case as Borrower may elect in the applicable Notice of Borrowing or Notice of Conversion/Continuation; *provided, however*, that (a) no Interest Period with respect to any LIBOR Credit Extension shall end later than the Revolving Line Maturity Date, (b) the last day of an Interest Period shall be determined in accordance with the practices of the LIBOR interbank market as from time to time in effect, (c) if any Interest Period would otherwise end on a day that is not a Business Day, that Interest Period shall be extended to the following Business Day unless, in the case of a LIBOR Credit Extension, the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the preceding Business Day, (d) any Interest Period pertaining to a LIBOR Credit Extension that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period, and (e) interest shall accrue from and include the first Business Day of an Interest Period but exclude the last Business Day of such Interest Period.

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“ **Interest Rate Determination Date** ” means each date for calculating the LIBOR for purposes of determining the interest rate in respect of an Interest Period. The Interest Rate Determination Date shall be the second Business Day prior to the first day of the related Interest Period for a LIBOR Credit Extension.

“ **Inventory** ” is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“ **Investment** ” is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

“ **Letter of Credit** ” means a standby letter of credit issued by Bank or another institution based upon an application, guarantee, indemnity or similar agreement on the part of Bank as set forth in Section 2.1.2, including any existing letter of credit specified on Schedule 1.1A hereto.

“ **Letter of Credit Application** ” is defined in Section 2.1.2(a).

“ **LIBOR** ” means, for any Interest Rate Determination Date with respect to an Interest Period for any Credit Extension to be made, continued as or converted into a LIBOR Credit Extension, the rate of interest per annum determined by Bank to be the per annum rate of interest at which deposits in United States Dollars are offered to Bank in the London interbank market (rounded upward, if necessary, to the nearest 1/100th of one percent (0.01%)) in which Bank customarily participates at 11:00 a.m. (local time in such interbank market) two (2) Business Days prior to the first day of such Interest Period for a period approximately equal to such Interest Period and in an amount approximately equal to the amount of such Credit Extension.

“ **LIBOR Credit Extension** ” means a Credit Extension that bears interest based at the LIBOR Rate plus the LIBOR Rate Margin.

“ **LIBOR Rate** ” means, for each Interest Period in respect of LIBOR Credit Extensions comprising part of the same Credit Extensions, an interest rate *per annum* (rounded upward to the nearest 1/16th of one percent (0.0625%)) equal to LIBOR for such Interest Period *divided by* one (1) *minus* the Reserve Requirement for such Interest Period.

“ **LIBOR Rate Margin** ” is two percent (2.00%).

“ **Lien** ” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“ **Liquidity Event** ” is the receipt by Borrower after the Effective Date of unrestricted net cash proceeds from the issuance and sale of equity securities or convertible debt of not less than Seventy Five Million Dollars (\$75,000,000).

“ **Loan Documents** ” are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Perfection Certificate, any subordination agreement, any Bank Services Agreement, any note, or notes or guaranties executed by Borrower or any Guarantor, and any other present or future agreement by Borrower and/or any Guarantor with or for the benefit of Bank in connection with this Agreement or Bank Services, all as amended, restated, or otherwise modified.

“ **Material Adverse Change** ” is (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), or condition (financial or otherwise) of the Borrower and its Subsidiaries, taken as a whole; (b) a material impairment of the rights and remedies of the Bank under any Loan Document, or of the ability of the Borrower or any Guarantor to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower or any Guarantor of any Loan Documents to which it is a party.

“ **Monthly Financial Statements** ” is defined in Section 6.2(c).

“ **Notice of Borrowing** ” means a notice given by Borrower to Bank in accordance with Section 3.2(a), substantially in the form of Exhibit C, with appropriate insertions.

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“ **Notice of Conversion/Continuation** ” means a notice given by Borrower to Bank in accordance with Section 3.5, substantially in the form of Exhibit D, with appropriate insertions.

“ **Obligations** ” are Borrower’s obligation to pay when due any debts, principal, interest, fees, Bank Expenses and other amounts Borrower owes Bank now or later, whether under this Agreement or the Loan Documents, including, without limitation, all obligations relating to letters of credit (including reimbursement obligations for drawn and undrawn letters of credit), cash management services, and foreign exchange contracts, if any, and including interest accruing after Insolvency Proceedings begin, and the performance of Borrower’s duties under the Loan Documents.

“ **Operating Documents** ” are, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“ **Overadvance** ” is defined in Section 2.2.

“ **Perfection Certificate** ” is defined in Section 5.1.

“ **Permitted Discretion** ”: means a determination made by Bank in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment, upon notice to and after consultation with the Borrower with respect thereto.

“ **Permitted Distributions** ” means:

(a) purchases of capital stock from former employees, consultants and directors pursuant to repurchase agreements or other similar agreements in an aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in any fiscal year provided that at the time of such purchase no Default or Event of Default has occurred and is continuing;

(b) distributions or dividends consisting solely of Borrower’s capital stock;

(c) purchases for value of any rights distributed in connection with any stockholder rights plan;

(d) purchases of capital stock or options to acquire such capital stock with the proceeds received from a substantially concurrent issuance of capital stock or convertible securities;

(e) purchases of capital stock pledged as collateral for loans to employees;

(f) purchases and redemptions of capital stock (1) in connection with the exercise of stock options or stock appreciation rights by way of cashless exercise or in connection with the satisfaction of withholding tax obligations, and (2) held by Borrower’s public stockholders, provided that, at the time of such repurchase no Default or Event of Default has occurred and is continuing, and Borrower is in compliance with the financial covenants set forth in Section 6.7 hereof;

(g) purchases of fractional shares of capital stock arising out of stock dividends, splits or combinations or business combinations;

(h) the settlement or performance of such Person’s obligations under any equity derivative transaction, option contract or similar transaction or combination of transactions;

(i) conversions of Borrower’s convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof; and

(j) repurchases of the Borrower’s capital stock concurrently with, and using the proceeds from, the issuance of the Convertible Notes.

