

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM708446

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	SECURITY INTEREST		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Epiphany Systems, Inc.		02/09/2022	Corporation: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Espresso Capital Ltd.		
<b>Street Address:</b>	300 - 8 KING STREET EAST		
<b>Internal Address:</b>	M5C 1B5		
<b>City:</b>	TORONTO		
<b>State/Country:</b>	CANADA		
<b>Entity Type:</b>	Corporation: CANADA		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	90866754	EXPLOITABILITY INDEX	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	2158511420		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	2152411234		
<b>Email:</b>	svarghese@reedsmith.com		
<b>Correspondent Name:</b>	REED SMITH LLP		
<b>Address Line 1:</b>	P.O. Box 488		
<b>Address Line 2:</b>	IP Docketing Department		
<b>Address Line 4:</b>	Pittsburgh, PENNSYLVANIA 15230		
<b>ATTORNEY DOCKET NUMBER:</b>	390192.20071		
<b>NAME OF SUBMITTER:</b>	Shiju Varghese		
<b>SIGNATURE:</b>	/Shiju Varghese/		
<b>DATE SIGNED:</b>	02/15/2022		
<b>Total Attachments: 27</b>			
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**LOAN FACILITY AND SECURITY AGREEMENT**

February 9, 2022

**PROPRIETARY AND CONFIDENTIAL**

Epiphany Systems, Inc.  
5 Penn Plaza, 19th Floor  
New York, New York 10119  
dan@epiphany.com

Attention: Dan Singer, CEO

**RE: Loan Facility and Grant of Security Interest**

Espresso Capital Ltd. ("**Espresso**") as administrative and collateral agent on behalf of Lender identified below (together with its successors and assigns, "**Lender**") are pleased to present this Loan Facility and Security Agreement (this "**Agreement**") to Epiphany Systems, Inc. ("**Borrower**").

If the terms and conditions of the Schedules annexed are satisfactory, then return a signed copy to Espresso no later than 5:00 pm ET on February 9, 2022. Upon execution, this shall be the binding and governing Agreement between Espresso, Lender and Borrower about the Loan Facility and Grant of Security Interest.

Yours truly,

Espresso Capital Ltd., as administrative and collateral agent on behalf of Lender  
By:

DocuSigned by:  
  
Enrico Luzzi, COO & CFO

Acknowledged and Agreed:  
Epiphany Systems, Inc.  
By:

DocuSigned by:  
  
Daniel R. Singer, CEO

Espresso Credit US LP, by its general partner, Espresso US GP Inc., as Lender  
By:

DocuSigned by:  
  
Enrico Luzzi, COO & CFO



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**Schedule A: Credit Terms at the Effective Date. Each Credit Term heading shall be a defined term in this Agreement. In addition, see Schedule B for Definitions and Interpretation.**

<b>Loan Facility</b>	Lender hereby establishes, in favor of Borrower, a loan facility with availability determined in accordance with the formula in the Authorized Credit Table below.
<b>Credit Limit</b>	The lesser of \$10,000,000 and the then Aggregate Authorized Credit Amount.
<b>Excess</b>	If Principal exceeds the Credit Limit, then such excess amount shall be, within ten days of Espresso's request, repaid to Espresso to reduce the Principal by the amount of such excess.
<b>Minimum Balance</b>	Principal shall, at no time while the Obligations are outstanding, be less than \$2,000,000 (the " <b>Minimum Balance</b> ") failing which, Borrower shall pay interest on the difference between Principal and the Minimum Balance at the Interest Rate during each period Principal is less than the Minimum Balance beginning on the day Principal drops below the Minimum Balance and ending, for each such period, on the day Principal becomes equal to or greater than the Minimum Balance.
<b>Senior Indebtedness</b>	Indebtedness owed to Senior Lender shall not exceed \$1,000,000 until Borrower has achieved Annual Recurring Revenue of \$6,000,000 and thereafter Senior Indebtedness shall not exceed Recurring Revenue measured by the average of the trailing 3-month period and multiplied by six (6). At no time while Obligations remain outstanding shall the Senior Indebtedness exceed 50% of Total Secured Indebtedness. " <b>Recurring Revenue</b> " means revenue as defined in the Authorized Credit Table. " <b>Annual Recurring Revenue</b> " means Recurring Revenue multiplied by 12.
<b>Aggregate Authorized Credit Amount</b>	Determined, from time to time, in accordance with the formula in the Authorized Credit Table.
<b>Interest Rate</b>	Equal to the sum of the Cash Rate and the Deferred Rate. The Cash Rate is equal to the variable sum of 9%, plus the 1-Month LIBOR on the day of the Initial Advance, and thereafter as determined on the last business day of each month, provided the Cash Rate shall not, while the Obligations are outstanding, be less than 9% per annum.  The Deferred Rate is the per annum rate of 3%, calculated daily and compounded monthly.
<b>Interest Payment</b>	Interest, accruing at the Interest Rate, shall be due on Principal and paid in arrears by pre-authorized debit, on the last business day of each month. Interest, at the Deferred Rate, shall be due and paid upon the repayment of Principal, in whole or part.
<b>Advance Fee</b>	1% of each advance requested by Borrower and approved by Espresso whether Borrower draws down such advance or not. Each extension of the Maturity Date at Borrower's request shall be deemed an advance of Principal on the day following the Maturity Date and subject to payment of the Advance Fee.



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**Fees and Expenses** Borrower shall pay all (i) all reasonable documented costs and expenses of Espresso and Lender (including external legal and consulting fees) for the preparation, negotiation, amendment, waiver (and consents in connection with) of the Loan Documents and the perfection and maintenance of the priority of security (including fees and expenses), incurred before, during and after an insolvency involving Borrower, whether or not suit is brought, whether or not the Initial Advance is made, and (ii) all fees, costs and expenses of Espresso and Lender (including without limitation, internal and external legal and consulting fees) in connection with the enforcement of the Loan Documents. Fees payable by Borrower in connection with the preparation and negotiation of the Loan Documents, and the perfection of security relating to US entities, shall be \$35,000, and Borrower shall reimburse Espresso and Lender for all legal fees and disbursements in connection with the preparation of documentation and perfection of its rights relating to entities incorporated or domiciled outside the United States, if any.

**Initial Advance** An Initial Advance of \$3,000,000 is hereby requested by Borrower for the Effective Date and hereby approved by Espresso and Lender subject to Conditions of Advance below.

**Subsequent Advance** After the Initial Advance, additional advances may be requested to Espresso no less than thirty (30) days prior to the date of the requested advance, unless otherwise approved earlier by Espresso. Approval will be subject to the Credit Limit and Conditions of Advance below.

**Financial Covenants** Borrower shall, while Obligations remain outstanding, maintain Net Working Capital equal to the greater of (i) \$1,000,000 and (ii) an amount equal to Borrower's average monthly negative earnings before interest, taxes, depreciation and amortization determined in accordance with GAAP ("EBITDA") for the trailing 3 months ended on the last day of the month immediately prior to the date of determination multiplied by 3. "Net Working Capital" means current assets (including any undrawn portion of Aggregate Authorized Credit Amount) minus current liabilities (excluding deferred revenue), determined in accordance with GAAP. This covenant shall be measured at the end of each calendar quarter.

Borrower shall achieve 35% year-over-year growth as measured by the trailing 3-month period against the same trailing 3-month period during the same period of the prior year, tested at the end of each calendar quarter. In the event Borrower fails the test in 2 consecutive quarters, the Borrower shall start amortizing the loan in equal installments over the remaining outstanding term of the Credit Facility.

**Prepayment** Each advance may be prepaid, in whole or part, prior to the Maturity Date, subject to sixty (60) days' prior written notice to Espresso, and if such prior notice is not given, then Borrower shall in any event pay, together with such prepayment, interest at the Interest Rate, that would have accrued through the 60th day of such notice, provided further, for each advance or portion of such advance prepaid prior to the last day of the 18th month following the date of such advance, Borrower shall pay the Prepayment Fee.

