

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
LOYALTYONE, CO.**

**REPLY MOTION RECORD OF BREAD FINANCIAL HOLDINGS INC.  
(Motions relating to Tax Matters Agreement returnable June 13-14, 2024)**

April 15, 2024

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Lawyers for Bread Financial Holdings, Inc.

**TO: THE SERVICE LIST**

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Court File No. CV-23-00696017-00CL

**ONTARIO  
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COMMERCIAL LIST**

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF LOYALTYONE, CO.

APPLICANT

**AFFIDAVIT OF JOSEPH L. MOTES III**  
(affirmed March 25, 2024)

I, Joseph L. Motes III, of the City of Dallas in the State of Texas AFFIRM AND SAY:

1. As described in my affidavit affirmed February 9, 2024 (the "**February Affidavit**"), I am the General Counsel, Executive Vice President, Chief Administrative Officer and Secretary of Bread Financial Holdings, Inc. ("**Bread**"). As such, I have knowledge of the matters contained in this affidavit. To the extent that I make statements on the basis of information and belief, in each case I state the source of my information and believe it to be true. In making this affidavit, I do not intend to and do not waive any applicable privilege.

2. I affirm this affidavit further to the February Affidavit and in reply to the affidavit of Cynthia Hageman affirmed March 8, 2024 (the "**Second Hageman Affidavit**"). Throughout this affidavit, unless otherwise defined herein, I use the defined terms in my February Affidavit. In this affidavit I reply to discrete parts of the Second Hageman Affidavit. Where I do not reply to a part of the Second Hageman Affidavit, I should not be understood to agree with it.

### **Cynthia Hageman was a Trusted Advisor of ADS**

3. I was surprised to read Ms. Hageman's description of her role and stature in the Second Hageman Affidavit as it paints an inaccurate picture of Ms. Hageman's position at ADS and her integral leadership and involvement in the Spinoff Transaction.

4. Ms. Hageman was admitted to the Texas Bar in 1999, three years after me. While it is true that for several years Ms. Hageman and I both worked at Akin Gump Strauss Hauer & Feld LLP and, following her departure, I became a partner, we were contemporaries and practiced law together (whether at Akin Gump or ADS) for many years.

5. Ms. Hageman is a smart and accomplished lawyer, a detail-oriented strategic thinker, and was a trusted advisor to me and ADS more generally. As the Assistant General Counsel, she was the second most senior lawyer, the only Senior Vice President in the corporate legal organization, and one of the few Senior Vice Presidents at ADS. Ms. Hageman was responsible for significant legal work at ADS and was the primary internal lawyer on substantially all of ADS' financing transactions (including credit facilities, share repurchases, high yield notes offerings and intra-company arrangements), M&A transactions (including the acquisition of BrandLoyalty), international corporate matters, and SEC filings (including preparation of ADS' Form 10-Ks, Form 10-Qs and Form 8-Ks). Due to her extensive subject matter expertise and the significant level of trust placed in the quality of her work, Ms. Hageman had almost total autonomy over her work.

6. Ms. Hageman's substantive legal work included extensive work on the planning and execution of the Spinoff Transaction, and her suggestion that she had a "who does what" coordination role on the Spinoff Transaction is entirely inaccurate. Among other things, Ms. Hageman was the primary internal lawyer responsible for: (i) working with Davis Polk on the Spinoff Transaction Documents; (ii) drafting and negotiating the July 2021 amendment to the ADS Credit Agreement that permitted the Spinoff Transaction; (iii) working with Akin Gump on the LVI

Credit Agreement and related debt documents; (iv) drafting the Form 10 filed with the SEC in connection with the Spinoff Transaction (which was the registration statement, in excess of 100 pages, for LVI to become a public company and akin to an IPO registration statement) and all of ADS' SEC disclosure documents filed since at least mid-2015 (which is when I joined ADS) to November 5, 2021; and (v) identifying and bringing to resolution, through discussion (and negotiation on behalf of LVI) with me or other senior members of management at ADS, all key deal issues arising in connection with the Spinoff Transaction. Ms. Hageman also played an integral role in preparing, together with the LVI Team, substantially all documents that came before the ADS Board of Directors and Audit Committee in connection with the Spinoff Transaction.

7. In addition, Ms. Hageman was the Assistant Secretary of ADS and attended substantially all meetings of the ADS Board of Directors and Board Committees and took the minutes for substantially all these meetings, including the many meetings where the Spinoff Transaction and related issues were discussed.

### **Hageman's Mischaracterization of ADS' Contributions to LoyaltyOne**

8. As set out in paragraph 17 of the February Affidavit, ADS provided significant contributions to LoyaltyOne. Ms. Hageman's statement at paragraph 7 of the Second Hageman Affidavit that the corporate overhead services provided to LoyaltyOne were "relatively negligible" is incorrect. I am advised by Julie McLaughlin, Senior Vice President, Finance, that ADS provided LoyaltyOne with its PeopleSoft ERP platform (consisting of a full suite of technology: General Ledger, Asset Management, Treasury Cash Management, Procurement, Accounts Payable and Accounts Receivable), a custom-developed billing platform unique to LoyaltyOne's complex sponsor contract and revenue recognition requirements, three custom forecast/budget applications, hosting of LoyaltyOne's HR employee management system, and the license cost of numerous

other software applications including the cost of dedicated personnel to support these technology tools. ADS also performed substantially all Treasury functions and accounts payable functions for LoyaltyOne in both the United States and Canada.

9. At paragraphs 9-11 of the Second Hageman Affidavit, Ms. Hageman also mischaracterizes the US\$170 million capital contribution provided by ADS in 2017.

10. In 2016, the Ontario government passed the *Protecting Rewards Points Act (Consumer Protection Amendment)*, 2016, SO 2016, c 34 – Bill 47, which prohibits the expiration of rewards points in consumer loyalty programs due to the passage of time alone. This Act, and the associated regulations, required LoyaltyOne to rescind its five-year expiry policy. The rescission of the expiry policy resulted in LoyaltyOne incurring a one-time accounting charge and requiring funds for the AIR MILES program, which ADS provided by way of a US\$164 million capital contribution.

11. Contrary to paragraph 11 of the Second Hageman Affidavit where she states that “ADS’s contribution to remedying the results of its decision was a US\$170 million loan from ADS to LoyaltyOne”, there was no loan between ADS and LoyaltyOne. I have reviewed the relevant correspondence and legal documentation associated with this transaction. On January 19, 2017, the ADS Board of Directors signed a Board consent approving a US\$164 million capital contribution to ADS Foreign Holdings, Inc. that would ultimately flow to LoyaltyOne. A copy of Ms. Hageman’s email to the ADS Board of Directors requesting their approval of this capital contribution is attached as **Exhibit “A”**. A copy of the ADS Board of Directors’ consent is attached as **Exhibit “B”**. Subsequently, and as set out in the chart titled “LoyaltyOne, Co. – Cash Infusion” attached as **Exhibit “C”**, this capital contribution then flowed down through the organization chain to LoyaltyOne. The “loan” that Ms. Hageman refers to was a lower-tier entity promissory note dated January 27, 2017 between LoyaltyOne and Alliance Data Lux Financing S.à.r.l. (both of

which became LVI entities at the time of the spinoff) for a portion of the capital contribution, in the amount of US\$109 million. Jeffrey Fair (LoyaltyOne's Vice President, Taxation) and Ms. Hageman were the Class A managers of Alliance Data Lux Financing S.à.r.l., and in their capacities as such, designed and approved this structure, presumably for tax reasons. A copy of the minutes from the January 25, 2017 meeting of the Board of Managers of Alliance Data Lux Financing S.à.r.l. is attached as **Exhibit "D"**.

### **Dividends and Share Repurchases Normal Course Transactions**

12. At paragraph 14 of the Second Hageman Affidavit, Ms. Hageman states that a "significant portion" of the US\$1 billion to acquire BrandLoyalty was funded directly or indirectly from LoyaltyOne dividends and suggests that there was something abusive or improper in ADS doing so. Regardless of whether Ms. Hageman is correct in stating that significant LoyaltyOne dividends were used directly or indirectly, it is completely normal for a parent company to receive regular dividend distributions from its subsidiaries and then use those funds to generate shareholder value. This is particularly so where the subsidiary's business is mature, as was the case with LoyaltyOne. As a public company, all of ADS' subsidiaries, including LoyaltyOne, BrandLoyalty, Epsilon, and Card Services existed to generate and create long-term value for ADS' shareholders.

13. Similarly, the share repurchases referred to in paragraph 15 of the Second Hageman Affidavit were normal course transactions that were part of a typical strategy for a public company to create value for its shareholders. Ms. Hageman served as the primary internal lawyer on these repurchases from at least mid-2015, if not longer.

### **The Spinoff Transaction was Initiated by the LVI Team**

14. Contrary to Ms. Hageman's suggestion that the Spinoff Transaction was initiated and conducted without any regard for the interests of LoyaltyOne, it was the LVI Team, particularly Charles Horn, who presented and recommended the Spinoff Transaction to the ADS Board of Directors as the best divestment strategy and one that would benefit both ADS and the loyalty reward businesses, including LoyaltyOne. The May 6, 2021 Board of Directors meeting minutes, drafted by Ms. Hageman, a redacted copy of which is attached as **Exhibit "E"**, reflect this: "Mr. Horn then reviewed the business purpose of the proposed spinoff, noting that separate management and capital structures was expected to enhance growth opportunities for both businesses, while permitting a simpler financial institution approach and charter flexibility for Card Services."

15. Under Mr. Horn's leadership, Ms. Hageman and the rest of the LVI Team that would become LVI's senior management enthusiastically supported the Spinoff Transaction and the attractive career and growth opportunities it presented. In their new roles at LVI, nearly all the ADS senior management personnel who went to LVI were elevated to titles and positions to which they had previously aspired, as I set out in paragraph 33 of the February Affidavit.

16. I learned that Ms. Hageman was leaving when, in the months leading up to the announcement of the prospective LVI leadership in June 2021, Mr. Horn called to tell me that most of the senior leaders in Plano, Texas were going with him to LVI. I knew that Ms. Hageman had long been interested in a General Counsel position as, over the years, she had applied for such positions with my blessing, and I had sent her leads when I became aware of them. However, I did not want or ask Ms. Hageman to leave or join LVI as she was a very valued colleague fulfilling a necessary role (a role which was not eliminated and remains based in Plano,



Texas). I similarly did not ask any other ADS employees to, or imply that any ADS employee should, leave and join LVI, nor am I aware of anyone else doing so.

17. I have been advised by Ralph Andretta, CEO of Bread, that he specifically spoke with Laura Santillan, Jeffrey Tusa, and Jeffrey Chesnut to assure them that they could stay at ADS if they wished and the choice to go to LVI was entirely theirs. Similarly, I am advised by Perry Beberman, the CFO of Bread, that he spoke with Ms. Santillan, Mr. Tusa, Mr. Chesnut and Mr. Fair and asked them to reconsider leaving ADS as they were all very talented and were his core team of direct reports, but, for various reasons, they each wanted to join LVI for the promotions and/or growth opportunities it provided or because they preferred to work for a marketing company and not a financial services company. I am advised by Mr. Beberman that at no point did he advise any of the LVI Team that, if they did not line up behind the Spin Transaction, they would risk losing their jobs.

#### **LVI Team was Optimistic about BrandLoyalty**

18. With respect to paragraphs 22 and 23 of the Second Hageman Affidavit, at all material times, the LVI Team prepared all the BrandLoyalty projections and were bullish about BrandLoyalty's deal pipeline and other upside potential. They remained bullish when LVI became an independent company. For instance, in a press release dated February 3, 2022, the company quoted Mr. Horn as saying "[a]s a newly independent company following the separation from our former parent on November 5, 2021, Loyalty Ventures exited 2021 with two market-leading businesses, each with significant growth potential that we plan to develop through a combination of organic investments and tuck-in acquisitions." The press release further noted that LVI was anticipating a "significant pickup" in BrandLoyalty's campaign-based programs "with BrandLoyalty posting its strongest results in the second and fourth quarters of 2022". Attached as **Exhibit "F"** is a copy of LVI's press release dated February 3, 2022.

19. Even in late 2022, when LVI faced significant difficulties from a challenging macroeconomic climate, the LVI executive team appears to have remained optimistic about BrandLoyalty's long-term prospects. For instance, on an earnings call on November 8, 2022, Mr. Horn noted that while "BrandLoyalty's results were impacted by the continuing effects of the invasion of Ukraine, higher prices, interest rate hikes, and consumer uncertainty in Europe", "there are some very encouraging strategic initiatives underway of BrandLoyalty." A copy of the transcript from the November 8, 2022 earnings call is attached as **Exhibit "G"**.

### **Hageman was Aware of Sobeys' Communications**

20. Ms. Hageman states in her affidavit that she was "generally aware" of the risk of Sobeys' departure as of the time of Project Angus. She also states that, as of the time of Project Angus and the subsequent Spin Transaction, she "was not aware of any specific communication by Sobeys of its intention to exit the program." I understood as of that time that, although Sobeys had communicated in early 2021 that it was intending to terminate by the end of 2022, any such decision to terminate was not final and that ordinary course negotiations were ongoing with Sobeys that could result in a different decision. My understanding is based on information that was provided by those who were involved in discussions with Sobeys and that was discussed at meetings which Ms. Hageman and I both attended. As the Second Hageman Affidavit acknowledges, Sobeys did not in fact exercise its early terminations rights in early 2021 but instead agreed to two subsequent amendments to the agreement. Sobeys did not actually exercise any early termination rights until June 2022.

### **The LVI Team prepared the EY, Rating Agency and Lender Information and Presentations**

21. Ms. Hageman complains that EY, the credit ratings agencies and LVI's sophisticated lender groups all suffered from information deficiencies. While I disagree with her assertion, Ms. Hageman fails to address that it was the LVI Team that prepared substantially all of the

information and provided it to these groups. I am advised by Mr. Beberman that Mr. Chesnut, Mr. Tusa and Jack Taffe prepared substantially all the information provided to EY, including all the historical and future projections, which the ADS team had no influence or input on. I am also advised by Mr. Beberman that Mr. Chestnut, Mr. Tusa and Mr. Taffe prepared all the documentation provided, and gave all the presentations presented to the rating agencies and lenders. Mr. Chesnut, Mr. Tusa and Mr. Taffe were also the individuals responding to questions from the rating agencies and prospective lenders.

### **The LVI Team Removed the Solvency Opinion Requirement**

22. At paragraph 67 of the Second Hageman Affidavit, Ms. Hageman states that Section 3.01(ix) of the draft Separation and Distribution Agreement requiring a solvency opinion of LVI and its Group (as a closing condition to the transaction) was removed by Joshua Pittell (of Davis Polk) in a draft sent to Ms. Hageman on September 10, 2021. That is incorrect – the draft sent by Mr Pittell to Ms. Hageman on September 10, 2021 did include Section 3.01(ix) relating to solvency opinions. A copy of Mr. Pittell’s email and the draft agreement sent to Ms. Hageman on September 10, 2021 is attached as **Exhibit “H”**.

23. Days later, on September 12, 2021 (September 13, 2021 UTC), Ms. Hageman sent a responsive email to Mr. Pittell and others, enclosing an updated draft (with clean and marked versions) of the Separation and Distribution Agreement, in which Section 3.01(ix) was deleted. It appears from the title of the document – “Separation and Distribution Agreement-94579784-v10 **LS CH.docx**” – that both Laura Santillan (LS) and Ms. Hageman (CH) prepared the draft in which the provision was removed. A copy of Ms. Hageman’s email and its attachment of a redline document that shows the changes made are attached as Exhibits “F” and “G” to the February Affidavit.

24. At paragraph 70 of the Second Hageman Affidavit, Ms. Hageman suggests that the EY Report was ADS' solution to satisfying itself on the solvency of LVI. EY was retained to provide ADS with independent advice regarding certain financial elements of the Spin Transaction, including the terms and execution of LVI's debt raise and the amount of cash to be retained at LVI versus transferred by dividend to ADS, consistent with ADS' goal of reducing debt and improving its post-spin capital adequacy while providing LVI with a sound capital structure to execute on its business plan. This was particularly important since, by June 2021, all the individuals (Mr. Chesnut, Mr. Tusa and Mr. Taffe) providing the projections and other information to the lenders had announced they were going to LVI and were therefore personally invested in the best interests of their new company.

**AFFIRMED** remotely by Joseph L. Motes III from the City of Sante Fe, in the State of New Mexico, before me at the City of Toronto, in the Province of Ontario, this 25<sup>th</sup> day of March, 2024 in accordance with O.Reg. 431/20, Administering Oath or Declaration Remotely



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Robert J. Reid LSO#88760P  
Commissioner for Taking Affidavits

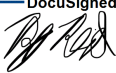
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Joseph L. Motes III

This is Exhibit "A" referred to in the Affidavit of Joseph L. Motes III affirmed by Joseph L. Motes III from the City of Sante Fe, in the State of New Mexico, before me at the City of Toronto, in the Province of Ontario, on March 25, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

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*Commissioner for Taking Affidavits (or as may be)*

**RJ REID**

**From:** [Hageman, Cynthia](#)  
**To:** [Bruce Anderson](#); [Roger H. Ballou \(rhbbp@aol.com\)](#); [D. Keith Cobb](#); [E. Linn Draper Jr.](#); [Heffernan, Ed](#); [Kenneth R. Jensen](#); [Robert Minicucci](#); [Timothy J. Theriault \(tjtheriault1@mac.com\)](#); [Tucker, Laurie](#)  
**Cc:** [Horn, Charles](#); [Motes, Joseph](#); [Chesnut, Jeff](#)  
**Subject:** 3 signatures requested - ADS  
**Date:** Monday, January 16, 2017 3:52:30 PM  
**Attachments:** [DM CORP-#185711-v1-Step 1 ADSC Board Consent 1-19-17 \(Capital Contribution\).pdf](#)  
[ADSC - Board Resolutions \(2017 Tack-on Offering\).pdf](#)  
[DM CORP-#185743-v1-1-26-2017 ADSC Board Consent \(cash dividend\).pdf](#)

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Dear members of the Board of Directors:

Attached are three written consents for your consideration and approval as follows:

1. January 19, 2017 (Funds for LoyaltyOne): In light of the cancellation of expiry by LoyaltyOne in December 2016, additional funds are required in “Redemption Settlement Assets, restricted” as shown on the consolidated balance sheet, which represents funds placed in trust for redemptions by collectors in the AIR MILES® Reward Program. An aggregate amount of \$170 million USD is being provided, a portion of which is represented in the consent attached here as a capital contribution to ADS Foreign Holdings, Inc.—the first step in a multi-step process to provide these funds to LoyaltyOne.
2. January 26, 2017 (Dividend): This consent declares the second quarterly dividend in the amount of \$0.52 per share effective January 26, 2017 (to be announced, if approved, prior to the fiscal year 2016 earnings release). The record date will be February 15, 2017 and payment date will be March 17, 2017.
3. February 3, 2017 (High Yield Offering): This consent approves a contemplated addition to the high yield offering completed in October 2016 in an amount up to \$200 million, which would be launched and priced on or about Tuesday, February 7, 2017 subject to market conditions at that time. If launched, I will work with the executive committee members named here as the pricing committee regarding the timing of a pricing call.

If you have any questions about these consents, please let me know. If none, please sign and return via fax or scan to my attention at your earliest convenience.

Regards, Cindy

### Cynthia Hageman

Vice President, Assistant General Counsel

214.494.3834 (phone)

214.494.3900 (fax)



**Confidentiality Note:** The information contained in this e-mail message and any attachments may be an attorney-client communication and/or work product and as such is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby

This is Exhibit "B" referred to in the Affidavit of Joseph L. Motes III affirmed by Joseph L. Motes III from the City of Santa Fe, in the State of New Mexico, before me at the City of Toronto, in the Province of Ontario, on March 25, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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*Commissioner for Taking Affidavits (or as may be)*

**RJ REID**

**Unanimous Written Consent of the Board of Directors of  
Alliance Data Systems Corporation**

**January 19, 2017**

The undersigned, being all of the members of the Board of Directors ( the "**Board**") of Alliance Data Systems Corporation, a Delaware corporation (the "**Corporation**"), do hereby waive notice for a meeting and do hereby consent that when they shall have signed this consent, or identical counterparts hereof, the following resolutions shall then be deemed to be adopted, to the same extent and with the same force and effect as if adopted by unanimous vote at a formal meeting of the Board duly called and held for the purpose of acting upon the proposal to adopt such resolutions, all in accordance with Section 141(f) of the Delaware General Corporation Law ("**DGCL**").

**Approval of Capital Contribution**

**WHEREAS**, the Board has determined that it is in the best interest of the Corporation to make a capital contribution ADS Foreign Holdings, Inc., a Delaware corporation, in the amount of \$164,000,000 USD (the "**ADSFH Capital Contribution**").

**NOW, THEREFORE, BE IT RESOLVED**, that the Corporation make the ADSFH Capital Contribution on or about January 19, 2017, and that the Proper Officers of the Corporation be, and they individually hereby are, authorized, empowered, and directed to take such other steps as may be necessary to cause the Corporation to make the ADSFH Capital Contribution.

**General**

**RESOLVED**, that the "**Proper Officers**" referenced in these resolutions shall be the Chief Executive Officer, President, Chief Financial Officer, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, any Executive Vice President, any Senior Vice President or any Vice President of the Corporation;

**RESOLVED FURTHER**, that the Proper Officers are, and each of them individually hereby is, authorized and empowered, in the name and on behalf of the Corporation, to approve, execute and deliver from time to time, as appropriate, the documents referred to herein with such further changes, revisions or modifications thereto as the officers executing the same shall, as evidenced by their execution thereof, deem appropriate, and any other agreements, documents, certificates and instruments contemplated thereby or hereby, including all exhibits thereto, to which the Corporation is a necessary party, such necessity to be conclusively evidenced by the execution and delivery thereof by such officer;

**RESOLVED FURTHER**, that the Proper Officers be, and each of them individually hereby is, authorized and empowered, in the name and on behalf of the Corporation to approve, execute and deliver any amendments to the aforementioned documents that may be necessary or desirable to effectuate the basic transactions contemplated thereby and any other agreements, documents, certificates and



instruments contemplated thereby or hereby, including all exhibits thereto, such approval to be conclusively established by the execution and delivery thereof;

**RESOLVED FURTHER**, that the Proper Officers are, and each of them individually hereby is, authorized and empowered, in the name and on behalf of the Corporation to make all payments and incur all expenses in connection with any transaction contemplated by these resolutions as they, or any of them, shall determine to be appropriate, such payment to be conclusive evidence of their determination;

**RESOLVED FURTHER**, that in addition to the specific authorizations conferred upon the officers and certain directors of the Corporation and subject to the authority of the Board, each of the Proper Officers is authorized and empowered to do or cause to be done all further acts and things (including the execution of all such further documents, papers and instruments) as they, upon the advice of counsel, may deem necessary or appropriate in order to carry into effect the purposes and intent of the foregoing resolutions; and, if specific forms of resolutions are necessary or desirable in the opinion of counsel to accomplish the foregoing transactions, then the same shall be deemed to have been and hereby are adopted, and the Secretary is authorized and directed to certify the adoption of all such resolutions as though such resolutions are to be inserted in the records of the Corporation immediately following execution hereof;

**RESOLVED FURTHER**, that the acts of the officers of the Corporation and each of them prior to the date hereof in connection with the transactions contemplated by the foregoing resolutions, are hereby ratified, approved, adopted and confirmed;

**RESOLVED FURTHER**, that the Secretary or Assistant Secretary and any other appropriate officer of the Corporation are, and each individually hereby is, authorized, empowered and directed to certify and furnish such copies of these resolutions and such statements as to the incumbency of the Corporation's officers, under corporate seal if necessary, as may be requested, and any person receiving such certified copy is and shall be authorized to rely upon the contents thereof;

**RESOLVED FURTHER**, that this consent may be executed in multiple counterparts, all of which shall be considered one and the same consent and shall become effective when signed by all members of the Board; and

**RESOLVED FURTHER**, that this consent may be executed by facsimile, telecopy or other reproduction, and such execution shall be considered valid, binding and effective for all purposes.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have set their hands to be effective as of the date first written above.

\_\_\_\_\_  
Bruce K. Anderson

\_\_\_\_\_  
Roger H. Ballou

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D. Keith Cobb

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E. Linn Draper, Jr.

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Edward J. Heffernan

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Kenneth R. Jensen

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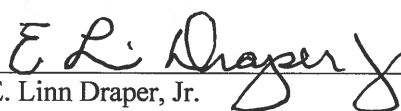
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Laurie A. Tucker

IN WITNESS WHEREOF, the undersigned have set their hands to be effective as of the date first written above.

\_\_\_\_\_  
Bruce K. Anderson

\_\_\_\_\_  
Roger H. Ballou



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D. Keith Cobb

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E. Linn Draper, Jr.

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Edward J. Heffernan

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Kenneth R. Jensen

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Robert A. Minicucci

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Timothy J. Theriault

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Laurie A. Tucker


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Timothy J. Theriault

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Laurie A. Tucker

*Signature Page of Unanimous Consent of the Board of Directors of Alliance Data Systems Corporation*

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Timothy J. Theriault

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Laurie A. Tucker

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Roger H. Ballou

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D. Keith Cobb

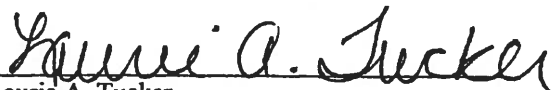
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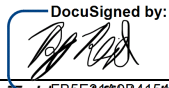
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Robert A. Minicucci

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Timothy J. Theriault

  
\_\_\_\_\_  
Laurie A. Tucker

This is Exhibit "C" referred to in the Affidavit of Joseph L. Motes III affirmed by Joseph L. Motes III from the City of Santa Fe, in the State of New Mexico, before me at the City of Toronto, in the Province of Ontario, on March 25, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

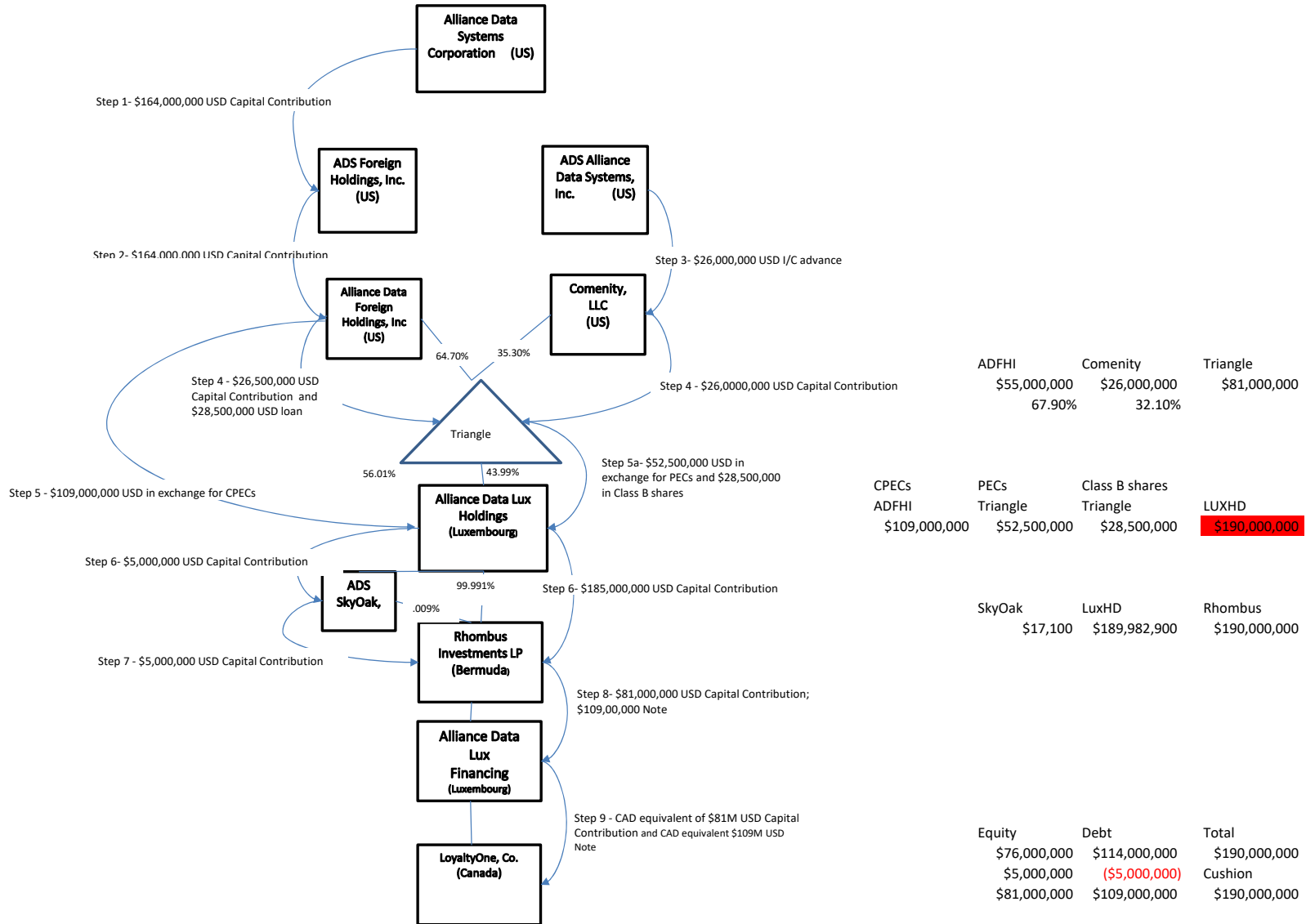
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Commissioner for Taking Affidavits (or as may be)

**RJ REID**

LoyaltyOne, Co. - Cash Infusion  
1/17/2017



Date

Step 1: Alliance Data Systems Corporation makes a capital contribution to ADS Foreign Holdings, Inc. for \$164,000,000 USD.

Step 2: ADS Data Foreign Holdings, Inc. makes a capital contribution to Alliance Data Foreign Holdings, Inc. for \$164,000,000 USD

Step 3: ADS Alliance Data Systems, Inc. advances an i/c amount (NOT A NOTE) to Comenity, LLC for \$26,000,000 USD

Step 4: Alliance Data Foreign Holdings, Inc. contributes \$26,500,000 and loans \$28,500,000 USD, respectively to Triangle LP. Comenity, LLC contributes \$26,000,000 to Triangle Investments LP. The total amount contributed to Triangle Investments LP from Alliance Data Foreign Holdings, Inc. and Comenity, LLC is \$52,500,000 USD. (Total cash transferred into Triangle LP is \$81,000,000). Comenity will earn a preferred yield of 8 percent on its incremental investment in Triangle LP.

Step 5: Alliance Data Foreign Holdings, Inc. makes a contribution to Alliance Data Lux Holdings of \$109,000,000 USD in exchange for the issuance of CPECs.

Step 5a: Triangle Investments, LP makes a contribution to Alliance Data Lux Holdings for \$52,500,000 USD in exchange for PECs and \$28,500,000 in exchange for Class B common shares. The total capital contributed to Alliance Data Lux Holdings from Alliance Data Foreign Holdings, Inc. and Triangle Investments LP is \$190,000,000 USD.

Step 5b: ADFHI and Triangle LP will enter into a shareholder level agreement whereby Triangle LP transfers the economic rights in the class B common shares to ADFHI in satisfaction of \$28,500,000 USD of the LP note. Triangle LP will retain legal title to the class B common shares and voting rights associated with the class B common shares

Step 6: Alliance Data Lux Holdings contributes to ADS Sky Oak, LLC \$5,000,000 USD and contributes to Rhombus Investments, LP \$185,000,000 USD in exchange for additional partnership interest.

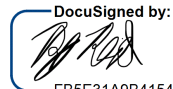
Step 7: ADS Sky Oak, LLC contributes to Rhombus Investments, LP \$5,000,000 USD in exchange for additional partnership interest.

Step 8: Rhombus Investments, LP declares a capital contribution to Alliance Data Lux Financing for \$81,000,000 USD in exchange for at least 2 newly issued shares and share premium. Rhombus loans Alliance Data Lux Financing a non-interest bearing note for \$109,000,000 USD.

Step 9: Alliance Data Lux Financing converts \$190,000,000 USD into CAD equivalent. Alliance Data Lux Financing declares a capital contribution of the CAD equivalent of \$81,000,000 USD to LoyaltyOne, Co. and loans the CAD equivalent of \$109,000,000M USD to LoyaltyOne Co.

\*\*\*\*\* Future consideration: Once Comenity LLC receives dividend from subsidiaries, the \$26,000,000 I/C advance need to be repaid.

This is Exhibit "D" referred to in the Affidavit of Joseph L. Motes III affirmed by Joseph L. Motes III from the City of Santa Fe, in the State of New Mexico, before me at the City of Toronto, in the Province of Ontario, on March 25, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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*Commissioner for Taking Affidavits (or as may be)*

**RJ REID**

**ALLIANCE DATA LUX FINANCING S.À R.L.**  
*société à responsabilité limitée*  
Registered office: 11-13, boulevard de la Foire  
L-1528 Luxembourg  
R.C.S Luxembourg: B 181593  
(the "**Company**")

**MINUTES OF THE MEETING OF THE COMPANY'S BOARD OF MANAGERS HELD AT THE REGISTERED  
OFFICE OF THE COMPANY ON 25 JANUARY 2017**

**Present:** Jeffrey L. FAIR, class A manager (by conference call),  
Cynthia HAGEMAN, class A manager (by conference call),  
Julien FRANCOIS, class B manager,  
Stéphane HEPINEUZE, class B manager.

**1. PRESENCE AND WAIVER**

The meeting was opened at 3 p.m. CET and chaired by Stéphane Hépineuze (the "**Chairman**"), which was unanimously approved by the other managers of the Company.

The Chairman suggested that Julien François shall act as secretary of the meeting, which was unanimously approved by the other managers of the Company.

The Chairman verified and confirmed that all members (the "**Managers**", each being a "**Manager**") of the board of Managers (the "**Board of Managers**") were present in person or by conference call. All Managers declared to have knowledge of the agenda of the meeting and waived any and all provisions with regard to the convening and holding of a meeting of the Board of Managers. The Chairman noted that thus the meeting was duly constituted and could validly take decisions on all items on the agenda.