“ **Permitted Indebtedness** ” is:

(a) Borrower’s Indebtedness to Bank under this Agreement and the other Loan Documents;

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(b) Indebtedness existing on the Effective Date and shown on the Perfection Certificate;

(c) Subordinated Debt;

(d) (i) unsecured Indebtedness to trade creditors incurred in the ordinary course of business and (ii) other unsecured Indebtedness provided that such other unsecured Indebtedness has a maturity date no earlier than six (6) months after the Revolving Line Maturity Date;

(e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(f) Indebtedness in an aggregate principal amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) secured by Permitted Liens;

(g) Indebtedness of Borrower to any Subsidiary and Contingent Obligations of any Subsidiary with respect to obligations of Borrower (provided that the primary obligations are not prohibited hereby), and Indebtedness of any Subsidiary to Borrower or any other Subsidiary and Contingent Obligations of any Subsidiary with respect to obligations of any other Subsidiary (provided that the primary obligations are not prohibited hereby);

(h) Indebtedness (contingent or otherwise) owing to sureties arising from surety bonds issued on behalf of the Borrower and its Subsidiaries as support for, among other things, their contracts with customers, whether such indebtedness is owing directly or indirectly by the Borrower and its Subsidiaries;

(i) Indebtedness consisting of interest rate, currency or commodity swap agreements, interest rate cap or collar agreements or arrangements entered into in the ordinary course of business and designed to protect Borrower or its Subsidiaries against fluctuations in interest rates, currency exchange rates or commodity prices;

(j) Indebtedness that otherwise constitutes a Permitted Investment;

(k) Indebtedness in the form of purchase price adjustments, earn-outs, deferred compensation, or other arrangements representing acquisition consideration or deferred payments of a similar nature incurred in connection with any Permitted Investment;

(l) to the extent constituting Indebtedness obligations, Indebtedness incurred in connection with the financing of insurance premiums in the ordinary course of business;

(m) to the extent constituting Indebtedness obligations, Indebtedness in respect of netting services or overdraft protection or otherwise in connection with deposit or securities account in the ordinary course of business;

(n) Indebtedness in respect of the Convertible Notes provided that such Convertible Notes are unsecured and have a maturity date that is no earlier than six (6) months after the Revolving Line Maturity Date;

(o) Other unsecured Indebtedness not otherwise permitted hereunder provided that (i) at the time such indebtedness is incurred no Default or Event of Default has occurred and is continuing and Borrower is in compliance with the financial covenants set forth in Section 6.7 hereof and (ii) such unsecured Indebtedness has a maturity date that is no earlier than six (6) months after the Revolving Line Maturity Date; and

(p) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (g) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

“ **Permitted Investments** ” are:

(a) Investments shown on the Perfection Certificate and existing on the Effective Date;

(b) Investments consisting of Cash Equivalents;

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(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of deposit accounts with Bank or in which Bank has a first priority perfected security interest;

(e) Investments accepted in connection with Transfers permitted by Section 7.1;

(f) (i) Investments of a Subsidiary that is not Borrower hereunder in or to other Subsidiaries or Borrower, and (ii) Investments of Borrower or any Guarantor in any Subsidiary;

(g) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors;

(h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(i) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (i) shall not apply to Investments of Borrower in any Subsidiary;

(j) Investments consisting of the acquisition of all or substantially all of the capital stock or property of any Person provided that any such Investment (i) is of a Person or ongoing business engaged in business activities in which Borrower is permitted to engage pursuant to Section 7.2 and (ii) is not a Hostile Acquisition;

(k) extensions of trade credit in the ordinary course of business;

(l) Investments by the Borrower in Japan in the form of a joint venture with Marubeni Corporation, provided that the aggregate amount of such Investments shall not exceed \$5,000,000; and

(m) Other Investments not otherwise permitted hereunder provided that (i) at the time such Investment is made no Default or Event of Default has occurred and is continuing and Borrower is in compliance with the financial covenants set forth in Section 6.7 hereof and (ii) any such Investment (A) is of a Person or ongoing business engaged in business activities in which Borrower is permitted to engage pursuant to Section 7.2 and (B) is not a Hostile Acquisition.

**“ Permitted Liens ”** are:

(a) Liens existing on the Effective Date and shown on the Perfection Certificate or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either not delinquent or being contested in good faith and for which Borrower maintains adequate reserves on Borrower's Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) purchase money Liens (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Five Hundred Thousand Dollars (\$500,000.00) in the aggregate amount outstanding, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business, securing liabilities in the aggregate amount not to exceed One Hundred Thousand Dollars (\$100,000.00) and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

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(e) carriers', warehousemen's, landlord's, mechanics', materialmen's, repairmen's or other like Liens (other than Liens imposed by ERISA) arising in the ordinary course of business that are not overdue for a period of more than thirty (30) days or that are being contested in good faith by appropriate proceedings;

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of business, and leases, subleases, non-exclusive licenses or sublicenses of property (other than real property or intellectual property) granted in the ordinary course of Borrower's business, if the leases, subleases, non-exclusive licenses and sublicenses do not prohibit granting Bank a security interest;

(h) licenses of intellectual property permitted by Section 7.1(d);

(i) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 8.4 and 8.7;

(j) Liens in favor of other financial institutions arising in connection with Borrower's deposit and/or securities accounts held at such institutions, provided that Bank has a first priority perfected security interest in the amounts held in such deposit and/or securities accounts;

(k) pledges or deposits in connection with worker's compensation, unemployment insurance or other social security legislation;

(m) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower or its Subsidiaries;

(n) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business (other than for indebtedness or any Liens arising under ERISA);

(o) any interest or title of a lessor under any lease entered into by the Borrower or any Subsidiary in the ordinary course of its business and covering only the assets so leased;

(p) precautionary financing statements filed in connection with operating leases permitted by this Agreement;

(q) Liens on insurance proceeds in favor of insurance companies granted solely to secure financial insurance premiums; and

(r) Liens not otherwise permitted hereunder securing Indebtedness not to exceed Five Hundred Thousand Dollars (\$500,000) at any time outstanding.

“**Person**” is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

“**Prime Rate**” is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Bank, the “Prime Rate” shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors).

“**Prime Rate Credit Extension**” means a Credit Extension that bears interest based at the Prime Rate plus the Prime Rate Margin.

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“ **Prime Rate Margin** ” is one percent (1.00%).

“ **Quick Assets** ”: on any date, the sum of (i) Unrestricted Cash, (ii) marketable securities in the United States that are immediately available for sale, and (iii) billed accounts receivable with respect to obligor located in the United States, in each case, of Borrower and its Subsidiaries.

“ **Quick Ratio** ” is a ratio of (a) Quick Assets, to (b) the sum of all of the liabilities and Obligations of the Borrower under this Agreement and the other Loan Documents (including Obligations in respect of drawn and undrawn Letters of Credit) and (ii) obligations of the Borrower for Bank Services that are not secured by cash.