If the Obligations are accelerated as a result of, and while an Event of Default is continuing, Borrower shall immediately pay to Lender the Obligations together with, if such acceleration results in the prepayment of an advance prior to the last day of the



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18th month following the date of such advance, the Prepayment Fee for such advance. Borrower agrees the Prepayment Fee is due and payable whether the Obligations are prepaid voluntarily or due to acceleration, including an insolvency proceeding involving or affecting Borrower, and represents a reasonable calculation of Lender's lost profits in view of the difficulties and impracticality of determining actual damages resulting from an early repayment of the advances. None of the Prepayment Fee shall constitute unmaturing interest. Borrower hereby waives any defense to payment of the Prepayment Fee, whether based on public policy, ambiguity or based on any portion of the Prepayment Fee constituting unmaturing interest, a penalty or an otherwise unenforceable or invalid obligation.

**Maturity Date** January 31, 2025, on which day the Obligations shall be due and paid unconditionally in full in immediately available funds, other than inchoate indemnity or reimbursement obligations, and any other obligations which, by their terms, are to survive the termination of this Agreement.

**Borrower's Bank Account** The account from which amounts due under this Agreement shall be drawn and to which advances will be deposited.

**Warrant** 10% of each advance funded, granted contemporaneously with such advance, of shares of Borrower's common equity at an exercise price equal to Borrower's most recent equity financing round (minimum raise of \$5,000,000). Warrants shall have a 5-year term and include customary provisions, anti-dilution and other protective provisions including Espresso's right but not obligation to exercise on a sale of Borrower's equity or assets, or on an IPO. If Borrower does not complete an equity financing of at least \$5,000,000 in one or more closings prior to the expiry of such 5-year term applicable to such a Warrant, the exercise price shall be set at a fully diluted enterprise value of \$20,000,000.

**Reporting** Borrower shall provide Espresso through its Insights online portal:

- (i) no later than thirty (30) days after each month end, the balance sheet, income statement, cash flow statement for such month end,
- (ii) no later than sixty (60) days following the first day of each financial year, the board approved annual budget in Excel format,
- (iii) no later than thirty (30) days following the first day of each quarter an updated financial model with cash flow forecast for such quarter,
- (iv) as and when delivered to Borrower's directors in advance of meetings of Borrower's Board, a copy of all Board reporting packages, provided, however, Borrower shall not be required to include and may redact, (a) information necessary to preserve trade secrets, as determined by Borrower upon advice of counsel, (b) proprietary technical information, (c) nor to extent disclosure of such information that would give rise to a conflict of interest or would impair attorney-client privilege with respect to pending or threatened litigation and (d) any proprietary, confidential forward-looking strategic



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information,

- (v) within one hundred twenty days (120) of each financial year end review level engagement annual financial statements including a balance sheet, income statement and cash flow statement.,
- (vi) a copy of all other reporting as a when delivered to Senior Lender, and all material notices to or from Senior Lender in connection with the Senior Indebtedness (including any notice of default), and copies of all amendments, restatements, waivers or other material documents entered into in connection with the Senior Indebtedness,
- (vii) within ten (10) days of Espresso's request, such other financial information as Espresso may reasonably request, and
- (viii) no later than thirty (30) days after each month end, a monthly certificate, certifying Borrower's calculations in respect of the Financial Covenants, in form and substance reasonably acceptable to Espresso.

The financial statements shall be prepared in accordance with GAAP, consistently applied (except (x) for unaudited statements, (y) the absence of footnotes, and (z) that they are subject to year-end adjustments).

If Borrower fails to deliver any above statement, report, package, or information when due, then notwithstanding that a reporting Event of Default has not yet been declared by Espresso, interest at the Default Rate shall be paid from the day of such failure until and including the day such statement, report, package or information is actually received by Espresso. Payment of interest at the Default Rate for such failure is not a permitted alternative to timely delivery of reporting and shall not constitute a waiver of any Event of Default resulting from late delivery or otherwise prejudice or limit any rights or remedies of Espresso arising from late delivery

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**Deposit**

The deposit of \$35,000 previously paid less Espresso's and Lender's fees and cost (internal and external) in conducting their due diligence will be applied against the Fees, or if Borrower fails to submit a requisition for the Initial Advance within five days of the Effective Date, the Deposit will be retained by Espresso and Lender in full and applied to the Fees incurred to such date.

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**Authorized Credit Table at the Effective Date**

Credit Item	Period	Funding Basis	Value	Loan to Value	Authorized Credit
Recurring Revenue	2021-11-30	Trailing 3 Months Average	\$140,000	12x	\$1,685,000
<b>Less: Senior Indebtedness Outstanding</b>					\$0
<b>Less: Indebtedness to Digitalware in excess of \$500,000</b>					\$175,000
<b>Aggregate Authorized Credit Amount</b>					<b>\$1,510,000</b>

Authorized Credit is rounded up to the next \$5,000

"Recurring Revenue" is monthly recurring subscription revenue received and recognized in the ordinary course of business in accordance with GAAP, provided beginning January 31, 2023, solely for purposes of calculating the Aggregate Authorized Credit Amount, no single source contract will comprise more than 20% of Recurring Revenue, except for any contract with New York City which from January 31, 2023 until December 31, 2023 will comprise no more than 30% of Recurring Revenue.

Aggregate Authorized Credit Amount to be waived until July 31, 2022.





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## 1. Promissory Note

Borrower shall deliver to Lender a promissory note substantially in the form of Schedule C (the "**Promissory Note**") and shall deliver an amended and restated Promissory Note in connection with, each advance, and any partial repayment.

## 2. Conditions to Advances

- 2.1 As a condition to each advance, Espresso shall have (i) received, and (ii) be satisfied of, in its reasonable business judgment, the following:
- (a) This Agreement
  - (b) The Promissory Note
  - (c) An Intellectual Property Security Agreement granting Espresso a security interest in Borrower's intellectual property.
  - (d) An officer's certificate attaching a certified copy of Borrower's organizational document, certified, if applicable, by the Secretary of State of Borrower's jurisdiction of organization, Board and, if applicable, stockholder, manager and member resolutions approving this Agreement and the other agreements, documents and certificates entered into in accordance with this Agreement (collectively, the "**Loan Documents**"), duly executed by a responsible officer of Borrower, and certificate of good standing or other similar document issued by Borrower's state of incorporation.
  - (e) Copies of all documents evidencing Senior Indebtedness.
  - (f) Certificates of the commercial property and general liability insurers adding Espresso as lender's loss payable or additional insured, as applicable.
  - (g) A requisition, prepared by Espresso, for such advance duly executed by a responsible officer of Borrower.
  - (h) An account control agreement for each US deposit and securities account of Borrower other than Excluded Accounts, provided Borrower shall have until sixty (60) days following the Effective Date to deliver such agreement for accounts now open at JPMorgan Chase & Co or such bank at which Borrower opens accounts to replace those now with JPMorgan Chase & Co.
  - (i) The representations and warranties in this Agreement and the Loan Documents shall be true, accurate and complete, in all material respects on the date the advance is funded, provided, such materiality qualifier shall not be applicable to any representation or warranty already qualified by materiality in its text, and provided further those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects at such date.
  - (j) A subordination agreement in favor of, and on terms satisfactory to, Espresso, acting reasonably, from each Subordinate Creditor, if any.
  - (k) No Event of Default shall have occurred and be continuing, and no event shall have occurred, nor circumstance shall exist which after Borrower's receipt of notice or passage of time would reasonably be expected to result in an Event of Default.
  - (l) All other documentation as Espresso reasonably requests
  - (m) There is no existing event or circumstance which would reasonably be expected to result in a



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Material Adverse Effect.