**2. AGENDA**

The Chairman then proposed to discuss and resolve on the following agenda:

1. To consider, approve and, to the extent necessary, ratify the contribution in cash of USD **81,000,000** to be made on behalf of Rhombus Investments LP to the share capital of the Company against the issue by the Company of two new shares to be subscribed by Rhombus Investments LP and paid together with share premium.
2. To consider, approve and, to the extent necessary, ratify the financing by the Rhombus Investments LP of the Company in an amount of USD **109,000,000** in exchange for the issue by the Company of a note to Rhombus Investments LP in the same nominal amount and the execution by the Company of the note in relation therewith.



3. To consider, approve and, to the extent necessary, ratify the direct payments of USD 190,000,000 to be made to the Company by ADS SkyOak LLC and Alliance Data Lux Holdings in the name and on behalf of Rhombus Investments LP in connection with the subscription by Rhombus Investments LP of the new Company's shares and the Company's financing as referred to in items 1 and 2 of the agenda.
4. To consider, approve and, to the extent necessary, ratify the subsequent capital contribution by the Company of an amount of the CAD equivalent of USD 81,000,000 to LoyaltyOne Co. in exchange for additional equity interest and the execution by the Company of any resolutions and other documents in relation therewith.
5. To consider, approve and, to the extent necessary, ratify the financing by the Company of LoyaltyOne Co. in an amount of the CAD equivalent of USD 109,000,000 in exchange for the issue by LoyaltyOne Co. of a note to the Company in the same nominal amount and the execution by the Company of the note in relation therewith.
6. To consider, approve and, to the extent necessary, ratify the execution of the board of managers' resolutions requested by Key Bank National Association in the scope of the foreign exchange transactions to be executed by the Company.
7. To instruct and delegate powers to any Manager acting individually with full power of substitution, to act in the name and on behalf of the Company to implement the contemplated transaction and the preceding resolutions.

### 3. DISCUSSION

The Chairman explained to the other Managers that the meeting of the Board of Managers had been called to consider and resolve on the actions to be taken in connection with the funding of the Company's subsidiary LoyaltyOne Co., a company governed by the laws of Nova Scotia, Canada, having its registered office at 1959 Upper Water Street, Suite 900, Halifax, Nova Scotia, Canada B3J 2X2 and registered with the Nova Scotia registrar of joint stock companies register of Canada under registry number 3276980 ("**LoyaltyOne**"), in an aggregate amount of USD 190,000,000, to be made by Alliance Data Systems Corporation (in an amount of USD 164,000,000) and ADS Alliance Data Systems, Inc. (in an amount of USD 26,000,000) through the chain of relevant companies pertaining to the Alliance Data group (the "**Financing**").

The Chairman further explained that, in connection with the Financing, it is intended that Rhombus Investments L.P., an exempted limited partnership formed under the laws of Bermuda, having its registered office at Clarendon House, 2 Church Street, Hamilton, HM11, Bermuda, registered with the Registrar of Companies of Bermuda under the number 48445 ("**Rhombus**"), being the sole shareholder of the Company, contributes (the "**Contribution 1**") a cash amount of USD 81,000,000 to the Company in exchange for the issue (the "**Shares Issue**") by the Company of two new shares to Rhombus to be paid together with share premium (the "**Shares Subscription**"), to be documented in a notarial deed before a Luxembourg notary.

The Chairman further explained that, in connection with the Financing, Rhombus intends to finance (the "**Company Debt Financing**") the Company in an amount of USD 109,000,000, in exchange for the issue by the Company of a note (the "**Note 1**") to Rhombus in the same nominal amount, which the Company shall also execute.

The Chairman explained that Rhombus has currently no bank account. As a consequence, the funds to be paid by Rhombus to the Company for the Shares Subscription and the Note 1 in an aggregate amount of USD 190,000,000 shall be wired directly from Alliance Data Lux Holdings (in an amount of USD 185,000,000) and ADS SkyOak (in an amount of USD 5,000,000) to the Company's bank account in the name and on behalf of Rhombus (the "**Direct Wire**").

The Chairman explained that, in connection with the Financing and subsequent to the Shares Issue, the Note 1 and Direct Wire, the Company intends to make a capital contribution (the "**Capital Contribution**") of an amount of the CAD equivalent of USD 81,000,000 to its subsidiary LoyaltyOne in exchange for additional equity interest and to execute any resolutions and other documents in relation therewith (together, the "**LoyaltyOne Documents**").

The Chairman explained that, in connection with the Financing and subsequent to the Shares Issue, the Note 1 and Direct Wire, the Company intends to finance (the "**LoyaltyOne Debt Financing**") LoyaltyOne in an amount of the CAD equivalent of USD 109,000,000 upon conversation at the Company's bank account, in exchange for the issue by LoyaltyOne of a note (the "**Note 2**") to the Company in the same nominal amount, which the Company shall also execute.

The Chairman further explained that, in connection with the above, the Company has to perform foreign exchange transactions and for this purpose, the bank Key Bank National Association requested to be provided with specific board resolutions in the form attached to the present minutes.

All the aforesaid steps are hereinafter referred to as the "**Transaction**".

#### 4. DOCUMENTS

The Chairman stated that the most recent drafts of the LoyaltyOne Documents, the Note 1 and the Note 2 (together, the "**Documents**") were submitted to and considered by the Managers, the latter being aware that these documents may still be subject to changes and that the final form of the same shall be decided upon by the duly authorised person(s) executing them in the name and on behalf of the Company as such person(s) may in his absolute discretion deem required or useful.

#### 5. DECLARATIONS

After having thoroughly considered and discussed the various elements of the Transaction, notably the approval and, to the extent necessary, ratification of the Financing, the Shares Issue, the Share Subscription, the Company Debt Financing in exchange for the Note 1, the Direct Wire, the Capital Contribution, the execution of the LoyaltyOne Documents, the LoyaltyOne Debt Financing in exchange for the Note 2 and the various other items on the agenda, each of the Managers declared to have no conflict of interest with respect thereto.

#### 6. RESOLUTIONS

Following full discussion, the Board of Managers adopted the following resolutions, each time by unanimous vote:

##### **First Resolution**

The Board of Managers concluded that the Transaction, notably the approval and, to the extent necessary, ratification of the Financing, the Shares Issue, the Share Subscription, the Company Debt Financing in exchange for the Note 1, the Direct Wire, the Capital Contribution, the execution of the LoyaltyOne Documents, the LoyaltyOne Debt Financing

in exchange for the Note 2 and the various other items on the agenda, falls within the Company's corporate object and is in the Company's best corporate interest and therefore approved and, to the extent necessary, ratified the Transaction.

**Second Resolution**

The Board of Managers more specifically approved and, to the extent necessary, ratified the Shares Issue and the Share Subscription.

**Third Resolution**

The Board of Managers more specifically approved and, to the extent necessary, ratified the Company Debt Financing in exchange for the issue by the Company of the Note 1 to Rhombus and the entry by the Company into any documents in connection thereto.

**Fourth Resolution**

The Board of Managers more specifically approved and, to the extent necessary, ratified the Direct Wire.

**Fifth Resolution**

The Board of Managers more specifically approved and, to the extent necessary, ratified the Capital Contribution and the execution by the Company of the LoyaltyOne Documents.

**Sixth Resolution**

The Board of Managers more specifically approved and, to the extent necessary, ratified the LoyaltyOne Debt Financing in exchange for the issue by LoyaltyOne of the Note 2 to the Company and the entry by the Company into any documents in connection thereto.

**Seventh Resolution**

The Board of Managers more specifically approved and, to the extent necessary, ratified the execution of the board of managers' resolutions required by Key Bank National Association relating to the foreign exchange transactions to be performed by the Company in the form attached to the present minutes.

**Eighth Resolution**

The Board of Managers approved and, to the extent necessary, ratified the execution of the Documents in the name and on behalf of the Company by any Manager, acting individually and with power of substitution, in the form as the person executing them in the name and on behalf of the Company may in his absolute discretion deem required or useful, and the Board of Managers instructed and delegated the necessary powers to any Manager, acting individually and with power of substitution, to do so.

**Ninth Resolution**

The Board of Managers also instructed and delegated the necessary powers to any Manager acting individually with full power of substitution, to act in the name and on behalf of the Company to implement the contemplated Transaction and to take all other actions that said person may in his or her absolute discretion deem necessary, appropriate or helpful in connection with the Transaction, without being limited to, the update of the shareholders' register of the Company.

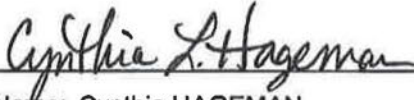
7. **CONCLUSION OF THE MEETING**

No further resolutions were passed and no other business considered. The meeting ended at \_\_\_\_\_ CET.



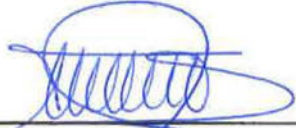
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Name: Jeffrey L. FAIR  
Title: Class A Manager



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Name: Cynthia HAGEMAN  
Title: Class A Manager



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Name: Julien FRANCOIS  
Title: Class B Manager



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Name: Stéphane HEPINEUZE  
Title: Class B Manager

This is Exhibit "E" referred to in the Affidavit of Joseph L. Motes III affirmed by Joseph L. Motes III from the City of Santa Fe, in the State of New Mexico, before me at the City of Toronto, in the Province of Ontario, on March 25, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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Commissioner for Taking Affidavits (or as may be)

**RJ REID**

**Minutes of the May 6, 2021 Meeting  
of the Board of Directors of  
Alliance Data Systems Corporation (“Company”)**

A meeting of the Board of Directors (the “*Board*”) of the Company was held telephonically and by a virtual platform from 2:00 p.m. to 3:00 p.m. (Central) on the 6th day of May 2021, pursuant to notice duly given.

Present: Ralph J. Andretta, Roger H. Ballou (Chair), John C. Gerspach, Jr., Timothy J. Theriault, Laurie A. Tucker and Sharen J. Turney

Absent: Rajesh Natarajan

Also Present: J. Jeffrey Chesnut, Cynthia L. Hageman, Charles L. Horn, Joseph L. Motes III and Jeffrey C. Tusa from the Company; Brad Whitman from Morgan Stanley; and Louis Goldberg from Davis Polk

Mr. Ballou called the meeting to order, and asked Mr. Horn to lead the update on the proposed spinoff of the Company’s LoyaltyOne segment. Mr. Horn stated that work streams for the LoyaltyOne standalone audit, the drafting of the Form 10 and the PLR request submitted to the IRS were all in progress and on track. With regard to capital structure considerations and the ratings agencies, Mr. Horn stated that management had sought indicative ratings from both S&P and Moody’s in a multi-week process. Mr. Horn reported feedback from both ratings agencies was in the expected range of B+ and B1, respectively, and that the institutional term loan markets were in good shape at this time. Mr. Horn next reviewed the strategic considerations for both the Card Services and LoyaltyOne segments as separate public companies and on question from Mr. Andretta, a brief discussion ensued regarding potential issues with the execution of a spinoff transaction as well as the short- and long-term financial benefits to Card Services with respect to key financial ratios for a financial institution. On question from Mr. Gerspach, Messrs. Goldberg, Whitman and Horn stated that with initial feedback from each of the IRS, FDIC and ratings agencies having been positive, the Board’s consideration of moving forward with and publicly announcing a proposed spinoff should be done soon so that additional associates could begin participating in the various work streams that would be instrumental in completing the transaction and to accommodate timing of the upcoming Investor Day that had been planned during 2020.

Mr. Horn next discussed spinoff structure considerations, including a retained equity stake, the existing Company debt, tax considerations, regulatory requirements and expected accounting treatment. Mr. Chesnut next presented the timing and amount of expected debt pay downs, including financing considerations at the spin off company, refinancing at the Company and other sources and uses of cash. Mr. Chesnut indicated that the Company’s profile as a financial institution would cause a shift in lender covenants. Mr. Tusa then reviewed the capital metrics for Card Services, noting that a spinoff would pull forward the improvement in in key financial institution ratios by up to two years. Mr. Horn then reviewed the business purpose of the proposed spinoff, noting that separate management and capital structures was expected to enhance growth opportunities for both businesses, while permitting a simpler financial institution approach and charter flexibility for Card Services. Mr. Horn also noted the limitations on equity issuances or sales within two years following the spin.

Mr. Chesnut next presented information regarding the liquidity position of the Company, noting sources and expected uses of cash through the end of 2021 as the Company looks to preserve revolving credit availability as support for the banks. Mr. Chesnut reviewed expected dividends from the banks in 2021 and the capitalization requirements and levels for the banks. Mr. Tusa next reviewed the pro forma expectations for Card Services and LoyaltyOne for 2021, noting the dilutive impact due to the loss of earnings with only a short period of interest expense limitation and the leverage placed on LoyaltyOne.

Mr. Horn reviewed anticipated next steps, including presentation to the Board on May 11, 2021 requesting approval to continue to move forward with the spinoff transaction and to publicly announce the proposed transaction. Mr. Horn noted that three key client and vendor discussions would be held in advance of that time under protection of confidentiality agreements to determine the position of those parties and any concerns with proceeding.

**Redact - Privilege**

**Redact - Privilege**

At 3:00 p.m. (Central), there being no further business to come before the meeting, the same was, by motion duly made and seconded, adjourned.

Respectfully submitted,

Approved:



Cynthia L. Hageman, Asst. Secretary

Roger H. Ballou, Chair

This is Exhibit "F" referred to in the Affidavit of Joseph L. Motes III affirmed by Joseph L. Motes III from the City of Santa Fe, in the State of New Mexico, before me at the City of Toronto, in the Province of Ontario, on March 25, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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*Commissioner for Taking Affidavits (or as may be)*

**RJ REID**





## Loyalty Ventures Inc. Reports Fourth Quarter and Full Year 2021 Results

- Fourth Quarter 2021 Operating Performance Reflected Resilience of Business Model
- Priority Investments Underway in Digital Innovations, Content Personalization and Program Value
- Full Year 2022 Guidance for Higher Revenue and Strategic Investments to Drive Sustainable Long-Term Growth

### Summary of Financial Results

(in millions, except per share data)

	<b>Fourth Quarter 2021</b>	<b>Full Year 2021</b>
<b>Revenue</b>	\$ 238.6	\$ 735.3
<b>Net (Loss) Income*</b>	\$ (55.8)	\$ 1.7
<b>Diluted EPS*</b>	\$ (2.27)	\$ 0.07
<b>Adjusted EBITDA**</b>	\$ 47.4	\$ 166.0

\* Net (Loss) Income and Diluted EPS include \$64 million, or \$2.62 per share of goodwill impairment and strategic transaction costs, respectively.

\*\* See "Reconciliation of Non-GAAP Financial Measures" and "Financial Measures" below for a discussion of non-GAAP financial measures, including adjusted EBITDA, adjusted EBITDA margin and free cash flow.

**DALLAS, Texas, February 3, 2022** – Loyalty Ventures Inc. (Nasdaq: LYLT), a leading provider of tech-enabled, data-driven consumer loyalty solutions today announced financial results for the fourth quarter and full year ended December 31, 2021.

Commenting on the results, Charles Horn, Chief Executive Officer said, "Fourth quarter operating performance demonstrated the resilience of our business model in the face of continued COVID-related headwinds. Both the AIR MILES® Reward Program and BrandLoyalty posted double-digit adjusted EBITDA growth on lower-than-anticipated revenues due to improved margins and lower overhead costs for the quarter, exclusive of strategic transaction costs and a goodwill impairment. In the AIR MILES Reward Program, redemptions in the fourth quarter were up year-over-year but were constrained by the Omicron variant whose impact emerged midway through the quarter. Similarly, activity at BrandLoyalty increased from fourth quarter 2020 levels, but fell off in the latter part of the quarter due to pandemic-related supply chain and lockdown disruptions. Within this dynamic business environment, which defined much of 2021, we maintained a stable adjusted EBITDA margin of 22.6% and generated net cash from operating activities of \$180 million that produced free cash flow of \$161 million for the year. As a strong cash flow generator, we have the financial flexibility to invest in our business while deleveraging.

"As a result of the ongoing impact of the COVID-19 pandemic, we determined that it was more likely than not that the fair value of the BrandLoyalty reporting unit was below its carrying value, and performed an interim impairment test in connection with the preparation of our annual financial statements. Based on the preliminary results, we recognized a non-cash, goodwill impairment charge of \$50 million.

"As a newly independent company following the separation from our former parent on November 5, 2021, Loyalty Ventures exited 2021 with two market-leading businesses, each with significant growth potential that we plan to develop through a combination of organic investments and tuck-in acquisitions. We will deploy our resources in 2022 to expand our analytics, accelerate digital platform upgrades, enhance rewards in our AIR MILES Reward Program and broaden our sourcing options and product portfolio at BrandLoyalty—all efforts designed to

40  
Loyalty Ventures Inc.  
February 3, 2022

strengthen our value proposition for sponsors, clients, and loyalty program participants and build on our capabilities to support future growth.

"I want to recognize the hard work and dedication of the teams at both the AIR MILES Reward Program and BrandLoyalty, who have navigated challenging business conditions over the last two years, while managing relationships with our sponsors, collectors, consumers, clients, and partners. Their efforts, together with those of our corporate leadership and staff, have been critical to our ability to establish Loyalty Ventures as an independent, publicly-traded company, ready to pursue the substantial long-term growth opportunities on the horizon."

#### **Fourth Quarter and Full Year 2021 Consolidated and Combined Financial Results**

Total revenue for the fourth quarter was \$239 million, above the \$231 million recorded in the fourth quarter of 2020. Adjusted EBITDA increased from \$41 million in the fourth quarter of 2020 to \$47 million in the fourth quarter of 2021. The net loss of \$56 million, or \$2.27 per diluted share includes \$64 million of goodwill impairment and strategic transaction costs, net of tax, related to the separation.

For full year 2021, total revenue was \$735 million compared to \$765 million in 2020. Adjusted EBITDA was \$166 million compared to adjusted EBITDA of \$173 million for 2020. Net income for 2021 was \$2 million, or \$0.07 per diluted share inclusive of the costs associated with the goodwill impairment and the separation.

#### **Fourth Quarter Segment Financial Results**

**AIR MILES Reward Program:** Revenue increased 1% to \$71 million, compared to \$70 million in the fourth quarter of 2020, primarily due to a favorable exchange rate and an increase in revenues related to marketing services, offset in part by lower brand revenues stemming from a 7% decline in AIR MILES reward miles issued. Adjusted EBITDA increased 13% to \$34 million, compared to the fourth quarter of 2020, mostly due to operating expense savings, exclusive of strategic transaction costs.

The decline in AIR MILES reward miles issuance relates to the non-renewal of two sponsors and their exit from the program in the first quarter of 2021. AIR MILES reward miles redeemed increased 28% compared to the fourth quarter of 2020, reflecting continued strength in the merchandise category and positive momentum early in the quarter for travel bookings, before the emergence of the Omicron variant in November 2021. On a sequential basis, AIR MILES reward miles issued and redeemed improved 9% and 20%, respectively, reflecting the impact of the holiday shopping season in the fourth quarter of 2021.

**BrandLoyalty:** Revenue increased 4% to \$168 million, compared to \$161 million in the fourth quarter of 2020, as a result of positive campaign performance in key European and Asian markets. Adjusted EBITDA increased 18% to \$17 million, compared to the fourth quarter of 2020, reflecting the impact of the higher revenues and improved margin for certain programs as well as overhead savings, exclusive of strategic transaction costs and the goodwill impairment.

#### **Recent Developments**

- After market close on November 5, 2021, Loyalty Ventures completed its separation from its former parent company and began regular-way trading on the Nasdaq Global Select Market on November 8, 2021. The separation was achieved through the distribution by the former parent of 81% of our outstanding shares to holders of the former parent's common stock on the record date of October 27,

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2021, at a ratio of one share of Loyalty Ventures common stock for every two and one-half shares of the former parent's common stock.

- The launch of a new AIR MILES Reward Program Flight platform in November provides collectors with a significantly improved booking experience and additional payment options, together with program enhancements.
- BrandLoyalty continued its exclusive partnership with The Walt Disney Company in key regions, making it the only company in its industry partnering with Disney to offer campaigns featuring Disney-branded products.

## Outlook

"Loyalty Ventures enters 2022 with a commitment to build upon the leadership positions of our AIR MILES Reward Program and BrandLoyalty segments to ensure long-term sustainable growth in the periods ahead. Underpinning our full year 2022 guidance for revenues of \$775 million to \$800 million are expectations for a significant pick-up in BrandLoyalty campaign-based programs which is expected to offset lower net revenues at the AIR MILES Reward Program due to higher redemption costs related to program enhancements. Adjusted EBITDA is expected to range from \$150 million to \$158 million, equivalent to a margin of approximately 20% at the midpoint, inclusive of additional operating expenses associated with priority spending initiatives to drive accelerated growth in 2023. We expect AIR MILES to produce relatively stable results throughout the year, with BrandLoyalty posting its strongest results in the second and fourth quarters of 2022.

"Our business is dedicated to deepening the connections between our clients and their customers, and we are confident that Loyalty Ventures is positioned to grow and prosper. Our established businesses have significant runway to expand beyond their current size, robust data platforms, a roster of marquee clients to which we can offer a broadened array of services, a solid financial position, and most importantly, a seasoned and motivated team around the world that is committed to value creation for all of our stakeholders," Mr. Horn concluded.

## Fourth Quarter and Full Year 2021 Conference Call and Webcast Information

Loyalty Ventures Inc. will hold a conference call to discuss its results and business outlook at 4 p.m. CT on Thursday, February 3, 2022. The live webcast of the conference call can be accessed here. The webcast replay will be available on the Company's investor relations website for up to one year.

## About Loyalty Ventures Inc.

Loyalty Ventures Inc. (Nasdaq: LYLT), an S&P SmallCap 600 company, is a leading provider of tech-enabled, data-driven consumer loyalty solutions. Our solutions are focused on helping partners achieve their strategic and financial objectives, from increased consumer basket size, shopper traffic and frequency and digital reach to enhanced program reporting and analytics.

We help financial services providers, retailers and other consumer-facing businesses create and increase customer loyalty across multiple touch points from traditional to digital to mobile and emerging technologies. We own and operate the AIR MILES® Reward Program, Canada's most recognized loyalty program, and BrandLoyalty, a leading global provider of campaign-based loyalty solutions for grocers and other high-frequency retailers.

The AIR MILES Reward Program is Canada's most recognized loyalty program with approximately two-thirds of all Canadian households participating. AIR MILES collectors earn AIR MILES at more than 300 leading Canadian, global and online brands and at thousands of retail and service locations across the country. This activity powers an unmatched data asset which along with world-class analytics and marketing capabilities, enables clients to accelerate their marketing activities and ROI. It is the only loyalty program of its kind to give collectors the flexibility and choice to use AIR MILES on aspirational rewards such as merchandise, travel, events or attractions

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or, instantly, in-store or online, through AIR MILES Cash at participating Partner locations. For more information, visit: [airmiles.ca](http://airmiles.ca). To celebrate collectors and the issuance of its 100 Billionth Mile, AIR MILES is inviting Canadians to visit the Program on Facebook, Instagram and Twitter.

BrandLoyalty is a leading global provider of campaign-based loyalty solutions for grocers and other high-frequency retailers. BrandLoyalty changes shopper behavior on a mass scale – both emotionally and transactionally – through its innovative and digitally-enhanced loyalty solutions. With over 25 years of loyalty experience, BrandLoyalty fully supports the retailer’s journey, from strategy to solution and execution. After defining the retailer’s objectives and campaign KPIs, BrandLoyalty designs the ideal solution, including the mechanic, reward and campaign. Inspired by its purpose ‘Next generation happiness,’ BrandLoyalty’s goal is to maximize the impact for its clients and minimize the impact on our planet—making people happy and business better.

Find out more via [brandloyalty.com](http://brandloyalty.com) or on LinkedIn and YouTube.

More information about Loyalty Ventures can be found at [loyaltyventures.com](http://loyaltyventures.com).

### **Caution Regarding Forward-Looking Statements**

This release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements give our expectations or forecasts of future events and can generally be identified by the use of words such as “believe,” “expect,” “anticipate,” “estimate,” “intend,” “project,” “plan,” “likely,” “may,” “should” or other words or phrases of similar import. Similarly, statements that describe our business strategy, outlook, objectives, plans, intentions or goals also are forward-looking statements. Examples of forward-looking statements include, but are not limited to, statements we make regarding, and the guidance we give with respect to, our anticipated operating or financial results, including revenues, adjusted EBITDA and adjusted EBITDA margins for 2022 and the assumptions related thereto; the preliminary results of our interim impairment test and the related goodwill impairment charge; our significant growth potential, including through organic investments and/or tuck-in acquisitions; our plans to deploy resources in 2022; our ability to grow our business; and the impact of future economic conditions, including, but not limited to, fluctuation in currency exchange rates, market conditions and COVID-19 impacts related to reduction in demand from clients, supply chain disruption with respect to our rewards, disruptions in the airline or travel industries and labor shortages due to quarantine.

We believe that our expectations are based on reasonable assumptions. Forward-looking statements, however, are subject to a number of risks and uncertainties that could cause actual results to differ materially from the projections, anticipated results or other expectations expressed in this release, and no assurances can be given that our expectations will prove to have been correct. These risks and uncertainties include, but are not limited to, that actual results may differ materially from the preliminary results of our interim impairment test upon the completion of our procedures with respect to our annual financial statements and filing of our annual report on Form 10-K and the factors set forth in the Risk Factors section of both (1) our Registration Statement on Form 10-12B; and (2) any updates in Item 1A, or elsewhere, in our Quarterly Reports on Form 10-Q filed for periods subsequent to such Registration Statement or our Form 10-K for the most recently ended fiscal year when filed or any updates thereto. Our forward-looking statements speak only as of the date made, and we undertake no obligation, other than as required by applicable law, to update or revise any forward-looking statements, whether as a result of new information, subsequent events, anticipated or unanticipated circumstances or otherwise.

### **Financial Measures**

In addition to the results presented in accordance with generally accepted accounting principles, or GAAP, the Company may present financial measures that are non-GAAP measures, adjusted EBITDA, adjusted EBITDA margin, and free cash flow. The Company believes that these non-GAAP financial measures, viewed in addition to and not in lieu of the Company’s reported GAAP results, provide useful information to investors regarding the Company’s performance, liquidity and overall results of operations. The Company uses adjusted EBITDA as an integral part of internal reporting to measure the performance and operational strength of reportable segments and to evaluate the performance of senior management. Adjusted EBITDA eliminates the uneven effect across all reportable segments of non-cash depreciation of tangible assets and amortization of intangible assets, including certain intangible assets that were recognized in business combinations, and the non-cash effect of stock

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compensation expense. In addition, adjusted EBITDA eliminates the effect of the gain (loss) on the sale of a business, goodwill impairment, strategic transaction costs, including costs related to the separation, and restructuring and other charges. Adjusted EBITDA margin represents adjusted EBITDA divided by revenue. Free cash flow represents cash flow from operations less capital expenditures. Free cash flow is a liquidity measure used by management to evaluate the amount of cash available for debt repayment, acquisition opportunities, and other corporate purposes.

**Reconciliation of Non-GAAP Financial Measures**

Reconciliations to the most directly comparable GAAP financial measures are available in the accompanying schedules, which are posted as part of this earnings release in both the Press Releases and Investor Relations sections on the Company's website ([www.loyaltyventures.com](http://www.loyaltyventures.com)). No reconciliation is provided with respect to forward looking annual guidance as we cannot reliably predict all necessary components or their impact to reconcile these non-GAAP measures without unreasonable effort. The events necessitating a non-GAAP adjustment are inherently unpredictable and may have a material impact on the Company's future results.

The financial measures presented are consistent with the Company's historical financial reporting practices. The non-GAAP financial measures presented herein may not be comparable to similarly titled measures presented by other companies and are not identical to corresponding measures used in other various agreements or public filings.

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**LOYALTY VENTURES INC.**  
**CONSOLIDATED AND COMBINED STATEMENTS OF INCOME**  
**(Unaudited)**

	Three Months Ended		Year Ended	
	December 31,		December 31,	
	2021	2020	2021	2020
	(in thousands, except per share amounts)			
Revenues				
Redemption, net	\$ 163,551	\$ 154,447	\$ 444,395	\$ 473,067
Services	69,829	70,194	269,073	264,050
Other	5,211	6,233	21,839	27,689
Total revenue	<u>238,591</u>	<u>230,874</u>	<u>735,307</u>	<u>764,806</u>
Operating expenses				
Cost of operations (exclusive of depreciation and amortization disclosed separately below)	200,426	188,096	573,246	587,615
General and administrative	8,403	3,522	20,011	14,315
Depreciation and other amortization	8,707	8,299	34,944	28,988
Amortization of purchased intangibles	424	12,785	1,740	48,953
Goodwill impairment	50,000	—	50,000	—
Total operating expenses	<u>267,960</u>	<u>212,702</u>	<u>679,941</u>	<u>679,871</u>
Operating (loss) income	(29,369)	18,172	55,366	84,935
Gain on sale of a business	—	—	—	(10,876)
Interest expense (income), net	5,852	(318)	5,534	(834)
(Loss) income before income taxes and loss (income) from investment in unconsolidated subsidiaries	(35,221)	18,490	49,832	96,645
Provision for income taxes	20,559	3,941	52,175	21,324
Loss (income) from investment in unconsolidated subsidiaries – related party, net of tax	—	40	(4,067)	246
Net (loss) income	<u>\$ (55,780)</u>	<u>\$ 14,509</u>	<u>\$ 1,724</u>	<u>\$ 75,075</u>
Net (loss) income per share:				
Basic	<u>\$ (2.27)</u>	<u>\$ 0.59</u>	<u>\$ 0.07</u>	<u>\$ 3.05</u>
Diluted	<u>\$ (2.27)</u>	<u>\$ 0.59</u>	<u>\$ 0.07</u>	<u>\$ 3.05</u>
Weighted average shares:				
Basic	<u>24,585</u>	<u>24,585</u>	<u>24,585</u>	<u>24,585</u>
Diluted	<u>24,591</u>	<u>24,585</u>	<u>24,591</u>	<u>24,585</u>

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**LOYALTY VENTURES INC.  
CONSOLIDATED AND COMBINED BALANCE SHEETS  
(Unaudited)**

	December 31,	
	2021	2020
	(in thousands, except per share amounts)	
<b>ASSETS</b>		
Cash and cash equivalents	\$ 167,601	\$ 278,841
Accounts receivable, net	288,251	270,559
Inventories, net	188,577	164,306
Redemption settlement assets, restricted	735,131	693,461
Other current assets	28,627	23,000
Total current assets	<u>1,408,187</u>	<u>1,430,167</u>
Property and equipment, net	79,959	97,916
Right of use assets - operating	99,515	113,870
Deferred tax asset, net	58,128	70,137
Intangible assets, net	3,095	5,097
Goodwill	649,958	735,898
Investment in unconsolidated subsidiary – related party	—	854
Other non-current assets	24,885	4,125
Total assets	<u>\$ 2,323,727</u>	<u>\$ 2,458,064</u>
<b>LIABILITIES AND EQUITY</b>		
Accounts payable	\$ 103,482	\$ 74,818
Accrued expenses	144,997	67,056
Deferred revenue	924,789	898,475
Current operating lease liabilities	10,055	9,942
Current debt	50,625	—
Other current liabilities	118,444	64,990
Total current liabilities	<u>1,352,392</u>	<u>1,115,281</u>
Deferred revenue	97,167	105,544
Long-term operating lease liabilities	103,242	117,648
Long-term debt	603,488	—
Other liabilities	20,874	25,290
Total liabilities	<u>2,177,163</u>	<u>1,363,763</u>
Common stock, \$0.01 par value; authorized, 200,000 shares; issued, 24,585 shares at December 31, 2021	246	—
Additional paid-in-capital	266,775	—
Accumulated deficit	(55,383)	—
Parent's net investment	—	1,093,920
Accumulated other comprehensive (loss) income	(65,074)	381
Total equity	<u>146,564</u>	<u>1,094,301</u>
Total liabilities and equity	<u>\$ 2,323,727</u>	<u>\$ 2,458,064</u>

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**LOYALTY VENTURES INC.**  
**CONDENSED CONSOLIDATED AND COMBINED STATEMENTS OF CASH FLOWS**  
**(Unaudited)**

	<u>Years Ended December 31,</u>	
	<u>2021</u>	<u>2020</u>
	(in thousands)	
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income	\$ 1,724	\$ 75,075
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	36,684	77,941
Deferred income tax expense (benefit)	8,763	(3,502)
Non-cash stock compensation	6,259	7,017
Loss from investments in unconsolidated subsidiaries – related party	60	246
Gain on sale of investment in unconsolidated subsidiary – related party	(4,110)	—
Gain on sale of a business	—	(10,876)
Goodwill impairment	50,000	—
Change in other operating assets and liabilities, net of sale of business	61,753	76,881
Other	18,443	(6,465)
Net cash provided by operating activities	<u>179,576</u>	<u>216,317</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Change in redemption settlement assets, restricted	(51,924)	(40,677)
Capital expenditures	(18,213)	(24,319)
Proceeds from the sale of investment in unconsolidated subsidiary – related party	4,055	—
Investments in unconsolidated subsidiaries – related party	—	(736)
Distributions from investment in unconsolidated subsidiary – related party	795	—
Net cash used in investing activities	<u>(65,287)</u>	<u>(65,732)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Borrowings under debt agreements	675,000	—
Payment of deferred financing costs	(22,852)	—
Contribution from Parent	5,637	—
Consideration paid to Parent in connection with Separation	(750,000)	—
Dividends paid to Parent	(120,000)	—
Net transfers to Parent	(3,972)	(2,638)
Net cash used in financing activities	<u>(216,187)</u>	<u>(2,638)</u>
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(3,025)	14,446
Change in cash, cash equivalents and restricted cash	(104,923)	162,393
Cash, cash equivalents and restricted cash at beginning of year	337,525	175,132
Cash, cash equivalents and restricted cash at end of year	<u>\$ 232,602</u>	<u>\$ 337,525</u>



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**LOYALTY VENTURES INC.**  
**SUMMARY OF FINANCIAL HIGHLIGHTS**  
**(Unaudited)**

	Three Months Ended December 31,			Year Ended December 31,		
	2021	2020	% Change	2021	2020	% Change
	(in thousands, except percentages)					
<b>Segment Revenue:</b>						
AIR MILES Reward Program	\$ 70,621	\$ 69,770	1%	\$ 284,744	\$ 277,121	3%
BrandLoyalty	168,016	161,104	4	450,609	487,685	(8)
Corporate/Other	—	—	—	—	—	—
Eliminations	(46)	—	nm*	(46)	—	nm*
Total	\$ 238,591	\$ 230,874	3%	\$ 735,307	\$ 764,806	(4)%
<b>Segment Adjusted EBITDA:</b>						
AIR MILES Reward Program	\$ 34,113	\$ 30,079	13%	\$ 147,798	\$ 144,025	3%
BrandLoyalty	16,892	14,263	18	32,112	42,161	(24)
Corporate/Other	(3,624)	(3,193)	13	(13,919)	(12,796)	9
Total	\$ 47,381	\$ 41,149	15%	\$ 165,991	\$ 173,390	(4)%
<b>Key Performance Indicators (in millions):</b>						
AIR MILES reward miles issued	1,264.2	1,355.2	(7)%	4,670.2	4,963.8	(6)%
AIR MILES reward miles redeemed	1,071.8	838.4	28%	3,507.3	3,127.8	12%

\* not meaningful

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**LOYALTY VENTURES INC.**  
**RECONCILIATION OF NON-GAAP FINANCIAL MEASURES**  
**(Unaudited)**

	Three Months Ended		Year Ended	
	December 31,		December 31,	
	2021	2020	2021	2020
	(in thousands)			
<b>Adjusted EBITDA:</b>				
Net (loss) income	\$ (55,780)	\$ 14,509	\$ 1,724	\$ 75,075
Loss (income) from investment in unconsolidated subsidiaries – related party, net of tax	—	40	(4,067)	246
Provision for income taxes	20,559	3,941	52,175	21,324
Interest expense (income), net	5,852	(318)	5,534	(834)
Depreciation and other amortization	8,707	8,299	34,944	28,988
Amortization of purchased intangibles	424	12,785	1,740	48,953
Stock compensation expense	(63)	1,833	6,259	7,017
Gain on sale of a business, net of strategic transaction costs (1)	—	(25)	—	(7,816)
Goodwill impairment	50,000	—	50,000	—
Strategic transaction costs (2)	17,682	100	17,682	329
Restructuring and other charges	—	(15)	—	108
Adjusted EBITDA	<u>\$ 47,381</u>	<u>\$ 41,149</u>	<u>\$ 165,991</u>	<u>\$ 173,390</u>

- (1) Represents gain on sale of Precima in January 2020, net of strategic transaction costs. Precima was included in our AIR MILES Reward Program segment.
- (2) Represents costs associated with strategic initiatives, including costs associated with the separation, which were comprised of consent fees, amounts associated with the employee and tax matters agreements and professional services.