“ **Registered Organization** ” is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.

“ **Regulatory Change** ” means, with respect to Bank, any change on or after the date of this Agreement in United States federal, state, or foreign laws or regulations, including Regulation D, or the adoption or making on or after such date of any interpretations, directives, or requests applying to a class of lenders including Bank, of or under any United States federal or state, or any foreign laws or regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof.

“ **Requirement of Law** ” is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“ **Reserve Requirement** ” means, for any Interest Period, the average maximum rate at which reserves (including any marginal, supplemental, or emergency reserves) are required to be maintained during such Interest Period under Regulation D against “Eurocurrency liabilities” (as such term is used in Regulation D) by member banks of the Federal Reserve System. Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by Bank by reason of any Regulatory Change against (a) any category of liabilities which includes deposits by reference to which the LIBOR Rate is to be determined as provided in the definition of LIBOR or (b) any category of extensions of credit or other assets which include Credit Extensions.

“ **Reserves** ”: with respect to the Borrowing Base, reserves against Eligible Accounts, Eligible Fixed Assets, and/or Eligible Unbilled Accounts that Bank may, in its Permitted Discretion, establish from time to time.

“ **Responsible Officer** ” is any of the Chief Executive Officer, President, Chief Financial Officer, Chief Operating Officer, General Counsel, Deputy General Counsel, Senior Vice President of Finance, Vice President of Finance, and Controller of Borrower.

“ **Revolving Line** ” is an Advance or Advances in an aggregate amount of up to Thirty Million Dollars (\$30,000,000.00) outstanding at any time.

“ **Revolving Line Maturity Date** ” is August 11, 2015.

“ **Securities Account** ” is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

“ **Subordinated Debt** ” is Indebtedness incurred by Borrower which (a) is subordinated to Borrower’s Indebtedness owed to Bank under the Loan Documents and which is reflected in a written agreement in a manner and form reasonably acceptable to Bank and approved by Bank in writing, and (b) has a maturity date no earlier than six (6) months after the Revolving Line Maturity Date, and to the extent the terms of subordination do not change adversely to Bank, refinancings, refundings, renewals, amendments or extensions of the foregoing.

“ **Subsidiary** ” is, with respect to any Person, any Person of which more than fifty percent (50.0%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or one or more Affiliates of such Person.

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“ **Total Liabilities** ” is on any day, obligations that should, under GAAP, be classified as liabilities on Borrower’s consolidated balance sheet, including all Indebtedness, and current portion of Subordinated Debt permitted by Bank to be paid by Borrower, but excluding all other Subordinated Debt.

“ **Transfer** ” is defined in Section 7.1.

“ **United States Dollars** ” is the lawful currency of the United States of America.

“ **Unrestricted Cash** ”: all of the cash and Cash Equivalents of Borrower on deposit in the United States at Bank or one of Bank’s Affiliates and, in each case, which is subject to first priority Lien in favor of Bank that is perfected by means of a Control Agreement.

“ **Unused Revolving Line Facility Fee** ” is defined in Section 2.5(c).

[ *Signature page follows* ]

**IN WITNESS WHEREOF** , the parties hereto have caused this Agreement to be executed as a sealed instrument under the laws of the Commonwealth of Massachusetts as of the Effective Date.

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BORROWER:

ENERNOC, INC.

By: /s/ Neil Moses  
Name: Neil Moses  
Title: Chief Financial Officer and Treasurer

BANK:

SILICON VALLEY BANK

By: /s/ Russell Follansbee  
Name: Russell Follansbee  
Title: Vice President

[Signature page to Loan and Security Agreement]

**EXHIBIT A**

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

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All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include any of the following, whether now owned or hereafter acquired any copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of Borrower connected with and symbolized thereby, know-how, operating manuals, trade secret rights, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing; provided, however, the Collateral shall include all Accounts, license and royalty fees and other revenues, proceeds, or income arising out of or relating to any of the foregoing; (b) any property to the extent that such grant of a security interest is prohibited by any Requirement of Law of a Governmental Authority or constitutes a breach or default under or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such property, except to the extent that such Requirement of Law or the term in such contract, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under Section 9-406, 9-407, 9-408 or 9-409 of the New York UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity; provided, however, that such security interest shall attach immediately at such time as such Requirement of Law is not effective or applicable, or such prohibition, breach, default or termination is no longer applicable or is waived, and to the extent severable, shall attach immediately to any portion of the Collateral that does not result in such consequences; (c), (A) the voting Capital Stock of any Immaterial Subsidiaries (that are not Loan Parties) or (B) more than 65% of the total outstanding voting Capital Stock of any of its Excluded Foreign Subsidiaries; and (d) Excluded Accounts.

Pursuant to the terms of a certain negative pledge arrangement with Bank, Borrower has agreed not to encumber any of its copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of Borrower connected with and symbolized thereby, know-how, operating manuals, trade secret rights, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing, without Bank's prior written consent.

**EXHIBIT B**

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**COMPLIANCE CERTIFICATE**

TO: SILICON VALLEY BANK  
 FROM: ENERNOC, INC.

Date:

The undersigned authorized officer of ENERNOC, INC. (“Borrower”) certifies that under the terms and conditions of the Loan and Security Agreement between Borrower and Bank (as amended, the “Agreement”), (1) Borrower is in compliance for the period ending with all required covenants except as noted below, (2) there are no Events of Default existing, (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, (4) Borrower, and each of its Subsidiaries, has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.8 of the Agreement, and (5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank. Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next (other than in the case of unaudited financial statements, for the absence of footnotes and subject to year-end audit adjustments) except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

**Please indicate compliance status by circling Yes/No under “Complies” column.**

Reporting Covenant	Required	Complies	
Monthly Financial Statements	Monthly within 45 days	Yes	No
Monthly Compliance Certificate	Monthly within 45 days	Yes	No
Borrowing Base Reports	Monthly within 45 days	Yes	No
Borrowing Base Certificate	Monthly within 45 days	N/A*	
Annual financial statements (CPA Audited) on 10-K together with an unqualified audited opinion	FYE within 90 days	Yes	No
8-K, 10-Q and 10-K filings	Within 5 days after SEC filing	Yes	No
A/R and A/P agings and statement of account balances	Monthly within 45 days	Yes	No
Board projections	60 days after FYE	Yes	No

\* N/A if Unrestricted Cash is in excess of \$40,000,000

**Contracts entered into during month by Borrower restricting grant of security interest to Bank pursuant to Section 5.2 of the Agreement:**

<b>Financial Covenant</b>	<b>Required</b>	<b>Actual</b>	<b>Complies</b>	
Quick Ratio (monthly)	<u>1.85:1.0 (1.25:1.00 at 5/31 and 6/30)</u>	<u>:1.0</u>	Yes	No
Minimum Unrestricted Cash (monthly)	\$40,000,000 (\$18,000,000 after the occurrence of a Liquidity Event)	\$	Yes	No

The following financial covenant analyses and information set forth in Schedule 1 attached hereto are true and accurate as of the date of this Certificate.