- (n) Subsequent Advances are subject to the Borrower raising a total minimum equity financing of \$3,000,000.

The foregoing conditions are for the sole benefit of Lender and may be waived by Espresso on behalf of Lender in whole or in part at any time or times prior to an advance, provided Borrower agrees any advance made prior to receipt of any required documents or satisfaction of other conditions shall not constitute a waiver by Espresso of Borrower's obligation to deliver such documents or satisfy such conditions. An advance to be made when any required condition has not been satisfied is in Espresso's sole and absolute discretion.

### 3. Evidence of Obligations

Espresso, as Lender's agent, shall maintain and reconcile records of advances, accruals and receipts of interest, repayments of advances and all other amounts due under this Agreement. Espresso's records shall constitute *prima facie* evidence of the Obligations, absent manifest error.

### 4. Default Rate

Interest at the Interest Rate plus 5% per annum, calculated daily (the "Default Rate") shall accrue on (i) interest, Principal, Fees, or other amounts not paid when due under this Agreement, beginning the day following their due date, until duly paid, and (ii) on Principal from the date an Event of Default occurs until it is cured or waived, provided Espresso, at its option may permit or require the amount equal to the interest at the Default Rate, less the interest at the Interest Rate, to accrue to Principal monthly, for any period during which an Event of Default exists, and until such Event of Default is cured or waived. Payment of interest at the Default Rate for any such failure is not a permitted alternative to timely payment and shall not itself constitute a waiver of any Event of Default resulting from late payment or otherwise prejudice or limit any rights or remedies of Espresso or Lender.

### 5. Fees and Expenses

Borrower hereby authorizes Espresso and Lender to deduct those Fees, as applicable which Espresso has given notice to Borrower are due, from the advance next following such notice or draw such Fees from Borrower's Bank Account.

### 6. LIBOR Replacement

If (a) Espresso is unable to determine or ascertain the 1 Month LIBOR, or (b) a rate other than LIBOR has become the widely recognized benchmark rate for newly originated loans in U.S. dollars in the U.S. market, or a LIBOR based rate is no longer representative, in each case, as determined by Espresso in good faith upon prior consultation with Borrower, or (c) if the administrator of the interbank Eurodollar market or its regulatory supervisor makes a public statement that LIBOR will cease to be provided or that LIBOR is no longer representative, Espresso shall, in good faith upon prior consultation with Borrower, and with reference to the margin above the 1 Month LIBOR in the definition of Cash Rate, select a replacement rate and replacement margin that results in a rate floor and total rate substantially similar to those rates in effect immediately prior to such replacement rate and replacement margin, or replacement publication, as the case may be, and shall immediately thereafter notify Borrower of such replacement rate and replacement margin or replacement publication.

### 7. Interest Not to Be Excessive

Notwithstanding anything to the contrary in this Agreement, the interest paid or agreed to be paid under this Agreement shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If Espresso on behalf of Lender has received interest in an amount exceeding the Maximum



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Rate, the excess interest shall be applied to Principal or, if it exceeds such unpaid Principal, refunded to Borrower. In determining whether the interest contracted for, charged, or received by Espresso on behalf of Lender exceeds the Maximum Rate, the Person so determining may, to the extent permitted by applicable law, (a) characterize any payment that is not Principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects of such prepayment, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of this Agreement.

## 8. Security Interest

- 8.1 As security for the payment of the Obligations and performance of Borrower's covenants, Borrower hereby grants a continuing security interest in and pledges to Espresso as agent of Lender, all of Borrower's right, title and interest in the Collateral, whether now owned or existing or hereafter acquired, arising or created, and all cash and non-cash products and proceeds of the Collateral (the "Security Interest").
- 8.2 The Security Interest's priority shall be subject only to the permitted Liens described in subsection 10.4.
- 8.3 At Espresso's request, Borrower shall execute and deliver such further and other documents and instruments and do all acts and things as Espresso reasonably requires to confirm, perfect, and maintain perfection and priority of the Security Interest, and preserve the Collateral, and forthwith reimburse and indemnify Espresso and Lender for all reasonable costs, charges, legal fees and disbursements incurred by it in so doing.
- 8.4 Borrower shall, except for Excluded Accounts and as otherwise permitted in subclause 2.1(h), within fifteen days of opening any US deposit and securities account after the Effective Date, deliver an account control agreement to Espresso for each such account, in form reasonably satisfactory to Espresso.
- 8.5 Borrower, Lender and Espresso acknowledge and agree that value has been given for the grant of the Security Interest, Borrower has (and will for after acquired property, have at the time of acquisition) rights in the Collateral, and there is no intention to delay the time of attachment of the Security Interest.
- 8.6 Espresso shall have the right at any time to verify the existence and state of the Collateral as Espresso reasonably considers appropriate. Borrower shall, during Borrower's regular business hours, provide all assistance and information and perform all such acts as Espresso may reasonably request in connection with such verification, and for such purpose grant Espresso or its agents access during Borrower's regular business hours to all places where the Collateral is located and to all premises occupied by Borrower, provided such access shall, except during a continuing Event of Default, be not more than once per calendar year.
- 8.7 Borrower shall promptly give Espresso written notice of each registration of intellectual property rights filed with the United States Patent and Trademark Office and/or the United States Copyright Office, including the date of such filing, the registration number, the title of such intellectual property rights registered, and execute such documents as Espresso, as agent of Lender may reasonably request for Espresso to perfect or provide notice of its security in such intellectual property rights.

## 9. Representations and Warranties

- 9.1 Borrower hereby represents and warrants:
  - (a) It is a corporation or limited liability company, as the case may be, duly incorporated or formed and validly existing.



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- (b) It has taken all necessary action, corporate or otherwise, to authorize the execution, delivery and performance of the Loan Documents.
- (c) The execution, delivery and performance of the Loan Documents do not conflict with, nor will result in a violation of its organizational documents, any material agreement to which it is a party or by which it or its property is bound, or any law or regulation applicable, in any way, to it, its business or its property.
- (d) It has filed, reported, deducted and made all remittances required under all laws, rules and regulations having jurisdiction over it, its business or its property, and is not in violation of any such laws, rules or regulations, except for any such violation or any such failure which would not have a Material Adverse Effect on it, its business or property.
- (e) All written information, other than financial projections, provided to Espresso by it in connection with the Loan Documents was, at the time provided to Espresso, complete and accurate in all material respects, and it is not aware of any material fact it had not disclosed that would have been necessary to make such information not materially misleading.
- (f) All financial projections provided by it to Espresso were prepared in good faith on assumptions it believed, acting in good faith, to have been reasonable at the time.
- (g) The information in the Perfection Certificate is true, accurate and complete at the Effective Date.
- (h) Except as disclosed in the Perfection Certificate, there is no action, suit, inquiry, claim or proceeding pending, nor to its knowledge threatened, involving Borrower, or any Subsidiaries or its properties, which could reasonably be expected to have a Material Adverse Effect.
- (i) Except as disclosed in the Perfection Certificate, Borrower and each of Borrower's Subsidiaries have timely filed all required federal and all other tax returns if taxes payable are in excess of \$5,000, and have timely paid all taxes, assessments, deposits and contributions owed, if in excess of \$5,000 except to the extent duly contested in good faith by appropriate proceedings promptly instituted and diligently conducted, and subject to reserves or other appropriate provision as required in conformity with GAAP, and Borrower is not aware of any material claim or adjustment proposed for any prior tax year of Borrower or any of its Subsidiaries which could result in a material amount of additional taxes becoming due and payable.