	Year Ended	
	December 31,	
	2021	2020
	(in thousands)	
<b>Free cash flow:</b>		
Net cash provided by operating activities	\$ 179,576	\$ 216,317
Capital expenditures	(18,213)	(24,319)
Free cash flow	<u>\$ 161,363</u>	<u>\$ 191,998</u>

This is Exhibit "G" referred to in the Affidavit of Joseph L. Motes III affirmed by Joseph L. Motes III from the City of Santa Fe, in the State of New Mexico, before me at the City of Toronto, in the Province of Ontario, on March 25, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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Commissioner for Taking Affidavits (or as may be)

**RJ REID**

**Exhibit 99.1**

REFINITIV STREETEVENTS

# EDITED TRANSCRIPT

Q3 2022 Loyalty Ventures Inc Earnings Call

EVENT DATE/TIME: NOVEMBER 08, 2022 / 1:30PM GMT

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NOVEMBER 08, 2022 / 1:30PM GMT, Q3 2022 Loyalty Ventures Inc. Earnings Call

**CORPORATE PARTICIPANTS****Charles L. Horn** *Loyalty Ventures Inc. - CEO, President & Director***John Jeffrey Chesnut** *Loyalty Ventures Inc. - CFO & EVP***Shawn Stewart** *Loyalty Ventures Inc. - President of the AIR MILES Reward Program***CONFERENCE CALL PARTICIPANTS****Marc Frye Riddick** *Sidoti & Company, LLC – Business and Consumer Services Analyst***Jennifer Belodeau** *Institutional Marketing Services, Inc. – VP***Sam Salvas** *Needham & Company – Equity Research Associate***PRESENTATION****Operator**

Good morning, and welcome to Loyalty Ventures Third Quarter 2022 Earnings Conference Call. (Operator Instructions)

It is now my pleasure to introduce Jen Belodeau of IMS Investor Relations. Jen, the floor is yours.

**Jennifer Belodeau** *Institutional Marketing Services, Inc. - VP*

Thank you. Copies of the slides we will be reviewing in the earnings release can be found on the Investor Relations section of our website.

Hosting today's call, we have Charles Horn, President and Chief Executive Officer of Loyalty Ventures; Jeff Chesnut, Executive Vice President and Chief Financial Officer of Loyalty Ventures; and Shawn Stewart, President of AIR MILES.

Before we begin, I would like to remind you that some of the comments made on today's call and some of the responses may contain forward-looking statements. These statements are subject to the risks and uncertainties described in the company's earnings release and other filings with the SEC. Loyalty Ventures has no obligation to update the information presented on the call. Also on today's call, our speakers will reference certain non-GAAP financial measures, which we believe will provide useful information for investors. Reconciliation of those measures to GAAP will be posted on the Investor Relations website at [loyaltyventures.com](http://loyaltyventures.com).

With that out of the way, I'd like to turn the call over to Charles Horn. Go ahead, Charles.

**Charles L. Horn** *Loyalty Ventures Inc. - CEO, President & Director*

Thank you, Jen, and thank you all for joining us today to review our third quarter results. Let's start with Page 3. Our consolidated results in the third quarter were in line with our updated expectations, which incorporated recent business developments at AIR MILES as well as the evolving economic reality in BrandLoyalty's key markets. Last quarter, we laid out our action plans to address these challenges while driving growth for our partners and ourselves. Today, we'll provide an update on our progress against those initiatives.

Let's begin with a recap of the third quarter. At AIR MILES, performance was consistent with our expectations due to the inherent visibility in our operating model. The issuance was up approximately 2% from the third quarter of 2021, with strength in the credit card and fuel verticals muted slightly by the grocery category after two regions transitioned in the quarter. The team continues to create new ways for collectors and sponsors to engage with the program, which we'll discuss later.

Importantly, I'm very pleased to announce that we've extended our relationships with three long-term sponsors in the AIR MILES, Bank of Montreal and Shell Canada Nationwide and Metro in Ontario. We are proud of how our decades-long strategic relationships have delivered value for Canadian consumers, and we look forward to working together in the coming years to enhance and evolve the coalition.

In addition, these extensions support our confidence in the changes we've made over the past several months and the coalition's bright future. In a moment, Shawn will share more details on what this means for AIR MILES.

BrandLoyalty reported top line in U.S. dollars declined about 2% from the third quarter of 2021. However, it increased approximately 14% in euros, reflecting the recent FX moves. This adjusted EBITDA was about breakeven due to increased cost for reward merchandise, which were up 37% in euros, 17% in dollars against the year ago period.

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## NOVEMBER 08, 2022 / 1:30PM GMT, Q3 2022 Loyalty Ventures Inc. Earnings Call

As we noted last quarter, BrandLoyalty's results were impacted by the continuing effects of the invasion of Ukraine, higher prices, interest rate hikes, and consumer uncertainty in Europe. We expect these conditions to persist throughout the year. That said, there are some very encouraging strategic initiatives underway of BrandLoyalty. And shortly, I'll share more color on BrandLoyalty's action plan.

Finally, we continue to make progress in our journey to strengthen our balance sheet. We are engaging with our lenders about options to focus cash flow on investing in strategic priorities, while also pursuing the operational efficiencies we previously highlighted. Last quarter, we announced a target savings rate of \$15 million, but now we expect to exceed that goal through our comprehensive and deliberate review of processes and expenses.

We believe our action plans, recent client extensions and savings initiatives will position Loyalty Ventures to navigate the uncertainty environment ahead of us while creating value for our clients, our consumers and our stakeholders.

The key financial metrics for the third quarter and year-to-date 9/30 period are included on Slide 4. Total revenue for the quarter was \$162 million, and adjusted EBITDA was \$33 million. Revenue declined \$7 million or 4% year-over-year, while adjusted EBITDA declined \$14 million driven by \$11 million decline at BrandLoyalty.

For the quarter, we reported a net loss per share of \$0.01. Year-to-date, total revenue was down 2% compared to the prior year, and adjusted EBITDA of \$85 million is down \$33 million. Through September 30, we reported a net loss of \$441 million, and a net loss per share of \$17.92, which was significantly impacted by the goodwill impairment charge recognized in the second quarter of 2022.

Now let's discuss the recent developments for each of our businesses. Slide 5 illustrates the broad geographic area that BrandLoyalty serves as well as the selection of the campaigns currently underway. Geographically, EMEA continues to represent the largest market for BrandLoyalty. Although euro market is experiencing an economic shift, we are concentrating our focus on this area for our near-term sales efforts.

Our campaigns are well known to the retailers and consumers in this area, and it represents our stable base of businesses we orient our outcomes are unreliable and projectable earnings.

In terms of active campaigns in the third quarter, a selection is highlighted here. The challenges we saw in the second quarter have carried over into the third quarter, and we anticipate that future campaigns will be closer to the kitchen since this reward categories represent affordable luxuries that upbuild consumers in times of economic uncertainty.

In addition, we will continue to focus on rewards for families with children through our exclusive license agreement with Disney in key markets. While this year has been challenging, I believe BrandLoyalty's combination of global closer relationships and exclusive supplier partnerships provide a differentiated and solid foundation for a sustainable growth.

Turning to Slide 6. Let's review the key priorities for BrandLoyalty that drove our decisions and action plans across Q3 and now into Q4. Last quarter, we discussed the shift in economic conditions and consumer sentiments in our key markets that caused us to adjust our expectations for the balance of 2022. We also outlined our action plan to respond to these developments. And today, I'll share an update on our progress toward those goals.

Let's begin with our focus on aligning our cost structure to reflect our new outlook for our near-term growth profile. With our consumers focused on stretching their budgets and making every dollar account, we must do the same, especially as we continue to see higher raw materials and energy prices contributing to elevated production costs for our campaign rewards. In response, we reorganized our business processes to focus on faster speed to market, end-to-end responsibility and a more flexible workforce. This approach will result in a reduction of our staffing of about 20% this year, leading us next year to a more efficient dynamic business.

As I mentioned a moment ago, we are refining our approach to rewards merchandise in our inventory mix to focus on relevant affordable rewards rather than aspirational luxuries, concentrating in our product lineup for the upcoming programs and patterns that are closer to

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the kitchen. This means categories like bakeware, dinnerware, barware, storage containers and cutlery. In addition to housewares, entertainment themes rewards will continue to be an important driver of our success, and it supports the focus of families I mentioned earlier.

We believe these adjustments will better align with current consumer preferences in our key markets, leading to stronger campaign performance. And since these items are generally smaller and lower costs than larger, more expensive reward categories, it will mean our logistics costs and working capital commitments are moderated. At quarter end, our inventory levels reflect the seasonal buildup for upcoming campaigns in Q4, but also reflect the inventory from underperforming campaigns in Q2.

Although the inventory levels are higher than optimal, our sales organization is actively seeking opportunities to redeploy that inventory through new campaigns across our usual markets. A benefit of having the inventory enhanced is that enables retailers to run programs in the moment without the usual lead times. And because the inventory was ordered and purchased before the recent escalation of manufacturing costs, it means more pricing flexibility and cost certainty when quoted the programs for our retail partners. Ultimately, our retailers and consumers will relate more value sooner as we redeploy the inventory into near-term campaigns.

Finally, our business continues to emphasize sustainability across all of our initiatives. For example, our Green Ray line of sustainable source zero impact cookware resonates with environmentally conscious consumers and retailers.

Additionally, our streamlined product packaging is designed to minimize waste and also reduces manufacturing and logistic costs. Our lineup of innovative storage containers reduces food waste and helps cost conscious stop shoppers, maximize the grocery budget and our focus on digital campaigns, bypasses its traditional supply chain, offering more flexibility and customization to our campaign calendar on top of being faster and eco-friendly. We expect to have several more digital campaigns in market later this year with more to follow next year.

As we look forward to the holiday season, we see the current market conditions persisting and continuing to limit our fourth quarter prospects. After adjusting our expectations to align with the new market realities, we expect our Q4 EBITDA to be slightly above breakeven, consistent with the challenging results we've seen here today. While this outcome is unwelcome and unprecedented in BrandLoyalty's history, our team is keenly focused on delivering the best performance possible.

From there, we will use those efforts as the springboard into 2023, where our new approach will continue to deliver growth for our retailers to life for our consumers and profitability for our business.

I'd also like to share my initial views on our impressions for next year across our top markets. While BrandLoyalty doesn't have long-term contracts, we do have long-term relationships with the retailers. Based upon our book of business for next year, we continue to see that our long-term partners realize the value of our programs offer, and they plan to continue running programs in 2023. We also see elevated awareness and interest in our digital loyalty offerings, and we expect next year to represent a step forward for our business in the number and size campaigns at that time.

Finally, our commitment to optimizing our inventory means we can be nimble and responsive to retailer interest in driving the results next month or next quarter in addition to next year.

At this point, I'd like to hand it to Shawn Stewart, the President of AIR MILES, who will walk us through the performance update for that segment. Shawn?

**Shawn Stewart Loyalty Ventures Inc. - President of the AIR MILES Reward Program**

Thanks, Charles. On our last call, we discussed the transition that's underway at AIR MILES. The coalition model has historically been a tightly structured closed ecosystem with a unified approach to amplifying our partners' marketing efforts through mild issuance strategies.

Under our new direction, we're pioneering a more open and flexible model that meets our clients' marketing strategies and growth

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imperatives on their terms and in a way that is best suited to each of their unique businesses. We know that a more tailored approach with our clients will lead to stronger, more personalized experience for our collectors and will ultimately benefit all the stakeholders in the coalition.

Our collectors have seen that in action this year through our card-linked offer platform, our airmilesshops.ca marketplace and some recent innovations I'll highlight momentarily. Even as our coalition model evolves, our always-on offer remains the foundation of the program, that is compelling options for some high-frequency verticals, including credit cards, fuel and grocery.

Our longtime partners appreciate the value that this approach offers for the business and their shoppers. We are pleased that Bank of Montreal, Shell Canada and Metro each recently extended their relationship with AIR MILES. While other collectors are spending on their BMO AIR MILES card, refueling at Shell nationwide or shopping in Metro in Ontario, they will earn AIR MILES on their spend in those retail locations like they have for decades.

We are very pleased to have extended these relationships, and we believe this outcome creates value for our collectors, our sponsors and our business. Going forward, we're excited to support the business goals for all of our partners through a dedicated and focused commitment to deliver the key capabilities across data analytics and collector value that meet their specific needs.

Slide 8 illustrates the different elements of today's AIR MILES ecosystem. Over the past quarter, we've continued to welcome new partners into the card-link offer program as well as the AIR MILES shops platform. As recently announced, the Pattison Food Group and AIR MILES launched the card-link offer or CLO program in late September, with a compelling bonus offer available at any of their participating 257 grocery locations. Pattison Food Group consists of eight banners and markets of all sizes across Western Canada.

More specifically, the AIR MILES offer will help drive store traffic and new customer acquisition efforts, and it will complement PFG's existing efforts to grow basket sizes. Also in Q3, we added a time-limited card-linked offer with Sephora. In this month, we also announced Goodfood, Natura Market and Peter & Paul's Gifts are joining the CLO platform across the duration of 2022 and into 2023.

We expect the momentum on this platform to continue to build, and we look forward to sharing more relationships with you in the coming months. AIR MILES also welcome Canada's largest electronics retailer, Best Buy, with online shopping platform, airmilesshops.ca. Best Buy joins an expensive list of marquee brands where collectors can earn miles, including amazon.ca, The Home Depot, Expedia, Indigo, Samsung and more.

Year-to-date, AIR MILES has added over 40 partners to the platform with a focus on providing our collectors a full set of options for their online shopping, including a continuing commitment to representing Canadian brands as well as local businesses. Each of these shopping options amplifies the availability of earnings opportunities for collectors and the data available for AIR MILES. It's also evidence of the open and flexible approach we're taking to find the right fit for each collector and each sponsor.

So as collector behavior changes for our clients' business goals evolve, the AIR MILES program will be ready to continue driving growth for our sponsors through each of our various platforms.

Moving to Slide 9, let's discuss the recent developments from the third quarter. Beyond the three models of issuance we've discussed, we're actively exploring and testing new approaches to help accelerate our partner's top line growth. Last quarter, we discussed how the open and flexible approach would enable some retailers to leverage the AIR MILES program on a targeted or time-limited basis.

Along those lines, the national office supplies retailer recently signed on to run a time-based campaign by which small businesses can earn up to 5x the normal miles by putting their purchases on their BMO AIR MILES MasterCard. The card serves as the collector identifier, meaning the IT integration for the client is both quick and straightforward with no collector effort required other than shopping.

AIR MILES has continued to bring other innovations to the Canadian market as well. We know that our most engaged collectors shop at multiple coalition brands with regularity, and that drives commitment and loyalty to the program's retailers. So when set more of that

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behavior, AIR MILES launched its new Max Pass in the third quarter. It's a micro subscription model offered to our collectors for a short window. Here's how it works. We curate a small group of responders highlight to collectors that these are some of our best offers ever and limit the number of Max Pass available. Collectors purchase a Max Pass and then shop at those retailers in a designated time frame to earn their mileage multiplier.

We expect that the mix of retail brands will change regularly, which combined with a limited time frame and quantity will drive urgency and excitement. It's an element of discovery model, the big-box discounters have successfully leveraged and we're excited about testing a year. (inaudible) Max Pass 2 which sold out in hours and expect to see even more versions in the market as the year progresses and we fine-tune the value to drive partner outcomes.

We're also excited to announce our new media services business, which is branded AMP Media powered by AIR MILES. You'll recall that AIR MILES has already been helping drive results for tourism boards representing relevant ads to our collectors as they browse their site for travel redemptions. Our collector reach, data scale and brand neutrality mean that AMP Media can become a trusted and powerful Canadian media services option for businesses of all sizes.

In the near term, we will fine-tune the offering to meet market demand, while emphasizing that this service opens the scale and reach of our data to all brands independent of their status as coalition partners. Longer term, we believe the growth and margin profiles for this initiative will be compelling over time while also helping to diversify our client base.

These growth initiatives were created by thinking innovatively about our existing infrastructure. We married our current capabilities with new ideas to create excitement for our collectors and growth for our sponsors. We're even more excited about the prospects to amplify our ideas and accelerate our time to market with an agile development mindset and more technological execution. That sentiment has been fueling our IT investments across the course of the year, which we'll discuss next.

On Slide 10, let's review the progress we've made on our strategic investments. As we previously outlined, we have committed an incremental \$20 million to \$25 million of capital spending to drive consumer engagement, accelerate digital innovations and enhance our data and analytics capabilities.

The first part of the year was spent in the planning and building phases of our investment time line. Concurrently, we also implemented an agile development model to quickly build and dynamically deploy customer experience changes to our digital properties so that we're best prepared for an environment of continuously evolving to meet our sponsors and collectors expectations.

Our collectors are now seeing the results of that work, which includes several notable improvements in our AIR MILES mobile app, including a step change in our apps feature set. For example, the seamless onboarding process for newly enrolled collectors immediately presents them with a set of our most compelling offers. In addition, the app log in process has been simplified to encourage frequent repeat visits, which drives their digital engagement outcomes.

We've also added self-service capabilities, so collectors can initiate customer service inquiries for things like miles that may have not posted in real time. This functionality elevates collector satisfaction when compared to making phone calls. It also serves as a cost control mechanism since we are reducing the inbound calls to our customer service centers.

Previously, the app hasn't matched the functionality of our desktop Internet sites, which resulted in a limited experience for consumers, a barrier to starting the next mobile first iteration of the AIR MILES Reward program. The prior mobile app also did not meet the expectations of our younger collectors who expect that the mobile app will be their primary and fully functional interface with the program. So we're very excited to have introduced improved functionality.

To encourage our collectors to explore the mobile app's new features, AIR MILES collaborated with BrandLoyalty to develop and launch a digital campaign to boost engagement. It's called the Carousel of Dreams, and it's a mobile game that rewards their collectors for checking the app each day, being BMO AIR MILES cardholder and shopping at our coalition partners. We're confident gamification and campaigns like this will help us introduce our new mobile-first approach to our collectors. I'll encourage them to make a part of their

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daily routine.

Our progress against these strategic initiatives will be measured by our collective digital activity. This means mobile app adoption, including downloads and repeat usage as well as collector engagement metrics comparing their activity pre app download and post app download.

As for the balance of our investments, we continue to focus on doing it once and doing it right. We're moving with speed and purpose, but due to IT bandwidth considerations, we project that about \$10 million of our planned capital spending will occur in the first half of 2023.

Page 11 highlights the AIR MILES Reward miles issuance and redemption trends over the past 9 quarters. AIR MILES reward miles issued in the third quarter increased by 2% as the quarter's issuance results benefited from strength in the credit card and fuel verticals, but we're also impacted by the regional grocery exits in both the Atlantic Canada and Western Canada regions.

Redemptions in the third quarter were up about 45% from the third quarter of 2021 due to increased demand for travel as compared to the year ago period. The burn rate, which is the ratio of miles redeemed to miles issued was slightly higher than the second quarter, and we expect to remain elevated in the fourth quarter as regular travel patterns resume.

Collectors pent-up interest in travel carried over from the first half of 2022, and AIR MILES saw a 79% increase in travel-related miles redeemed compared to the year ago period. We expect the burn rate to normalize in 2023 as the renewed demand for travel levels off as we add new sponsors and earning opportunities for our collectors.

We believe this period of elevated redemptions is a natural offset for the last few quarters, we saw historically lower redemptions due to the pandemic-related limitations on travel. Our redemption settlement assets account had a balance of \$610 million at quarter end, funded by cash we set aside for redemptions. We are confident that the redemption settlement assets will cover periods of higher redemptions without an impact on our liquidity position or operating cash flow.

Next, I'll turn it over to our CFO, Jeff Chesnut, for a financial review.

**John Jeffrey Chesnut Loyalty Ventures Inc. - CFO & EVP**

Thanks, Shawn. Slide 12 presents our results for the third quarter of 2022 compared to the corresponding period of 2021. Revenue in the quarter was down 4%, which was a combination of a 6% decrease at AIR MILES and a 2% decrease at BrandLoyalty. The net loss and diluted EPS were both down year-over-year as a result of the margin loss from revenue declines and higher costs as well as a full quarter of interest expense.

Slide 13 presents our segment level results for the third quarter of 2022. In the third quarter, AIR MILES revenue declined approximately \$5 million, with about half of that driven by a decline in service revenue, representing the flow-through impact of lower miles issuance in 2020 and 2021. The balance of the decline was associated with higher cost of redemptions, which are netted out from gross revenues to arrive at our revenue presentation. The margins on redemptions contracted in connection with the enhancements we made late last year to the collector value proposition.

BrandLoyalty's revenue declined about \$2 million due to the FX impact, since on a constant currency basis, BrandLoyalty's top line was up \$14 million over the year ago period. The size and timing of campaigns as well can vary meaningfully year-over-year.

AIR MILES adjusted EBITDA declined 14% or approximately \$6 million as compared to the third quarter of 2021 due to the revenue impact combined with personnel costs. These costs were partially offset by savings across the host of other operating expenses, and we expect to see more impactful savings starting in Q4 now that the operational efficiency plan has been implemented.

BrandLoyalty's adjusted EBITDA in the third quarter was just above breakeven, but a \$10 million decline from the year ago period due primarily to the higher cost of redemptions. We continue to project that BrandLoyalty will realize its typical sizable lift in revenue in Q4,

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but the ongoing impact of higher production costs plus the impact of recent FX movements suggest that BrandLoyalty's full year adjusted EBITDA will be less than the 2021 result.

As we look ahead into next year, we believe that the proactive changes we've made, which Charles outlined earlier, will position BrandLoyalty for earnings growth going forward.

Let's discuss our outlook for the balance of our fiscal year. Last quarter, we projected that our full year adjusted EBITDA for 2022 would be approximately \$110 million. We are reiterating that guidance today that we now project BrandLoyalty's minimal EBITDA contribution to be offset by improvements at AIR MILES and corporate when compared to our expectations from last quarter.

Our outlook for AIR MILES includes the impact of the recent extensions as well as the grocery exits for all regions except Quebec, where the transition must be completed by the end of the first quarter of 2023. Last quarter's guidance for AIR MILES reflected earlier, more conservative transition dates, which have now been established with certainty other than Quebec, and it included an estimate for our savings initiative that AIR MILES has since exceeded, each of which contributed to a stronger expected result this year for the segment.

Our expectations for BrandLoyalty reflect our latest assessment of the macro conditions and consumer sentiment in BrandLoyalty's key European markets as well as the most recent FX levels. This performance with add-backs permitted by our debt agreement would be in compliance with our loan covenant. We expect to provide guidance on our outlook for 2023 on our next earnings call.

Let's move to Slide 15. Last quarter, we announced an enterprise-wide operational efficiency initiative in response to the difficult conditions facing our business segments in our key markets. We established a target of \$15 million in run rate savings and challenged the teams to help us meet and beat that target. They conducted a thoughtful and thorough review of our historical processes while also working to reorient our business model to reflect the new strategic imperatives for each segment.

Even as that work continues, we're able to share that the preliminary outcomes will result in a reduction of more than 15% in our staffing levels and a run rate savings of more than \$25 million using current FX levels. While some of that reduction to operating costs will be realized in the fourth quarter, the full benefit should be phased in by year-end and fully leveraged in 2023.

These choices are difficult but necessary to ensure that our businesses' financial foundation is strong and durable. We're grateful to our whole team for working through this strategic imperative with commitment, dedication and professionalism.

As we progress towards year-end, we will continue to focus on our liquidity and our balance sheet flexibility. Slide 16 highlights that our liquidity at quarter end was \$212 million, exclusive of the redemption settlement assets.

Going forward, we expect liquidity to benefit from two upcoming catalysts. First is the \$25 million of annual run rate savings from our operational efficiency plan, which we expect will provide enhanced flexibility as we move into 2023. And second is the expected conversion of BrandLoyalty's seasonally driven inventory balance into cash as the segment's Q4 campaign calendar plays out.

We ended the third quarter with no borrowings on our revolver, and we reduced our gross debt by \$13 million, consistent with our focus on deleveraging while investing in our future. This resulted in a covenant leverage ratio of 4.5x. On a net debt basis, we finished the quarter at about \$564 million. Our average interest rate for the quarter was 7%, and for every 100 basis point increase in rates, our interest expense will increase approximately \$6 million annually.

Earlier, we noted that we're focused on creating a more efficient capital structure for our business, we believe the best outcome will help us execute on our existing vision for transforming both AIR MILES and BrandLoyalty while also reinforcing the durability of our balance sheet. We'll continue to provide updates on this initiative as progress develops.

As we wrap up, I'd like to emphasize that our collective team has made substantial progress this quarter on our key strategic objectives. At BrandLoyalty, we've taken steps to adjust upcoming campaigns to feature reward merchandise from categories that reflect consumers' interest in affordable luxury and homeowners.

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Similarly, BL's focus on sustainability will guide its choices for future campaigns in the near and medium term, whether offering rewards that are sustainably sourced or that focus on sustainable choices or even those that are entirely digital, BrandLoyalty will feature compelling offers that meet the priorities of its retailers and consumers.

For campaigns currently running in Q4, BrandLoyalty is focused on program execution and is ready to make in-the-moment adjustments to maximize performance across the balance of the year.

At AIR MILES, Shawn and his team renewed important relationships with BMO and Shell Nationwide and Metro in Ontario, while signing new issuance partners, including Pattison Food Group and Best Buy. The team also demonstrated its commitment to delivering a mobile-first digital experience for our collectors by rolling out more features and enhanced functionality to make the AIR MILES app, the daily hub for collector engagement. And importantly, the team continues to emphasize innovation in the coalition.

In addition to investing for growth, we also prudently and proactively reshaped our business with the expectation of success despite the uncertain economic conditions in markets around the world. With the changes in our business processes Loyalty Ventures has enhanced flexibility to react quickly to market challenges and opportunities.

Collectively, we believe these initiatives will drive stronger and more personal connections between our retailers and their consumers, which will, in turn, secure Loyalty Ventures as a trusted partner capable of helping our global clients achieve and exceed their growth and marketing objectives.

Operator, we are now ready to open the line for questions.

#### QUESTIONS AND ANSWERS

##### Operator

(Operator Instructions) Our first question comes from Kyle Peterson from Needham & Company.

##### Unidentified Analyst

This is actually [Sam Salvas] on for Kyle today. Nice to see the results here. I was wondering if you kick things off, you guys can give us an update on the partnership with Pattison and how things have progressed there since you guys announced it a couple of months ago?

And then maybe how we should think about this partnership as far as the size and impact goes?

##### Shawn Stewart *Loyalty Ventures Inc. - President of the AIR MILES Reward Program*

Shawn here. Yes, the program with Pattison is still early days, relatively since launch. What I can tell you is in partnership with them, we put out a very compelling offer to consumers. So it was a spend \$100, get 100 miles which in terms of value prop is extremely rich offer.

And we're seeing good kind of new customer acquisition that was key for us. Just to elaborate a little bit on the grocery strategy, both in the Atlantic early days in West, it was about identifying collectors who are dropping off in terms of their engagement and giving them other opportunities. So Pattison sure does that, but we've also added a bunch of other brands to the program. And we already have 300-plus brands in the program.

So for us, it was really about highly targeted engagement with our collectors to drive participation in other verticals. And in our early stage, we're seeing good results.

##### Unidentified Analyst

Awesome. And then just a quick follow-up from my end. Could you guys give us an update on the timing for the remainder of the Sobeys transition?

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**Shawn Stewart Loyalty Ventures Inc. - President of the AIR MILES Reward Program**

Yes. So they -- as Jeff mentioned, they launched their third region in Ontario a couple of days ago on November 3. The last remaining region is Quebec, and we don't have any indication on the timing of that at the moment from Sobeys.

**Operator**

(Operator Instructions) And we have no further -- My apologies. We do have another question from Marc Riddick from Sidoti & Company.

**Marc Frye Riddick Sidoti & Company, LLC - Business and Consumer Services Analyst**

So I was wondering if you could talk to us a little bit about the process of working on the extensions that you've announced as well as the potential for new accounts and new business wins, particularly within AIR MILES? And then I have a couple of follow-ups after that.

**Shawn Stewart Loyalty Ventures Inc. - President of the AIR MILES Reward Program**

Yes. Thanks, Marc. We're constantly in discussions with our existing partners and new partners. I think the important part for me and really as a new leadership team at AIR MILES is the conversations around our extension opened up, good dialogue around what's important for our partners. And call it alignment on where we're investing in the business.

So you get the terms and you signed the extension, I think the key part of the whole process is the proximity to understanding our partners' businesses better and focusing on outcomes for them and what KPIs matter.

We're pretty well aligned in terms of driving collector activity overall as we discussed in our remarks, driving digital activity because those are what give us the opportunity to talk to our collectors in a more frequent personalized basis and to drive activity to our partner brands.

So I think -- the biggest thing I got out of it with our partners was just really a better understanding of what they expect from our business and how we measure success together.

**Marc Frye Riddick Sidoti & Company, LLC - Business and Consumer Services Analyst**

That's great. And then what's helpful in that, and I wanted to sort of that kind of segues into sort of where I was going was given the macroeconomic pressures that you've seen, is there any indication as to how your customers are responding or what maybe those responses are looking like in different verticals relative to maybe what your expectations were?

**Shawn Stewart Loyalty Ventures Inc. - President of the AIR MILES Reward Program**

Yes. I think in general, in our history, we've seen the program hold up pretty well in kind of recessionary environments. I mean we have a lot of nondiscretionary verticals, fuel, grocery, pharmacy that persist pretty well, and collectors are seeking value, and that's what we provide with our partners. So we see relative -- and we've seen it in our past relative resiliency during tough economic conditions.

**Marc Frye Riddick Sidoti & Company, LLC - Business and Consumer Services Analyst**

Great. And then I know it's a little early to just make a (inaudible) on this, I suppose. But I mean, you talked about -- if you go back a year or so, you talked about this year being a transition year for a lot of things. And so I was wondering how -- for investors who may be looking at opportunities, how should new investor look at the sort of what the path may look like next year? With this year being such a big reset in so many of the areas of the business maybe sort of maybe bigger picture, how someone would freshly looking at the name might look at what Loyalty may experience in '23?

**Charles L. Horn Loyalty Ventures Inc. - CEO, President & Director**

Yes, Shawn, do AIR MILES, and then I'll do BrandLoyalty.

**Shawn Stewart Loyalty Ventures Inc. - President of the AIR MILES Reward Program**

Yes. I mean -- as we discussed last quarter, I think the biggest thing for us is changing our go-to-market model, both from a B2B perspective and with collectors. We call it open and flexible. As you heard in our remarks, it's really about removing the barriers of entry for brands that participate in the program and really on their terms in a way that's going to drive the best kind of ROI for them, while at the same time, giving our collectors much more choice.

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And ultimately, I believe whenever someone shops, they should think, well, I wonder if there's an AIR MILES opportunity there because of the pervasiveness of our brand portfolio.

And so I'd say in the past, that was a little more constricted in terms of exclusivity, in terms of what we could or couldn't do with certain verticals, in the open and flexible model we're removing technology barriers, IT investments and the ability to go with speed to market in a way that we never have before. I mean, on our card-linked offer program, we can be up and running with a brand within two weeks. Contrast that with the past where you're doing heavy point-of-sale integration with a retailer, it's remarkably different.

And so our mindset around how we can help brands and be more targeted in terms of our go-to-market is completely different. And as you can see from the last two quarters, we're gaining traction with new brands.