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

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ENERNOC, INC.

**BANK USE ONLY**

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

Received by: \_\_\_\_\_  
 AUTHORIZED SIGNER  
 Date: \_\_\_\_\_  
 Verified: \_\_\_\_\_  
 AUTHORIZED SIGNER  
 Date: \_\_\_\_\_

Compliance Status: Yes No

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**Schedule 1 to Compliance Certificate**  
**Financial Covenants of Borrower**

Dated:

In the event of a conflict between this Schedule and the Loan Agreement, the terms of the Loan Agreement shall control.

I. **Quick Ratio** (Section 6.7(a))

Required: 1.85 : 1.00

Actual: : 1.00

A.	Aggregate value of the unrestricted cash of Borrower	\$
B.	Aggregate value of the net accounts receivable of Borrower	\$
C.	Marketable securities that are immediately available for sale	\$
D.	Quick Assets (the sum of lines A, B and C)	\$
E.	Aggregate value of obligations and liabilities of Borrower to Bank	\$
F.	Quick Ratio (line D divided by line E)	

Is line F equal to or greater than 1.85 : 1.00?

No, not in compliance

Yes, in compliance

II. **MINIMUM UNRESTRICTED CASH** (Section 6.7(b))

Required: \$40,000,000 (\$18,000,000 after the occurrence of a Liquidity Event) (see Section 6.7(b))

Actual: \$

Is Minimum Unrestricted Cash at least \$40,000,000 (\$18,000,000 after the occurrence of a Liquidity Event) (see Section 6.7(b))?

No, not in compliance

Yes, in compliance

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**EXHIBIT C**

**FORM OF NOTICE OF BORROWING**

**ENERNOC, INC.**

Date:

**T O :**       **S I L I C O N V A L L E Y B A N K**  
3003 Tasman Drive  
Santa Clara, CA 95054  
Attention: Corporate Services Department

**R E :**       Loan and Security Agreement dated as of \_\_\_\_\_, 2014 (as amended, modified, supplemented or restated from time to time, the "*Loan Agreement*"), by and between (a) EnerNOC, Inc. ("*Borrower*") and (b) Silicon Valley Bank (the "*Bank*")

Ladies and Gentlemen:

The undersigned refers to the Loan Agreement, the terms defined therein and used herein as so defined, and hereby gives you notice irrevocably, pursuant to Section 3.4(a) of the Loan Agreement, of the borrowing of a Credit Extension.

1. The Funding Date, which shall be a Business Day, of the requested borrowing is \_\_\_\_\_.
2. The aggregate amount of the requested borrowing is \$ \_\_\_\_\_.
3. The requested Credit Extension shall consist of \$ \_\_\_\_\_ of Prime Rate Credit Extensions and \$ \_\_\_\_\_ of LIBOR Credit Extensions.
4. The duration of the Interest Period for the LIBOR Credit Extensions included in the requested Credit Extension shall be \_\_\_\_\_ months.

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed Credit Extension before and after giving effect thereto, and to the application of the proceeds therefrom, as applicable:

(a) all representations and warranties of Borrower contained in the Loan Agreement are true and correct in all material respects as of the date hereof; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true and correct in all material respects as of such date;

(b) no Event of Default has occurred and is continuing, or would result from such proposed Credit Extension; and

(c) the requested Credit Extension will not cause the aggregate principal amount of the outstanding Credit Extensions to exceed, as of the designated Funding Date, the Revolving Line.

**B O R R O W E R**

**ENERNOC, INC.**

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

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LIBOR Pricing Date	LIBOR	LIBOR Variance	Revolving Line Maturity Date
			%

**EXHIBIT D**

**FORM OF NOTICE OF CONVERSION/CONTINUATION**

**ENERNOC, INC.**

Date:

**T O :**    **S I L I C O N   V   A L L E Y   B A N K**  
3003 Tasman Drive  
Santa Clara, CA 95054  
Attention:

**R E :**    Loan and Security Agreement dated as of \_\_\_\_\_, 2014 (as amended, modified, supplemented or restated from time to time, the “*Loan Agreement*”), by and between (a) EnerNOC, Inc. (“*Borrower*”) and (b) Silicon Valley Bank (the “*Bank*”)

Ladies and Gentlemen:

The undersigned refers to the Loan Agreement, the terms defined therein being used herein as therein defined, and hereby gives you notice irrevocably, pursuant to Section 3.5 of the Loan Agreement, of the [conversion] [continuation] of the Credit Extensions specified herein, that:

1. The date of the [conversion] [continuation] is \_\_\_\_\_, 20\_\_.
2. The aggregate amount of the proposed Credit Extensions to be [converted] is \$ \_\_\_\_\_ or [continued] is \$ \_\_\_\_\_.
3. The Credit Extensions are to be [converted into] [continued as] [LIBOR] [Prime Rate] Credit Extensions.
4. The duration of the Interest Period for the LIBOR Credit Extensions included in the [conversion] [continuation] shall be \_\_\_\_\_ months.

The undersigned, on behalf of Borrower, hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed [conversion] [continuation], before and after giving effect thereto and to the application of the proceeds therefrom:

(a) all representations and warranties of Borrower stated in the Loan Agreement are true and correct in all material respects as of the date hereof; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true and correct in all material respects as of such date; and

(b) no Event of Default has occurred and is continuing, or would result from such proposed [conversion] [continuation].

[Signature page follows.]