## 10. Covenants

10.1 Borrower shall, and shall cause each of its Subsidiaries to, while the Obligations are outstanding:

- (a) Pay all amounts, as and when, due under this Agreement.
- (b) Strictly comply with all applicable laws, rules and regulations relating in any way to it, its business or its property, except where failure to do so would not have a Material Adverse Effect.
- (c) Remit federal and all other taxes and all other deductions and payments required to be paid to every relevant taxing agency and authority as they become due, other than such taxes that are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, provided a reserve or other appropriate provision in conformity with GAAP shall have been made for such contested amounts, or if such taxes, deductions or payments do not in the aggregate, exceed \$5,000.
- (d) Notify Espresso promptly upon becoming aware of an Event of Default.
- (e) Notify Espresso within ten (10) days of any change in location of any material portion of the



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Collateral, or of any material loss or material damage to any of the Collateral.

- (f) Notify Espresso within five days of the details of any action, suit, inquiry, claim, governmental investigation or proceeding which to Borrower's knowledge is pending or threatened in writing, involving Borrower, or any of Borrower's Subsidiaries or any of its or their assets that could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, \$100,000 or more.
- (g) Notify Espresso within five days of Borrower or any Subsidiary acquiring any interest in any commercial tort claim, a summary of the general details thereof and Borrower and each applicable Subsidiary shall grant to Espresso as agent of Lender a security interest in such claim and its proceeds, all upon the terms of this Agreement, with such summary to be in form and substance reasonably satisfactory to Espresso.
- (h) Strictly comply with the Financial Covenants.
- (i) Maintain a policy or policies of insurance for risks, and in amounts, customary for businesses in Borrower's industry and Borrower's size, and reasonably satisfactory to Espresso, including commercial property and general liability insurance, and shall cause such commercial property insurance to have a lender's loss payable endorsement in favor of Espresso, and such general liability insurance to have Espresso as additional insured. If Borrower fails to maintain such insurance, Espresso may, but shall not be obliged to maintain or effect such insurance and add the cost to Principal.
- (j) Notify Espresso prior to the creation of any new Subsidiary.

10.2 Borrower shall not, and shall not permit any Subsidiary, while the Obligations are outstanding and without Espresso's prior written consent, to:

- (a) Except for Permitted Investments, merge, consolidate or amalgamate with any Person, liquidate or dissolve or acquire all or substantially all the capital stock, or assets, or business line of another Person.
- (b) Except for Permitted Distributions, redeem, repurchase, pay dividends on, or make other distributions in respect of, its capital stock.
- (c) Except for Permitted Indebtedness, repay, incur, create, assume, be liable for or allow to exist any Indebtedness.
- (d) Make any payment in respect of Subordinate Indebtedness, if any, other than in compliance with the applicable subordination agreement.
- (e) Except in accordance with subsection 10.4, grant, create, or suffer to exist any Lien on any Collateral, or enter into any agreement directly or indirectly restricting Borrower's or any Subsidiary's right to grant a security interest in all or any Collateral.
- (f) Except for Permitted Investments, make any Investments.
- (g) Permit a Subsidiary not party to this Agreement nor a guarantor of the Obligations, to (i) maintain cash and other assets with an aggregate value in excess of 10% of the consolidated assets of Borrower and its Subsidiaries, on a consolidated basis, tested on the last day of each fiscal quarter, (ii) achieve revenue, in the aggregate, in excess of 10% of consolidated revenue of Borrower and its Subsidiaries on a consolidated basis, tested quarterly for the twelve (12) month period then ended, (iii) own or license any intellectual property material to Borrower's business, (iv) create, incur, assume, be or remain liable for any Indebtedness, other than Permitted Indebtedness, or (v) create, incur, assume or suffer to exist any Lien, except in accordance with



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subsection 10.4, on any of its property, or assign or otherwise convey any right to receive any of its income, including the sale of any accounts, or agree with any Person other than Espresso to grant a security interest in, or otherwise encumber, any of its property.

- (h) Except for Permitted Investments in Subsidiaries expressly permitted under this Agreement and Permitted Distributions, enter into or permit to exist, directly or indirectly, any material transaction with any Affiliate, except in the ordinary course of Borrower's business, and on customary commercial terms no more favorable to such Affiliate than would be made available to a non-affiliated Person at arm's length from Borrower: such transaction and its terms to be made available to Espresso promptly upon request.
  - (i) Except for Permitted Transfers, sell, lease, license, dispose of, transfer, release, surrender or abandon possession of any material portion of the Collateral.
  - (j) Change its legal name or the address of its chief executive office or place of business, except upon thirty (30) days prior notice to Espresso.
  - (k) Effect a Change of Control unless the Obligations (other than inchoate contingent indemnity or reimbursement obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) are unconditionally paid in full in immediately available funds prior to or simultaneously with such Change of Control.
  - (l) Change (except for death or disability), in any material respect, the role or responsibilities within Borrower's business, of Dan Singer without giving Espresso at least thirty (30) days prior written notice.
  - (m) Issue equity interests that by their terms or by the terms of any security or other equity interest into which they are convertible or for which they are exchangeable, or upon the happening of any event or condition (i) are redeemable in cash at the request of the holder, or (ii) require any scheduled payment of dividends in cash, in each case, prior to Borrower's unconditional repayment of the Obligations in full, unless the holder has entered into a subordination agreement in favor of Espresso in form and substance reasonably satisfactory to Espresso.
- 10.3 Any reference in this Agreement or any other document to a merger, transfer, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of, or by, a limited liability company, limited partnership or trust, or an allocation of assets to a series of a limited liability company, limited partnership or trust (or the unwinding of such a division or allocation), as if it were a merger, fundamental change, transfer, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate person. Any division or series of a limited liability company, limited partnership or trust shall constitute a separate Person under this Agreement and the other Loan Documents (and each division or series of any limited liability company, limited partnership or trust that is a Subsidiary, joint venture or any other like term shall also constitute such a person or entity).
- 10.4 Borrower may grant, create, or suffer to exist Liens on any of its Collateral, only as follows:
- (a) A Lien in favor of the Senior Lender securing its Senior Indebtedness.
  - (b) Liens existing on the Effective Date and disclosed in the Perfection Certificate, or arising under this Agreement or the Loan Documents, or otherwise existing in favor of Espresso,
  - (c) Inchoate Liens for taxes, fees, assessments or other governmental charges or levies, that (i) are not delinquent, (ii) are related to sales taxes collected in the ordinary course of Borrower's business, and (iii) and are being duly contested in good faith by appropriate proceedings promptly instituted and diligently conducted, and subject to reserves or other appropriate provision as required in



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conformity with GAAP,

- (d) Liens (i) upon equipment and related software acquired or held by Borrower or a Subsidiary to secure its acquisition price or Indebtedness incurred solely for the purpose of financing such acquisition to the extent such Indebtedness is permitted under the definition of Permitted Indebtedness, or (ii) existing on equipment when acquired, only if solely against such equipment and improvements, accessions and proceeds of such equipment,
- (e) Liens on the Collateral securing Subordinate Indebtedness, if any,
- (f) Liens in respect of the extension, renewal or refinancing of Indebtedness secured by Liens described in subsections (a) through (e) above, provided such extension, renewal or replacement Liens shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness is not increased,
- (g) Liens in favor of financial institutions arising in connection with Borrower's or a Subsidiary's deposit and securities accounts, if otherwise permitted in accordance with this Agreement, provided Espresso, as agent Lender, has a perfected Security Interest in the amounts held in such deposit and securities accounts pursuant to an account control agreement reasonably satisfactory to Espresso,
- (h) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default,
- (i) Inchoate possessory Liens of carriers, warehousemen, suppliers, or other Persons arising in the ordinary course of business which are not delinquent, remain payable without penalty or are being contested in good faith and by appropriate proceedings preventing the forfeiture or sale of the subject property,
- (j) cash deposits under, or Liens to secure payment of workers' compensation, employment insurance, pensions, social security, and other like obligations incurred in the ordinary course of business (other than Liens imposed by the Employee Retirement Income Security Act),
- (k) leases or subleases, non-exclusive licenses or sub-licenses granted in the ordinary course of business of (i) real property (ii) personal property (other than intellectual property), and related security deposits or other similar security for obligations under such leases, subleases, licenses, and sub-licenses, and
- (l) non-exclusive licenses of intellectual property in the ordinary course of business and licenses that could not result in a legal transfer of title of the licensed property but that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discrete geographical areas outside of the United States.