**Charles L. Horn Loyalty Ventures Inc. - CEO, President & Director**

And I'll just shift over quickly to BrandLoyalty. We've talked extensively today about how it's a tough environment out there. And what it means is we're going to have to shift from historically BrandLoyalty focused on revenue to more of an ROI type approach, what top return are we generating. So the first thing we're going to do is rationalize the number of programs we're running.

There's really three types that we have in market. One is sort of a no risk option to our client, meaning they have no investments in the program. The second is where they do have an investment in the program, meaning they're actually paying some of the cost. And the third is more of an instant loyalty program, which is where we take zero risk.

So what the focus is going to be is really rationalizing on and focusing on the second and third type of offering and reducing the number of programs that really -- the retailer doesn't have any skin in the game, and so if it doesn't work, it doesn't work. We're going to pull back on that.

And then it really comes back to being more efficient, cutting the OpEx, we talked about, and I hate to do this, cutting 20% of our workforce, reducing product costs, sourcing more locally, getting some cheaper products into the market and focusing on exactly what the consumer wants.

And then the last is reducing inventory. And those are the levers we're going to pull going into 2023. Now as Jeff said, I think it will still be a tough market in 2023. But I do think that the changes we're going to make is going to stabilize and help turn the program into some modicum of profitability versus being the cash train it was in 2022.

**Operator**

We have no further questions in queue. I'd like to turn the call back over to the presenters for closing remarks.

**Charles L. Horn Loyalty Ventures Inc. - CEO, President & Director**

Thank you for joining us today. We do think we've made some good progress during the third quarter. I know you've been waiting patiently as investors after a slow start to the year in Q1 and Q2. We do think we're developing some momentum. I think we're on the right track with AIR MILES.

We still have some work to do with BrandLoyalty, but we do think we're setting the platform in terms of fixing our capital structure which will be more efficient, more effective, more flexible and really adjusting the way we go to market in both AIR MILES and BrandLoyalty. And that should set a stage for improvement in profitability results going into 2023.

So thank you for participating today.

**Operator**

This concludes today's conference call. Thank you for your participation. You may now disconnect.

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This is Exhibit "H" referred to in the Affidavit of Joseph L. Motes III affirmed by Joseph L. Motes III from the City of Santa Fe, in the State of New Mexico, before me at the City of Toronto, in the Province of Ontario, on March 25, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


F05E31A0B41540B...

---

Commissioner for Taking Affidavits (or as may be)

**RJ REID**



DocuSign Envelope ID: F5CD13D3-DB79-4ED6-907C-9A29071ABFA1; Motes, Joseph[joseph.motes@alliancedata.com]; Morgan, Ben[Ben.Morgan@alliancedata.com]  
**Cc:** Goldberg, Louis L.[louis.goldberg@davispolk.com]; Chesnut, Jeff[Jeff.Chesnut@alliancedata.com]; Santillan, Laura[Laura.Santillan@alliancedata.com]; Tusa, Jeffrey[jeffrey.tusa@alliancedata.com]; Fair, Jeffrey[Jeffrey.Fair@alliancedata.com]; McLaughlin, Julie[Julie.McLaughlin@alliancedata.com]  
**From:** Pittell, Joshua B.[joshua.pittell@davispolk.com]  
**Sent:** Fri 9/10/2021 2:25:28 PM (UTC)  
**Subject:** RE: Project Legacy - Draft Separation and Distribution Agreement  
[\[BLK\] Separation and Distribution Agreement.pdf](#)  
[Separation and Distribution Agreement-94579784-v10.docx](#)

⚠ External Email ⚠

All – Please reference the attached version instead. Substantially the same as the one from this morning. Just a couple tweaks to conform to our language in the Form 10.

Thanks,  
Josh  
**Joshua B. Pittell**  
+1 212 450 4660 office  
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[joshua.pittell@davispolk.com](mailto:joshua.pittell@davispolk.com)

**Davis Polk & Wardwell LLP**

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---

**From:** Pittell, Joshua B.  
**Sent:** Friday, September 10, 2021 2:00 AM  
**To:** 'Hageman, Cynthia' <Cynthia.Hageman@alliancedata.com>; Motes, Joseph <joseph.motes@alliancedata.com>; Morgan, Ben <Ben.Morgan@alliancedata.com>  
**Cc:** Goldberg, Louis L. <louis.goldberg@davispolk.com>; Chesnut, Jeff <Jeff.Chesnut@alliancedata.com>; Santillan, Laura <Laura.Santillan@alliancedata.com>; Tusa, Jeffrey <jeffrey.tusa@alliancedata.com>; Fair, Jeffrey <Jeffrey.Fair@alliancedata.com>; McLaughlin, Julie <Julie.McLaughlin@alliancedata.com>  
**Subject:** RE: Project Legacy - Draft Separation and Distribution Agreement

Yes, see attached for the current version of the Separation and Distribution Agreement. This is marked against the version you previously sent with your changes and comments. To the extent your comment was addressed in the body of the agreement or through other correspondence, I marked it as "Done" in the word doc. If there was still anything open to run down or discuss, I left it as is for the time being.

**Joshua B. Pittell**  
+1 212 450 4660 office  
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[joshua.pittell@davispolk.com](mailto:joshua.pittell@davispolk.com)

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**From:** Hageman, Cynthia <[Cynthia.Hageman@alliancedata.com](mailto:Cynthia.Hageman@alliancedata.com)>  
**Sent:** Thursday, September 9, 2021 8:14 PM  
**To:** Pittell, Joshua B. <[joshua.pittell@davispolk.com](mailto:joshua.pittell@davispolk.com)>; Motes, Joseph <[joseph.motes@alliancedata.com](mailto:joseph.motes@alliancedata.com)>; Morgan, Ben <[Ben.Morgan@alliancedata.com](mailto:Ben.Morgan@alliancedata.com)>  
**Cc:** Goldberg, Louis L. <[louis.goldberg@davispolk.com](mailto:louis.goldberg@davispolk.com)>; Chesnut, Jeff <[Jeff.Chesnut@alliancedata.com](mailto:Jeff.Chesnut@alliancedata.com)>; Santillan, Laura <[Laura.Santillan@alliancedata.com](mailto:Laura.Santillan@alliancedata.com)>; Tusa, Jeffrey <[jeffrey.tusa@alliancedata.com](mailto:jeffrey.tusa@alliancedata.com)>; Fair, Jeffrey <[Jeffrey.Fair@alliancedata.com](mailto:Jeffrey.Fair@alliancedata.com)>;

**Subject:** RE: Project Legacy - Draft Separation and Distribution Agreement

Sorry for the repeat – forgot to include Ben – and we need Ben!

**Louis** – thank you for your call this morning to touch base about the status of this agreement and the work to integrate the registration rights that we included in the July 14<sup>th</sup> Form 10 filing as well as other governance points reviewed by the ADS executive management team.

**Josh** – I think you are the correct person from whom to **request the current version of the Separation and Distribution Agreement so that the ADS teams can work to completion.**

**ADS team(s)** –

1. Kudos to Joe as he is the only person to respond to my July 29<sup>th</sup> email asking everyone to begin populating these schedules. I have not included Joe's changes here as the litigation matters will be held to the side and not be widely shared with everyone.
2. **We need attention on completing these schedules.** I think we need the Separation and Distribution Agreement to be able to best understand what is required – but it does not make sense to me to re-distribute the June 24 version. While we await a new version, **please take a look at the topics of each schedule and be thinking about who needs to be recruited to assist.**

As soon as we receive the most recent version of the Separation and Distribution Agreement, **we need to put our heads together and make a plan to ensure we reach the “finish line” on time** with both the agreement and the accompanying schedules. I believe we need to file the “form of” agreement in as nearly complete fashion as possible with the next Form 10. That filing should occur in the next week to 2 weeks at the most to stay on track.

Thank you for indulging my Thursday anxiety attack.

Cindy

**Cynthia Hageman**  
SVP, Asst. General Counsel

214.494.3834 (office)  
972.898.1530 (mobile)



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**From:** Che, Erica <[erica.che@davispolk.com](mailto:erica.che@davispolk.com)>

**Sent:** Tuesday, June 29, 2021 3:47 PM

**To:** Hageman, Cynthia <[Cynthia.Hageman@alliancedata.com](mailto:Cynthia.Hageman@alliancedata.com)>; Motes, Joseph <[joseph.motes@alliancedata.com](mailto:joseph.motes@alliancedata.com)>

**Cc:** Goldberg, Louis L. <[louis.goldberg@davispolk.com](mailto:louis.goldberg@davispolk.com)>; Chesnut, Jeff <[Jeff.Chesnut@alliancedata.com](mailto:Jeff.Chesnut@alliancedata.com)>; Santillan, Laura <[Laura.Santillan@alliancedata.com](mailto:Laura.Santillan@alliancedata.com)>; Tusa, Jeffrey <[jeffrey.tusa@alliancedata.com](mailto:jeffrey.tusa@alliancedata.com)>; Fair, Jeffrey <[Jeffrey.Fair@alliancedata.com](mailto:Jeffrey.Fair@alliancedata.com)>; McLaughlin, Julie <[Julie.McLaughlin@alliancedata.com](mailto:Julie.McLaughlin@alliancedata.com)>

**Subject:** RE: Project Legacy - Draft Separation and Distribution Agreement

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Received, thanks very much. Our team will review, and we will come back to you on a time to discuss.

Thanks,  
Erica

**Erica Che**

**Davis Polk & Wardwell LLP**

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**From:** Hageman, Cynthia <[Cynthia.Hageman@alliancedata.com](mailto:Cynthia.Hageman@alliancedata.com)>  
**Sent:** Tuesday, June 29, 2021 4:42 PM  
**To:** Che, Erica <[erica.che@davispolk.com](mailto:erica.che@davispolk.com)>; Motes, Joseph <[joseph.motes@alliancedata.com](mailto:joseph.motes@alliancedata.com)>  
**Cc:** Goldberg, Louis L. <[louis.goldberg@davispolk.com](mailto:louis.goldberg@davispolk.com)>; Chesnut, Jeff <[Jeff.Chesnut@alliancedata.com](mailto:Jeff.Chesnut@alliancedata.com)>; Santillan, Laura <[Laura.Santillan@alliancedata.com](mailto:Laura.Santillan@alliancedata.com)>; Tusa, Jeffrey <[jeffrey.tusa@alliancedata.com](mailto:jeffrey.tusa@alliancedata.com)>; Fair, Jeffrey <[Jeffrey.Fair@alliancedata.com](mailto:Jeffrey.Fair@alliancedata.com)>; McLaughlin, Julie <[Julie.McLaughlin@alliancedata.com](mailto:Julie.McLaughlin@alliancedata.com)>  
**Subject:** RE: Project Legacy - Draft Separation and Distribution Agreement

Erica –

A few comments, and several questions included in a marked to show changes version (Word and .pdf are the same).

I have copied the individuals who will be instrumental in populating the schedules.

Let us know when you would like to discuss.

Thanks, Cindy

**Cynthia Hageman**

SVP, Asst. General Counsel

214.494.3834 (office)  
972.898.1530 (mobile)



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**From:** Che, Erica <[erica.che@davispolk.com](mailto:erica.che@davispolk.com)>  
**Sent:** Thursday, June 24, 2021 3:12 PM  
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**Cc:** Goldberg, Louis L. <[louis.goldberg@davispolk.com](mailto:louis.goldberg@davispolk.com)>  
**Subject:** Project Legacy - Draft Separation and Distribution Agreement

⚠ External Email ⚠

Joe, Cindy,

Please find an initial draft of the separation and distribution agreement attached here. We note that we have included some footnotes with comments and questions for review. Please let us know of any comments, and we are happy to discuss.

Thanks,

Erica

**Erica Che**

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+1 646 413 5465 mobile  
[erica.che@davispolk.com](mailto:erica.che@davispolk.com)

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DPW Draft ~~6/24/21~~9/10/21

**SEPARATION AND DISTRIBUTION AGREEMENT**

by and between

ALLIANCE DATA SYSTEMS CORPORATION

and

LOYALTY VENTURES INC.

Dated as of [•], 2021

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**SCHEDULES**

[To be updated]

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**ANNEXES**

<u>Annex A</u>	Restructuring Plan
----------------	--------------------



**SEPARATION AND DISTRIBUTION AGREEMENT**

SEPARATION AND DISTRIBUTION AGREEMENT dated as of [●], 2021 (as the same may be amended from time to time in accordance with its terms and together with the schedules and exhibits hereto, this “**Agreement**”) between Alliance Data Systems Corporation, a Delaware corporation (“**ADS**”), and Loyalty Ventures Inc., a Delaware corporation (“**Loyalty Ventures**”).

**WITNESSETH:**

WHEREAS, the Board of Directors of ADS has determined that it is in the best interests of ADS and its stockholders to separate the LoyaltyOne Business from the ADS Business;

WHEREAS, Loyalty Ventures is a wholly owned Subsidiary of ADS that has been incorporated for the sole purpose of, and has not engaged in activities except in preparation for, the Distribution and the transactions contemplated by this Agreement;

WHEREAS, in furtherance of the foregoing, the Board of Directors of ADS has determined that it is in the best interests of ADS and its stockholders to distribute to the holders of the issued and outstanding shares of common stock, par value \$0.01 per share, of ADS (the “**ADS Common Stock**”) as of the Record Date, by means of a *pro rata* dividend, [81]% of the issued and outstanding shares of common stock, par value \$0.01 per share, of Loyalty Ventures (the “**Loyalty Ventures Common Stock**”) and [19]% of the Loyalty Ventures Common Stock retained by ADS, the “**Retained Loyalty Ventures Common Stock**”), on the basis of one share of Loyalty Ventures Common Stock for every [●]<sup>1</sup> then issued and outstanding share of ADS Common Stock (the “**Distribution**”);

WHEREAS, ADS and Loyalty Ventures have prepared, and Loyalty Ventures has filed with the Commission, the Form 10, which includes the Information Statement, and which sets forth appropriate disclosure concerning Loyalty Ventures and the Distribution, and the Form 10 has become effective under the Exchange Act;

WHEREAS, the Distribution will be preceded by, among other things, the Restructuring, pursuant to which, among other things, (a) Loyalty Ventures will enter into the Loyalty Ventures Financing Arrangements and (b) all of the stock of the Loyalty Ventures First-Tier Subsidiaries will be contributed by Alliance Data International, LLC (“**ADILC**”), a Subsidiary of ADS, to Loyalty Ventures in exchange for Loyalty Ventures Common Stock and the proceeds of the Loyalty Ventures Financing Arrangements (such proceeds, the “**Cash Proceeds**,” and such contribution, (the “**Contribution**”));

<sup>1</sup> **Note to Draft:** Distribution ratio to be determined.

WHEREAS, ADS may transfer up to 10% of the Loyalty Ventures Common Stock to one or more of ADS's creditors in exchange for ADS's indebtedness (the "Equity-for-Debt Exchange"), in which case ADS would transfer the Cash Proceeds to one or more ADS Creditors (the "Boot Purge"), in each case, in connection with the Contribution and Distribution;

WHEREAS, for United States federal and state income tax purposes, it is intended that (i) the Contribution and the Distribution, taken together, ~~will~~ qualify as a "reorganization" within the meaning of Section 368(a)(1)(D) of the Internal Revenue Code of 1986, as amended (the "**Code**"), ~~and~~ (ii) the Distribution ~~will~~ qualify as a tax-free transaction under Sections 355(a) and 361(c) of the Code (in each case, qualifying for such treatment under the corresponding provisions of state law), (iii) the Equity-for-Debt Exchange qualify as a transfer of "qualified property" to ADS's creditors in connection with the reorganization described in clause (i) for purposes of Section 361(c) of the Code, and (iv) the Boot Purge qualify as money distributed to ADS's creditors in connection with the reorganization described in clause (i) for purposes of Section 361(b) of the Code, and it is a condition to the Distribution that ADS will have obtained the PLR and the Tax Opinion to such effect as contemplated by Section 3.01(a)(ix);

WHEREAS, this Agreement, together with the Ancillary Agreements and other documents implementing the Contribution and Distribution, is intended to be, and is hereby adopted as, a "plan of reorganization" within the meaning of Treas. Reg. Section 1.368-2(g); and

WHEREAS, the parties hereto have determined to set forth the principal actions required to effect the Distribution and to set forth certain agreements that will govern the relationship between those parties following the Distribution.

ACCORDINGLY, in consideration of the mutual covenants contained in this Agreement, the parties hereby agree as follows:

#### ARTICLE 1 DEFINITIONS

Section 1.01. *Definitions.* (a) As used in this Agreement, the following terms have the following meanings:

"**Action**" means any demand, claim, suit, action, arbitration, inquiry, investigation or other proceeding by or before any Governmental Authority or any arbitration or mediation tribunal.

"**ADS Assets**" means all assets, of whatever sort, nature or description, of ADS or any of its Subsidiaries (including any member of the Loyalty Ventures Group) other than the Loyalty Ventures Assets, including, for the avoidance of doubt, the assets set forth on Schedule 1.01[•]. *provided that, notwithstanding*

Hageman, Cynthia [HC1] June 29, 2021  
12:32 AM  
Julie McLaughlin – we need to know if there is anything that requires a specific call out on the ADS side AFTER reviewing the specificity listed in the definition of Loyalty Ventures Assets below.

the foregoing, the ADS Assets shall not include any Tax assets, which shall be governed by the Tax Matters Agreement.

“**ADS Business**” means all of the businesses conducted by ADS and its Subsidiaries from time to time, whether before, on or after the Distribution, other than the LoyaltyOne Business and any Loyalty Ventures Former Business. For the avoidance of doubt, the Loyalty Ventures Assets (and all assets and properties owned, directly or indirectly, by entities forming all or part of such assets) will not be considered part of the ADS Business.

“**ADS Former Business**” means the Former Businesses previously owned, in whole or in part, or previously operated, in whole or in part, by ADS or any of its Subsidiaries and[, as determined by ADS in its sole discretion,] primarily related to the ADS Business or that would have comprised part of the ADS Business had they not been terminated, divested or discontinued prior to the Distribution Time, including the Former Business set forth on Schedule 1.01[●], but excluding, for the avoidance of doubt, the Loyalty Ventures Former Businesses.<sup>2</sup>

“**ADS Group**” means ADS and its Subsidiaries (other than any member of the Loyalty Ventures Group) and, where applicable, the ADS Former Businesses, including all predecessors and successors to such Persons (excluding, for the avoidance of doubt, all Loyalty Ventures Former Businesses).

“**ADS Liabilities**” means (without duplication) all of the following [(as determined by ADS in its sole discretion)]:

(a) all Liabilities solely to the extent relating to, arising out of or in connection with or resulting from the ADS Business or the business and operation of the ADS Assets, as currently or formerly operated (including as conducted or operated by any predecessor of any member of the ADS Group [or the Loyalty Ventures Group]), including those Liabilities set forth on Schedule 1.01[●];

(b) all Liabilities of the ADS Group and/or the Loyalty Ventures Group to the extent relating to, arising out of or in connection with or resulting from any ADS Former Business or any disposition thereof;<sup>3</sup> and

(c) all Liabilities that are expressly contemplated by this Agreement or any other Ancillary Agreement as Liabilities to be retained or assumed by ADS or any other member of the ADS Group, and all agreements, obligations and other Liabilities of ADS or any member of the ADS Group under this Agreement or any of the other Ancillary Agreements;

<sup>2</sup> **Note to Draft:** Relevant to allocation of liabilities for former businesses.

<sup>3</sup> **Note to Draft:** ADS to consider.

Hageman, Cynthia [HC2] June 26, 2021  
12:51 AM  
Santillan/McLaughlin – need a list for a schedule; this is used in separating liabilities – see ADS Liabilities immediately below.

Hageman, Cynthia [HC3] June 26, 2021  
12:53 AM  
Chesnut/Santillan/McLaughlin – please review; see also “Loyalty Ventures Liabilities” and “Liabilities” below.

*provided* that, notwithstanding the foregoing, the ADS Liabilities shall not include (i) any Liabilities for Taxes, which shall be governed by the Tax Matters Agreement or (ii) any Liabilities for the employment, employee benefits and employee compensation matters expressly covered by the Employee Matters Agreement, all of which shall be governed by the Employee Matters Agreement.

“**ADS Names and Marks**” means any and all Trademarks of ADS or any of its Affiliates (other than any Trademark included in the Loyalty Ventures Assets), including, for the avoidance of doubt, any that use, contain or include “ADS” or “Alliance Data”, in each case either alone or in combination with other words, phrases or logos, and any and all Trademarks derived therefrom or confusingly similar thereto.

“**ADS Participants**” has the meaning set forth in the Employee Matters Agreement.

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such other Person. For the purposes of this definition, “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or other interests, by Contract or otherwise, and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing. Notwithstanding any provision of this Agreement to the contrary (except where the relevant provision states explicitly to the contrary), no member of the ADS Group, on the one hand, and no member of the Loyalty Ventures Group, on the other hand, shall be deemed to be an Affiliate of the other.

“**Ancillary Agreement**” means each of the [Tax Matters Agreement, the Transition Services Agreement, the Employee Matters Agreement, the Restructuring Agreements and any other agreements, instruments, or certificates related thereto or to the transactions contemplated by this Agreement (in each case, together with the schedules, exhibits, annexes and other attachments thereto).]<sup>4</sup>

“**Applicable Law**” means, with respect to any Person, any federal, state, local or foreign law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling, directive, guidance, instruction, direction, permission, waiver, notice, condition, limitation, restriction or prohibition or other similar requirement enacted, adopted, promulgated, imposed, issued or applied by a Governmental

<sup>4</sup> **Note to Draft:** Ancillary Agreements subject to ongoing review. To discuss whether there are any ongoing contractual or commercial relationships that should be the subject of separate agreements, in addition to those listed here.

Authority that is binding upon or applicable to such Person, its properties or assets or its business or operations.

“**Business**” means, with respect to the ADS Group, the ADS Business and, with respect to the Loyalty Ventures Group, the LoyaltyOne Business.

“**Business Day**” means any day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

“**Cash and Cash Equivalents**” means cash or cash equivalents, certificates of deposit, banker’s acceptances and other investment securities of any form or maturity.

“**Commercial Data**” means any and all data and information relating to an identified or identifiable Person (whether the information is accurate or not), alone or in combination with other information, which Person is or was an actual or prospective customer of, or consumer of products or services offered by, the LoyaltyOne and/or ADS Business, as applicable.<sup>5</sup>

“**Commission**” means the United States Securities and Exchange Commission.

“**Confidential Information**” means, with respect to a Group, (i) any proprietary information that is competitively sensitive, material or otherwise of value to the members of such Group and not generally known to the public, including business plan or product planning information, strategies, financial information, information regarding operations, consumer and/or customer relationships, consumer and/or customer profiles, sales estimates, internal performance results relating to the past, present or future business activities of the members of such Group and the consumers, customers, clients and suppliers of the members of such Group, and information relating to filings, plans, correspondence or relationships with regulators, (ii) any proprietary scientific or technical information, design, invention, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords any member of such Group a competitive advantage over its competitors and (iii) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, information, and trade secrets, in the case of each of clauses (i), (ii) and (iii) of this definition, that are related primarily to such Group’s Business; *provided* that to the extent both the ADS Business and the LoyaltyOne Business use or rely upon any of the information described in any of the foregoing clauses (i), (ii) and/or (iii), subject to Section 4.07, such information

Hageman, Cynthia [HC4] June 26, 2021  
12:56 AM  
Joe: Without Mike Britton – who can respond to this?

<sup>5</sup> **Note to Draft:** ADS to confirm whether there are other types of data.

shall be deemed the Confidential Information of both the ADS Group and the Loyalty Ventures Group.

“**Contract**” means any written or oral commitment, contract, subcontract, agreement, lease, sublease, license, sublicense, understanding, sales order, purchase order, instrument, indenture, note or any other legally binding commitment or undertaking.

“**Distribution Agent**” means Computershare Trust Company, N.A.

“**Distribution Date**” means [•], 2021.

“**Distribution Documents**” means this Agreement and the Ancillary Agreements.

“**Distribution Time**” means the time at which the Distribution is effective on the Distribution Date, which shall be deemed to be 11:59 p.m., Eastern Daylight Time, on the Distribution Date.

“**Employee Matters Agreement**” means the Employee Matters Agreement dated as of the date hereof between ADS and Loyalty Ventures substantially in the form of Exhibit A, as such agreement may be amended from time to time in accordance with its terms.

“**Equity Compensation Registration Statement**” means the Registration Statement on Form S-8 or such other form or forms as may be appropriate, as amended and supplemented, including all documents incorporated by reference therein, to effect the registration under the Securities Act of Loyalty Ventures Common Stock subject to certain equity awards granted to current and former officers, employees, directors and consultants of the ADS Group to be assumed or replaced by Loyalty Ventures pursuant to the Employee Matters Agreement.

“**Escheat Payment**” means any payment required to be made to a Governmental Authority pursuant to an abandoned property, escheat or similar law.

“**Exchange Act**” means the Securities Exchange Act of 1934.

“**Form 10**” means the registration statement on Form 10 filed by Loyalty Ventures with the Commission to effect the registration of Loyalty Ventures Common Stock pursuant to the Exchange Act in connection with the Distribution, as such registration statement may be amended or supplemented from time to time.

“**Former Business**” means any corporation, partnership, entity, division, business unit, business or set of business operations that has been sold, conveyed, assigned, transferred or otherwise disposed of or divested (other than solely in connection with the Restructuring), in whole or in part, or the operations,

activities or production of which has been discontinued, abandoned, liquidated, completed or otherwise terminated, in whole or in part, in each case, by either Group prior to the Distribution Time.

“**Governmental Authority**” means any multinational, foreign, federal, state, local or other governmental, statutory or administrative authority, regulatory body or commission or any court, tribunal or judicial or arbitral authority which has any jurisdiction or control over either party (or any of their Affiliates).

“**Group**” means, as the context requires, the Loyalty Ventures Group, the ADS Group or either or both of them.

“**Indemnitees**” means, as the context requires, the ADS Indemnitees or the Loyalty Ventures Indemnitees.

“**Information Statement**” means the Information Statement to be sent to each holder of ADS Common Stock in connection with the Distribution.

“**Intellectual Property**” means any and all intellectual property throughout the world, including any and all U.S. and foreign (i) patents, invention disclosures, and all related continuations, continuations-in-part, divisionals, provisionals, renewals, reissues, re-examinations, additions, extensions (including all supplementary protection certificates), and all applications and registrations therefor (collectively, “**Patent Rights**”), (ii) trademarks, service marks, names, corporate names, trade names, domain names, social media identifiers, logos, slogans, trade dress, design rights, and other similar business identifiers or designations of source or origin and all applications and registrations therefor, together with the goodwill symbolized by any of the foregoing (collectively, “**Trademarks**”), (iii) copyrights, works of authorship and copyrightable subject matter and all applications and registrations therefor, (iv) trade secrets, know-how, confidential data and information, technical information, including practices, techniques, methods, processes, inventions, developments, specifications, formulations, structures, analytical and quality control information and procedures, studies and procedures and regulatory information, (v) computer software (including source code, object code, firmware, operating systems and specifications), (vi) databases and data collections and (vii) all rights to sue or recover and retain damages and costs and attorneys’ fees for the past, present or future infringement, misappropriation or other violation of any of the foregoing.

“**Intended Tax Treatment**” has the meaning set forth in the [Tax Matters Agreement](#).

“**IRS**” means the Internal Revenue Service.

“**IT Assets**” means computers, software, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines, and all other information technology assets or other equipment storing or processing

information, including all associated documentation related to any of the foregoing.

“**LoyaltyOne Business**” means the businesses and operations of the ADS LoyaltyOne segment, in each case as more fully described in the Form 10 and the Information Statement.

“**Loyalty Ventures Assets**” means, except as expressly otherwise contemplated in this Agreement or any Ancillary Agreement, the following assets of ADS and its Subsidiaries [(as determined by ADS in its sole discretion)]:<sup>6</sup>

(a) all interests of whatever nature in the real property listed on Schedule 1.01, together with all buildings, fixtures and improvements erected thereon (the “**Loyalty Ventures Facilities**”);

(b) all interests in personal property, fixtures, [machinery,] furniture, office equipment, automobiles, motor vehicles and other transportation equipment, [special and general tools, test devices, prototypes and models,] and other tangible personal property (other than any Intellectual Property) located at the Loyalty Ventures Facilities [or primarily used or primarily held for use in connection with the LoyaltyOne Business];

(c) all inventories of materials, supplies, goods in transit, customer returns, and work-in-process and finished goods and products, in each case of whatever kind, nature or description, in each case solely to the extent primarily related to or primarily used or primarily held for use in connection with the Loyalty Ventures Business;

(d) all interests in any capital stock or other equity securities or interests of or in any member of the Loyalty Ventures Group;

(e) all deposits, letters of credit, and performance and surety bonds, in each case solely to the extent primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business;

(f) all prepaid expenses, trade accounts, and other accounts and notes receivable, in each case solely to the extent primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business;

<sup>6</sup> **Note to Draft:** To confirm treatment of each category of assets and standard for separating the LoyaltyOne Business from the ADS Business (e.g., (i) primarily used by the LoyaltyOne Business, (ii) exclusively used by the LoyaltyOne Business or (iii) assets set forth on a schedule).

<sup>7</sup> [DPW Response: Confirmed – leases are intended to be included.](#)

Hageman, Cynthia [HC5] June 26, 2021  
01:03 PM  
Davis Polk: is this intended to include leases? No owned real property.

Hageman, Cynthia [HC6] June 26, 2021  
01:05 PM  
Davis Polk: Given the WFH model and the corporate orphans in the U.S. where there is no facility identified at this point, how do we better define this to capture all of the office equipment and files not at Loyalty Venture Facilities?



(g) the Patent Rights listed on Schedule 1.01[●] and all other Intellectual Property (other than Patent Rights) owned by ADS or any of its Subsidiaries solely to the extent primarily used or primarily held for use in connection with the LoyaltyOne Business (other than any Trademarks that use, contain or include “ADS” or “Alliance Data”, either alone or in combination with other words, phrases or logos), including such other Intellectual Property listed on Schedule 1.01[●];

Hageman, Cynthia [HC7] June 26, 2021 01:08 PM  
If these are in the names of subsidiaries in the Loyalty Ventures Group, do we need to list all of this stuff? None owned by ADS Group to my knowledge – with the exception of the new domain names picked up by ADS on Loyalty Ventures behalf, which we will transfer prior to Separation.

(h) all IT Assets solely to the extent exclusively related to or exclusively used or exclusively held for use in connection with the LoyaltyOne Business (other than the IT Assets set forth on Schedule 1.01[●]);

(i) all Contracts (including Contracts related to Intellectual Property and IT Assets) and any rights thereunder, in each case solely to the extent primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business, including the Contracts set forth on Schedule 1.01[●];

Hageman, Cynthia [HC8] June 26, 2021 01:11 PM  
This does not seem like it would be a useful exercise given the separate nature of the business. I would not schedule EVERY contract, nor do I think we have the capability to do so.

(j) all claims, causes of action and similar rights, whether accrued or contingent, in each case solely to the extent primarily related to the LoyaltyOne Business;

Pittell, Joshua B. [PJB9] September 10, 2021 00:44 AM  
Any risk of overlap between the two businesses? If we're certain the answer is no, then we can all likely get comfortable with the "primarily" standard. If there are a certain subset of contracts that may be on the fence, and it is agreed they will transfer to the Loyalty Ventures, then it may be helpful to add a "for the avoidance of doubt" schedule and call out those particular contracts.

(k) all employee Contracts with any Loyalty Ventures Participants, including the right thereunder to restrict any Loyalty Ventures Participant from competing in certain respects;

(l) all Permits primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business;

(m) Cash and Cash Equivalents solely to the extent (i) located at the Loyalty Ventures Facilities or (ii) primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business;

(n) subject to the foregoing clause (m), all bank accounts, lock boxes and other deposit arrangements, and all brokerage accounts, in each case solely to the extent (i) located at the Loyalty Ventures Facilities or (ii) primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business;

Hageman, Cynthia [HC10] June 26, 2021 01:41 PM  
Chesnut – Believe there are no issues here as bank accounts are in the name of a specific legal entity.

(o) all accounting and other legal and business books, records, minute books, corporate documents, ledgers and files and all personnel records, in each case, whether printed, electronic, contained on storage media or written, or in any other form, in each case solely to the extent primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business;

Hageman, Cynthia [HC11] June 26, 2021 01:42 PM  
Laura – think about how this information can be segregated and be in the possession of Loyalty Ventures; part of TSA scope?

(p) (x) all Confidential Information, except for any confidential supervisory information (including confidential supervisory information as identified in 12 C.F.R. § 309.5(g)(8)) of a U.S. federal or state Governmental

Authority or any information the disclosure of which by ADS is prohibited by Applicable Law (y) all cost information, sales and pricing data, supplier records, supplier lists, vendor data, customer data, correspondence and lists, and (z) all product data and literature, brochures, marketing and sales literature, advertising catalogues, photographs, display materials, media materials, packaging materials, artwork, designs, formulations and specifications, quality records and reports (other than any Intellectual Property in any of the foregoing and excluding any Commercial Data), in each case solely to the extent primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business;

(q) all Commercial Data to the extent exclusively related to or exclusively used or exclusively held for use in connection with the LoyaltyOne Business;

(r) all goodwill associated with the LoyaltyOne Business or the Loyalty Ventures Assets; and

(s) any other assets, of whatever sort, nature or description, that are exclusively related to or exclusively used or exclusively held for use in connection with the LoyaltyOne Business and any assets on the books and records of any member of the Loyalty Ventures Group, including but not limited to the assets set forth on Schedule 1.01[●];

Provided that, notwithstanding the foregoing, the Loyalty Venures Assets shall not include any Tax assets, which shall be governed by the Tax Matters Agreement.

“Loyalty Ventures Credit Facility” means [●].

“Loyalty Ventures Financing Arrangements” means (i) the Loyalty Ventures Credit Facility and (ii) [●].

“Loyalty Ventures First-Tier Subsidiaries” means each of ADI Crown Helix Limited and Alliance Data Lux Holdings S.à.r.l.