**B ORROWER**

**ENERNOC, INC.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*For internal Bank use only*

LIBOR Pricing Date

LIBOR

LIBOR Variance

%

Revolving Line Maturity  
Date

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SCHEDULE 1.1

Immaterial Subsidiaries

1. Celerity Energy Partners San Diego LLC
  2. ENOC Securities Corporation
  3. Menergy, LLC
  4. Pinpoint Power DR LLC
  5. South River Consulting, LLC
  6. EnTech Utility Service Bureau, Inc.
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## FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT

This First Amendment to Loan and Security Agreement (this “*Amendment*”) dated and effective as of October 23, 2014, by and among between (a) **SILICON VALLEY BANK**, a California corporation with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054 and with a loan production office located at 275 Grove Street, Suite 2- 200, Newton, Massachusetts 02466 (“*Bank*”), and (b) **ENERNOC, INC.**, a Delaware corporation (“*Borrower*”).

### **WITNESSETH:**

WHEREAS, the parties hereto are party to that certain Loan and Security Agreement dated as of August 11, 2014 (as amended, modified, supplemented or restated and in effect from time to time, the “*Loan Agreement*”); and

WHEREAS, the parties hereto have agreed to modify and amend certain terms and conditions of the Loan Agreement, subject to the terms and conditions contained herein.

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

1. Capitalized Terms. All capitalized terms used herein and not otherwise defined shall have the same meaning herein as in the Loan Agreement.

2. Amendment to Section 13.1 of the Loan Agreement. The Loan Agreement is hereby amended by amending and restating clause (h) of the definition of “Excluded Accounts” in Section 13.1 of the Loan Agreement to read as follows:

“(h) the account at Blackrock referenced in the Perfection Certificate provided that amounts therein do not exceed \$1,000,000 at any time.”

3. Conditions Precedent to Effectiveness. This Amendment shall not be effective until each of the following conditions precedent have been fulfilled to the satisfaction of Bank:

- (a) This Amendment shall have been duly executed and delivered by the respective parties hereto. Bank shall have received a fully executed copy hereof and of each other document required hereunder.
- (b) All necessary consents and approvals to this Amendment shall have been obtained.
- (c) After giving effect to this Amendment, no Event of Default shall have occurred and be continuing.
- (d) After giving effect to this Amendment, the representations and warranties in the Loan Agreement and the other Loan Documents shall be true and correct in all respects on and as of the date hereof, as though made on such date (except to the extent that such representations and warranties relate solely to an earlier date)
- (e) All other documents and legal matters in connection with the transactions contemplated by this Amendment shall have been delivered, executed, or recorded and shall be in form and substance satisfactory to Bank, in its sole discretion.

4. [Reserved].

5. Release by Borrower. The Borrower hereby acknowledges and agrees that as of the date hereof to the knowledge of the Borrower, the Borrower has no offsets, defenses, claims, or counterclaims against Bank with respect to the Obligations, or otherwise, and that if the Borrower now has, or ever did have, any offsets, defenses, claims, or counterclaims against Bank, whether known or unknown, at law or in equity, all of them are hereby expressly WAIVED and Borrower hereby RELEASES Bank from any liability thereunder.

6. Choice of Law. This Amendment and the rights of the parties hereunder, shall be determined under, governed by, and construed in accordance with the laws of the State of New York.

7. Counterpart Execution. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Amendment by signing any such counterpart. Delivery of an executed counterpart of this Amendment by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Amendment. Any party delivering an executed counterpart of this Amendment by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Amendment, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment.

8. Effect on Loan Documents.

- (a) The Loan Agreement, as amended hereby, and each of the other Loan Documents shall be and remain in full force and effect in accordance with their respective terms and hereby are ratified and confirmed in all respects. The execution, delivery, and performance of this Amendment shall not operate, except as expressly set forth herein, as a modification or waiver of any right, power, or remedy of Bank under the Loan Agreement
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or any other Loan Document. The consents, modifications and other agreements herein are limited to the specifics hereof (including facts or occurrences on which the same are based), shall not apply with respect to any facts or occurrences other than those on which the same are based, shall not excuse any noncompliance with the Loan Documents, and shall not operate as a consent or waiver to any matter under the Loan Documents. Except for the amendments to the Loan Agreement expressly set forth herein, the Loan Agreement and other Loan Documents shall remain unchanged and in full force and effect. The execution, delivery and performance of this Amendment shall not operate as a waiver of or, except as expressly set forth herein, as an amendment of, any right, power or remedy of Bank in effect prior to the date hereof. The amendments, consents, modifications and other agreements set forth herein are limited to the specifics hereof, shall not apply with respect to any facts or occurrences other than those on which the same are based, and except as expressly set forth herein, shall neither excuse any future non-compliance with the Loan Agreement, nor operate as a waiver of any Event of Default. To the extent any terms or provisions of this Amendment conflict with those of the Loan Agreement or other Loan Documents, the terms and provisions of this Amendment shall control.

(b) Upon and after the date hereof, each reference in the Loan Agreement to “this Agreement”, “hereunder”, “herein”, “hereof” or words of like import referring to the Loan Agreement, and each reference in the other Loan Documents to “the Loan Agreement”, “thereunder”, “therein”, “thereof” or words of like import referring to the Loan Agreement, shall mean and be a reference to the Loan Agreement as modified and amended hereby.

(c) To the extent that any terms and conditions in any of the Loan Documents shall contradict or be in conflict with any terms or conditions of the Loan Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Loan Agreement as modified or amended hereby.

(d) This Amendment is a Loan Document.

(e) Unless the context of this Amendment clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms “includes” and “including” are not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”.

9. Entire Agreement. This Amendment, and terms and provisions hereof, the Loan Agreement and the other Loan Documents constitute the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous amendments or understandings with respect to the subject matter hereof, whether express or implied, oral or written.

10. Integration. This Amendment, together with the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

11. Reaffirmation of Obligations. The Borrower hereby reaffirms its obligations under each Loan Document to which it is a party. The Borrower hereby further ratifies and reaffirms the validity and enforceability of all of the Liens heretofore granted, pursuant to and in connection with the Loan Documents to Bank, as collateral security for the obligations under the Loan Documents in accordance with their respective terms, and acknowledges that all of such Liens, and all collateral heretofore pledged as security for such obligations, continues to be and remain collateral for such obligations from and after the date hereof.