## 11. Events of Default

11.1 Each of the following is an "Event of Default" under this Agreement:

- (a) Borrower fails to pay any amount of Principal (including an excess payment) or interest when due and payable; provided that Borrower shall be permitted three (3) business days to cure such failure. During such cure period, the failure to make or pay any payment specified under this subsection 11.1(a) is not an Event of Default.
- (b) Borrower fails to pay any Fees, of which it has notice, when due.
- (c) Borrower fails to comply with any reporting obligations of Borrower in Schedule A and does not cure such failure within ten (10) days of the occurrence of such failure.



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- (d) Borrower fails to perform or comply with any obligation or restriction under the Loan Documents, other than a payment obligation or a reporting obligation, and does not cure such failure within ten (10) days of the occurrence of such failure.
- (e) A default occurs in respect of any Indebtedness (including Permitted Indebtedness) in excess of \$50,000 which would result in the right of the holder of such Indebtedness to accelerate its payment, whether or not exercised, or a default occurs under any other material agreement to which Borrower is a party, which would reasonably be expected to have a Material Adverse Effect.
- (f) Any representation or warranty of Borrower in the Loan Documents, or any other writing, other than financial projections, in a certificate, financial statement, report, notice or instrument delivered by Borrower to Espresso in connection with the Loan Documents was at the time it was delivered, false or misleading in any material respect.
- (g) Any asset material to a Borrower's business is sequestered, attached or seized, or a court order enjoins, restrains or otherwise prevents Borrower from conducting its business and is not removed, discharged or rescinded within thirty (30) days of such sequester, attachment, seizure or order, unless such action or event is stayed, or an adequate bond has been posted pending a good faith contest by Borrower.
- (h) Borrower is unable to pay its debts as they become due or otherwise becomes insolvent, or Borrower, or any of its Subsidiaries commences or becomes subject of an insolvency proceeding which is not dismissed or stayed within thirty (30) days of its commencement. An "insolvency proceeding" is a proceeding under applicable bankruptcy or insolvency law, including an assignment for the benefit of creditors, and proceedings seeking reorganization, arrangement, or other relief from insolvency.
- (i) A judgment, fine, penalty or other order requiring Borrower to pay more than \$75,000 in excess of any insurance coverage acknowledged by the applicable insurer is rendered against Borrower, and not discharged, stayed or bonded, pending appeal within twenty (20) days of entry, assessment or issuance.

## 12. Remedies

12.1 While an Event of Default is continuing and subject to applicable cure periods in subclause 11.1, Espresso or Lender may, by giving notice do any of the following:

- (a) Declare all the Obligations immediately due and payable.
- (b) Stop advancing money or extending credit to Borrower,

and without notice or demand do any of the following in accordance with the terms of the Espresso Loan Documents:

- (c) Notify Borrower's account debtors of the Security Interest, direct such account debtors to make all payments to Espresso or Lender, and settle or adjust disputes and claims directly with account debtors for amounts, on terms and in any order that Espresso considers advisable.
- (d) Make payments and do acts it considers necessary or reasonable to protect the Security Interest. If, and as, Espresso requests in writing, Borrower shall assemble the Collateral and make it available as Espresso designates at a location reasonably convenient to Espresso and Borrower.
- (e) Peaceably enter and occupy any of premises of Borrower and its Subsidiaries, without charge by Borrower, to exercise any of Espresso's or Lender's rights or remedies, including premises where





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the Collateral is located, to take and maintain possession of any of it, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to the Security Interest and pay all expenses incurred.

- (f) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral, and to so do, Espresso and Lender are 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, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling the Collateral and, in connection with Espresso's and Lender's exercise of their rights under the Loan Documents, and Borrower's rights under all licenses and all franchise agreements inure to Lender's benefit.
- (g) Deliver a notice of exclusive control pursuant to any account control agreement or exercise any other remedy under the Loan Documents.
- (h) Demand and receive possession of Borrower's Books.
- (i) Exercise all other rights and remedies of Espresso and Lender under the Loan Documents at law and equity.
- (j) Any deficiency existing after disposition of Collateral as provided above will be paid immediately by Borrower.

- 12.2 Borrower shall, while an Event of Default is continuing, hold all payments received by it, in trust for Lender, and turn over such payments to Espresso or Lender upon written request to be applied to the Obligations.
- 12.3 Espresso may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of the Security Interest, and otherwise deal with the Collateral, the Security Interest, Borrower, account debtors of Borrower, sureties, and others, as Espresso sees fit without prejudice to the liability of Borrower, Espresso's or Lender's right to hold and realize on the security constituted by this Agreement.

### **13. Application of Payments and Proceeds**

Subject to the Code, all payments and proceeds of the Collateral received by Espresso or Lender shall be applied on account of the Obligations in such order as Espresso or Lender may determine.

### **14. Rights Cumulative**

All rights and remedies of Espresso and Lender in this Agreement are cumulative, and no such right or remedy is intended to be exclusive, but each shall be in addition to every other right or remedy contained in this Agreement, or now or in the future existing at law, in equity or by statute, or under any other agreement between Borrower, Lender and Espresso.

### **15. Liability of Espresso**

Borrower bears all risk of loss, damage or destruction of the Collateral. So long as Espresso complies with the Code and applicable law about safekeeping of the Collateral in the possession or control of a secured party, neither Espresso nor Lender shall be liable for any loss, damage to, or diminution in value of any of the Collateral, or any act or default of any carrier, bailee or other Person, nor shall Espresso or Lender be liable for salaries or non-fulfilment of contracts during any period when Espresso shall manage the Collateral, including upon peaceable



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entry of Borrower's premises. Neither Espresso nor Lender shall be bound to do, observe, or perform or to see to the observance or performance by Borrower of any obligations or covenants imposed upon Borrower, nor shall Espresso or Lender, in the case of instruments, or chattel paper, be obliged to preserve rights against other Persons, nor to keep any of the Collateral identifiable. Borrower hereby waives any applicable provision of law permitted to be waived by it which imposes higher or greater obligations upon Espresso or Lender than as contained in this section.

**16. Authorization to Debit Borrower's Bank Account**

16.1 Borrower hereby irrevocably authorizes Espresso as Lender's agent to debit and initiate electronic funds transfers, including ACH transfers from Borrower's Bank Account, and any successor to such account, from time to time, and to automatically debit all amounts as and when due to Espresso or Lender under this Agreement or any other Loan Document. This authorization shall continue until the Obligations (other than inchoate contingent indemnity or reimbursement obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been unconditionally paid in full, but no more than the Obligations. Borrower agrees to execute such documents as may be reasonably necessary to initiate electronic funds transfers from Borrower's Bank Account, including an ACH authorization, and to provide Espresso and Lender with then current information about any change to Borrower's Bank Account.

Name of Account: Epiphany Systems, Inc.

Bank Name: Chase

Bank Address: 988 8<sup>th</sup> Ave., New York, NY 10019

Bank Account Number: 715111818

Bank Routing Number: 021000021

SWIFT Code: CHASUS33

or

IBAN Number:

16.2 Revocation, cancellation or termination of this authorization shall not terminate this Agreement nor Borrower's obligations under this Agreement. The information in this Agreement necessary to complete such electronic funds transfer or debit may be disclosed only as required to complete such transfer or debit.