“Loyalty Ventures Former Business” means each Former Business previously owned, in whole or in part, or previously operated, in whole or in part, by ADS or any of its Subsidiaries and[, as determined by ADS and in its sole discretion,] primarily related to the LoyaltyOne Business or that would have comprised part of the LoyaltyOne Business had such Former Business not been terminated, divested or discontinued prior to the Distribution Time, including the Former Businesses set forth on Schedule 1.01[●], but excluding, for the avoidance of doubt, all ADS Former Businesses.

Hageman, Cynthia [HC12] June 26, 2021 01:44 PM  
Does this schedule negate the generality and inclusiveness of the “other” catch all concept intended here; if yes, delete or add a “but not limited to.”

Hageman, Cynthia [HC13] June 26, 2021 12:45 AM  
Jeff Fair please confirm.

Hageman, Cynthia [HC14] June 26, 2021 01:45 PM  
Laura – please list (LoyaltyOne Participacoes (dotz)), Precima, consulting business, the JV, the sports management minority interest, L1 India, L1 China – let me know if I should check with Mitchell or if you are checking with Lynette.

“**Loyalty Ventures Group**” means Loyalty Ventures and its Subsidiaries as set forth on Schedule 1.01[●], including all predecessors and successors to such Persons.

“**Loyalty Ventures Liabilities**” means (without duplication) all of the following [(as determined by ADS in its sole discretion)]:

(a) any and all Liabilities to the extent relating to, arising out of or in connection with or resulting from the LoyaltyOne Business, the business and operation of the Loyalty Ventures Assets, as currently or formerly operated (including as conducted or operated by any predecessor of any member of the ADS Group or the Loyalty Ventures Group), including the following Liabilities:

(i) all Liabilities relating to, arising out of or in connection with or resulting from the Loyalty Ventures Financing Arrangements;

(ii) [●]<sup>78</sup>;

(iii) all Liabilities set forth on Schedule 1.01[●];

(b) all Liabilities of the ADS Group and/or the Loyalty Ventures Group to the extent relating to, arising out of or in connection with or resulting from any Loyalty Ventures Former Business or any disposition thereof; and

(c) all Liabilities that are expressly contemplated by this Agreement or any other Ancillary Agreement as Liabilities to be retained or assumed by Loyalty Ventures or any other member of the Loyalty Ventures Group, and all agreements, obligations and other Liabilities of Loyalty Ventures or any member of the Loyalty Ventures Group under this Agreement or any of the other Ancillary Agreements;

*provided* that, notwithstanding the foregoing, the Loyalty Ventures Liabilities shall not include (i) any Liabilities for Taxes, which shall be governed by the Tax Matters Agreement or (ii) any Liabilities for the employment, employee benefits and employee compensation matters expressly covered by the Employee Matters Agreement, all of which shall be governed by the Employee Matters Agreement.

“**Loyalty Ventures Participants**” has the meaning set forth in the Employee Matters Agreement.

“**Liabilities**” means any and all Claims, debts, liabilities, damages and/or obligations (including, but not limited to, any Escheat Payment) of any kind, character or description, whether absolute or contingent, matured or not matured,

<sup>78</sup> **Note to Draft:** ADS to advise on additional categories of liabilities to be specifically listed as Loyalty Ventures Liabilities.

Hageman, Cynthia [HC15] June 26, 2021 01:48 PM  
Chesnut / Santillan / McLaughlin – see also ADS Liabilities above and “Liabilities” below.

liquidated or unliquidated, accrued or unaccrued, known or unknown, whenever arising, including all costs and expenses (including attorneys' fees and expenses and associated investigation costs) relating thereto, and including those Claims, debts, liabilities, damages and/or obligations arising under this Agreement, any Applicable Law, any Action or threatened Action, any order or consent decree of any Governmental Authority or any award of any arbitrator of any kind, and those arising under any agreement, commitment or undertaking, including in connection with the enforcement of rights hereunder or thereunder.

~~["NYSE"] means The New York Stock Exchange, Inc.]<sup>8</sup>~~

["Nasdaq"] means Nasdaq Global [Select] Market.

**"Permit"** means any license, permit, approval, consent, certification, franchise, registration or authorization which has been issued by or obtained from any Governmental Authority.

**"Person"** means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

**"PLR"** means the private letter ruling and any supplements thereto issued by the IRS to ADS prior to and in connection with the Contribution, Distribution Equity-for-Debt Exchange, Boot Purge and any related transactions.

**"Record Date"** means the close of business on [●], 2021, the date determined by the Board of Directors of ADS as the record date for the Distribution.

**"Restructuring"** means the reorganization of certain businesses, assets and liabilities of the ADS Group and the Loyalty Ventures Group to be completed before the Distribution Time in accordance with the Restructuring Plan, including the Contribution.

**"Restructuring Plan"** means that certain [●], attached hereto as Annex A.

**"Securities Act"** means the Securities Act of 1933.

**"Subsidiary"** means, with respect to any Person, any other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

~~<sup>8</sup>Note to Draft: Exchange to be confirmed.~~

Hageman, Cynthia [HC16] June 26, 2021 01:50 PM

Davis Polk: Can we just change it to "Exchange" and fill in the selection later? Why favor this one?

Chesnut / Tusa - Need to circle about timing to determine this.

Hageman, Cynthia [HC17] June 26, 2021 01:50 PM

Davis Polk: Can we just change it to "Exchange" and fill in the selection later? Why favor this one?

Chesnut / Tusa - Need to circle about timing to determine this.

“**Tax**” or “**Taxes**” has the meaning set forth in the Tax Matters Agreement.

“**Tax Benefit**” has the meaning set forth in the Tax Matters Agreement.

“**Tax Matters Agreement**” means the Tax Matters Agreement dated as of the date hereof between ADS and Loyalty Ventures substantially in the form of Exhibit B, as such agreement may be amended from time to time in accordance with its terms.

“**Tax Opinion**” has the meaning set forth in the Tax Matters Agreement.

“**Third Party**” means any Person that is not a member or an Affiliate of the Loyalty Ventures Group or the ADS Group.

“**Transition Services Agreement**” means the Transition Services Agreement dated as of the date hereof between ADS and Loyalty Ventures substantially in the form of Exhibit C, as such agreement may be amended from time to time in accordance with its terms.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
ADILC	Recitals
ADS	Preamble
ADS Assumed Actions	4.02(b)
ADS Claims-Made Policies	4.10(b)
ADS Common Stock	Recitals
ADS Designee	2.03(a)
ADS Group Privileged Materials	4.07(e)
ADS Indemnitees	5.02(a)
ADS Insurance Policies	4.10(a)
ADS Loss Discovered-Policies	4.10(b)
ADS Occurrence-Based Policy	4.10(b)
ADS Shared Policies	4.10(b)
Agreement	Preamble
Amended and Restated Bylaws	2.02(c)
Amended and Restated Certificate of Incorporation	2.02(c)
Claim	5.04(a)
Code	Recitals
Contribution	Recitals
Disposing Party	4.05
Distribution	Recitals
Guarantee	2.09
Indemnified Party	5.04(a)

<u>Term</u>	<u>Section</u>
Indemnifying Party	5.04(a)
Intercompany Accounts	2.06
Loyalty Ventures	Preamble
Loyalty Ventures Assumed Actions	4.02(a)
Loyalty Ventures Common Stock	Recitals
Loyalty Ventures Designee	2.03(a)
Loyalty Ventures Facilities	1.01(a)
Loyalty Ventures Indemnitees	5.03(a)
Patent Rights	1.01(a)
Pre-Distribution Time Communications	4.07(e)
Prior Company Counsel	4.07(d)
Privileged Information	4.07(a)
Privileges	4.07(a)
Post-Distribution Insurance Arrangements	4.10(a)
Receiving Party	4.05
Released Parties	5.01(a)
Representatives	4.06
Restructuring Agreements	2.04
Third Party Claim	5.04(b)
Trademarks	1.01(a)

Section 1.02. *Interpretation.* (a) In this Agreement, unless the context clearly indicates otherwise:

- (i) words used in the singular include the plural and words used in the plural include the singular;
- (ii) references to any Person include such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;
- (iii) except as otherwise clearly indicated, reference to any gender includes the other gender;
- (iv) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation";
- (v) reference to any Article, Section, Exhibit or Schedule means such Article or Section of, or such Exhibit or Schedule to, this Agreement, as the case may be, and references in any Section or definition to any clause means such clause of such Section or definition;
- (vi) the words "herein," "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision hereof;

(vii) reference to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement;

(viii) reference to any law (including statutes and ordinances) means such law (including all rules and regulations promulgated thereunder) as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;

(ix) relative to the determination of any period of time, “from” means “from and including,” “to” means “to and including” and “through” means “through and including”;

(x) the titles to Articles and headings of Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement;

(xi) unless otherwise specified in this Agreement, all references to dollar amounts herein shall be in respect of lawful currency of the United States; and

(xii) any capitalized term used in an Exhibit or Schedule but not otherwise defined therein shall have the meaning set forth in this Agreement.

ARTICLE 2  
PRIOR TO THE DISTRIBUTION

On or prior to the Distribution Date:

Section 2.01 . *Information Statement; Listing.* ADS shall mail (or shall have mailed) the Information Statement to the holders of ADS Common Stock as of the Record Date. ADS and Loyalty Ventures shall take (or shall have taken) all such actions as may be necessary or appropriate under the securities or blue sky laws of states or other political subdivisions of the United States and shall use commercially reasonable efforts to comply with all applicable foreign securities laws in connection with the transactions contemplated by this Agreement and the Ancillary Agreements. ADS and Loyalty Ventures shall prepare, file and pursue (or shall have prepared, filed and pursued) an application to permit listing of the Loyalty Ventures Common Stock on ~~the NYSE~~[Nasdaq](#).

Section 2.02 . *Restructuring and Other Actions prior to the Distribution Time.*

(a) Restructuring. The Restructuring shall have been consummated on or prior to the Distribution Time, including (i) the entry by Loyalty Ventures into the Loyalty Ventures Financing Arrangements and (ii) the ~~distribution~~ Contribution, including the transfer by Loyalty Ventures of the proceeds of the Loyalty Ventures Financing Arrangements to ADILC in ~~connection with the Contribution~~ partial consideration for the stock of Loyalty Ventures First-Tier Subsidiaries.

(b) Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws. (i) ADS and Loyalty Ventures shall each take (or shall have taken) all necessary action that may be required to provide for the adoption by Loyalty Ventures of an amended and restated certificate of incorporation of Loyalty Ventures substantially in the form of Exhibit D (the “**Amended and Restated Certificate of Incorporation**”), and amended and restated bylaws of Loyalty Ventures, substantially in the form of Exhibit E (the “**Amended and Restated Bylaws**”), and (ii) Loyalty Ventures shall file (or shall have filed) the Amended and Restated Certificate of Incorporation of Loyalty Ventures with the Secretary of State of the State of Delaware.

(c) The Distribution Agent. ADS shall enter (or shall have entered) into a distribution agent agreement with the Distribution Agent or otherwise provide instructions to the Distribution Agent regarding the Distribution.

(d) Satisfying Conditions to the Distribution. ADS and Loyalty Ventures shall cooperate (or shall have cooperated) to cause the conditions to the Distribution set forth in Section 3.01 to be satisfied (or waived by ADS) and to effect the Distribution at the Distribution Time upon such satisfaction (or waiver by ADS).

Section 2.03. *Transfers of Certain Other Assets and Liabilities*. Unless otherwise provided in this Agreement or in any Ancillary Agreement and to the extent not previously effected in accordance with Section 2.02(a), effective as of the Distribution Time:<sup>9</sup>

(a) ADS hereby agrees, and hereby causes the relevant member of the ADS Group, to assign, contribute, convey, transfer and deliver (or shall have assigned, contributed, conveyed, transferred and delivered) to Loyalty Ventures or any member of the Loyalty Ventures Group as of the Distribution Time designated by Loyalty Ventures (a “**Loyalty Ventures Designee**”) all of the right, title and interest of ADS or such member of the ADS Group in and to all of the Loyalty Ventures Assets, if any, held by any member of the ADS Group, and ADS and Loyalty Ventures hereby agree, and hereby cause the relevant member of the Loyalty Ventures Group, to assign, contribute, convey, transfer and deliver to ADS or any member of the ADS Group as of the Distribution Time designated

<sup>9</sup> **Note to Draft:** If there are any overlapping/shared assets or contracts that need to be separated, to discuss how best to address these.

Hageman, Cynthia [HC18] June 26, 2021 01:52 PM  
Wouldn't this be addressed in the TSA?

Pittell, Joshua B. [PJB19] September 10, 2021 00:54 AM  
[TSA focuses more on shared services \(i.e. legal, HR, FP&A\). This would focus more on shared assets/contracts/etc. From the notes above, it's possible it's a null set given the distinct operations of the two businesses.](#)



by ADS (a “**ADS Designee**”) all of the right, title and interest of Loyalty Ventures or such member of the Loyalty Ventures Group in and to all of the ADS Assets, if any, held by any member of the Loyalty Ventures Group; and

(b) ADS hereby agrees, and hereby causes the relevant member of the ADS Group, to assign, transfer and deliver (or shall have assigned, transferred and delivered) to Loyalty Ventures, and Loyalty Ventures, on behalf of itself or such Loyalty Ventures Designee, hereby accepts, assumes and agrees to perform, discharge and fulfill, all of the Loyalty Ventures Liabilities, if any, to the extent such Loyalty Ventures Liabilities would otherwise remain obligations of any member of the ADS Group, and ADS and Loyalty Ventures hereby agree, and hereby cause the relevant member of the Loyalty Ventures Group, to assign, transfer and deliver (or shall have assigned, transferred and delivered) to ADS, and ADS, on behalf of itself or such ADS Designee, hereby accepts, assumes and agrees to perform, discharge and fulfill, all of the ADS Liabilities, if any, to the extent such ADS Liabilities would otherwise remain obligations of any member of the Loyalty Ventures Group.

(c) To the extent any assignment, contribution, conveyance, transfer, delivery or assumption of any asset or Liability of either Group as of the Distribution Time is not effected in accordance with this Section 2.03 as of the Distribution Time for any reason (including as a result of the failure of the parties to identify it as being required to be transferred pursuant to this Section 2.03, but subject to Section 2.04), the relevant party shall use all commercially reasonable efforts to effect such transfer as promptly thereafter as practicable.

Section 2.04. *Restructuring Agreements.* The transfers of the various entities and the contribution, assignment, transfer, conveyance and delivery of the assets and the acceptance and assumption of the Liabilities contemplated by Section 2.03 and the Restructuring Plan will be effected, in certain cases, pursuant to one or more asset transfer agreements, share transfer agreements, business transfer agreements, certificates of merger and other agreements and instruments (the “**Restructuring Agreements**”); *provided that*, in each case, it is intended that the Restructuring Agreements shall serve purely to effect (x) the legal transfer of the Loyalty Ventures Assets or ADS Assets to the Loyalty Ventures Group or the ADS Group, as applicable, in accordance with the Restructuring Plan or as contemplated pursuant to Section 2.03 and (y) the acceptance and assumption of the Loyalty Ventures Liabilities or the ADS Liabilities by a member of the Loyalty Ventures Group or the ADS Group, as applicable, in each case, in accordance with the Restructuring Plan or as contemplated pursuant to Section 2.03. [In the event of any conflict between any Restructuring Agreement and this Agreement, the terms of such Restructuring Agreement shall control solely with respect to any applicable purchase price adjustment or cash adjustment set forth in any such Restructuring Agreement and this Agreement shall control in all other respects;] [*provided that*, notwithstanding anything in any Restructuring Agreement to the contrary, in the event any Restructuring Agreement provides for a purchase price adjustment or cash adjustment, whether

based upon a calculation of fair market value or otherwise, or any similar adjustment provision, any purchase price adjustment or cash adjustment determination under such Restructuring Agreement, including as to the amount, if any, of any such adjustment, shall be determined by ADS in its sole discretion.] Notwithstanding anything in any Restructuring Agreement to the contrary, neither ADS nor any member of the ADS Group, on the one hand, nor Loyalty Ventures nor any member of the Loyalty Ventures Group, on the other hand, shall commence, bring or otherwise initiate any Action under any Restructuring Agreement.

Section 2.05. *Agreement Relating to Consents Necessary to Transfer Assets and Liabilities.* Notwithstanding any provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to transfer or assign any asset (including any Contract) or any claim or right or any benefit arising thereunder or resulting therefrom, or to assume any Liability, if such transfer, assignment, or assumption without the consent of a Third Party or a Governmental Authority, would result in a breach, or constitute a default (or an event which, with the giving of notice or lapse of time, or both, would become a default), under any Contract or would otherwise adversely affect the rights of a member of the ADS Group or the Loyalty Ventures Group thereunder. ADS and Loyalty Ventures will use their respective commercially reasonable efforts to obtain the consent of any Third Party (including any Governmental Authority), if any, required in connection with the transfer, assignment or assumption pursuant to Section 2.03 of any such asset or any such claim or right or benefit arising thereunder or to the assumption of any Liability; *provided* that in no event shall any member of a Group have any Liability whatsoever to any member of the other Group for any failure to obtain any such consent. If and when such consent is obtained, such transfer, assignment and/or assumption shall be effected in accordance with the terms of this Agreement and/or the applicable Ancillary Agreement. During the period in which any transfer, assignment or assumption is delayed pursuant to this Section 2.05 as a result of the absence of a required consent, the party (or relevant member in its Group) retaining such asset, claim or right shall thereafter hold (or shall cause such member in its Group to hold) such asset, claim or right for the use and benefit of the party (or relevant member in its Group) entitled thereto (at the expense of the Person entitled thereto) and the party intended to assume such Liability shall, or shall cause the applicable member of its Group to, pay, hold harmless or reimburse the party (or the relevant member of its Group) retaining such Liability for all amounts paid, incurred in connection with or arising out of the retention of such Liability. In addition, the party retaining such asset, claim or right, or such Liability (or relevant member of its Group) shall (or shall cause such member in its Group to) treat, insofar as reasonably possible and to the extent permitted by Applicable Law, such asset, claim or right, or such Liability, in the ordinary course of business in accordance with past practice and take such other actions as may be reasonably requested by the party to which such asset, claim or right, or such Liability, is to be transferred or assumed in order to place such party, insofar as reasonably possible, in the same position as if such asset, claim or right, or such Liability, had been

transferred or assumed on or prior to the Distribution Time as contemplated hereby and so that all the benefits and burdens relating to such asset, claim or right, or such Liability, including possession, use, risk of loss, potential for gain, and dominion, control and command over such asset, claim or right, or such Liability, are to inure from and after the Distribution Time to the relevant member of the ADS Group or the Loyalty Ventures Group, as the case may be, entitled to the receipt of such asset, claim or right, or required to assume such Liability.

Section 2.06. *Intercompany Accounts*. The parties shall use commercially reasonable efforts to settle on or prior to the Distribution Date (to the extent practicable), all intercompany receivables, payables and other balances, in each case, that arise prior to the Distribution Time between members of the ADS Group, on the one hand, and members of the Loyalty Ventures Group, on the other hand (“**Intercompany Accounts**”), by way of capitalization and/or one or more cash payments (whether or not on a net basis) in satisfaction of such amounts. From and after the Distribution Time, the parties shall use commercially reasonable efforts to settle any Intercompany Accounts that are not settled as of the Distribution Time within 90 days of the Distribution Date and in the manner set forth in the first sentence of this Section 2.06; *provided* that any claim by any member of either Group with respect to an Intercompany Account must be made in writing (which writing shall be provided in accordance with Section 6.01 and be reasonably specific as to the applicable Intercompany Account and the amount thereof) to the applicable member of the other Group within 90 days of the Distribution Date.

Hageman, Cynthia [HC20] June 26, 2021 01:53 PM  
Laura/Julie – Need to ensure Brigitte is planning for this.

Section 2.07. *Intercompany Agreements*. (a) Except as set forth in Section 2.07(b), all Contracts between members of the ADS Group, on the one hand, and members of the Loyalty Ventures Group, on the other hand, in effect immediately prior to the Distribution are hereby agreed by ADS (on behalf of itself and each member of the ADS Group) and by Loyalty Ventures (on behalf of itself and each member of the Loyalty Ventures Group) to be terminated, cancelled and of no further force and effect from and after the Distribution Time (including any provision thereof that purports to survive termination) without any further Liability to any party thereto.

Hageman, Cynthia [HC21] June 26, 2021 01:54 PM  
NONE to report.

(b) The provisions of Section 2.07(a) shall not apply to any of the following Contracts: (i) this Agreement and the Ancillary Agreements (and each other Contract expressly contemplated by this Agreement or any Ancillary Agreement (A) to be entered into by any of the parties hereto or any of the members of their respective Groups or (B) to survive the Distribution Date); (ii) any Contract to which any Person, other than solely the parties hereto and the members of their respective Groups is a party; (iii) any Intercompany Accounts to the extent such Intercompany Accounts were not satisfied and/or settled in accordance with the first sentence of Section 2.06 (it being understood that such Intercompany Accounts shall be satisfied or settled in accordance with the second sentence of Section 2.06); and (iv) the Contracts set forth on Schedule 2.07(b).

Section 2.08. *Bank Accounts; Cash Balances.*

(a) ADS and Loyalty Ventures shall, and shall cause the members of their respective Group to, use commercially reasonable efforts such that, on or prior to the Distribution Time, the ADS Group and the Loyalty Ventures Group maintain separate bank accounts and separate cash management processes. Without limiting the generality of the foregoing, ADS and Loyalty Ventures shall use commercially reasonable efforts to, and shall cause the members of their respective Groups to use commercially reasonable efforts to, effective prior to the Distribution Time, (x) remove and replace the signatories of any bank or brokerage account owned by Loyalty Ventures or any other member of the Loyalty Ventures Group as of the Distribution Time with individuals designated by Loyalty Ventures and (y) if requested by ADS, remove and replace the signatories of any bank or brokerage account owned by ADS or any other member of the ADS Group as of the Distribution Time with individuals designated by ADS.

(b) With respect to any outstanding payments initiated by ADS, Loyalty Ventures, or any of their respective Subsidiaries prior to the Distribution Time, such outstanding payments shall be honored following the Distribution by the Person or Group owning the account from which the payment was initiated.

(c) As between ADS and Loyalty Ventures (and the members of their respective Groups) all payments received after the Distribution Date by either party (or member of its Group) that relate to a business, asset or Liability of the other party (or member of its Group), shall be held by such party for the use and benefit and at the expense of the party entitled thereto. Each party shall maintain an accounting of any such payments, and the parties shall have a monthly reconciliation, whereby all such payments received by each party are calculated and the net amount owed to ADS or Loyalty Ventures, as applicable, shall be paid over with a mutual right of set-off. If at any time the net amount owed to either party exceeds \$[500,000]<sup>10</sup>, an interim payment of such net amount owed shall be made to the party entitled thereto within five (5) Business Days of such amount exceeding \$[500,000]. Notwithstanding the foregoing, neither ADS nor Loyalty Ventures shall act as collection agent for the other party, nor shall either party act as surety or endorser with respect to non-sufficient funds checks or funds to be returned in a bankruptcy or fraudulent conveyance action.

Section 2.09. *Replacement of Guarantees.* ADS and Loyalty Ventures shall each use commercially reasonable efforts to, and shall cause the members of their respective Groups to use commercially reasonable efforts to, effective as of the Distribution Time, terminate or cause a member of the Loyalty Ventures Group to be substituted in all respects for a member of the ADS Group with respect to, and for the members of the ADS Group, as applicable, to be otherwise

Hageman, Cynthia [HC22] June 26, 2021 01:55 PM  
Chesnut / Tusa – Please review.

Hageman, Cynthia [HC23] June 26, 2021 01:56 PM  
Chesnut / McLaughlin – Any reason to be concerned about this amount and is it too high or too low?

Hageman, Cynthia [HC24] June 26, 2021 01:57 PM  
There are no lease guarantees. I am aware of a Lego (BrandLoyalty supplier) guarantee and will inquire about any others.  
Credit facility guarantees will fall away at the time of the Loyalty Ventures Financing.

<sup>10</sup> **Note to Draft:** ADS to confirm.

removed or released from, all obligations of any member of the Loyalty Ventures Group under any guarantee, surety bond, letter of credit, letter of comfort or similar credit or performance support arrangement (each, a “**Guarantee**”), given or obtained by any member of the ADS Group for the benefit of any member of the Loyalty Ventures Group or the LoyaltyOne Business. If ADS and Loyalty Ventures have been unable to effect any such substitution, removal, release and termination with respect to any such Guarantee as of the Distribution Time, then, following the Distribution Time (a) the parties shall cooperate to effect such substitution, removal, release and termination as soon as reasonably practicable after the Distribution Time, (b) Loyalty Ventures and the members of the Loyalty Ventures Group shall, from and after the Distribution Time, indemnify against, hold harmless and promptly reimburse the members of the ADS Group for any payments made by members of the ADS Group and for any and all Liabilities of the members of the ADS Group arising out of, or in performing, in whole or in part, any obligation under any such Guarantee, and (c) without the prior written consent of ADS, no member of the Loyalty Ventures Group may renew, extend the term of, increase any obligations under, or transfer to a third Person, any Liability for which any member of the ADS Group is or might be liable pursuant to an applicable Guarantee unless such Guarantee, and all applicable obligations of the members of the ADS Group with respect thereto, are thereupon terminated pursuant to documentation reasonably acceptable to ADS.<sup>11</sup>

Section 2.10. *Further Assurances and Consents.* In addition to the actions specifically provided for elsewhere in this Agreement, each of the parties hereto shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary, proper or advisable under Applicable Law or applicable agreements or otherwise to consummate and make effective any transfers of assets, assignments and assumptions of Liabilities and any other transactions contemplated hereby, including using its commercially reasonable efforts to obtain any consents and approvals and to make any filings and applications necessary or desirable in order to consummate the transactions contemplated by this Agreement; *provided* that in no event shall any member of a Group have any Liability whatsoever to any member of the other Group for any failure to obtain any such consent or approval.

### ARTICLE 3 DISTRIBUTION

Section 3.01. *Conditions Precedent to Distribution.* (a) In no event shall the Distribution occur unless each of the following conditions shall have been satisfied (or waived by ADS in its sole discretion):

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<sup>11</sup> **Note to Draft:** Subject to review and discussion of any outstanding guarantees between the Loyalty Ventures Group and the ADS Group.

(i) the Restructuring shall have been completed, including the consummation of the Loyalty Ventures Financing Arrangements and the ~~distribution~~ Contribution, including the transfer by Loyalty Ventures of the proceeds of the Loyalty Ventures Financing Arrangements to ADILC in ~~connection with the Contribution~~ partial consideration for the stock of Loyalty Ventures First-Tier Subsidiaries;

(ii) the Board of Directors of ADS shall have approved the Distribution and shall not have abandoned the Distribution or terminated this Agreement at any time prior to the Distribution;

(iii) the Form 10 shall have been filed with the Commission and declared effective by the Commission, no stop order suspending the effectiveness of the Form 10 shall be in effect, no proceedings for such purpose shall be pending before or threatened by the Commission, and the Information Statement shall have been mailed to holders of the ADS Common Stock as of the Record Date;

(iv) all actions and filings necessary or appropriate under applicable federal, state or foreign securities or "blue sky" laws and the rules and regulations thereunder shall have been taken and, where applicable, become effective or been accepted;

(v) the Loyalty Ventures Common Stock to be delivered in the Distribution shall have been approved for listing on ~~the NYSE~~ Nasdaq, subject to official notice of issuance;

(vi) the Board of Directors of Loyalty Ventures, as named in the Information Statement, shall have been duly appointed, and the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws, each in substantially the form filed as an exhibit to the Form 10, shall be in effect;

(vii) each of the Ancillary Agreements shall have been duly executed and delivered by the parties thereto;

(viii) ADS shall have received the PLR and Tax Opinion (neither of which shall ~~not~~ have been revoked or modified in any material respect) ~~that is, both of which are~~ reasonably satisfactory to ADS ~~confirming that (i) the Contribution and the Distribution, taken together, will qualify as a "reorganization" within the meaning of Section 368(a)(1)(D) of the Code and (ii) the Distribution will qualify as a tax-free transaction under Sections 355(a) and 355(c) of the Code;~~

(ix) a nationally recognized valuation advisory firm acceptable to ADS shall have delivered one or more opinions to the Board of

Hageman, Cynthia [HC25] June 26, 2021 01:59 PM  
What about the resignations of Loyalty Ventures Participants from their roles as officers or directors of ADS Group subsidiaries?

Pittell, Joshua B. [PJB26] September 10, 2021 10:15 AM  
We can cover this outside of the SDA.

Directors of ADS concerning the solvency and capital adequacy matters relating to each of (A) ADS and its Group and (B) Loyalty Ventures and its Group after consummation of the Distribution, and such opinions shall be acceptable to the Board of Directors of ADS in its sole and absolute discretion and such opinions shall not have been withdrawn or rescinded;

(x) no Applicable Law shall have been adopted, promulgated or issued, and be in effect, that prohibits the consummation of the Distribution or any of the other transactions contemplated hereby;

(xi) any material governmental approvals and consents and any material permits, registrations and consents from Third Parties, in each case, necessary to effect the Distribution and to permit the operation of the LoyaltyOne Business after the Distribution Date substantially as it is conducted at the date hereof shall have been obtained; and

(xii) no event or development shall have occurred or exist that, in the judgment of the Board of Directors of ADS, in its sole discretion, makes it inadvisable to effect the Distribution or the other transactions contemplated hereby.

(b) Each of the conditions set forth in this Section 3.01(a) is for the sole benefit of ADS and shall not give rise to or create any duty on the part of ADS or its Board of Directors to waive or not to waive any such condition or to effect the Distribution, or in any way limit ADS's rights of termination as set forth in Section 6.11 or alter the consequences of any termination from those specified in Section 6.11. Any determination made by ADS on or prior to the Distribution concerning the satisfaction or waiver of any or all of the conditions set forth in this Section 3.01 shall be conclusive and binding on the parties and all other affected Persons.

Section 3.02. *The Distribution.* (a) ADS shall, in its sole discretion, determine the Distribution Date and all terms of the Distribution, including the timing of the consummation of all or part of the Distribution. ADS may, at any time and from time to time until the consummation of the Distribution, modify or change the terms of the Distribution including by accelerating or delaying the timing of the consummation of all or part of the Distribution. For the avoidance of doubt, nothing in this Agreement shall in any way limit ADS's right to terminate this Agreement or the Distribution as set forth in Section 6.11 or alter the consequences of any such termination from those specified in Section 6.11.

(b) Subject to the terms and conditions set forth in this Agreement, (i) on or prior to the Distribution Date, ADS shall take such steps as are reasonably necessary or appropriate to permit the Distribution by the Distribution Agent of validly issued, fully paid and non-assessable shares of Loyalty Ventures Common Stock, registered in book-entry form through the registration system, (ii) the Distribution shall be effective at the Distribution Time, and (iii) subject to Section

Hageman, Cynthia [HC27] June 26, 2021 02:00 PM  
Davis Polk: ADS would like guidance on this process.

Pittell, Joshua B. [PJB28] September 10, 2021 10:15 AM

Pittell, Joshua B. [PJB29] September 10, 2021 10:15 AM

3.03, ADS shall instruct the Distribution Agent to distribute, on or as soon as practicable after the Distribution Date, to each holder of record of ADS Common Stock as of the Record Date, by means of a *pro rata* dividend, one share of Loyalty Ventures Common Stock for every [●] shares of ADS Common Stock so held. Following the Distribution Date, Loyalty Ventures agrees to provide all book-entry transfer authorizations for shares of Loyalty Ventures Common Stock that ADS or the Distribution Agent shall require (after giving effect to Sections 3.03 and 3.04) in order to effect the Distribution.

(c) Within thirty (30) days following the Distribution, ADS shall use the Cash Proceeds to repay or repurchase certain of its debt from third-party lenders, ADS may complete the Equity-for-Debt Exchange within one year of the Distribution.

Section 3.03. *Fractional Shares*. No fractional shares of Loyalty Ventures Common Stock will be distributed in the Distribution. The Distribution Agent will be directed to determine (based on the aggregate number of shares held by each holder) the number of whole shares and the fractional share of Loyalty Ventures Common Stock allocable to each holder of ADS Common Stock as of the Record Date. Upon the determination by the Distribution Agent of such numbers of whole shares and fractional shares, as soon as practicable on or after the Distribution Date, the Distribution Agent, acting on behalf of the holders thereof, shall aggregate the fractional shares into whole shares and shall sell the whole shares obtained thereby for cash on the open market (with the Distribution Agent, in its sole discretion, determining when, how and through which broker-dealer(s) and at which price(s) to make such sales) and shall thereafter promptly distribute to each such holder entitled thereto (*pro rata* based on the fractional share such holder would have been entitled to receive in the Distribution) the resulting aggregate cash proceeds, after making appropriate deductions of the amounts required to be withheld for United States federal income tax purposes, if any, and after deducting an amount equal to all brokerage fees and commissions, transfer taxes and other costs attributed to the sale of shares pursuant to this Section 3.03. Neither ADS nor Loyalty Ventures will be required to guarantee any minimum sale price for the fractional shares. Recipients of cash in lieu of fractional shares will not be entitled to any interest on the amounts of payments made in lieu of fractional shares.

Section 3.04. *NO REPRESENTATIONS OR WARRANTIES*. EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY OTHER DISTRIBUTION DOCUMENT, NO MEMBER OF EITHER GROUP MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, TO ANY MEMBER OF THE OTHER GROUP OR ANY OTHER PERSON WITH RESPECT TO ANY OF THE TRANSACTIONS OR MATTERS CONTEMPLATED HEREBY (INCLUDING WITH RESPECT TO THE BUSINESS, ASSETS, LIABILITIES, CONDITION OR PROSPECTS (FINANCIAL OR OTHERWISE) OF, OR ANY OTHER MATTER INVOLVING, EITHER BUSINESS, OR THE SUFFICIENCY OF ANY

Hageman, Cynthia [HC30] June 26, 2021 02:02 PM

Chesnut – there may be an opportunity here; if we are using Computershare as the Distribution Agent, we should talk to Monique Hughes and ask if we can assist in the designation.

Hageman, Cynthia [HC31] June 26, 2021 02:03 PM

Also want to know how this happens – like cash dividends? Do not want the \$100 per wire fee issue that we had with Bread stockholders receiving payments.