12. Severability. In case any provision in this Amendment shall be invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Amendment and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

[ SIGNATURE PAGE FOLLOWS ]

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

**BORROWER**

**ENERNOC, INC.**

By:

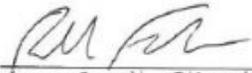


Name: Michael Berdik

Title: Assistant Secretary and Deputy  
General Counsel

**BANK**

**SILICON VALLEY BANK**

By:   
Name: Russell Follansbee  
Title: Vice President

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## SECOND AMENDMENT TO LOAN AND SECURITY AGREEMENT

This Second Amendment to Loan and Security Agreement (this "*Amendment*") dated and effective as of August, 11, 2015, by and among between (a) **SILICON VALLEY BANK**, a California corporation with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054 and with a loan production office located at 275 Grove Street, Suite 2-200, Newton, Massachusetts 02466 ("*Bank*"), and (b) **ENERNOC, INC.**, a Delaware corporation ("*Borrower*").

### WITNESSETH:

WHEREAS, the parties hereto are party to that certain Loan and Security Agreement dated as of August 11, 2014 as amended by a certain First Amendment to Loan and Security Agreement dated as of October 23, 2014 (as further amended, modified, supplemented or restated and in effect from time to time, the "*Loan Agreement*"); and

WHEREAS, the parties hereto have agreed to modify and amend certain terms and conditions of the Loan Agreement, subject to the terms and conditions contained herein.

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

1. Capitalized Terms. All capitalized terms used herein and not otherwise defined shall have the same meaning herein as in the Loan Agreement.

2. Amendment to Section 13.1 of the Loan Agreement. The Loan Agreement is hereby amended by amending and restating clause (h) of the definition of "Excluded Accounts" and "Revolving Line Maturity Date" in Section 13.1 of the Loan Agreement to read as follows:

"" **Excluded Accounts**" are (a) Deposit Accounts used exclusively for payroll, payroll taxes, and other employee wage and benefit payments to or for the benefit of the Grantors' employees; (b) withholding tax and fiduciary accounts; (c) any trust or escrow accounts; (d) zero balance accounts; (e) accounts maintained with institutions in jurisdictions outside of the United States of America, and (f) other Deposit Accounts and Securities Accounts located in the United States at institutions other than Bank and Affiliates provided that aggregate amount in all such Deposit Accounts and Securities Accounts does not exceed \$10,000,000 at any time.

" **Revolving Line Maturity Date**" is August 9, 2016."

3. Conditions Precedent to Effectiveness. This Amendment shall not be effective until each of the following conditions precedent have been fulfilled to the satisfaction of Bank:

(a) This Amendment shall have been duly executed and delivered by the respective parties hereto. Bank shall have received a fully executed copy hereof and of each other document required hereunder.

(b) All necessary consents and approvals to this Amendment shall have been obtained.

(c) Before and after giving effect to this Amendment, no Event of Default shall have occurred and be continuing.

(d) After giving effect to this Amendment, the representations and warranties in the Loan Agreement and the other Loan Documents shall be true and correct in all respects on and as of the date hereof, as though made on such date (except to the extent that such representations and warranties relate solely to an earlier date)

(e) Receipt by Bank of a Secretary's certificate of Borrower with respect to specimen signatures and board minutes authorizing the execution and delivery of this Amendment;

(f) All other documents and legal matters in connection with the transactions contemplated by this Amendment shall have been delivered, executed, or recorded and shall be in form and substance satisfactory to Bank, in its sole discretion.

(g) Borrower's payment of (i) a commitment/amendment fee in an amount equal to \$75,000.00, and (ii) Bank's legal fees and expenses incurred in connection with this Amendment.

4. Representations and Warranties. To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:

(a) Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

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- (b) Borrower and each Guarantor has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement (as amended by this Amendment) and each of the other Loan Documents;
- (c) The organizational documents of Borrower and each Guarantor previously delivered to Bank remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;
- (d) The execution and delivery by Borrower and each Guarantor of this Amendment and the performance by Borrower and each Guarantor of its respective obligations under the Loan Agreement (as amended by this Amendment) and the other Loan Documents have been duly authorized;
- (e) The execution and delivery by Borrower and each Guarantor of this Amendment and the performance by Borrower and each Guarantor of its respective obligations under the Loan Agreement (as amended by this Amendment) and the other Loan Documents do not and will not contravene (a) any law or regulation binding on or affecting Borrower or any Guarantor, (b) any contractual restriction with a Person binding on Borrower or any Guarantor, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower or any Guarantor, or (d) the organizational documents of Borrower or any Guarantor;
- (f) The execution and deliver by Borrower and each Guarantor of this Amendment and the performance by Borrower and each Guarantor of its respective obligations under the Loan Agreement (as amended by this Amendment) and the other Loan Documents do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower or any Guarantor, except as already has been obtained or made; and
- (g) This Amendment has been duly executed and delivered by Borrower and each Guarantor and is the binding obligation of Borrower and each Guarantor, enforceable against Borrower and each Guarantor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

5. Ratification of Perfection Certificates. Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and disclosures contained in those certain Perfection Certificates dated as of August 11, 2014 and December 30, 2014 delivered by Borrower to Bank, and acknowledges, confirms and agrees the disclosures and information Borrower provided to Bank in said Perfection Certificates have not changed, as of the date hereof.

6. Release by Borrower. The Borrower hereby acknowledges and agrees that as of the date hereof to the knowledge of the Borrower, the Borrower has no offsets, defenses, claims, or counterclaims against Bank with respect to the Obligations, or otherwise, and that if the Borrower now has, or ever did have, any offsets, defenses, claims, or counterclaims against Bank, whether known or unknown, at law or in equity, all of them are hereby expressly WAIVED and Borrower hereby RELEASES Bank from any liability thereunder.

7. Choice of Law. This Amendment and the rights of the parties hereunder, shall be determined under, governed by, and construed in accordance with the laws of the State of New York.

8. Counterpart Execution. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Amendment by signing any such counterpart. Delivery of an executed counterpart of this Amendment by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Amendment. Any party delivering an executed counterpart of this Amendment by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Amendment, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment.