**17. Notices**

Any communication which is required or permitted between Borrower and Espresso (or to and from Espresso as Lender's agent) relating to this Agreement shall be in writing and shall be delivered either personally or electronically. Any such communication shall be sent to Espresso at the postal address contained in the first page of this Agreement, attention Enio Lazer, or by email to enio@espressocapital.com, and to Borrower at the postal address or email address contained in first page of this Agreement, or such other municipal address or email address as Borrower or Espresso may from time to time notify the other. Notices are deemed effective upon the earlier of actual receipt or when delivered, if hand-delivered, delivered by courier or when transmitted, if delivered by email.



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## **18. Satisfaction and Discharge**

Any partial payment or satisfaction of the Obligations, or any ceasing by Borrower to be indebted to Lender, shall be deemed not to be a redemption or discharge of this Agreement. Borrower shall be entitled to a release of this Agreement and the termination of the Espresso's and Lender's security interests in and Liens on Borrower's Collateral upon full and unconditional payment and satisfaction of all Obligations (other than inchoate indemnity or reimbursement obligations, and any other obligations which, by their terms, are to survive the termination of this Agreement) and all rights shall revert to Borrower. Upon request Espresso will authorize Borrower or Borrower's counsel to discharge any registration under the Code, or otherwise in connection with the Loan Documents and deliver or execute any such documents necessary for such discharge at Borrower's sole expense.

## **19. Publicity**

Subject to Borrower's prior written consent, each of Espresso and the Lender may disclose the existence of this financing on its website and in its promotional material.

## **20. No Strict Construction**

Espresso, Lender and Borrower have participated jointly in the negotiation and drafting of this Agreement. In the event of any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by them and no presumption or burden of proof shall arise favoring or disfavoring any of them by virtue of the authorship of any provisions of this Agreement.

## **21. Entire Agreement**

This Agreement, and other documents to be delivered pursuant to this Agreement, constitute the entire agreement between Borrower, Espresso and Lender about the Loan Facility and supersedes all prior agreements (of every nature and kind), understandings, negotiations and discussions, whether oral or written, of Borrower, Espresso and Lender.

## **22. Governing Law**

This Agreement and the rights and obligations of Espresso, Lender and Borrower shall, in all respects, be governed by, and construed in accordance with, the laws of the State of New York (without regard to principles of conflicts of laws that would result in the application of the laws of another jurisdiction) (including Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York), including all matters of construction, validity and performance, except (a) as required by mandatory provisions of law and (b) to the extent validity or perfection of the Security Interest, or the remedies under this Agreement, in respect of any of the Collateral are governed by the law of another jurisdiction.

## **23. Submission to Jurisdiction and Venue**

Borrower, Espresso and Lender hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the State and Federal courts in New York County, New York, provided nothing in this Agreement shall be deemed to operate to preclude Espresso or Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral in that jurisdiction, or to enforce a judgment or other court order in favor of Espresso or Lender. Borrower, Espresso and Lender expressly submit and consent in advance to such jurisdiction in any action or suit commenced in any such court and waives any objection 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, Espresso and Lender waive personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such



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summons, complaints, and other process may be made by registered or certified mail addressed to Borrower and Espresso (to itself and as agent to Lender) at the address provided under the heading "Notices" above, and service so made shall be deemed completed upon the earlier to occur of Borrower's or Espresso's, as the case may be, actual receipt or three (3) days after deposit in the U.S. mails, proper postage prepaid.

**24. Waiver of Jury Trial**

EACH OF BORROWER, ESPRESSO AND LENDER HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION OF ANY KIND ARISING FROM OR IN CONNECTION WITH THE OBLIGATIONS OR THIS AGREEMENT OR ANY MATTER RELATING TO THIS AGREEMENT, OR ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS DELIVERED PURSUANT TO THIS AGREEMENT OR THE OBLIGATIONS. EACH OF BORROWER, ESPRESSO AND LENDER AGREES ALL SUCH CLAIMS SHALL BE TRIED BEFORE A JUDGE OF A COURT HAVING JURISDICTION, WITHOUT A JURY. EACH OF BORROWER, ESPRESSO AND LENDER ACKNOWLEDGES THESE WAIVERS ARE OF A LEGAL RIGHT AND REPRESENT TO EACH OTHER THAT THESE WAIVERS ARE MADE KNOWINGLY AND VOLUNTARILY. THESE WAIVERS ARE A MATERIAL INDUCEMENT TO BORROWER, ESPRESSO AND LENDER TO ENTER INTO THIS AGREEMENT AND EACH HAS REVIEWED THESE WAIVERS WITH ITS COUNSEL.

**25. Amendment and Waiver**

Except as may otherwise be provided in this Agreement, no supplement, modification or waiver of this Agreement shall be binding unless executed in writing by Espresso, Lender and Borrower. No waiver of any of the provisions of this Agreement, nor the acceptance of any payment under this Agreement shall constitute a waiver of any other provision nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in such waiver.

Nor shall any delay or omission by Espresso or Lender in exercising any right or remedy under this Agreement or with respect to an Event of Default operate as a waiver of any other right or remedy.

**26. Assignment**

Neither this Agreement nor any right or obligation under it may be assigned by Borrower without Espresso's prior written consent. Unless an Event of Default is continuing, neither Espresso nor Lender shall assign any interest in the Loan Documents to any Person who is (a) a competitor of Borrower or any of its Subsidiaries, whether as an operating company or direct or indirect parent with voting control over such operating company or (b) a vulture or distressed debt fund.

**27. Agency**

Lender appoints Espresso to act on its behalf as the administrative and collateral agent under this Agreement and the other Loan Documents and authorizes Espresso to take such actions on its behalf and to exercise such powers as are delegated to Espresso in accordance with the services agreement between Espresso and Lender.

**28. Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions and such invalid or unenforceable provision shall be deemed severed in such jurisdiction.

**29. Conflicts with Loan Documents**



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In the event of any conflict between the provisions of this Agreement and the provisions of any other Loan Document, the provisions of this Agreement shall prevail.

### 30. Counterparts

This Agreement may be executed in counterparts and delivered electronically, each of which when so executed and delivered shall be an original, and such counterparts shall together constitute one and the same instrument. The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation assignments, assumptions, amendments, waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global or any state laws based on the Uniform Electronic Transactions Act.

### 31. Confidentiality

Espresso, Lender and Borrower shall each hold Confidential Information of the other in confidence using procedures and practices no less stringent than those used for its own confidential information. Espresso and Lender shall only use Confidential Information for the purposes contemplated by this Agreement and shall restrict access on a need-to-know basis to the Confidential Information only to such of its syndication partners, capital providers, employees and authorized consultants solely for the purposes contemplated by this Agreement and to prospective syndication partners and credit providers who shall have entered into an agreement containing confidentiality provisions substantially the same as those in this clause 31. "**Confidential Information**" means (a) the terms and conditions of this Agreement and other information that may be shared by Espresso, Lender and Borrower in connection with this Agreement, and (b) in the case of Borrower, all information, including, but not limited to, financial information (including Borrower's industry, residency, loan amounts, loan status, use of loan proceeds, and assets secured), business plans, customer contact information, pricing and sales policies generally known to the public, but "**Confidential Information**" does not include information which: (i) was known to Espresso, Lender or Borrower, as applicable, at the time of the disclosure, (ii) received from a third party without restriction and without breach of any confidentiality obligation, (iii) is or becomes publicly available without contravention of this provision of this Agreement, or (iv) is disclosed at the request of any governmental or regulatory authority (including securities regulatory authorities, and public exchanges) or an order of a court of competent jurisdiction. Espresso and Lender may use the Confidential Information of Borrower, including Borrower's industry, residency, loan amounts, loan status, use of loan proceeds, and assets secured, for the purposes of developing insights and creating reports ("**Aggregated Reports**") which will consist of aggregated information of certain borrowers in Espresso's portfolio, provided such Aggregated Reports and insights shall not include information identifying Borrower or any of its Affiliates as a source of such data. Espresso may use the Aggregated Reports and insights for its internal purposes, and may disclose such data to its professional advisors, service providers, existing and prospective investors, governmental, securities or other regulatory authorities, and other third parties for reporting or commercial purposes.