Pittell, Joshua B. [PJB32] September 10, 2021 01:12 AM

Should definitively confirm the approach with Computershare, but wires are not typically contemplated. Payment is typically made in the form of a check mailed to the holder or a credit to a brokerage account.



ASSETS TRANSFERRED OR LICENSED TO THE APPLICABLE GROUP, OR THE TITLE TO ANY SUCH ASSETS, OR THAT ANY REQUIREMENTS OF APPLICABLE LAW ARE COMPLIED WITH RESPECT TO THE RESTRUCTURING OR THE DISTRIBUTION). EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY OTHER DISTRIBUTION DOCUMENT, EACH MEMBER OF EACH GROUP SHALL TAKE ALL OF THE BUSINESS, ASSETS AND LIABILITIES TRANSFERRED OR LICENSED TO OR ASSUMED BY IT PURSUANT TO THIS AGREEMENT OR ANY DISTRIBUTION DOCUMENT ON AN "AS IS, WHERE IS" BASIS, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE OR OTHERWISE ARE HEREBY EXPRESSLY DISCLAIMED.

ARTICLE 4  
COVENANTS

Section 4.01 . *Books and Records; Access to Information.* (a) To the extent not previously transferred in accordance with Section 2.02(a) or Section 2.03, from and after the Distribution Date, ADS shall, and shall cause the members of the ADS Group to, deliver to Loyalty Ventures or any Loyalty Ventures Designee any books and records that are Loyalty Ventures Assets (or copies of relevant portions thereof if such books and records contain information not related to the LoyaltyOne Business) found to be in the possession of ADS or any member of the ADS Group in accordance with the applicable terms of the Transition Services Agreement and the applicable schedules thereto; *provided* that without limiting any express delivery requirements under this Section 4.01(a) and the terms of the Transition Services Agreement, neither ADS nor any member of the ADS Group shall be required to conduct any general search or investigation of its files for such books and records other than with respect to Commercial Data. Notwithstanding anything in this Agreement to the contrary, ADS shall not transfer or otherwise disclose or deliver to Loyalty Ventures any confidential supervisory information (including confidential supervisory information as identified in 12 C.F.R. § 309.5(g)(8)) of a U.S. federal or state Governmental Authority or any information the disclosure of which by ADS is prohibited by Applicable Law.

(b) Without limiting the express delivery requirements of Section 4.01(a) or any Ancillary Agreement, for a period of seven <sup>12</sup> years after the Distribution Date, each Group shall afford promptly the other Group and its agents and, to the extent required by Applicable Law, authorized representatives of any Governmental Authority of competent jurisdiction, reasonable access (which shall include, to the extent reasonably requested, the right to make copies) during normal business hours to its books of account, financial and other records (including accountant's work papers, to the extent any required consents have

<sup>12</sup> **Note to Draft:** ADS to confirm.

been obtained), information (excluding any Commercial Data), employees and auditors to the extent necessary or useful for such other Group in connection with any audit, investigation, dispute or litigation, complying with their obligations under this Agreement or any Ancillary Agreement, any regulatory proceeding, any regulatory filings, complying with reporting disclosure requirements or any other requirements imposed by any Governmental Authority or any other reasonable business purpose of the Group requesting such access; *provided* that (i) any such access shall not unreasonably interfere with the conduct of the business of the Group providing such access and (ii) if any party reasonably determines that affording any such access to the other party would be commercially detrimental in any material respect or violate any Applicable Law or agreement to which such party or member of its Group is a party, or waive any Privilege applicable to such party or any member of its Group, the parties shall use commercially reasonable efforts to permit the compliance with such request in a manner that avoids any such harm or consequence.

(c) [Without limiting the express delivery requirements of Section 4.01(a) or any Ancillary Agreement, [to the extent permitted under Applicable Law](#), until the end of the first full Loyalty Ventures fiscal year occurring after the Distribution Date (and for a reasonable period of time afterwards as required for each party to prepare consolidated financial statements or complete a financial statement audit for the fiscal year during which the Distribution Date occurs), each party shall use its commercially reasonable efforts to cooperate with the other party's information requests (other than with respect to any Commercial Data) to enable (i) the other party to meet its timetable for dissemination of its earnings releases, financial statements and management's assessment of the effectiveness of its disclosure controls and procedures and its internal control over financial reporting in accordance with Items 307 and 308, respectively, of Regulation S-K promulgated under the Exchange Act; and (ii) the other party's auditors timely to complete their review of the quarterly financial statements and audit of the annual financial statements, including, to the extent applicable to such party, its auditor's audit of its internal control over financial reporting and management's assessment thereof in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, the SEC's and Public Company Accounting Oversight Board's rules and auditing standards thereunder and any other Applicable Laws.]<sup>13</sup>

Section 4.02. *Litigation Cooperation.* (a) Effective as of the Distribution Time, the applicable member of the Loyalty Ventures Group shall assume and thereafter be responsible for all Liabilities of either Group that may result from the Loyalty Ventures Assumed Actions and, subject to Section 5.04(c), all Liabilities and fees and costs relating to the defense of the Loyalty Ventures Assumed Actions, including attorneys', accountants', consultants' and other

<sup>13</sup> **Note to Draft:** To discuss whether any additional financial information should be included for purposes of satisfying ADS's public reporting and financial statement preparation.

professionals' fees and expenses that have been incurred prior to the Distribution Time and are unpaid as of the Distribution Time, or, that are incurred on or after the Distribution Time. "**Loyalty Ventures Assumed Actions**" means (x) those Actions primarily related to the LoyaltyOne Business, including those in which any member of the ADS Group or any Affiliate of a member of the ADS Group is a defendant or a party against whom the claim or investigation is directed that are primarily related to the LoyaltyOne Business, (y) those Actions set forth on Schedule 4.02(a)(i) and (x) all Actions that Loyalty Ventures has elected to control the defense of as the Indemnifying Party pursuant to Section 5.04(b)[, but excluding those Actions set forth on Schedule 4.02(a)(ii)].<sup>14</sup> If any member of the ADS Group has any rights or claims against a Third Party insurer or other Third Party in connection with or relating to any Loyalty Ventures Assumed Action, such member shall, subject to Section 2.05, transfer and assign to the applicable member of the Loyalty Ventures Group all such rights or claims and cooperate with the Loyalty Ventures Group in connection with the enforcement and collection thereof. For the avoidance of doubt, effective as of the Distribution Time, Loyalty Ventures shall be entitled to all recovery, rights, claims, credits, causes of action, payments, awards and rights of set-off, in each case, with respect to the Loyalty Ventures Assumed Actions. ADS hereby agrees to transfer or pay, and to cause any applicable member of the ADS Group to transfer or pay, to Loyalty Ventures any such recovery, rights, claims, credits, causes of action, payments, awards and rights of set-off as promptly as possible.

(b) Effective as of the Distribution Time, the applicable member of the ADS Group shall assume and thereafter be responsible for all Liabilities of either Group that may result from the ADS Assumed Actions and, subject to Section 5.04(c), all fees and costs relating to the defense of the ADS Assumed Actions, including attorneys', accountants', consultants' and other professionals' fees and expenses that have been incurred prior to the Distribution Time and are unpaid as of or after the Distribution Time, or, that are incurred on or after the Distribution Time. "**ADS Assumed Actions**" means (x) those Actions primarily related to the ADS Business, including those in which any member of Loyalty Ventures Group or any Affiliate of a member of the Loyalty Ventures Group is a defendant or a party against whom the claim or investigation is directed that are primarily related to the ADS Business, (y) those Actions set forth on Schedule 4.02(b) and (z) all Actions that ADS has elected to control the defense of as the Indemnifying Party pursuant to Section 5.04(b).<sup>15</sup> If any member of the Loyalty Ventures Group has any rights or claims against a Third Party insurer or other Third Party in connection with or relating to any ADS Assumed Action, such member shall, subject to Section 2.05, transfer and assign to the applicable member of the ADS Group all such rights or claims and cooperate with the ADS Group in connection with the enforcement and collection thereof. For the avoidance of doubt,

<sup>14</sup> **Note to Draft:** ADS to confirm if there is litigation primarily relating to the LoyaltyOne Business that should be retained by ADS.

<sup>15</sup> **Note to Draft:** To discuss clause (z).

Hageman, Cynthia [HC33] June 26, 2021 02:06 PM

Joe – Is there anything to list here if (x) captures already those primarily related to the LoyaltyOne Business?

Hageman, Cynthia [HC34] June 26, 2021 02:08 PM

Joe – Anything ADS keeps – see footnote.

effective as of the Distribution Time, ADS shall be entitled to all recovery, rights, claims, credits, causes of action, payments, awards and rights of set-off, in each case, with respect to the ADS Assumed Actions. Loyalty Ventures hereby agrees to transfer or pay, and to cause any applicable member of the Loyalty Ventures Group to transfer or pay, to ADS any such recovery, rights, claims, credits, causes of action, payments, awards and rights of set-off as promptly as possible.

(c) Each party agrees that, at all times from and after the Distribution Time, if an Action relating primarily to its Business is commenced by a Third Party naming a member of each Group as defendants thereto, such action shall be deemed to be a Loyalty Ventures Assumed Action (in the case of an Action primarily related to the LoyaltyOne Business) or an ADS Assumed Action (in the case of an Action primarily related to the ADS Business) and the party as to which the Action primarily relates shall use its commercially reasonable efforts to cause the other party or member of its Group to be removed from such Action.

(d) The parties agree, that at all times from and after the Distribution Time, if any Action is commenced by a Third Party naming a member of each Group as a defendant thereto and the parties are not able to reasonably determine whether such Action primarily relates to the LoyaltyOne Business or the ADS Business, then the parties shall cooperate in good faith to determine which party and the members of its Group shall control and be responsible for such Action in accordance with the terms of this Section 4.02, and the parties will consult to the extent necessary or advisable with respect to such Action.<sup>+6</sup>

Hageman, Cynthia [HC35] June 26,  
2021 02:09 PM  
Joe—Do you agree?

(e) Each Group shall use commercially reasonable efforts to make available to the other Group and its attorneys, accountants, consultants and other designated representatives, upon written request, its directors, officers, employees and representatives as witnesses, and shall otherwise cooperate with the other Group, to the extent reasonably requested in connection with any Action arising out of either Group's Business prior to the Distribution Time in which the requesting Group may from time to time be involved.

(f) Notwithstanding the foregoing, this Section 4.02 shall not require the party to whom any request pursuant to Section 4.02(e) has been made to make available Persons or information if such party determines that doing so would, in the reasonable good faith judgment of such party, reasonably be expected to result in any violation of any Applicable Law or agreement or adversely affect its ability to successfully assert a claim of Privilege under Applicable Law; *provided*, that the parties shall use commercially reasonable efforts to cooperate in seeking to find a way to permit compliance with such obligations to the extent and in a manner that avoids such consequence.

~~<sup>+6</sup>Note to Draft: ADS to confirm the treatment of post-spin lawsuits that are not clearly primarily related to the LoyaltyOne business, i.e., to be resolved by mutual agreement.~~

Section 4.03. *Reimbursement.* Each Group providing information or witnesses to the other Group or otherwise incurring any out-of-pocket expense in connection with transferring books and records or otherwise cooperating under Section 4.01 or Section 4.02 shall be entitled to receive from the recipient thereof, upon the presentation of invoices therefor, payment for all reasonable and documented out-of-pocket costs and expenses (including outside attorney's fees but excluding reimbursement for general overhead, salary and employee benefits) actually incurred in providing such access, information, witnesses or cooperation.

Section 4.04. *Ownership of Information.* All information owned by one party (or a member of its Group) that is provided to the other party (or a member of its Group) under Section 4.01 or Section 4.02 shall be deemed to remain the property of the providing party. Unless specifically set forth herein or in any Ancillary Agreement, nothing contained in this Agreement shall be construed to grant or confer rights of license or otherwise in any such information.

Section 4.05. *Retention of Records.* Except as otherwise required by Applicable Law or agreed to in writing, each party shall, and shall cause the members of its Group to, retain any and all information in its possession or control relating to the other Group's Business in accordance with the document retention practices of ADS as in effect as of the date hereof. Neither party shall destroy, or permit the destruction, or otherwise dispose, or permit the disposal, of any such information, subject to such retention practice, unless, prior to such destruction or disposal, the party proposing (or whose Group member is proposing) such destruction or disposal (the "**Disposing Party**") provides not less than 30 days' prior written notice to the other party (the "**Receiving Party**"), specifying the information proposed to be destroyed or disposed of and the scheduled date for such destruction or disposal. If the Receiving Party shall request in writing prior to the scheduled date for such destruction or disposal that any of the information proposed to be destroyed or disposed of be delivered to the Receiving Party, the Disposing Party shall promptly arrange for the delivery of such of the information as was requested at the expense of the Receiving Party; *provided* that, if the Disposing Party reasonably determines that any such provision of information would violate any Applicable Law or agreement to which such party or member of its Group is a party, or waive any Privilege applicable to such party or any member of its Group, the parties shall use commercially reasonable efforts to permit the prompt compliance with such request in a manner that avoids any such harm or consequence. Any records or documents that were subject to a litigation hold prior to the Distribution Date must be retained by the applicable party until such party or member of its Group is notified by the other party that the litigation hold is no longer in effect.

Hageman, Cynthia [HC36] June 26, 2021 02:18 PM  
No need to define a random date – use records retention rules.

Section 4.06. *Confidentiality.* Each party acknowledges that it or a member of its Group may have in its possession, and, in connection with this Agreement and the Ancillary Agreements, may receive, Confidential Information of the other party or any member of its Group (including information in the possession of such other party relating to its clients or customers). Each party

shall hold and shall cause its directors, officers, employees, agents, consultants and advisors (“**Representatives**”) and the members of its Group and their Representatives to hold in strict confidence and not to use, except as permitted by this Agreement, or any Ancillary Agreement all such Confidential Information concerning the other Group unless (a) such party or any of the members of its Group or its or their Representatives is compelled to disclose such Confidential Information by judicial or administrative process or by other requirements of Applicable Law or (b) such Confidential Information can be shown to have been (i) in the public domain through no fault of such party or any of the members of its Group or its or their Representatives, (ii) lawfully acquired after the Distribution Date on a non-confidential basis from other sources not known by such party to be under any legal obligation to keep such information confidential or (iii) developed by such party or any of the members of its Group or its or their Representatives without the use of any Confidential Information of the other Group. Notwithstanding the foregoing, such party or member of its Group or its or their Representatives may disclose such Confidential Information to the members of its Group and its or their Representatives so long as such Persons are informed by such party of the confidential nature of such Confidential Information and are directed by such party to treat such information confidentially. The obligation of each party and the members of its Group and its and their Representatives to hold any such Confidential Information in confidence shall be satisfied if they exercise the same level of care with respect to such Confidential Information as they would with respect to their own proprietary information. If such party or any of a member of its Group or any of its or their Representatives becomes legally compelled to disclose any documents or information subject to this Section 4.06, such party will promptly notify the other party and, upon request, use commercially reasonable efforts to cooperate with the other party’s efforts to seek a protective order or other remedy. If no such protective order or other remedy is obtained or if the other party waives in writing such party’s compliance with this Section 4.06, such party or the member of its Group or its or their Representatives may furnish only that portion of the information which it concludes, after consultation with counsel, is legally required to be disclosed and will exercise its commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such information. Each party agrees to be responsible for any breach of this Section 4.06 by it, the members of its Group and its and their Representatives.

Section 4.07. *Privileged Information.* (a) The parties acknowledge that members of the ADS Group, on the one hand, and members of the Loyalty Ventures Group, on the other hand, may possess documents or other information regarding the other Group that is or may be subject to the attorney-client privilege, the work product doctrine or common interest privilege (collectively, “**Privileges**”; and such documents and other information collectively, the “**Privileged Information**”). Each party agrees to use commercially reasonable efforts to protect and maintain, and to cause their respective Affiliates to protect and maintain, any applicable claim to Privilege in order to prevent any of the other Group’s Privileged Information from being disclosed or used in a manner

inconsistent with such Privilege without the other party's consent. Without limiting the generality of the foregoing, a party and its Affiliates shall not, without the other party's prior written consent, (i) waive any Privilege with respect to any of the other party's or any member of its Group's Privileged Information, (ii) fail to defend any Privilege with respect to any such Privileged Information, or (iii) fail to take any other actions reasonably necessary to preserve any Privilege with respect to any such Privileged Information.

(b) Upon receipt by a party or any member of such party's Group of any subpoena, discovery or other request that calls for the production or disclosure of Privileged Information of the other party or a member of its Group, such party shall promptly notify the other party of the existence of the request and shall provide the other party a reasonable opportunity to review the information and to assert any rights it or a member of its Group may have under this Section 4.07 or otherwise to prevent the production or disclosure of such Privileged Information. Each party agrees that neither it nor any member of its Group will produce or disclose any information that may be covered by a Privilege of the party or a member of its Group under this Section 4.07 unless (i) the other party has provided its written consent to such production or disclosure (which consent shall not be unreasonably withheld) or (ii) a court of competent jurisdiction has entered an order finding that the information is not entitled to protection under any applicable Privilege or otherwise requires disclosure of such information.

(c) In the event that any member of the ADS Group and any member of the Loyalty Ventures Group cooperate in the mutual defense of any Third Party Claim, such cooperation shall not constitute a waiver or qualification of such party's right to assert and defend any applicable claim to Privilege.

(d) Each of the ADS Group and the Loyalty Ventures Group covenants and agrees that, following the Distribution Time, Davis Polk & Wardwell LLP or any other internal or external legal counsel currently representing the Loyalty Ventures Group (each a "**Prior Company Counsel**") may serve as counsel to the ADS Group and its Affiliates in connection with any matters arising under or related to this Agreement or the transactions contemplated by this Agreement or any Ancillary Agreement, including with respect to any litigation, Claim or obligation arising out of or related to this Agreement or any Ancillary Agreement or the transactions contemplated by this Agreement or any Ancillary Agreement, notwithstanding any representation by the Prior Company Counsel prior to the Distribution Time. The ADS Group and the Loyalty Ventures Group hereby irrevocably (i) waive any Claim they have or may have that a Prior Company Counsel has a conflict of interest or is otherwise prohibited from engaging in such representation and (ii) covenant and agree that, in the event that a dispute arises after the Distribution Time between the Loyalty Ventures Group (or any of its Affiliates) and the ADS Group (or any of its Affiliates), Prior Company Counsel may represent any member of the ADS Group and any Affiliates thereof in such dispute even though the interests of such Person(s) may be directly adverse to the Loyalty Ventures Group and even though

Prior Company Counsel may have represented the Loyalty Ventures Group in a matter substantially related to such dispute.

(e) All communications between members of the ADS Group, on the one hand, and Prior Company Counsel, on the other hand, related to the transactions contemplated by this Agreement or any Ancillary Agreement shall be deemed to be attorney-client confidences that belong solely to such members of the ADS Group or the Prior Company Counsel (the “**Pre-Distribution Time Communications**”). Accordingly, the Loyalty Ventures Group shall not have access to any such Pre-Distribution Time Communications or to the files of Prior Company Counsel relating to such engagement related to the transactions contemplated hereby from and after the Distribution Time, and all books, records and other materials of the Loyalty Ventures Group in any medium (including electronic copies) containing or reflecting any of the Pre-Distribution Time Communications or the work product of legal counsel with respect thereto, including any related summaries, drafts or analyses, and all rights with respect to any of the foregoing, are hereby assigned and transferred to the ADS Group effective as of the Distribution Time (collectively, the “**ADS Group Privileged Materials**”). The ADS Group may cause all of the ADS Group Privileged Materials to be distributed to the ADS Group immediately prior to the Distribution Time with no copies thereof retained by the Loyalty Ventures Group or its respective representatives, and all such distributed ADS Group Privileged Materials shall be excluded from the transactions contemplated by this Agreement and each Ancillary Agreement. From and after the Distribution Time, in the event that any member of the Loyalty Ventures Group shall possess any ADS Group Privileged Materials, such member of the Loyalty Ventures Group shall promptly cause such ADS Group Privileged Materials to be distributed to the ADS Group in accordance with this Section 4.07(e) or destroyed, at the election of Loyalty Ventures. In addition, from and after the Distribution Time, (i) the Loyalty Ventures Group and its representatives shall maintain the confidentiality of the ADS Group Privileged Materials and (ii) none of the members of the Loyalty Ventures Group or their respective representatives shall access or in any way, directly or indirectly, use or rely upon any ADS Group Privileged Materials (whether or not distributed to the ADS Group prior to the Distribution Time in accordance with this Section 4.07(e)). To the extent that any ADS Group Privileged Materials are not delivered to the ADS Group, the Loyalty Ventures Group agrees not to assert a waiver of any applicable Privilege or protection with respect to such materials. Without limiting the generality of the foregoing, from and after the Distribution Time, (a) the ADS Group shall be the sole holders of the Privileges with respect to the ADS Group Privileged Materials, and no member of the Loyalty Ventures Group shall be a holder thereof, (b) to the extent that files of Prior Company Counsel in respect of ADS Group Privileged Materials constitute property of the client, only the ADS Group shall hold such property rights, (c) Prior Company Counsel shall have no duty whatsoever to reveal or disclose any ADS Group Privileged Materials to the Loyalty Ventures Group by reason of any attorney-client relationship between Prior Company Counsel and the Loyalty Ventures Group and (d) after the Distribution Date, all



communications between members of the Loyalty Ventures Group, on the one hand, and any attorneys retained by any member of the Loyalty Ventures Group, on the other hand, shall be deemed to be attorney-client confidences that belong solely to such members of the Loyalty Ventures Group or such attorneys. Each of the Loyalty Ventures Group and the ADS Group hereby acknowledges and confirms that it has had the opportunity to review and obtain adequate information regarding the significance and risks of the waivers and other terms and conditions of this Section 4.07(e), including the opportunity to discuss with counsel such matters and reasonable alternatives to such terms. This Section 4.07(e) is for the benefit of the ADS Group and Prior Company Counsel, and the ADS Group and Prior Company Counsel are intended third party beneficiaries of this Section 4.07(e). This Section 4.07(e) shall be irrevocable, and no term of this Section 4.07(e) may be amended, waived or modified, without the prior written consent of the ADS Group and Prior Company Counsel. The covenants and obligations set forth in this Section 4.07(e) shall survive for ten (10) years following the Distribution Time.

Hageman, Cynthia [HC37] June 26, 2021 02:19 PM  
Davis Polk: Joe and I need to both speak with you and understand why constructed this way.

Section 4.08. *Limitation of Liability.* Except as otherwise provided in this Agreement, no party shall have any liability to any other party in the event that any information, books or records exchanged or provided pursuant to this Agreement is found to be inaccurate or the requested information, books or records is not provided, in the absence of willful misconduct by the party requested to provide such information, books or records. No party shall have any liability to any other party if any information, books or records is destroyed after commercially reasonable efforts by such party to comply with the provisions of Section 4.05.

Section 4.09. *Other Agreements Providing for Exchange of Information.* The rights and obligations granted under this Article 4 are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange, retention, rights to use, or confidential treatment of information set forth in any Ancillary Agreement. Notwithstanding anything in this Agreement to the contrary, (i) the Tax Matters Agreement shall govern the retention of Tax related records and the exchange of Tax related information and (ii) the Employee Matters Agreement shall govern the retention of employment and benefits related records.

Hageman, Cynthia [HC38] June 26, 2021 02:20 PM  
Reviewed and approved by Lockton (insurance broker)

Section 4.10. *Conduct of Incidents Subject to ADS Insurance.*<sup>17</sup> (a) Loyalty Ventures, for itself and the members of its Group, acknowledges that coverage for the LoyaltyOne Business under the insurance policies of ADS and the members of the ADS Group (other than insurance policies, insurance contracts and claim administration contracts established in contemplation of the Distribution to cover only the Loyalty Ventures Group after the Distribution Time

<sup>17</sup> ~~Note to Draft: To be reviewed by ADS insurance team. These provisions have been adapted from a spin-off precedent but should be reworked as necessary to align with ADS's insurance arrangements.~~

(the “**Post-Distribution Insurance Arrangements**”)) (the “**ADS Insurance Policies**”) will cease as of the Distribution Time, and that, except as set forth in this Section 4.10, neither ADS nor any member of its Group will purchase any “tail” policy or other additional or substitute coverage for the benefit of Loyalty Ventures or the members of the Loyalty Ventures Group relating to the LoyaltyOne Business applicable in any period after the Distribution Time.

(b) Notwithstanding the foregoing, ADS, for itself and the members of its Group, agrees that ADS or a member of its Group shall, with respect to (x) any act, circumstance, occurrence or incident arising prior to the Distribution Time that relates to the LoyaltyOne Business that is potentially covered by an occurrence-based insurance policy of ADS or any member of its Group (each, a “**ADS Occurrence-Based Policy**”) in effect prior to the Distribution Time, (y) any act, circumstance, occurrence or incident arising or occurring prior to the Distribution Time that relates to the LoyaltyOne Business that is potentially covered by an insurance policy of ADS or any member of its Group written on a “claims made” basis (“**ADS Claims-Made Policies**”) in effect prior to the Distribution Time, or (z) any act, circumstance, occurrence or incident arising or occurring prior to the Distribution Time that relates to the LoyaltyOne Business that is potentially covered by an insurance policy of ADS or any member of its Group written on a “loss discovered” basis (“**ADS Loss Discovered-Policies**” and together with the ADS Occurrence-Based Policies and the ADS Claims-Made Policies, the “**ADS Shared Policies**”) (i) not relinquish any of its rights, or take any actions (other than the making of claims under the ADS Shared Policies) that could reasonably be expected to reduce or otherwise limit the available coverage for any claim or incident arising prior to the Distribution Time that relates to the LoyaltyOne Business, under any of the ADS Shared Policies, (ii) upon request of Loyalty Ventures or any member of its Group, report such claim or incident to the appropriate insurer as promptly as practicable and in accordance with the terms and conditions of the applicable ADS Shared Policy and to use commercially reasonable efforts to administer such claims, (iii) include Loyalty Ventures and the applicable member of its Group on material correspondence and possible litigation proceedings relating to such claim or incident and (iv) instruct that such proceeds are paid directly to the injured party in settlement of any claims, rather than to ADS or the members of its Group, or, if such proceeds are received by ADS or any member of its Group, pay such proceeds over to Loyalty Ventures or the applicable member of its Group; *provided* that Loyalty Ventures and the applicable members of its Group shall notify ADS promptly of any potential claim, shall cooperate in the investigation and pursuit of any claim, shall have the right to effectively associate in the pursuit of any claim, including the ability to withhold its consent to any proposed claim settlement (such consent not to be unreasonably conditioned, withheld or delayed) and shall bear all out-of-pocket expenses incurred by ADS or the members of its Group in connection with the foregoing; *provided further* that ADS and the members of its Group shall be obligated to use only commercially reasonable efforts to pursue any claims that are potentially covered by available ADS Shared Policies and shall not, for the avoidance of doubt, have any obligation to commence any litigation with respect

to any matter potentially covered by any ADS Shared Policy unless the costs of such litigation are borne by Loyalty Ventures. Loyalty Ventures shall bear responsibility for any deductible payments required to be made under the ADS Shared Policies in respect of any such claims.

(c) If, after the Distribution Time, Loyalty Ventures or any of the members of its Group reasonably requires any information regarding claims data for renewal purposes or other information pertaining to a claim or to any occurrence or alleged wrongful acts which occurred prior to the Distribution Time (regardless of when such occurrences or alleged wrongful acts may be reported) that could reasonably be expected to give rise to a claim (including any pre-Distribution claims under any ADS Shared Policy) in order to give notice to or make filings with insurance carriers or claims adjustors or administrators or to adjust, administer or otherwise manage a claim, then, subject to the provisos in Section 4.10, ADS shall cause such information to be supplied to Loyalty Ventures or the applicable member of its Group, to the extent such information is in its possession and control or can be reasonably obtained by ADS (or the members of its Group), as applicable, reasonably promptly upon a written request therefore. In furtherance of the foregoing, if any Third Party requires the consent of ADS or any of the members its Group to the disclosure of claims data or information maintained by an insurance company or other Third Party in respect of any claim (including any pre-Distribution claims under any ADS Shared Policy), such consent shall not be unreasonably withheld, conditioned or delayed.

Section 4.11 . *Trademark Phase Out.*

(a) As soon as reasonably practicable, but in any event within [one hundred eighty (180)]<sup>#16</sup> days, following the Distribution Time, Loyalty Ventures shall, and shall cause its Subsidiaries to, cease any and all use of the ADS Names and Marks and remove, conceal, cover, redact and/or replace the ADS Names and Marks from any and all Loyalty Ventures Assets and any other assets and materials under their possession or control bearing such ADS Names and Marks.

(b) Loyalty Ventures shall, and shall cause its Subsidiaries to, make all filings with any and all offices, agencies and bodies and take all other actions necessary to adopt new corporate names that do not contain or consist of, in whole or in part, the ADS Names and Marks (and provide ADS with written evidence thereof) as soon as reasonably practicable following the Distribution Time, but in any event no later than [twenty-four (24)] months thereafter.

Section 4.12 . *Governance Matters.* The parties hereto shall take all necessary action within their power to cause Roger Ballou to be appointed as Chairman of the Board of Directors of Loyalty Ventures effective as of the Distribution Time (the “**Overlapping Board Member**”). The Overlapping Board Member’s term will expire after three years, with no opportunity for reelection.

<sup>#16</sup> Note to Draft: To confirm timing for trademark phase-out.

Hageman, Cynthia [HC39] June 26, 2021 02:23 PM

Shouldn't there be a reciprocal obligation for ADS to remove Loyalty Ventures marks – think corporate web site?

Hageman, Cynthia [HC40] June 26, 2021 02:24 PM

There are only 4 of these; 1 has already been changed and the other 3 can be done at any time (preferably pre-Distribution).

ARTICLE 5  
RELEASE; INDEMNIFICATION

Section 5.01 . *Release of Pre-Distribution Claims.*

(a) Except (i) as provided in Section 5.01(b) and (ii) as otherwise expressly provided in this Agreement or any Ancillary Agreement, each party does hereby, on behalf of itself and each member of its Group, and each of their successors and assigns, release and forever discharge the other party and the other members of such party's Group, and their respective successors and assigns, and all Persons who at any time prior to the Distribution Time have been directors, officers, employees or attorneys serving as independent contractors of such other party or any member of its Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns (collectively, the "**Released Parties**"), from any and all demands, Claims, Actions and Liabilities whatsoever, whether at law or in equity, whether arising under any Contract, by operation of law or otherwise (and including for the avoidance of doubt, those arising as a result of the negligence, strict liability or any other liability under any theory of law or equity of, or any violation of law by any Released Party), existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Distribution Date. In furtherance of the foregoing, each party shall cause each of the members of its respective Group to, effective as of the Distribution Time, release and forever discharge each of the Released Parties of the other Group as and to the same extent as the release and discharge provided by such party pursuant to the foregoing provisions of this Section 5.01(a).

(b) Nothing contained in Section 5.01(a) shall impair any right of any Person identified in Section 5.01(a) to enforce this Agreement or any Ancillary Agreement. Nothing contained in Section 5.01(a) shall release or discharge any Person from:

(i) any Liability assumed, transferred, assigned, retained or allocated to that Person in accordance with, or any other Liability of that Person under, this Agreement or any of the Ancillary Agreements;

(ii) any Liability that is expressly specified in this Agreement (including Section 2.06 and Section 2.07) or any Ancillary Agreement to continue after the Distribution Time, but subject to any limitation set forth in this Agreement (including Section 2.06 and Section 2.07) or any Ancillary Agreement relating specifically to such Liability;

(iii) any Liability that the parties may have with respect to claims for indemnification, recovery or contribution brought pursuant to this Agreement or any Ancillary Agreement, which Liability shall be

governed by the provisions of this Article 5, or, if applicable, the appropriate provisions of the Ancillary Agreements; or

(iv) any Liability the release of which would result in the release of any Person, other than a member of the ADS Group or any related Released Party; *provided, however*, that the parties hereto agree not to bring or allow their respective Subsidiaries to bring suit against the other party or any related Released Party with respect to any such Liability.

In addition, nothing contained in Section 5.01(a) shall release any party or any member of its Group from honoring its existing obligations to indemnify, or advance expenses to, any Person who was a director, officer or employee of such party or any member of its Group, at or prior to the Distribution Time, to the extent such Person was entitled to such indemnification or advancement of expenses pursuant to then-existing obligations; *provided, however*, that to the extent applicable, Section 5.02 hereof shall determine whether any party shall be required to indemnify the other or a member of its Group in respect of such Liability.

(c) No party hereto shall make, nor permit any member of its Group to make, any Claim or demand, or commence any Action asserting any Claim or demand, including any Claim of contribution or indemnification, against the other party, or any related Released Party, with respect to any Liability released pursuant to Section 5.01(a).

(d) It is the intent of each of the parties by virtue of the provisions of this Section 5.01 to provide for a full and complete release and discharge of all Liabilities existing or arising from all acts and events occurring or failing to occur or alleged to have occurred or to have failed to occur and all conditions existing or alleged to have existed on or before the Distribution Date between members of the ADS Group, on the one hand, and members of the Loyalty Ventures Group, on the other hand, (including any Contract existing or alleged to exist between the parties on or before the Distribution Date), except as expressly set forth in Section 5.01(b) or as expressly provided in this Agreement or any Ancillary Agreement. At any time, at the reasonable request of either ADS or Loyalty Ventures, the other party hereto shall execute and deliver (and cause its respective Subsidiaries to execute and deliver) releases reflecting the provisions hereof.

Section 5.02. *Loyalty Ventures Indemnification of the ADS Group.* (a) Effective as of and after the Distribution Time, Loyalty Ventures shall indemnify, defend and hold harmless each member of the ADS Group, each Affiliate thereof and each of their respective past, present and future directors, officers, employees and agents and the respective heirs, executors, administrators, successors and assigns of any of the foregoing (the “**ADS Indemnitees**”) from and against any and all Liabilities incurred or suffered by any of the ADS Indemnitees arising out of or in connection with (i) any of the Loyalty Ventures Liabilities, or the failure

of any member of the Loyalty Ventures Group to pay, perform or otherwise discharge any of the Loyalty Ventures Liabilities, (ii) any breach by Loyalty Ventures or any member of the Loyalty Ventures Group of this Agreement or any Ancillary Agreement, (iii) the ownership or operation of the LoyaltyOne Business or the Loyalty Ventures Assets, whether prior to, on or after the Distribution Date, (iv) any payments made by ADS or any member of the ADS Group in respect of any Guarantee given or obtained by any member of the ADS Group for the benefit of any member of the Loyalty Ventures Group or the LoyaltyOne Business, or any Liability of any member of the ADS Group in respect thereof, and (v) any use of any ADS Names and Marks by Loyalty Ventures.