9. Effect on Loan Documents.

- (a) The Loan Agreement, as amended hereby, and each of the other Loan Documents shall be and remain in full force and effect in accordance with their respective terms and hereby are ratified and confirmed in all respects. The execution, delivery, and performance of this Amendment shall not operate, except as expressly set forth herein, as a modification or waiver of any right, power, or remedy of Bank under the Loan Agreement or any other Loan Document. The consents, modifications and other agreements herein are limited to the specifics hereof (including facts or occurrences on which the same are based), shall not apply with respect to any facts or occurrences other than those on which the same are based, shall not excuse any noncompliance with the Loan Documents, and shall not operate as a consent or waiver to any matter under the Loan Documents. Except for the amendments to the Loan Agreement expressly set forth herein, the Loan Agreement and other Loan Documents shall remain unchanged and in full force and effect. The execution, delivery and
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performance of this Amendment shall not operate as a waiver of or, except as expressly set forth herein, as an amendment of, any right, power or remedy of Bank in effect prior to the date hereof. The amendments, consents, modifications and other agreements set forth herein are limited to the specifics hereof, shall not apply with respect to any facts or occurrences other than those on which the same are based, and except as expressly set forth herein, shall neither excuse any future non-compliance with the Loan Agreement, nor operate as a waiver of any Event of Default. To the extent any terms or provisions of this Amendment conflict with those of the Loan Agreement or other Loan Documents, the terms and provisions of this Amendment shall control.

(b) Upon and after the date hereof, each reference in the Loan Agreement to “this Agreement”, “hereunder”, “herein”, “hereof” or words of like import referring to the Loan Agreement, and each reference in the other Loan Documents to “the Loan Agreement”, “thereunder”, “therein”, “thereof” or words of like import referring to the Loan Agreement, shall mean and be a reference to the Loan Agreement as modified and amended hereby.

(c) To the extent that any terms and conditions in any of the Loan Documents shall contradict or be in conflict with any terms or conditions of the Loan Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Loan Agreement as modified or amended hereby.

(d) This Amendment is a Loan Document.

(e) Unless the context of this Amendment clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms “includes” and “including” are not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”.

10. Entire Agreement. This Amendment, and terms and provisions hereof, the Loan Agreement and the other Loan Documents constitute the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous amendments or understandings with respect to the subject matter hereof, whether express or implied, oral or written.

11. Integration. This Amendment, together with the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

12. Reaffirmation of Obligations. The Borrower hereby reaffirms its obligations under each Loan Document to which it is a party. The Borrower hereby further ratifies and reaffirms the validity and enforceability of all of the Liens heretofore granted, pursuant to and in connection with the Loan Documents to Bank, as collateral security for the obligations under the Loan Documents in accordance with their respective terms, and acknowledges that all of such Liens, and all collateral heretofore pledged as security for such obligations, continues to be and remain collateral for such obligations from and after the date hereof.

13. Severability. In case any provision in this Amendment shall be invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Amendment and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

[ SIGNATURE PAGE FOLLOWS ]

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

**BORROWER:**

**ENERNOC, INC.**

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



### **THIRD AMENDMENT TO LOAN AND SECURITY AGREEMENT**

This Third Amendment to Loan and Security Agreement (this “*Amendment*”) dated August 3, 2016 and effective as of August 9, 2016 by and among between (a) **SILICON VALLEY BANK**, a California corporation with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054 and with a loan production office located at 275 Grove Street, Suite 2-200, Newton, Massachusetts 02466 (“*Bank*”), and (b) **ENERNOC, INC.**, a Delaware corporation (“*Borrower*”).

#### **WITNESSETH:**

WHEREAS, the parties hereto are party to that certain Loan and Security Agreement dated as of August 11, 2014 as amended by a certain First Amendment to Loan and Security Agreement dated as of October 23, 2014 and a certain Second Amendment to Loan and Security Agreement dated as of August 11, 2015 (as further amended, modified, supplemented or restated and in effect from time to time, the “*Loan Agreement*”); and

WHEREAS, the parties hereto have agreed to modify and amend certain terms and conditions of the Loan Agreement, subject to the terms and conditions contained herein.

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

1. **Capitalized Terms**. All capitalized terms used herein and not otherwise defined shall have the same meaning herein as in the Loan Agreement.
  2. **Amendment to Section 13.1 of the Loan Agreement**. The Loan Agreement is hereby amended by amending and restating the definition of “Revolving Line Maturity Date” in Section 13.1 of the Loan Agreement to read as follows:  
“**Revolving Line Maturity Date**” is August 8, 2017.”
  3. **Conditions Precedent to Effectiveness**. This Amendment shall not be effective until each of the following conditions precedent have been fulfilled to the satisfaction of Bank:
    - (a) This Amendment shall have been duly executed and delivered by the respective parties hereto. Bank shall have received a fully executed copy hereof and of each other document required hereunder.
    - (b) All necessary consents and approvals to this Amendment shall have been obtained.
    - (c) Before and after giving effect to this Amendment, no Event of Default shall have occurred and be continuing.
    - (d) After giving effect to this Amendment, the representations and warranties in the Loan Agreement and the other Loan Documents shall be true and correct in all respects on and as of the date hereof, as though made on such date (except to the extent that such representations and warranties relate solely to an earlier date).
    - (e) Receipt by Bank of a secretary’s certificate of Borrower with respect to specimen signatures and board minutes authorizing the execution and delivery of this Amendment;
    - (f) All other documents and legal matters in connection with the transactions contemplated by this Amendment shall have been delivered, executed, or recorded and shall be in form and substance satisfactory to Bank, in its sole discretion.
    - (g) Borrower’s payment of (i) a commitment/amendment fee in an amount equal to \$75,000.00, and (ii) Bank’s legal fees and expenses incurred in connection with this Amendment.
  4. **Representations and Warranties**. To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:
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- (a) Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;
- (b) Borrower and each Guarantor has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement (as amended by this Amendment) and each of the other Loan Documents;
- (c) The organizational documents of Borrower and each Guarantor previously delivered to Bank remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;
- (d) The execution and delivery by Borrower and each Guarantor of this Amendment and the performance by Borrower and each Guarantor of its respective obligations under the Loan Agreement (as amended by this Amendment) and the other Loan Documents have been duly authorized;
- (e) The execution and delivery by Borrower and each Guarantor of this Amendment and the performance by Borrower and each Guarantor of its respective obligations under the Loan Agreement (as amended by this Amendment) and the other Loan Documents do not and will not contravene (a) any law or regulation binding on or affecting Borrower or any Guarantor, (b) any contractual restriction with a Person binding on Borrower or any Guarantor, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower or any Guarantor, or (d) the organizational documents of Borrower or any Guarantor;
- (f) The execution and delivery by Borrower and each Guarantor of this Amendment and the performance by Borrower and each Guarantor of its respective obligations under the Loan Agreement (as amended by this Amendment) and the other Loan Documents do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower or any Guarantor, except as already has been obtained or made; and
- (g) This Amendment has been duly executed and delivered by Borrower and each Guarantor and is the binding obligation of Borrower and each Guarantor, enforceable against Borrower and each Guarantor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

5. Ratification of Perfection Certificates. Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and disclosures contained in that certain Perfection Certificate dated as of August \_\_, 2016 delivered by Borrower to Bank, and acknowledges, confirms and agrees the disclosures and information Borrower provided to Bank in said Perfection Certificate have not changed, as of the date hereof.