### 32. Further Assurances

Borrower shall with reasonable diligence, do all things and provide all reasonable assurances as reasonably requested by Espresso that are required to complete and give effect to the transactions contemplated by this Agreement.



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**33. Withholding Tax Certificate**

A certificate (IRS Form W-8BEN-E or any successor form or other applicable document prescribed by the IRS) for United States tax withholding will be included in the closing record book and updated from time to time upon request of Borrower as required by applicable law.



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## Schedule B: Defined Terms and Interpretation

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**"1 Month LIBOR"** means the rate per annum equal to the ICE Benchmark Administration Limited LIBOR Rate, as published by Bloomberg (or another commercially available source providing quotations of LIBOR as reasonably determined by Espresso from time to time) for U.S. dollar deposits (for delivery on the fifteenth day of the applicable month) with a term of one month or the LIBOR replacement determined as above, and in each case at approximately 11:45 a.m. (City of London time) on the last business day of each month.

**"Affiliate"** means, with respect to any Person, any other Person that owns or controls directly or indirectly such Person, any other Person that controls or is controlled by or is under common control with such Person, and each of such other Person's senior executive officers, directors, and partners.

**"Board"** means, with respect to any Person, the board of directors, board of managers, managers, managing member, members, trustees or board of trustees, general partner or similar entity, group or governing body of such Person.

**"Borrower's Books"** means all Borrower's books and records including, ledgers, records of Borrower's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs, or tape files, and the equipment, containing such information.

**"Change of Control"** means any transaction, event or series of related transactions or events after the Effective Date that, individually or in the aggregate, result in: (a) the holders of Borrower's capital stock having ordinary voting power who were holders of such capital stock as of the Effective Date, ceasing to own at least fifty-one percent (51%) of such shares of capital stock of Borrower or (b) any "person" or "group" (within the meaning of Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) becoming the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, of a sufficient number of shares of capital stock having ordinary voting power to vote in the election of directors, empowering such "person" or "group" to elect a majority of the members of the Board, who did not have such power before such transaction.

**"Code"** means the Uniform Commercial Code, as from time to time, in effect in the State of New York, provided, to the extent the Code is used to define any term in this Agreement 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, and provided further, if by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Espresso's Lien on any of the Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of its provisions relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

**"Collateral"** means all Borrower's goods (including equipment and inventory), accounts, general intangibles (including payment intangibles and intellectual property), commercial tort claims, documents, instruments (including all promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, letter of credit rights, investment property (including certificated and uncertificated securities, securities accounts and security entitlements), in each case, 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, improvements to and, products, proceeds (including insurance proceeds) of any or all of the foregoing, except to the extent any such property (i) is non assignable by its terms without the consent of the licensor thereof or another party (but only to the extent such prohibition on transfer is enforceable under applicable law, including, without limitation, Sections 9406 and 9408 of the Code), (ii) the granting of a



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security interest therein is contrary to applicable law, provided that upon the cessation of any such restriction or prohibition, such property shall automatically become part of the Collateral, or (iii) any intent to use trademark or application, at all times prior to first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise, but only to the extent that granting of a security interest in such intent-to-use trademarks would be contrary to applicable law. Each of the foregoing terms shall have the meaning given it in the Code.

**“Contingent Obligation”** means, 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, in each case, 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. 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 a guarantee or other support arrangement.

**“Dollar”** and **“\$”** refer to currency of United States of America, unless otherwise provided.

**“Effective Date”** means the date first written above.

**“Excluded Accounts”** are fiduciary deposit accounts used exclusively for payroll, payroll taxes and other employee wage and benefit payment, provided the cash on deposit in such accounts is not commingled with cash held for any other purpose.

**“Fees”** are the Advance Fee, the Fees and Expenses and the Prepayment Fee.

**“GAAP”** means 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, provided, however, that (a) any GAAP principle or rule that requires operating leases to be classified, accounted for or treated similarly to capital leases or otherwise reflected on Borrower’s or any of its Subsidiaries’ balance sheet, for the purposes of this Agreement and any related document shall instead be treated as operating leases for private companies were treated under GAAP as of December 31, 2018 and (b) if there occurs after the Effective Date any change in GAAP that affects in any respect the calculation of any covenant or threshold in this Agreement, Espresso, Lender and Borrower shall negotiate in good faith amendments to the provisions of this Agreement that relate to the calculation of such covenant or threshold with the intent of having the respective positions of Espresso, Lender and Borrower after such change in GAAP conform as nearly as possible to their respective positions as of the Effective Date, and, until any such amendments have been agreed upon, such covenants and thresholds shall be calculated as if no such change in GAAP has occurred.

**“Indebtedness”** means any of the following indebtedness or payment obligations of Borrower to a Person other than Espresso and Lender: (a) indebtedness for borrowed money or the deferred price of property or services, (b) any reimbursement and other obligations for surety bonds and letters of credit, (c) obligations evidenced by notes, bonds, debentures or similar instruments, (d) capital lease obligations, and (e) Contingent Obligations.

**“Investment”** means (a) the acquisition of any beneficial ownership interest in any Person (including stock,





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partnership interests or other securities), (b) any loan, advance or capital contribution to any Person, or (c) the acquisition of all or substantially all the assets or properties of another Person.

**“Lien”** means 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.

**“material”** means of such nature as Espresso would reasonably consider significant in its assessment of Borrower’s ability to pay and perform the Obligations under this Agreement.

**“Material Adverse Effect”** means (a) a material impairment in priority of Espresso’s Lien in the Collateral, or to the value of the Collateral, or (b) a material adverse effect upon: (i) the business, operations, properties, assets or financial condition of Borrower, or (ii) the ability of Espresso or Lender to enforce any of its rights or remedies with respect to any Obligations.

**“Obligations”** means the Borrower’s obligations to pay when due any debts, Principal, interest, incurred and unpaid Fees, expenses and other amounts that Borrower owes or is required to pay to Espresso or Lender now or later, whether under this Agreement and the other Loan Documents (other than any warrant, if applicable) or otherwise, including, without limitation: (a) all obligations relating to interest accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, incurred and unpaid Fees, and all other amounts payable by Borrower under this Agreement and (b) debts, liabilities, or obligations of Borrower assigned to Espresso or Lender, and (c) all payment obligations and payment liabilities related to Borrower’s duties under the Loan Documents (other than any warrant, if applicable).

**“Perfection Certificate”** means Espresso’s standard form of certificate, by which Borrower certifies, among other things, exact legal names (and names of predecessors, if any), organization structure and jurisdiction, chief executive office address and intellectual property of Borrower and its Subsidiaries.

**“Permitted Distribution”** means:

- (a) conversion or exchange any of Borrower’s convertible, exercisable or exchangeable securities into other securities which comply with the provisions of subsection 12. 2 (m),
- (b) payment of dividends solely in common stock,
- (c) provided an Event of Default is not then continuing or would result from its completion, repurchase of stock up to an aggregate of \$10,000 in any fiscal year held by current or former employees, directors, officers or other service providers pursuant to stock repurchase agreements, the exercise of contractual rights of refusal,
- (d) provided an Event of Default is not then continuing or would result from its completion, cash payments to any holder of Borrower’s or a Subsidiary’s stock in lieu of issuing such holder fractional stock upon the conversion, exercise or exchange of such holder’s stock or convertible debt, SAFE instruments, or KISS instruments, or the exercise of options, warrants, or similar securities, into any other class or series of capital stock of Borrower or a Subsidiary,
- (e) provided an Event of Default is not then continuing or would result from its completion, repurchase equity of Borrower or a Subsidiary held by any of Borrower’s or a Subsidiary’s founders, employees, directors (or comparable persons), or officers if, immediately prior to, or simultaneously with, the completion of any such repurchase, Borrower or such Subsidiary has received, without duplication of the amounts financed by way of Subordinate Indebtedness, cash from the sale and issuance of its equity securities in an amount equal to or greater than the cash consideration to be paid by Borrower or such Subsidiary for such repurchase and such founder or officer continues to be actively involved



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in the management and operations of Borrower or such Subsidiary following such repurchase, and  
(f) any distributions permitted by a subordination agreement.