(b) Except to the extent set forth in Section 5.03(b), effective as of and after the Distribution Time, Loyalty Ventures shall indemnify, defend and hold harmless each of the ADS Indemnitees and each Person, if any, who controls any ADS Indemnitee within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all Liabilities caused by any untrue statement or alleged untrue statement of a material fact contained in the Form 10 or any amendment thereof, the Information Statement (as amended or supplemented if Loyalty Ventures shall have furnished any amendments or supplements thereto), the Equity Compensation Registration Statement or any offering or marketing materials prepared in connection with the Loyalty Ventures Financing Arrangements or caused by any omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Section 5.03. *ADS Indemnification of the Loyalty Ventures Group.* (a) Effective as of and after the Distribution Time, ADS shall indemnify, defend and hold harmless each member of the Loyalty Ventures Group, each Affiliate thereof and each of their respective past, present and future directors, officers, employees and agents and the respective heirs, executors, administrators, successors and assigns of any of the foregoing (the “**Loyalty Ventures Indemnitees**”) from and against any and all Liabilities incurred or suffered by any of the Loyalty Ventures Indemnitees and arising out of or in connection with (i) any of the ADS Liabilities, or the failure of any member of the ADS Group to pay, perform or otherwise discharge any of the ADS Liabilities, (ii) the ownership or operation of the ADS Business or the ADS Assets, whether prior to, on or after the Distribution Date, (iii) any breach by ADS or any member of the ADS Group of this Agreement or any Ancillary Agreement, and (iv) any use of any Loyalty Ventures Names and Marks by ADS.

(b) Effective as of and after the Distribution Time, ADS shall indemnify, defend and hold harmless each of the Loyalty Ventures Indemnitees and each Person, if any, who controls any Loyalty Ventures Indemnitee within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all Liabilities caused by any untrue statement or alleged untrue statement of a material fact contained in the Form 10 or any amendment thereof, the Information Statement (as amended or supplemented if

Loyalty Ventures shall have furnished any amendments or supplements thereto), the Equity Compensation Registration Statement or any offering or marketing materials prepared in connection with the Loyalty Ventures Financing Arrangements or caused by any omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that such Liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based on information furnished by ADS solely in respect of the ADS Group and which information is set forth on Schedule 5.03(b).<sup>4917</sup>

Section 5.04. *Procedures.* (a) The party seeking indemnification under Section 5.02 or Section 5.03 (the “**Indemnified Party**”) agrees to give prompt notice to the party against whom indemnity is sought (the “**Indemnifying Party**”) of the assertion of any claim, or the commencement of any suit, action or proceeding (each, a “**Claim**”) in respect of which indemnity may be sought hereunder and will provide the Indemnifying Party such information with respect thereto that the Indemnifying Party may reasonably request. The failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have prejudiced the Indemnifying Party.

(b) The Indemnifying Party shall be entitled to participate in the defense of any Claim asserted by any Third Party (“**Third Party Claim**”) and, subject to the limitations set forth in this Section 5.04, if it so notifies the Indemnified Party no later than 30 days after receipt of the notice described in Section 5.04(a), shall be entitled to control and appoint lead counsel for such defense, in each case at its expense. If the Indemnifying Party does not so notify the Indemnified Party, the Indemnified Party shall have the right to defend or contest such Third Party Claim through counsel chosen by the Indemnified Party that is reasonably acceptable to the Indemnifying Party, subject to the provisions of this Section 5.04. The Indemnified Party shall provide the Indemnifying Party and such counsel with such information regarding such Third Party Claim as either of them may reasonably request (which request may be general or specific).

(c) If the Indemnifying Party shall assume the control of the defense of any Third Party Claim in accordance with the provisions of Section 5.04(b), (i) the Indemnifying Party shall obtain the prior written consent of the Indemnified Party (which shall not be unreasonably withheld) before entering into any settlement of such Third Party Claim, if the settlement does not release the Indemnified Party from all Liabilities and obligations with respect to such Third Party Claim or the settlement imposes injunctive or other equitable relief against the Indemnified Party or any of its related Indemnitees or is otherwise materially prejudicial to any such Person and (ii) the Indemnified Party shall be entitled to

<sup>4917</sup> **Note to Draft:** This schedule to be limited to details provided by ADS regarding its equity securities, corporate address and name, and the description of the Distribution.

participate in (but not control) the defense of such Third Party Claim and, at its own expense, to employ separate counsel of its choice for such purpose; *provided* that in the event of a conflict of interest between the Indemnifying Party and the applicable Indemnified Party, the reasonable and documented fees and expenses of such separate counsel shall be at the Indemnifying Party's expense.<sup>29</sup>

(d) Each party shall cooperate, and cause their respective Affiliates to cooperate, in the defense or prosecution of any Third Party Claim and shall furnish or cause to be furnished such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith.

(e) Each Indemnified Party shall use commercially reasonable efforts to collect any amounts available under insurance coverage, or from any other Person alleged to be responsible, for any Liabilities payable under Section 5.02 or Section 5.03 and the reasonable expenses incurred in connection therewith will be treated as Liabilities subject to indemnification hereunder.

(f) If any Third Party Claim shall be brought against a member of each Group, then such Action shall be deemed to be a Loyalty Ventures Assumed Action or an ADS Assumed Action in accordance with Sections 4.02(a) or 4.02(b), to the extent applicable, and Loyalty Ventures, in the case of any Loyalty Ventures Assumed Action, or ADS, in the case of any ADS Assumed Action, shall be deemed to be the Indemnifying Party for the purposes of this Article 5. In the event of any Action in which the Indemnifying Party is not also named defendant, at the request of either the Indemnified Party or the Indemnifying Party, the parties will use commercially reasonable efforts to substitute the Indemnifying Party or its applicable Affiliate for the named defendant in the Action.

Section 5.05. *Calculation of Indemnification Amount.* Any indemnification amount pursuant to Section 5.02 or Section 5.03 shall be paid (i) net of any amounts actually recovered by the Indemnified Party under applicable Third Party insurance policies or from any other Third Party alleged to be responsible therefor, and (ii) taking into account any Tax Benefit allowable to the Indemnified Party (using the methodology set forth in Section [●] of the Tax Matters Agreement to determine the amount of any such Tax Benefit) and any Tax cost incurred by the Indemnified Party arising from the incurrence or payment of the relevant Liabilities. ADS and Loyalty Ventures agree that, for United States federal income tax purposes, any payment made pursuant to this Article 5 will be treated as provided under Section ~~f-12(b)~~12(b) of the Tax Matters Agreement. If the Indemnified Party receives any amounts under applicable Third Party insurance policies, or from any other Third Party alleged to be responsible for any Liabilities, subsequent to an indemnification payment by the

<sup>29</sup> ~~Note to Draft: To discuss whether to provide that if a Claim or proceeding is a regulatory matter, the affected party should control the defense even if it is the Indemnified Party.~~



Indemnifying Party in respect thereof, then such Indemnified Party shall promptly reimburse the Indemnifying Party for any payment made by such Indemnifying Party in respect thereof up to the amount received by the Indemnified Party from such Third Party insurance policy or Third Party, as applicable.

Section 5.06. *Contribution.* If for any reason the indemnification provided for in Section 5.02 or Section 5.03 is unavailable to any Indemnified Party, or insufficient to hold it harmless, then the Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of such Liabilities in such proportion as is appropriate to reflect the relative fault of the ADS Group, on the one hand, and the Loyalty Ventures Group, on the other hand, in connection with the conduct, statement or omission that resulted in such Liabilities. In case of any Liabilities arising out of or related to information contained in the Form 10 or any amendment thereof, the Information Statement (as amended or supplemented if Loyalty Ventures shall have furnished any amendments or supplements thereto), the Equity Compensation Registration Statement or any offering or marketing materials prepared in connection with the Loyalty Ventures Financing Arrangements, the relative fault of the ADS Group, on the one hand, and the Loyalty Ventures Group, on the other hand, shall be determined by reference to, among other things, whether the untrue statement or alleged untrue statement of a material fact or the omission or alleged omission of a material fact relates to information supplied by Loyalty Ventures or any member of its Group, on the one hand, or ADS or any member of its Group (but solely to the extent such information is set forth on Schedule 5.03(b)), on the other hand.

Section 5.07. *Non-Exclusivity of Remedies.* Subject to Section 5.01, the remedies provided for in this Article 5 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Party at law or in equity; *provided* that the procedures set forth in Sections ~~6.04~~5.04 and ~~6.05~~5.05 shall be the exclusive procedures governing any indemnity action brought under this Agreement.

Section 5.08. *Survival of Indemnities.* The rights and obligations of any Indemnified Party or Indemnifying Party under this Article 5 shall survive the sale or other transfer of any party of any of its assets, business or liabilities.

Section 5.09. *Ancillary Agreements.* If an indemnification claim is covered by the indemnification provisions of an Ancillary Agreement, the claim shall be made under the Ancillary Agreement to the extent applicable and the provisions thereof shall govern such claim. In no event shall any party be entitled to double recovery from the indemnification provisions of this Agreement and any Ancillary Agreement.

ARTICLE 6  
MISCELLANEOUS

Section 6.01. *Notices.* Any notice, instruction, direction or demand under the terms of this Agreement required to be in writing shall be duly given upon delivery, if delivered by hand, facsimile transmission, mail, or e-mail transmission to the following addresses:

If to ADS to:

Alliance Data Systems Corporation  
7500 Dallas Parkway, Suite 700  
Plano, Texas 75024  
Attn: General Counsel  
Email: [generalcounsel@alliancedata.com](mailto:generalcounsel@alliancedata.com)<sup>2+</sup>

with a copy to:

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attn: Louis Goldberg  
Email: [louis.goldberg@davispolk.com](mailto:louis.goldberg@davispolk.com)

Hageman, Cynthia [HC41] June 26, 2021 02:27 PM  
*Joe – suggest using the Plano address since that is the GC's home office AND this 3075 address is about to change as well but new notice address not yet determined.*

Hageman, Cynthia [HC42] June 26, 2021 02:27 PM  
*Joe – suggest using the Plano address since that is the GC's home office AND this 3075 address is about to change as well but new notice address not yet determined.*

If to Loyalty Ventures to:

Loyalty Ventures Inc.  
[\[7500 Dallas Parkway, Suite 700  
Plano, Texas 75024\]](#)  
[•]  
[•]  
Attn: [•][General Counsel](#)  
Email: [•][generalcounsel@alliancedata.com](mailto:generalcounsel@alliancedata.com)]

with a copy to:

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attn: Louis Goldberg  
Email: [louis.goldberg@davispolk.com](mailto:louis.goldberg@davispolk.com)

Hageman, Cynthia [HC43] June 26, 2021 02:28 PM  
The Form 10 is using the Plano address for now. Unsure when new contact details will be available.

<sup>2+</sup>~~Note to Draft: ADS to confirm.~~

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other party hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 6.02. *Amendments; No Waivers.* (a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by ADS and Loyalty Ventures, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 6.03. *Expenses.* ADS and Loyalty Ventures shall each bear the costs and expenses incurred or paid in connection with the Restructuring, the Distribution and any other related transaction, as applicable, set forth below their respective names on Schedule 6.03.<sup>18</sup> All other third-party fees, costs and expenses paid or incurred in connection with the foregoing (except as specifically allocated pursuant to the terms of this Agreement or any Ancillary Agreement) will be paid by the party incurring such fees or expenses, whether or not the Distribution occurs, or as otherwise agreed by the parties in writing.

Hageman, Cynthia [HC44] June 26, 2021 02:30 PM  
Need Andretta, Horn, Ballou to help us here.

Section 6.04. *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; *provided* that neither party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other party hereto. If any party or any of its successors or permitted assigns (i) shall consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of such party shall assume all of the obligations of such party under the Distribution Documents.

<sup>22</sup> Note to Draft: To discuss allocation of expenses.

<sup>18</sup> Note to Draft: To discuss allocation of expenses.

Section 6.05. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such state.

Section 6.06. *Counterparts; Effectiveness; Third-Party Beneficiaries.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. The words " execution," " signed," " signature," and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement shall include images of manually executed signatures transmitted by facsimile or other electronic format (including " pdf" , " tif" or " jpg" ) and other electronic signatures (including DocuSign and AdobeSign). The use of electronic signatures and electronic records (including any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by Applicable Law. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). Except for Section 4.07 and the indemnification and release provisions of Article 5, neither this Agreement nor any provision hereof is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto and their respective successors and permitted assigns.

Section 6.07. *Entire Agreement.* This Agreement and the other Distribution Documents constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter hereof and thereof. No representation, inducement, promise, understanding, condition or warranty not set forth herein or in the other Distribution Documents has been made or relied upon by any party hereto or any member of their Group with respect to the transactions contemplated by the Distribution Documents. Without limiting Section 5.09 and subject to Section 6.08, in the event and to the extent that there shall be a conflict between the provisions of this Agreement and the provisions of any Ancillary Agreement, the Ancillary Agreement shall control with respect to the subject matter thereof, and this Agreement shall control with respect to all other matters; *provided*, that except as provided for in Section 2.04 to extent that there shall be a conflict between the provisions of this Agreement and the provisions of any Restructuring Agreement, this Agreement shall control with respect to all matters.

Section 6.08. *Tax and Employee Matters.* Except as otherwise expressly provided herein, this Agreement shall not govern (i) Tax matters (including any administrative, procedural and related matters thereto), which shall be exclusively governed by the Tax Matters Agreement and the Employee Matters Agreement or (ii) employee matters (including any labor, compensation plans, benefit plans and related matters thereto), which shall be exclusively governed by the Employee Matters Agreement. For the avoidance of doubt, to the extent of any inconsistency between this Agreement and either of the Tax Matters Agreement or Employee Matters Agreement, the terms of the Tax Matters Agreement or Employee Matters Agreement, as the case may be, shall govern.

Section 6.09. *Jurisdiction.* The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the Chancery Court of the State of Delaware and any state appellate court therefrom within the State of Delaware (or if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any federal or state court sitting in the State of Delaware and any federal or state appellate court therefrom), and each of the parties hereby irrevocably consents to the exclusive jurisdiction of such courts in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or outside of the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 6.01 shall be deemed effective service of process on such party.

Section 6.10. *WAIVER OF JURY TRIAL.* EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 6.11. *Termination.* Notwithstanding any provision of this Agreement to the contrary, the Board of Directors of ADS may, in its sole discretion and without the approval of Loyalty Ventures or any other Person, at any time prior to the Distribution terminate this Agreement and/or abandon the Distribution, whether or not it has theretofore approved this Agreement and/or the Distribution. In the event this Agreement is terminated pursuant to the preceding sentence, this Agreement shall forthwith become void and neither party nor any of its directors or officers shall have any liability or further obligation to the other party or any other Person by reason of this Agreement.

Section 6.12. *Severability*. If any one or more of the provisions contained in this Agreement should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a declaration, the parties shall modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner so that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 6.13. *Survival*. All covenants and agreements of the parties contained in this Agreement shall survive the Distribution Date indefinitely, unless a specific survival or other applicable period is expressly set forth herein.

Section 6.14. *Captions*. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

Section 6.15. *Interpretation*. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of its authorship of any of the provisions of this Agreement.

Section 6.16. *Specific Performance*. Each party to this Agreement acknowledges and agrees that damages for a breach or threatened breach of any of the provisions of this Agreement would be inadequate and irreparable harm would occur. In recognition of this fact, each party agrees that, if there is a breach or threatened breach, in addition to any damages, the other nonbreaching party to this Agreement, without posting any bond, shall be entitled to seek and obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction, attachment, or any other equitable remedy which may then be available to obligate the breaching party (i) to perform its obligations under this Agreement or (ii) if the breaching party is unable, for whatever reason, to perform those obligations, to take any other actions as are necessary, advisable or appropriate to give the other party to this Agreement the economic effect which comes as close as possible to the performance of those obligations (including transferring, or granting liens on, the assets of the breaching party to secure the performance by the breaching party of those obligations).

Section 6.17. *Performance*. Each party shall cause to be performed all actions, agreements and obligations set forth herein to be performed by any member of such party's Group.

[Section 6.18. \*Confidential Supervisory Information. Notwithstanding any other provision of this Agreement, no disclosure, representation or warranty shall\*](#)

be made (or other action taken) pursuant to this Agreement that results in the disclosure of confidential supervisory information (including confidential supervisory information as identified in 12 C.F.R. § 309.5(g)(8)) of a Governmental Authority by any party to this Agreement to the extent prohibited by applicable law. To the extent legally permissible, appropriate substitute disclosures or actions, which may include the disclosure of underlying facts or circumstances that do not themselves constitute confidential supervisory information, shall be made or taken under circumstances in which the limitations of the preceding sentence apply.

*[Remainder of page intentionally left blank]*

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

**ALLIANCE DATA SYSTEMS  
CORPORATION**

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

**LOYALTY VENTURES INC.**

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



| [#94579784v694579784v10](#)

<b>Summary report:</b>	
<b>Litera® Change-Pro for Word 10.14.0.46 Document comparison done on 9/10/2021 10:21:15 AM</b>	
<b>Style name:</b> General	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://DMSWEB/AmericasActive/94579784/6	
<b>Modified DMS:</b> iw://DMSWEB/AmericasActive/94579784/10	
<b>Changes:</b>	
<a href="#">Add</a>	96
<del>Delete</del>	86
<del>Move From</del>	4
<del>Move To</del>	4
<del>Table Insert</del>	0
<del>Table Delete</del>	0
<del>Table moves to</del>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	190

**DPW Draft 9/10/21**

**SEPARATION AND DISTRIBUTION AGREEMENT**

by and between

ALLIANCE DATA SYSTEMS CORPORATION

and

LOYALTY VENTURES INC.

Dated as of [•], 2021

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**SCHEDULES**

[To be updated]

**EXHIBITS**

<u>Exhibit A</u>	Employee Matters Agreement
<u>Exhibit B</u>	Tax Matters Agreement
<u>Exhibit C</u>	Transition Services Agreement
<u>Exhibit D</u>	Amended and Restated Certificate of Incorporation
<u>Exhibit E</u>	Amended and Restated Bylaws

**ANNEXES**

<u>Annex A</u>	Restructuring Plan
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## SEPARATION AND DISTRIBUTION AGREEMENT

SEPARATION AND DISTRIBUTION AGREEMENT dated as of [•], 2021 (as the same may be amended from time to time in accordance with its terms and together with the schedules and exhibits hereto, this “**Agreement**”) between Alliance Data Systems Corporation, a Delaware corporation (“**ADS**”), and Loyalty Ventures Inc., a Delaware corporation (“**Loyalty Ventures**”).

### WITNESSETH:

WHEREAS, the Board of Directors of ADS has determined that it is in the best interests of ADS and its stockholders to separate the LoyaltyOne Business from the ADS Business;

WHEREAS, Loyalty Ventures is a wholly owned Subsidiary of ADS that has been incorporated for the sole purpose of, and has not engaged in activities except in preparation for, the Distribution and the transactions contemplated by this Agreement;

WHEREAS, in furtherance of the foregoing, the Board of Directors of ADS has determined that it is in the best interests of ADS and its stockholders to distribute to the holders of the issued and outstanding shares of common stock, par value \$0.01 per share, of ADS (the “**ADS Common Stock**”) as of the Record Date, by means of a *pro rata* dividend, [81]% of the issued and outstanding shares of common stock, par value \$0.01 per share, of Loyalty Ventures (the “**Loyalty Ventures Common Stock**”) and [19]% of the Loyalty Ventures Common Stock retained by ADS, the “**Retained Loyalty Ventures Common Stock**”), on the basis of one share of Loyalty Ventures Common Stock for every [•]<sup>1</sup> then issued and outstanding share of ADS Common Stock (the “**Distribution**”);

WHEREAS, ADS and Loyalty Ventures have prepared, and Loyalty Ventures has filed with the Commission, the Form 10, which includes the Information Statement, and which sets forth appropriate disclosure concerning Loyalty Ventures and the Distribution, and the Form 10 has become effective under the Exchange Act;

WHEREAS, the Distribution will be preceded by, among other things, the Restructuring, pursuant to which, among other things, (a) Loyalty Ventures will enter into the Loyalty Ventures Financing Arrangements and (b) all of the stock of the Loyalty Ventures First-Tier Subsidiaries will be contributed by Alliance Data International, LLC (“**ADILC**”), a Subsidiary of ADS, to Loyalty Ventures in exchange for Loyalty Ventures Common Stock and the proceeds of the Loyalty Ventures Financing Arrangements (such proceeds, the “**Cash Proceeds**,” and such contribution, (the “**Contribution**”);

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<sup>1</sup> **Note to Draft:** Distribution ratio to be determined.

WHEREAS, ADS may transfer up to 10% of the Loyalty Ventures Common Stock to one or more of ADS's creditors in exchange for ADS's indebtedness (the "**Equity-for-Debt Exchange**"), in which case ADS would transfer the Cash Proceeds to one or more ADS Creditors (the "**Boot Purge**"), in each case, in connection with the Contribution and Distribution;

WHEREAS, for United States federal and state income tax purposes, it is intended that (i) the Contribution and the Distribution, taken together, qualify as a "reorganization" within the meaning of Section 368(a)(1)(D) of the Internal Revenue Code of 1986, as amended (the "**Code**"), (ii) the Distribution qualify as a tax-free transaction under Sections 355(a) and 361(c) of the Code (in each case, qualifying for such treatment under the corresponding provisions of state law), (iii) the Equity-for-Debt Exchange qualify as a transfer of "qualified property" to ADS's creditors in connection with the reorganization described in clause (i) for purposes of Section 361(c) of the Code, and (iv) the Boot Purge qualify as money distributed to ADS's creditors in connection with the reorganization described in clause (i) for purposes of Section 361(b) of the Code, and it is a condition to the Distribution that ADS will have obtained the PLR and the Tax Opinion to such effect as contemplated by Section 3.01(a)(ix);

WHEREAS, this Agreement, together with the Ancillary Agreements and other documents implementing the Contribution and Distribution, is intended to be, and is hereby adopted as, a "plan of reorganization" within the meaning of Treas. Reg. Section 1.368-2(g); and

WHEREAS, the parties hereto have determined to set forth the principal actions required to effect the Distribution and to set forth certain agreements that will govern the relationship between those parties following the Distribution.

ACCORDINGLY, in consideration of the mutual covenants contained in this Agreement, the parties hereby agree as follows:

## Article 1 DEFINITIONS

Section 1.01. *Definitions.* Article 2 As used in this Agreement, the following terms have the following meanings:

"**Action**" means any demand, claim, suit, action, arbitration, inquiry, investigation or other proceeding by or before any Governmental Authority or any arbitration or mediation tribunal.

"**ADS Assets**" means all assets, of whatever sort, nature or description, of ADS or any of its Subsidiaries (including any member of the Loyalty Ventures Group) other than the Loyalty Ventures Assets, including, for the avoidance of doubt, the assets set forth on Schedule 1.01[•], *provided that, notwithstanding*



the foregoing, the ADS Assets shall not include any Tax assets, which shall be governed by the Tax Matters Agreement.

“**ADS Business**” means all of the businesses conducted by ADS and its Subsidiaries from time to time, whether before, on or after the Distribution, other than the LoyaltyOne Business and any Loyalty Ventures Former Business. For the avoidance of doubt, the Loyalty Ventures Assets (and all assets and properties owned, directly or indirectly, by entities forming all or part of such assets) will not be considered part of the ADS Business.

“**ADS Former Business**” means the Former Businesses previously owned, in whole or in part, or previously operated, in whole or in part, by ADS or any of its Subsidiaries and[, as determined by ADS in its sole discretion,] primarily related to the ADS Business or that would have comprised part of the ADS Business had they not been terminated, divested or discontinued prior to the Distribution Time, including the Former Business set forth on Schedule 1.01[•], but excluding, for the avoidance of doubt, the Loyalty Ventures Former Businesses.<sup>2</sup>

“**ADS Group**” means ADS and its Subsidiaries (other than any member of the Loyalty Ventures Group) and, where applicable, the ADS Former Businesses, including all predecessors and successors to such Persons (excluding, for the avoidance of doubt, all Loyalty Ventures Former Businesses).

“**ADS Liabilities**” means (without duplication) all of the following [(as determined by ADS in its sole discretion)]:

(a) all Liabilities solely to the extent relating to, arising out of or in connection with or resulting from the ADS Business or the business and operation of the ADS Assets, as currently or formerly operated (including as conducted or operated by any predecessor of any member of the ADS Group [or the Loyalty Ventures Group]), including those Liabilities set forth on Schedule 1.01[•];

(b) all Liabilities of the ADS Group and/or the Loyalty Ventures Group to the extent relating to, arising out of or in connection with or resulting from any ADS Former Business or any disposition thereof;<sup>3</sup> and

(c) all Liabilities that are expressly contemplated by this Agreement or any other Ancillary Agreement as Liabilities to be retained or assumed by ADS or any other member of the ADS Group, and all agreements, obligations and other Liabilities of ADS or any member of the ADS Group under this Agreement or any of the other Ancillary Agreements;

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<sup>2</sup> **Note to Draft:** Relevant to allocation of liabilities for former businesses.

<sup>3</sup> **Note to Draft:** ADS to consider.

*provided* that, notwithstanding the foregoing, the ADS Liabilities shall not include (i) any Liabilities for Taxes, which shall be governed by the Tax Matters Agreement or (ii) any Liabilities for the employment, employee benefits and employee compensation matters expressly covered by the Employee Matters Agreement, all of which shall be governed by the Employee Matters Agreement.

“**ADS Names and Marks**” means any and all Trademarks of ADS or any of its Affiliates (other than any Trademark included in the Loyalty Ventures Assets), including, for the avoidance of doubt, any that use, contain or include “ADS” or “Alliance Data”, in each case either alone or in combination with other words, phrases or logos, and any and all Trademarks derived therefrom or confusingly similar thereto.

“**ADS Participants**” has the meaning set forth in the Employee Matters Agreement.

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such other Person. For the purposes of this definition, “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or other interests, by Contract or otherwise, and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing. Notwithstanding any provision of this Agreement to the contrary (except where the relevant provision states explicitly to the contrary), no member of the ADS Group, on the one hand, and no member of the Loyalty Ventures Group, on the other hand, shall be deemed to be an Affiliate of the other.

“**Ancillary Agreement**” means each of the [Tax Matters Agreement, the Transition Services Agreement, the Employee Matters Agreement, the Restructuring Agreements and any other agreements, instruments, or certificates related thereto or to the transactions contemplated by this Agreement (in each case, together with the schedules, exhibits, annexes and other attachments thereto).]<sup>4</sup>

“**Applicable Law**” means, with respect to any Person, any federal, state, local or foreign law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling, directive, guidance, instruction, direction, permission, waiver, notice, condition, limitation, restriction or prohibition or other similar requirement enacted, adopted, promulgated, imposed, issued or applied by a Governmental Authority that is binding upon or applicable to such Person, its properties or assets or its business or operations.

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<sup>4</sup> **Note to Draft:** Ancillary Agreements subject to ongoing review. To discuss whether there are any ongoing contractual or commercial relationships that should be the subject of separate agreements, in addition to those listed here.

“**Business**” means, with respect to the ADS Group, the ADS Business and, with respect to the Loyalty Ventures Group, the LoyaltyOne Business.

“**Business Day**” means any day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

“**Cash and Cash Equivalents**” means cash or cash equivalents, certificates of deposit, banker’s acceptances and other investment securities of any form or maturity.

“**Commercial Data**” means any and all data and information relating to an identified or identifiable Person (whether the information is accurate or not), alone or in combination with other information, which Person is or was an actual or prospective customer of, or consumer of products or services offered by, the LoyaltyOne and/or ADS Business, as applicable.<sup>5</sup>

“**Commission**” means the United States Securities and Exchange Commission.

“**Confidential Information**” means, with respect to a Group, (i) any proprietary information that is competitively sensitive, material or otherwise of value to the members of such Group and not generally known to the public, including business plan or product planning information, strategies, financial information, information regarding operations, consumer and/or customer relationships, consumer and/or customer profiles, sales estimates, internal performance results relating to the past, present or future business activities of the members of such Group and the consumers, customers, clients and suppliers of the members of such Group, and information relating to filings, plans, correspondence or relationships with regulators, (ii) any proprietary scientific or technical information, design, invention, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords any member of such Group a competitive advantage over its competitors and (iii) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, information, and trade secrets, in the case of each of clauses (i), (ii) and (iii) of this definition, that are related primarily to such Group’s Business; *provided* that to the extent both the ADS Business and the LoyaltyOne Business use or rely upon any of the information described in any of the foregoing clauses (i), (ii) and/or (iii), subject to Section 4.07, such information shall be deemed the Confidential Information of both the ADS Group and the Loyalty Ventures Group.

“**Contract**” means any written or oral commitment, contract, subcontract, agreement, lease, sublease, license, sublicense, understanding, sales order,

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<sup>5</sup> **Note to Draft:** ADS to confirm whether there are other types of data.

purchase order, instrument, indenture, note or any other legally binding commitment or undertaking.

“**Distribution Agent**” means Computershare Trust Company, N.A.

“**Distribution Date**” means [●], 2021.

“**Distribution Documents**” means this Agreement and the Ancillary Agreements.

“**Distribution Time**” means the time at which the Distribution is effective on the Distribution Date, which shall be deemed to be 11:59 p.m., Eastern Daylight Time, on the Distribution Date.

“**Employee Matters Agreement**” means the Employee Matters Agreement dated as of the date hereof between ADS and Loyalty Ventures substantially in the form of Exhibit A, as such agreement may be amended from time to time in accordance with its terms.

“**Equity Compensation Registration Statement**” means the Registration Statement on Form S-8 or such other form or forms as may be appropriate, as amended and supplemented, including all documents incorporated by reference therein, to effect the registration under the Securities Act of Loyalty Ventures Common Stock subject to certain equity awards granted to current and former officers, employees, directors and consultants of the ADS Group to be assumed or replaced by Loyalty Ventures pursuant to the Employee Matters Agreement.

“**Escheat Payment**” means any payment required to be made to a Governmental Authority pursuant to an abandoned property, escheat or similar law.

“**Exchange Act**” means the Securities Exchange Act of 1934.

“**Form 10**” means the registration statement on Form 10 filed by Loyalty Ventures with the Commission to effect the registration of Loyalty Ventures Common Stock pursuant to the Exchange Act in connection with the Distribution, as such registration statement may be amended or supplemented from time to time.

“**Former Business**” means any corporation, partnership, entity, division, business unit, business or set of business operations that has been sold, conveyed, assigned, transferred or otherwise disposed of or divested (other than solely in connection with the Restructuring), in whole or in part, or the operations, activities or production of which has been discontinued, abandoned, liquidated, completed or otherwise terminated, in whole or in part, in each case, by either Group prior to the Distribution Time.

“**Governmental Authority**” means any multinational, foreign, federal, state, local or other governmental, statutory or administrative authority, regulatory body or commission or any court, tribunal or judicial or arbitral authority which has any jurisdiction or control over either party (or any of their Affiliates).

“**Group**” means, as the context requires, the Loyalty Ventures Group, the ADS Group or either or both of them.

“**Indemnitees**” means, as the context requires, the ADS Indemnitees or the Loyalty Ventures Indemnitees.

“**Information Statement**” means the Information Statement to be sent to each holder of ADS Common Stock in connection with the Distribution.

“**Intellectual Property**” means any and all intellectual property throughout the world, including any and all U.S. and foreign (i) patents, invention disclosures, and all related continuations, continuations-in-part, divisionals, provisionals, renewals, reissues, re-examinations, additions, extensions (including all supplementary protection certificates), and all applications and registrations therefor (collectively, “**Patent Rights**”), (ii) trademarks, service marks, names, corporate names, trade names, domain names, social media identifiers, logos, slogans, trade dress, design rights, and other similar business identifiers or designations of source or origin and all applications and registrations therefor, together with the goodwill symbolized by any of the foregoing (collectively, “**Trademarks**”), (iii) copyrights, works of authorship and copyrightable subject matter and all applications and registrations therefor, (iv) trade secrets, know-how, confidential data and information, technical information, including practices, techniques, methods, processes, inventions, developments, specifications, formulations, structures, analytical and quality control information and procedures, studies and procedures and regulatory information, (v) computer software (including source code, object code, firmware, operating systems and specifications), (vi) databases and data collections and (vii) all rights to sue or recover and retain damages and costs and attorneys’ fees for the past, present or future infringement, misappropriation or other violation of any of the foregoing.

“**Intended Tax Treatment**” has the meaning set forth in the Tax Matters Agreement.

“**IRS**” means the Internal Revenue Service.

“**IT Assets**” means computers, software, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines, and all other information technology assets or other equipment storing or processing information, including all associated documentation related to any of the foregoing.

“**LoyaltyOne Business**” means the businesses and operations of the ADS LoyaltyOne segment, in each case as more fully described in the Form 10 and the Information Statement.