6. Release by Borrower. The Borrower hereby acknowledges and agrees that as of the date hereof to the knowledge of the Borrower, the Borrower has no offsets, defenses, claims, or counterclaims against Bank with respect to the Obligations, or otherwise, and that if the Borrower now has, or ever did have, any offsets, defenses, claims, or counterclaims against Bank, whether known or unknown, at law or in equity, all of them are hereby expressly WAIVED and Borrower hereby RELEASES Bank from any liability thereunder.

7. Choice of Law. This Amendment and the rights of the parties hereunder, shall be determined under, governed by, and construed in accordance with the laws of the State of New York.

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8. Counterpart Execution. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Amendment by signing any such counterpart. Delivery of an executed counterpart of this Amendment by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Amendment. Any party delivering an executed counterpart of this Amendment by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Amendment, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment.

9. Effect on Loan Documents.

(a) The Loan Agreement, as amended hereby, and each of the other Loan Documents shall be and remain in full force and effect in accordance with their respective terms and hereby are ratified and confirmed in all respects. The execution, delivery, and performance of this Amendment shall not operate, except as expressly set forth herein, as a modification or waiver of any right, power, or remedy of Bank under the Loan Agreement or any other Loan Document. The consents, modifications and other agreements herein are limited to the specifics hereof (including facts or occurrences on which the same are based), shall not apply with respect to any facts or occurrences other than those on which the same are based, shall not excuse any non-compliance with the Loan Documents, and shall not operate as a consent or waiver to any matter under the Loan Documents. Except for the amendments to the Loan Agreement expressly set forth herein, the Loan Agreement and other Loan Documents shall remain unchanged and in full force and effect. The execution, delivery and performance of this Amendment shall not operate as a waiver of or, except as expressly set forth herein, as an amendment of, any right, power or remedy of Bank in effect prior to the date hereof. The amendments, consents, modifications and other agreements set forth herein are limited to the specifics hereof, shall not apply with respect to any facts or occurrences other than those on which the same are based, and except as expressly set forth herein, shall neither excuse any future non-compliance with the Loan Agreement, nor operate as a waiver of any Event of Default. To the extent any terms or provisions of this Amendment conflict with those of the Loan Agreement or other Loan Documents, the terms and provisions of this Amendment shall control.

(b) Upon and after the date hereof, each reference in the Loan Agreement to “this Agreement”, “hereunder”, “herein”, “hereof” or words of like import referring to the Loan Agreement, and each reference in the other Loan Documents to “the Loan Agreement”, “thereunder”, “therein”, “thereof” or words of like import referring to the Loan Agreement, shall mean and be a reference to the Loan Agreement as modified and amended hereby.

(c) To the extent that any terms and conditions in any of the Loan Documents shall contradict or be in conflict with any terms or conditions of the Loan Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Loan Agreement as modified or amended hereby.

(d) This Amendment is a Loan Document.

(e) Unless the context of this Amendment clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms “includes” and “including” are not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”.

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10. Entire Agreement. This Amendment, and terms and provisions hereof, the Loan Agreement and the other Loan Documents constitute the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous amendments or understandings with respect to the subject matter hereof, whether express or implied, oral or written.

11. Integration. This Amendment, together with the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

12. Reaffirmation of Obligations. The Borrower hereby reaffirms its obligations under each Loan Document to which it is a party. The Borrower hereby further ratifies and reaffirms the validity and enforceability of all of the Liens heretofore granted, pursuant to and in connection with the Loan Documents to Bank, as collateral security for the obligations under the Loan Documents in accordance with their respective terms, and acknowledges that all of such Liens, and all collateral heretofore pledged as security for such obligations, continues to be and remain collateral for such obligations from and after the date hereof.

13. Severability. In case any provision in this Amendment shall be invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Amendment and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

[ SIGNATURE PAGE FOLLOWS ]

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

**BORROWER:**

**ENERNOC, INC.**

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

Name: Neil moses

Title: Chief Operating officer  
Chief Financial Officer  
Vice president.

**BANK:**

**SILICON VALLEY BANK**

By:   
Name: Russell Follansbee  
Title: Vice President

**ACKNOWLEDGED AND AGREED:**

**GUARANTORS:**

**COGENT ENERGY, INC.**

By:   
Name: Michael Berdik  
Title: General Counsel

**M2M COMMUNICATIONS CORPORATION**

By:   
Name: Michael Berdik  
Title: General Counsel

**GLOBAL ENERGY PARTNERS, INC.**

By:   
Name: Michael Berdik  
Title: General Counsel

**WORLD ENERGY SOLUTIONS, INC.**

By:   
Name: Michael Berdik  
Title: General Counsel

2011308.2

## CERTIFICATIONS

I, Timothy G. Healy, certify that:

1. I have reviewed this quarterly report on Form 10-Q of EnerNOC, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - 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: November 4, 2016

By: /s/ Timothy G. Healy  
Timothy G. Healy  
Chief Executive Officer  
(principal executive officer)

## CERTIFICATIONS

I, William G. Sorenson, certify that:

1. I have reviewed this quarterly report on Form 10-Q of EnerNOC, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - 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: November 4, 2016

By: /s/ William G. Sorenson  
William G. Sorenson  
Chief Financial Officer  
(principal financial officer)

**CERTIFICATION 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 on Form 10-Q of EnerNOC, Inc. (the "Company"), for the quarter ended September 30, 2016, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Timothy G. Healy, Chief Executive Officer of the Company and William G. Sorenson, Chief Financial Officer of the Company, do hereby certify, to such officer's knowledge, pursuant to Section 1350 of Chapter 63 of Title 18, United States Code, 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 results of operations of the Company.

Date: November 4, 2016

By: /s/ Timothy G. Healy  
Timothy G. Healy  
Chief Executive Officer

By: /s/ William G. Sorenson  
William G. Sorenson  
Chief Financial Officer (principal financial officer)