**“Permitted Indebtedness”** means:

- (a) Indebtedness existing on the Effective Date and disclosed in the Perfection Certificate,
- (b) Indebtedness secured by a Lien described in clauses (a) through (h) of subsection 10.4 provided under (c) of such subsection Indebtedness does not exceed \$50,000,
- (c) Senior Indebtedness, provided the aggregate amount outstanding shall not exceed \$1,000,000 and the Senior Loan Agreement shall not be amended to modify the borrowing base formula and associated definitions in a manner that would result in increased availability over the availability at the Effective Date, without Espresso’s prior written consent,
- (d) Subordinate Indebtedness,
- (e) unsecured Indebtedness to trade creditors, and other unsecured general business payables and obligations incurred in the ordinary course of business,
- (f) Indebtedness in respect of credit cards up to an aggregate of \$50,000,
- (g) Indebtedness incurred by endorsing negotiable instruments received in the ordinary course of business,
- (h) Intercompany Indebtedness of Borrower to Digitalware, Inc. provided any amount of such Indebtedness in excess \$500,000 shall be deducted from the Aggregate Authorized Credit Amount,
- (i) extensions, refinancings, modifications, amendments and restatements of any Permitted Indebtedness in (a) through (h), provided (i) the principal amount of the Indebtedness is not increased, nor (ii) their terms modified with the effect they are burdensome, in any material respect, upon Borrower or a Subsidiary.

**“Permitted Investments”** means:

- (a) Investments (including ownership interests in Subsidiaries) existing on the Effective Date and disclosed in the Perfection Certificate,
- (b) Investments consisting of (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State maturing within 1 year from the date of their acquisition, and (ii) commercial paper maturing no more than 1 year from the date of their creation and with a rating of at least A-2 or P-2 from either Standard & Poor’s Corporation or Moody’s Investors Service. if any, and (iii) certificates of deposit maturing no more than 1 year,
- (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection, or similar transactions in the ordinary course of the business of Borrower or the Subsidiary holding such instrument,
- (d) Investments in the aggregate not to exceed \$100,000 per fiscal year for (i) travel advances for relocation and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers, or directors for the purchase of equity securities of Borrower or its a Subsidiary pursuant to employee stock purchase plans or agreements approved by the Borrower’s or such Subsidiary’s Board,
- (e) 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,
- (f) Investments by (i) a Borrower in any other Borrower, and (ii) Borrower in any Subsidiary of Borrower



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that is not a co-borrower or guarantor of the Obligations in an amount not to exceed \$100,000 in any fiscal year,

- (g) Investments consisting of money market accounts or other deposit accounts and securities accounts with a depositor bank or securities intermediary subject to (other than any Excluded Account) a deposit account control agreement in favor of Espresso,
- (h) Investments to create or acquire a Subsidiary, provided such Subsidiary complies with subclause 12.2(g),
- (i) Investments consisting of earnest money deposits required in connection with an acquisition of property specifically permitted under this Agreement,
- (j) other Investments by Borrower and its Subsidiaries in an aggregate amount not to exceed \$100,000 in the aggregate at any time outstanding.

**“Permitted Transfers”** means:

- (a) Transfers of inventory in the ordinary course of business,
- (b) Transfers of non-exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business and licenses that could not result in a legal transfer of title of the licensed property but that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discrete geographical areas outside of the United States,
- (c) Transfers of worn-out, obsolete, or surplus equipment not financed by Lender,
- (d) Grants of security interests and other Liens referred to in subsection 10.4,
- (e) Transfers consisting of or in connection with Permitted Distributions or Permitted Investments, and
- (f) Transfers consisting of Borrower’s or a Subsidiary’s use or transfer of money or cash equivalents for trade payables and other business expenses in the ordinary course of business not prohibited by the Loan Documents.

**“Person”** means an individual, corporation, partnership, limited liability company, partnership, joint venture, syndicate, sole proprietorship or corporation, joint stock company, unincorporated association, trust, executor or any other entity of whatever nature, including any legal personal representative, government, governmental agency or authority, or entity however designated or constituted.

**“Prepayment Fee”** means for each advance or portion of such advance prepaid prior to the last day of the 18th month following the date of such advance an amount equal to all additional interest that would have accrued (but for such prepayment) from the date of such prepayment through the 18th month from the date of such advance, at the Interest Rate.

**“Principal”** means, at any time, the aggregate sum of unrepaid advances.

**“Senior Lender”** means Hitachi HC Capital America.

**“Subordinate Creditor”** means any Person holding Subordinate Indebtedness.

**“Subordinate Indebtedness”** means Indebtedness, including pursuant to convertible notes on terms to investors reasonably acceptable to Espresso, which is subject to a subordination agreement in form and substance reasonably satisfactory to Espresso.

**“Subsidiary”** means any corporation, company or partnership in which Borrower or a subsidiary of Borrower has (i) any general partnership interest or (ii) more than 50% of the securities or other units of ownership which by



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their terms have the voting power to elect or appoint its Board, and “**Subsidiaries**” are more than one.

“**Transfer**” means a sale, conveyance, lease, transfer, assignment or other disposition.

“**Total Secured Indebtedness**” means Principal plus all Senior Indebtedness.



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**Schedule C: Form of Promissory Note**

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**FOR VALUE RECEIVED**, the undersigned: (i) agrees each capitalized word and term in this Promissory Note not otherwise defined in this Promissory Note shall have the meaning ascribed to it in the Loan Facility and Security Agreement between the undersigned and Espresso Capital Ltd., as agent for Espresso Credit US LP (together with its successors and assigns "**Espresso**") dated , as amended, modified, restated or replaced from time to time (the "**Loan Agreement**"), and (ii) promises to pay to Espresso Credit US LP at 300-8 King Street East, Toronto, Ontario, M5C 1B5 (or at such other address as Espresso shall notify Borrower), in lawful money of the United States of America, Principal in the amount of \$3,000,000 together with interest on Principal, fees, costs, charges and other amounts from time to time owing or payable under the Loan Agreement no later than the Maturity Date, or as otherwise required under the Loan Agreement.

Interest shall be paid in arrears on each advance from the date of such advance, by pre-authorized payment, on the last business day of each month. Interest on overdue interest shall accrue and be calculated daily at the Default Rate, both before and after demand and judgment.

All advances and any prepayments will be recorded by Espresso and evidenced by an amended and restated promissory note. No failure to record nor any error in doing so shall limit or otherwise affect the undersigned's responsibility to pay any amount of the Obligations. The records maintained by Espresso shall be, absent manifest error, prima facie evidence of the advances and prepayments made under the Loan Agreement, interest, fees and other amounts received and owing under the Loan Agreement.

Each advance may be prepaid, in whole or part, prior to the Maturity Date, subject to the applicable Prepayment Fee. All amounts due under this Promissory Note shall, at request of Espresso, immediately become due and payable upon the occurrence and the continuance of an Event of Default.

The undersigned waives presentment for payment, notice of non-payment, notice of dishonor and notice of protest of this Promissory Note, and waives any defences based upon indulgences which may be granted by Espresso to the undersigned. In the event of any conflict between the provisions of this Promissory Note and the provisions of the Loan Agreement, the provisions of the Loan Agreement shall prevail.

This Promissory Note shall be governed by the laws of the State of New York. This Promissory Note shall inure to the benefit of Espresso, its successors, and assigns, and be binding upon the undersigned, its successors and assigns.

This Promissory Note has been executed at the date first written above and may be delivered electronically and when so delivered shall be deemed an original.