“**Loyalty Ventures Assets**” means, except as expressly otherwise contemplated in this Agreement or any Ancillary Agreement, the following assets of ADS and its Subsidiaries [(as determined by ADS in its sole discretion)]:<sup>6</sup>

(a) all interests of whatever nature in the real property<sup>7</sup> listed on Schedule 1.01[●], together with all buildings, fixtures and improvements erected thereon (the “**Loyalty Ventures Facilities**”);

(b) all interests in personal property, fixtures, [machinery,] furniture, office equipment, automobiles, motor vehicles and other transportation equipment, [special and general tools, test devices, prototypes and models,] and other tangible personal property (other than any Intellectual Property) located at the Loyalty Ventures Facilities [or primarily used or primarily held for use in connection with the LoyaltyOne Business];

(c) all inventories of materials, supplies, goods in transit, customer returns, and work-in-process and finished goods and products, in each case of whatever kind, nature or description, in each case solely to the extent primarily related to or primarily used or primarily held for use in connection with the Loyalty Ventures Business;

(d) all interests in any capital stock or other equity securities or interests of or in any member of the Loyalty Ventures Group;

(e) all deposits, letters of credit, and performance and surety bonds, in each case solely to the extent primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business;

(f) all prepaid expenses, trade accounts, and other accounts and notes receivable, in each case solely to the extent primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business;

(g) the Patent Rights listed on Schedule 1.01[●] and all other Intellectual Property (other than Patent Rights) owned by ADS or any of its Subsidiaries solely to the extent primarily used or primarily held for use in connection with the LoyaltyOne Business (other than any Trademarks that use, contain or include “ADS” or “Alliance Data”, either alone or in combination with

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<sup>6</sup> **Note to Draft:** To confirm treatment of each category of assets and standard for separating the LoyaltyOne Business from the ADS Business (e.g., (i) primarily used by the LoyaltyOne Business, (ii) exclusively used by the LoyaltyOne Business or (iii) assets set forth on a schedule).

<sup>7</sup> **DPW Response:** Confirmed – leases are intended to be included.

other words, phrases or logos), including such other Intellectual Property listed on Schedule 1.01[•];

(h) all IT Assets solely to the extent exclusively related to or exclusively used or exclusively held for use in connection with the LoyaltyOne Business (other than the IT Assets set forth on Schedule 1.01[•]);

(i) all Contracts (including Contracts related to Intellectual Property and IT Assets) and any rights thereunder, in each case solely to the extent primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business, including the Contracts set forth on Schedule 1.01[•];

(j) all claims, causes of action and similar rights, whether accrued or contingent, in each case solely to the extent primarily related to the LoyaltyOne Business;

(k) all employee Contracts with any Loyalty Ventures Participants, including the right thereunder to restrict any Loyalty Ventures Participant from competing in certain respects;

(l) all Permits primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business;

(m) Cash and Cash Equivalents solely to the extent (i) located at the Loyalty Ventures Facilities or (ii) primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business;

(n) subject to the foregoing clause (m), all bank accounts, lock boxes and other deposit arrangements, and all brokerage accounts, in each case solely to the extent (i) located at the Loyalty Ventures Facilities or (ii) primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business;

(o) all accounting and other legal and business books, records, minute books, corporate documents, ledgers and files and all personnel records, in each case, whether printed, electronic, contained on storage media or written, or in any other form, in each case solely to the extent primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business;

(p) (x) all Confidential Information, except for any confidential supervisory information (including confidential supervisory information as identified in 12 C.F.R. § 309.5(g)(8)) of a U.S. federal or state Governmental Authority or any information the disclosure of which by ADS is prohibited by Applicable Law (y) all cost information, sales and pricing data, supplier records, supplier lists, vendor data, customer data, correspondence and lists, and (z) all product data and literature, brochures, marketing and sales literature, advertising catalogues, photographs, display materials, media materials, packaging materials,

artwork, designs, formulations and specifications, quality records and reports (other than any Intellectual Property in any of the foregoing and excluding any Commercial Data), in each case solely to the extent primarily related to or primarily used or primarily held for use in connection with the LoyaltyOne Business;

(q) all Commercial Data to the extent exclusively related to or exclusively used or exclusively held for use in connection with the LoyaltyOne Business;

(r) all goodwill associated with the LoyaltyOne Business or the Loyalty Ventures Assets; and

(s) any other assets, of whatever sort, nature or description, that are exclusively related to or exclusively used or exclusively held for use in connection with the LoyaltyOne Business and any assets on the books and records of any member of the Loyalty Ventures Group, including but not limited to the assets set forth on Schedule 1.01[•];

*Provided* that, notwithstanding the foregoing, the Loyalty Ventures Assets shall not include any Tax assets, which shall be governed by the Tax Matters Agreement.

**“Loyalty Ventures Credit Facility”** means [•].

**“Loyalty Ventures Financing Arrangements”** means (i) the Loyalty Ventures Credit Facility and (ii) [•].

**“Loyalty Ventures First-Tier Subsidiaries”** means each of ADI Crown Helix Limited and Alliance Data Lux Holdings S.à.r.l.

**“Loyalty Ventures Former Business”** means each Former Business previously owned, in whole or in part, or previously operated, in whole or in part, by ADS or any of its Subsidiaries and[, as determined by ADS and in its sole discretion,] primarily related to the LoyaltyOne Business or that would have comprised part of the LoyaltyOne Business had such Former Business not been terminated, divested or discontinued prior to the Distribution Time, including the Former Businesses set forth on Schedule 1.01[•], but excluding, for the avoidance of doubt, all ADS Former Businesses.

**“Loyalty Ventures Group”** means Loyalty Ventures and its Subsidiaries as set forth on Schedule 1.01[•], including all predecessors and successors to such Persons.

**“Loyalty Ventures Liabilities”** means (without duplication) all of the following [(as determined by ADS in its sole discretion)]:



(a) any and all Liabilities to the extent relating to, arising out of or in connection with or resulting from the LoyaltyOne Business, the business and operation of the Loyalty Ventures Assets, as currently or formerly operated (including as conducted or operated by any predecessor of any member of the ADS Group or the Loyalty Ventures Group), including the following Liabilities:

(i) all Liabilities relating to, arising out of or in connection with or resulting from the Loyalty Ventures Financing Arrangements;

(ii) [●]<sup>8</sup>;

(iii) all Liabilities set forth on Schedule 1.01[●];

(b) all Liabilities of the ADS Group and/or the Loyalty Ventures Group to the extent relating to, arising out of or in connection with or resulting from any Loyalty Ventures Former Business or any disposition thereof; and

(c) all Liabilities that are expressly contemplated by this Agreement or any other Ancillary Agreement as Liabilities to be retained or assumed by Loyalty Ventures or any other member of the Loyalty Ventures Group, and all agreements, obligations and other Liabilities of Loyalty Ventures or any member of the Loyalty Ventures Group under this Agreement or any of the other Ancillary Agreements;

*provided* that, notwithstanding the foregoing, the Loyalty Ventures Liabilities shall not include (i) any Liabilities for Taxes, which shall be governed by the Tax Matters Agreement or (ii) any Liabilities for the employment, employee benefits and employee compensation matters expressly covered by the Employee Matters Agreement, all of which shall be governed by the Employee Matters Agreement.

“**Loyalty Ventures Participants**” has the meaning set forth in the Employee Matters Agreement.

“**Liabilities**” means any and all Claims, debts, liabilities, damages and/or obligations (including, but not limited to, any Escheat Payment) of any kind, character or description, whether absolute or contingent, matured or not matured, liquidated or unliquidated, accrued or unaccrued, known or unknown, whenever arising, including all costs and expenses (including attorneys’ fees and expenses and associated investigation costs) relating thereto, and including those Claims, debts, liabilities, damages and/or obligations arising under this Agreement, any Applicable Law, any Action or threatened Action, any order or consent decree of any Governmental Authority or any award of any arbitrator of any kind, and those arising under any agreement, commitment or undertaking, including in connection with the enforcement of rights hereunder or thereunder.

<sup>8</sup> **Note to Draft:** ADS to advise on additional categories of liabilities to be specifically listed as Loyalty Ventures Liabilities.

“**Nasdaq**” means Nasdaq Global [Select] Market.

“**Permit**” means any license, permit, approval, consent, certification, franchise, registration or authorization which has been issued by or obtained from any Governmental Authority.

“**Person**” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

“**PLR**” means the private letter ruling and any supplements thereto issued by the IRS to ADS prior to and in connection with the Contribution, Distribution Equity-for-Debt Exchange, Boot Purge and any related transactions.

“**Record Date**” means the close of business on [•], 2021, the date determined by the Board of Directors of ADS as the record date for the Distribution.

“**Restructuring**” means the reorganization of certain businesses, assets and liabilities of the ADS Group and the Loyalty Ventures Group to be completed before the Distribution Time in accordance with the Restructuring Plan, including the Contribution.

“**Restructuring Plan**” means that certain [•], attached hereto as Annex A.

“**Securities Act**” means the Securities Act of 1933.

“**Subsidiary**” means, with respect to any Person, any other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

“**Tax**” or “**Taxes**” has the meaning set forth in the Tax Matters Agreement.

“**Tax Benefit**” has the meaning set forth in the Tax Matters Agreement.

“**Tax Matters Agreement**” means the Tax Matters Agreement dated as of the date hereof between ADS and Loyalty Ventures substantially in the form of Exhibit B, as such agreement may be amended from time to time in accordance with its terms.

“**Tax Opinion**” has the meaning set forth in the Tax Matters Agreement.

“**Third Party**” means any Person that is not a member or an Affiliate of the Loyalty Ventures Group or the ADS Group.

“**Transition Services Agreement**” means the Transition Services Agreement dated as of the date hereof between ADS and Loyalty Ventures substantially in the form of Exhibit C, as such agreement may be amended from time to time in accordance with its terms.

(a) Each of the following terms is defined in the Section set forth opposite such term:

<b><u>Term</u></b>	<b><u>Section</u></b>
ADILC	Recitals
ADS	Preamble
ADS Assumed Actions	4.02(b)
ADS Claims-Made Policies	4.10(b)
ADS Common Stock	Recitals
ADS Designee	2.03(a)
ADS Group Privileged Materials	4.07(e)
ADS Indemnitees	5.02(a)
ADS Insurance Policies	4.10(a)
ADS Loss Discovered-Policies	4.10(b)
ADS Occurrence-Based Policy	4.10(b)
ADS Shared Policies	4.10(b)
Agreement	Preamble
Amended and Restated Bylaws	2.02(c)
Amended and Restated Certificate of Incorporation	2.02(c)
Claim	5.04(a)
Code	Recitals
Contribution	Recitals
Disposing Party	4.05
Distribution	Recitals
Guarantee	2.09
Indemnified Party	5.04(a)
Indemnifying Party	5.04(a)
Intercompany Accounts	2.06
Loyalty Ventures	Preamble
Loyalty Ventures Assumed Actions	4.02(a)
Loyalty Ventures Common Stock	Recitals
Loyalty Ventures Designee	2.03(a)
Loyalty Ventures Facilities	1.01(a)
Loyalty Ventures Indemnitees	5.03(a)
Patent Rights	1.01(a)
Pre-Distribution Time Communications	4.07(e)
Prior Company Counsel	4.07(d)
Privileged Information	4.07(a)
Privileges	4.07(a)
Post-Distribution Insurance Arrangements	4.10(a)
Receiving Party	4.05

Released Parties	5.01(a)
Representatives	4.06
Restructuring Agreements	2.04
Third Party Claim	5.04(b)
Trademarks	1.01(a)

Section 2.02. *Interpretation.* Article 3 In this Agreement, unless the context clearly indicates otherwise:

- (i) words used in the singular include the plural and words used in the plural include the singular;
- (ii) references to any Person include such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;
- (iii) except as otherwise clearly indicated, reference to any gender includes the other gender;
- (iv) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”;
- (v) reference to any Article, Section, Exhibit or Schedule means such Article or Section of, or such Exhibit or Schedule to, this Agreement, as the case may be, and references in any Section or definition to any clause means such clause of such Section or definition;
- (vi) the words “herein,” “hereunder,” “hereof,” “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision hereof;
- (vii) reference to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement;
- (viii) reference to any law (including statutes and ordinances) means such law (including all rules and regulations promulgated thereunder) as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;
- (ix) relative to the determination of any period of time, “from” means “from and including,” “to” means “to and including” and “through” means “through and including”;
- (x) the titles to Articles and headings of Sections contained in this Agreement have been inserted for convenience of reference only and

shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement;

(xi) unless otherwise specified in this Agreement, all references to dollar amounts herein shall be in respect of lawful currency of the United States; and

(xii) any capitalized term used in an Exhibit or Schedule but not otherwise defined therein shall have the meaning set forth in this Agreement.

#### Article 4 PRIOR TO THE DISTRIBUTION

On or prior to the Distribution Date:

Section 4.01. *Information Statement; Listing.* ADS shall mail (or shall have mailed) the Information Statement to the holders of ADS Common Stock as of the Record Date. ADS and Loyalty Ventures shall take (or shall have taken) all such actions as may be necessary or appropriate under the securities or blue sky laws of states or other political subdivisions of the United States and shall use commercially reasonable efforts to comply with all applicable foreign securities laws in connection with the transactions contemplated by this Agreement and the Ancillary Agreements. ADS and Loyalty Ventures shall prepare, file and pursue (or shall have prepared, filed and pursued) an application to permit listing of the Loyalty Ventures Common Stock on the Nasdaq.

Section 4.02. *Restructuring and Other Actions prior to the Distribution Time.*

(a) Restructuring. The Restructuring shall have been consummated on or prior to the Distribution Time, including (i) the entry by Loyalty Ventures into the Loyalty Ventures Financing Arrangements and (ii) the Contribution, including the transfer by Loyalty Ventures of the proceeds of the Loyalty Ventures Financing Arrangements to ADILC in partial consideration for the stock of Loyalty Ventures First-Tier Subsidiaries.

(b) Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws. (i) ADS and Loyalty Ventures shall each take (or shall have taken) all necessary action that may be required to provide for the adoption by Loyalty Ventures of an amended and restated certificate of incorporation of Loyalty Ventures substantially in the form of Exhibit D (the “**Amended and Restated Certificate of Incorporation**”), and amended and restated bylaws of Loyalty Ventures, substantially in the form of Exhibit E (the “**Amended and Restated Bylaws**”), and (ii) Loyalty Ventures shall file (or shall have filed) the Amended and Restated Certificate of Incorporation of Loyalty Ventures with the Secretary of State of the State of Delaware.

(c) The Distribution Agent. ADS shall enter (or shall have entered) into a distribution agent agreement with the Distribution Agent or otherwise provide instructions to the Distribution Agent regarding the Distribution.

(d) Satisfying Conditions to the Distribution. ADS and Loyalty Ventures shall cooperate (or shall have cooperated) to cause the conditions to the Distribution set forth in Section 3.01 to be satisfied (or waived by ADS) and to effect the Distribution at the Distribution Time upon such satisfaction (or waiver by ADS).

Section 4.03. *Transfers of Certain Other Assets and Liabilities*. Unless otherwise provided in this Agreement or in any Ancillary Agreement and to the extent not previously effected in accordance with Section 2.02(a), effective as of the Distribution Time:<sup>9</sup>

(a) ADS hereby agrees, and hereby causes the relevant member of the ADS Group, to assign, contribute, convey, transfer and deliver (or shall have assigned, contributed, conveyed, transferred and delivered) to Loyalty Ventures or any member of the Loyalty Ventures Group as of the Distribution Time designated by Loyalty Ventures (a “**Loyalty Ventures Designee**”) all of the right, title and interest of ADS or such member of the ADS Group in and to all of the Loyalty Ventures Assets, if any, held by any member of the ADS Group, and ADS and Loyalty Ventures hereby agree, and hereby cause the relevant member of the Loyalty Ventures Group, to assign, contribute, convey, transfer and deliver to ADS or any member of the ADS Group as of the Distribution Time designated by ADS (a “**ADS Designee**”) all of the right, title and interest of Loyalty Ventures or such member of the Loyalty Ventures Group in and to all of the ADS Assets, if any, held by any member of the Loyalty Ventures Group; and

(b) ADS hereby agrees, and hereby causes the relevant member of the ADS Group, to assign, transfer and deliver (or shall have assigned, transferred and delivered) to Loyalty Ventures, and Loyalty Ventures, on behalf of itself or such Loyalty Ventures Designee, hereby accepts, assumes and agrees to perform, discharge and fulfill, all of the Loyalty Ventures Liabilities, if any, to the extent such Loyalty Ventures Liabilities would otherwise remain obligations of any member of the ADS Group, and ADS and Loyalty Ventures hereby agree, and hereby cause the relevant member of the Loyalty Ventures Group, to assign, transfer and deliver (or shall have assigned, transferred and delivered) to ADS, and ADS, on behalf of itself or such ADS Designee, hereby accepts, assumes and agrees to perform, discharge and fulfill, all of the ADS Liabilities, if any, to the extent such ADS Liabilities would otherwise remain obligations of any member of the Loyalty Ventures Group.

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<sup>9</sup> **Note to Draft:** If there are any overlapping/shared assets or contracts that need to be separated, to discuss how best to address these.

(c) To the extent any assignment, contribution, conveyance, transfer, delivery or assumption of any asset or Liability of either Group as of the Distribution Time is not effected in accordance with this Section 2.03 as of the Distribution Time for any reason (including as a result of the failure of the parties to identify it as being required to be transferred pursuant to this Section 2.03, but subject to Section 2.04), the relevant party shall use all commercially reasonable efforts to effect such transfer as promptly thereafter as practicable.

Section 4.04. *Restructuring Agreements.* The transfers of the various entities and the contribution, assignment, transfer, conveyance and delivery of the assets and the acceptance and assumption of the Liabilities contemplated by Section 2.03 and the Restructuring Plan will be effected, in certain cases, pursuant to one or more asset transfer agreements, share transfer agreements, business transfer agreements, certificates of merger and other agreements and instruments (the “**Restructuring Agreements**”); *provided that*, in each case, it is intended that the Restructuring Agreements shall serve purely to effect (x) the legal transfer of the Loyalty Ventures Assets or ADS Assets to the Loyalty Ventures Group or the ADS Group, as applicable, in accordance with the Restructuring Plan or as contemplated pursuant to Section 2.03 and (y) the acceptance and assumption of the Loyalty Ventures Liabilities or the ADS Liabilities by a member of the Loyalty Ventures Group or the ADS Group, as applicable, in each case, in accordance with the Restructuring Plan or as contemplated pursuant to Section 2.03. [In the event of any conflict between any Restructuring Agreement and this Agreement, the terms of such Restructuring Agreement shall control solely with respect to any applicable purchase price adjustment or cash adjustment set forth in any such Restructuring Agreement and this Agreement shall control in all other respects;] [*provided that*, notwithstanding anything in any Restructuring Agreement to the contrary, in the event any Restructuring Agreement provides for a purchase price adjustment or cash adjustment, whether based upon a calculation of fair market value or otherwise, or any similar adjustment provision, any purchase price adjustment or cash adjustment determination under such Restructuring Agreement, including as to the amount, if any, of any such adjustment, shall be determined by ADS in its sole discretion.] Notwithstanding anything in any Restructuring Agreement to the contrary, neither ADS nor any member of the ADS Group, on the one hand, nor Loyalty Ventures nor any member of the Loyalty Ventures Group, on the other hand, shall commence, bring or otherwise initiate any Action under any Restructuring Agreement.

Section 4.05. *Agreement Relating to Consents Necessary to Transfer Assets and Liabilities.* Notwithstanding any provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to transfer or assign any asset (including any Contract) or any claim or right or any benefit arising thereunder or resulting therefrom, or to assume any Liability, if such transfer, assignment, or assumption without the consent of a Third Party or a Governmental Authority, would result in a breach, or constitute a default (or an event which, with the giving of notice or lapse of time, or both, would become a

default), under any Contract or would otherwise adversely affect the rights of a member of the ADS Group or the Loyalty Ventures Group thereunder. ADS and Loyalty Ventures will use their respective commercially reasonable efforts to obtain the consent of any Third Party (including any Governmental Authority), if any, required in connection with the transfer, assignment or assumption pursuant to Section 2.03 of any such asset or any such claim or right or benefit arising thereunder or to the assumption of any Liability; *provided* that in no event shall any member of a Group have any Liability whatsoever to any member of the other Group for any failure to obtain any such consent. If and when such consent is obtained, such transfer, assignment and/or assumption shall be effected in accordance with the terms of this Agreement and/or the applicable Ancillary Agreement. During the period in which any transfer, assignment or assumption is delayed pursuant to this Section 2.05 as a result of the absence of a required consent, the party (or relevant member in its Group) retaining such asset, claim or right shall thereafter hold (or shall cause such member in its Group to hold) such asset, claim or right for the use and benefit of the party (or relevant member in its Group) entitled thereto (at the expense of the Person entitled thereto) and the party intended to assume an such Liability shall, or shall cause the applicable member of its Group to, pay, hold harmless or reimburse the party (or the relevant member of its Group) retaining such Liability for all amounts paid, incurred in connection with or arising out of the retention of such Liability. In addition, the party retaining such asset, claim or right, or such Liability (or relevant member of its Group) shall (or shall cause such member in its Group to) treat, insofar as reasonably possible and to the extent permitted by Applicable Law, such asset, claim or right, or such Liability, in the ordinary course of business in accordance with past practice and take such other actions as may be reasonably requested by the party to which such asset, claim or right, or such Liability, is to be transferred or assumed in order to place such party, insofar as reasonably possible, in the same position as if such asset, claim or right, or such Liability, had been transferred or assumed on or prior to the Distribution Time as contemplated hereby and so that all the benefits and burdens relating to such asset, claim or right, or such Liability, including possession, use, risk of loss, potential for gain, and dominion, control and command over such asset, claim or right, or such Liability, are to inure from and after the Distribution Time to the relevant member of the ADS Group or the Loyalty Ventures Group, as the case may be, entitled to the receipt of such asset, claim or right, or required to assume such Liability.

Section 4.06. *Intercompany Accounts.* The parties shall use commercially reasonable efforts to settle on or prior to the Distribution Date (to the extent practicable), all intercompany receivables, payables and other balances, in each case, that arise prior to the Distribution Time between members of the ADS Group, on the one hand, and members of the Loyalty Ventures Group, on the other hand (“**Intercompany Accounts**”), by way of capitalization and/or one or more cash payments (whether or not on a net basis) in satisfaction of such amounts. From and after the Distribution Time, the parties shall use commercially reasonable efforts to settle any Intercompany Accounts that are not settled as of the Distribution Time within 90 days of the Distribution Date and in



the manner set forth in the first sentence of this Section 2.06; *provided* that any claim by any member of either Group with respect to an Intercompany Account must be made in writing (which writing shall be provided in accordance with Section 6.01 and be reasonably specific as to the applicable Intercompany Account and the amount thereof) to the applicable member of the other Group within 90 days of the Distribution Date.

Section 4.07. *Intercompany Agreements.* Article 5 Except as set forth in Section 2.07(b), all Contracts between members of the ADS Group, on the one hand, and members of the Loyalty Ventures Group, on the other hand, in effect immediately prior to the Distribution are hereby agreed by ADS (on behalf of itself and each member of the ADS Group) and by Loyalty Ventures (on behalf of itself and each member of the Loyalty Ventures Group) to be terminated, cancelled and of no further force and effect from and after the Distribution Time (including any provision thereof that purports to survive termination) without any further Liability to any party thereto.

(a) The provisions of Section 2.07(a) shall not apply to any of the FOLLOWING Contracts: Article 6 this Agreement and the Ancillary Agreements (and each other Contract expressly contemplated by this Agreement or any Ancillary Agreement (A) to be entered into by any of the parties hereto or any of the MEMBERS OF THEIR RESPECTIVE GROUPS or (B) to survive the Distribution Date); Article 7 any Contract to which any Person, other than solely the parties hereto AND THE MEMBERS OF THEIR RESPECTIVE GROUPS IS A PARTY; Article 8 any Intercompany Accounts to the extent such Intercompany Accounts were not satisfied and/or settled in accordance with the first sentence of Section 2.06 (it being understood that such Intercompany Accounts shall be satisfied or settled in ACCORDANCE WITH the second sentence of Section 2.06); and Article 9 the Contracts set forth on Schedule 2.07(b).

Section 9.01. *Bank Accounts; Cash Balances.*

(a) ADS and Loyalty Ventures shall, and shall cause the members of their respective Group to, use commercially reasonable efforts such that, on or prior to the Distribution Time, the ADS Group and the Loyalty Ventures Group maintain separate bank accounts and separate cash management processes. Without limiting the generality of the foregoing, ADS and Loyalty Ventures shall use commercially reasonable efforts to, and shall cause the members of their respective Groups to use commercially reasonable efforts to, effective prior to the Distribution Time, (x) remove and replace the signatories of any bank or brokerage account owned by Loyalty Ventures or any other member of the Loyalty Ventures Group as of the Distribution Time with individuals designated by Loyalty Ventures and (y) if requested by ADS, remove and replace the signatories of any bank or brokerage account owned by ADS or any other member of the ADS Group as of the Distribution Time with individuals designated by ADS.

(b) With respect to any outstanding payments initiated by ADS, Loyalty Ventures, or any of their respective Subsidiaries prior to the Distribution Time, such outstanding payments shall be honored following the Distribution by the Person or Group owning the account from which the payment was initiated.

(c) As between ADS and Loyalty Ventures (and the members of their respective Groups) all payments received after the Distribution Date by either party (or member of its Group) that relate to a business, asset or Liability of the other party (or member of its Group), shall be held by such party for the use and benefit and at the expense of the party entitled thereto. Each party shall maintain an accounting of any such payments, and the parties shall have a monthly reconciliation, whereby all such payments received by each party are calculated and the net amount owed to ADS or Loyalty Ventures, as applicable, shall be paid over with a mutual right of set-off. If at any time the net amount owed to either party exceeds \$[500,000]<sup>10</sup>, an interim payment of such net amount owed shall be made to the party entitled thereto within five (5) Business Days of such amount exceeding \$[500,000]. Notwithstanding the foregoing, neither ADS nor Loyalty Ventures shall act as collection agent for the other party, nor shall either party act as surety or endorser with respect to non-sufficient funds checks or funds to be returned in a bankruptcy or fraudulent conveyance action.

Section 9.02. *Replacement of Guarantees.* ADS and Loyalty Ventures shall each use commercially reasonable efforts to, and shall cause the members of their respective Groups to use commercially reasonable efforts to, effective as of the Distribution Time, terminate or cause a member of the Loyalty Ventures Group to be substituted in all respects for a member of the ADS Group with respect to, and for the members of the ADS Group, as applicable, to be otherwise removed or released from, all obligations of any member of the Loyalty Ventures Group under any guarantee, surety bond, letter of credit, letter of comfort or similar credit or performance support arrangement (each, a “**Guarantee**”), given or obtained by any member of the ADS Group for the benefit of any member of the Loyalty Ventures Group or the LoyaltyOne Business. If ADS and Loyalty Ventures have been unable to effect any such substitution, removal, release and termination with respect to any such Guarantee as of the Distribution Time, then, following the Distribution Time (a) the parties shall cooperate to effect such substitution, removal, release and termination as soon as reasonably practicable after the Distribution Time, (b) Loyalty Ventures and the members of the Loyalty Ventures Group shall, from and after the Distribution Time, indemnify against, hold harmless and promptly reimburse the members of the ADS Group for any payments made by members of the ADS Group and for any and all Liabilities of the members of the ADS Group arising out of, or in performing, in whole or in part, any obligation under any such Guarantee, and (c) without the prior written consent of ADS, no member of the Loyalty Ventures Group may renew, extend the term of, increase any obligations under, or transfer to a third Person, any Liability for which any member of the ADS Group is or might be liable pursuant

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<sup>10</sup> **Note to Draft:** ADS to confirm.

to an applicable Guarantee unless such Guarantee, and all applicable obligations of the members of the ADS Group with respect thereto, are thereupon terminated pursuant to documentation reasonably acceptable to ADS.<sup>11</sup>

Section 9.03. *Further Assurances and Consents.* In addition to the actions specifically provided for elsewhere in this Agreement, each of the parties hereto shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary, proper or advisable under Applicable Law or applicable agreements or otherwise to consummate and make effective any transfers of assets, assignments and assumptions of Liabilities and any other transactions contemplated hereby, including using its commercially reasonable efforts to obtain any consents and approvals and to make any filings and applications necessary or desirable in order to consummate the transactions contemplated by this Agreement; *provided* that in no event shall any member of a Group have any Liability whatsoever to any member of the other Group for any failure to obtain any such consent or approval.

## Article 10 DISTRIBUTION

Section 10.01. *Conditions Precedent to Distribution.* (a) In no event shall the Distribution occur unless each of the following conditions shall have been satisfied (or waived by ADS in its sole discretion):

(i) the Restructuring shall have been completed, including the consummation of the Loyalty Ventures Financing Arrangements and the Contribution, including the transfer by Loyalty Ventures of the proceeds of the Loyalty Ventures Financing Arrangements to ADILC in partial consideration for the stock of Loyalty Ventures First-Tier Subsidiaries;

(ii) the Board of Directors of ADS shall have approved the Distribution and shall not have abandoned the Distribution or terminated this Agreement at any time prior to the Distribution;

(iii) the Form 10 shall have been filed with the Commission and declared effective by the Commission, no stop order suspending the effectiveness of the Form 10 shall be in effect, no proceedings for such purpose shall be pending before or threatened by the Commission, and the Information Statement shall have been mailed to holders of the ADS Common Stock as of the Record Date;

(iv) all actions and filings necessary or appropriate under applicable federal, state or foreign securities or “blue sky” laws and the

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<sup>11</sup> **Note to Draft:** Subject to review and discussion of any outstanding guarantees between the Loyalty Ventures Group and the ADS Group.

rules and regulations thereunder shall have been taken and, where applicable, become effective or been accepted;

(v) the Loyalty Ventures Common Stock to be delivered in the Distribution shall have been approved for listing on the Nasdaq, subject to official notice of issuance;

(vi) the Board of Directors of Loyalty Ventures, as named in the Information Statement, shall have been duly appointed, and the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws, each in substantially the form filed as an exhibit to the Form 10, shall be in effect;

(vii) each of the Ancillary Agreements shall have been duly executed and delivered by the parties thereto;

(viii) ADS shall have received the PLR and Tax Opinion (neither of which shall have been revoked or modified in any material respect), both of which are reasonably satisfactory to ADS ;

(ix) a nationally recognized valuation advisory firm acceptable to ADS shall have delivered one or more opinions to the Board of Directors of ADS concerning the solvency and capital adequacy matters relating to each of (A) ADS and its Group and (B) Loyalty Ventures and its Group after consummation of the Distribution, and such opinions shall be acceptable to the Board of Directors of ADS in its sole and absolute discretion and such opinions shall not have been withdrawn or rescinded;

(x) no Applicable Law shall have been adopted, promulgated or issued, and be in effect, that prohibits the consummation of the Distribution or any of the other transactions contemplated hereby;

(xi) any material governmental approvals and consents and any material permits, registrations and consents from Third Parties, in each case, necessary to effect the Distribution and to permit the operation of the LoyaltyOne Business after the Distribution Date substantially as it is conducted at the date hereof shall have been obtained; and

(xii) no event or development shall have occurred or exist that, in the judgment of the Board of Directors of ADS, in its sole discretion, makes it inadvisable to effect the Distribution or the other transactions contemplated hereby.

(b) Each of the conditions set forth in this Section 3.01(a) is for the sole benefit of ADS and shall not give rise to or create any duty on the part of ADS or its Board of Directors to waive or not to waive any such condition or to effect the Distribution, or in any way limit ADS's rights of termination as set forth in Section 6.11 or alter the consequences of any termination from those

specified in Section 6.11. Any determination made by ADS on or prior to the Distribution concerning the satisfaction or waiver of any or all of the conditions set forth in this Section 3.01 shall be conclusive and binding on the parties and all other affected Persons.

Section 10.02. *The Distribution.* (a) ADS shall, in its sole discretion, determine the Distribution Date and all terms of the Distribution, including the timing of the consummation of all or part of the Distribution. ADS may, at any time and from time to time until the consummation of the Distribution, modify or change the terms of the Distribution including by accelerating or delaying the timing of the consummation of all or part of the Distribution. For the avoidance of doubt, nothing in this Agreement shall in any way limit ADS's right to terminate this Agreement or the Distribution as set forth in Section 6.11 or alter the consequences of any such termination from those specified in Section 6.11.

(b) Subject to the terms and conditions set forth in this Agreement, (i) on or prior to the Distribution Date, ADS shall take such steps as are reasonably necessary or appropriate to permit the Distribution by the Distribution Agent of validly issued, fully paid and non-assessable shares of Loyalty Ventures Common Stock, registered in book-entry form through the registration system, (ii) the Distribution shall be effective at the Distribution Time, and (iii) subject to Section 3.03, ADS shall instruct the Distribution Agent to distribute, on or as soon as practicable after the Distribution Date, to each holder of record of ADS Common Stock as of the Record Date, by means of a *pro rata* dividend, one share of Loyalty Ventures Common Stock for every [•] shares of ADS Common Stock so held. Following the Distribution Date, Loyalty Ventures agrees to provide all book-entry transfer authorizations for shares of Loyalty Ventures Common Stock that ADS or the Distribution Agent shall require (after giving effect to Sections 3.03 and 3.04) in order to effect the Distribution.

(c) Within thirty (30) days following the Distribution, ADS shall use the Cash Proceeds to repay or repurchase certain of its debt from third-party lenders, ADS may complete the Equity-for-Debt Exchange within one year of the Distribution.

Section 10.03. *Fractional Shares.* No fractional shares of Loyalty Ventures Common Stock will be distributed in the Distribution. The Distribution Agent will be directed to determine (based on the aggregate number of shares held by each holder) the number of whole shares and the fractional share of Loyalty Ventures Common Stock allocable to each holder of ADS Common Stock as of the Record Date. Upon the determination by the Distribution Agent of such numbers of whole shares and fractional shares, as soon as practicable on or after the Distribution Date, the Distribution Agent, acting on behalf of the holders thereof, shall aggregate the fractional shares into whole shares and shall sell the whole shares obtained thereby for cash on the open market (with the Distribution Agent, in its sole discretion, determining when, how and through which broker-dealer(s) and at which price(s) to make such sales) and shall

thereafter promptly distribute to each such holder entitled thereto (*pro rata* based on the fractional share such holder would have been entitled to receive in the Distribution) the resulting aggregate cash proceeds, after making appropriate deductions of the amounts required to be withheld for United States federal income tax purposes, if any, and after deducting an amount equal to all brokerage fees and commissions, transfer taxes and other costs attributed to the sale of shares pursuant to this Section 3.03. Neither ADS nor Loyalty Ventures will be required to guarantee any minimum sale price for the fractional shares. Recipients of cash in lieu of fractional shares will not be entitled to any interest on the amounts of payments made in lieu of fractional shares.

Section 10.04. *NO REPRESENTATIONS OR WARRANTIES.* EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY OTHER DISTRIBUTION DOCUMENT, NO MEMBER OF EITHER GROUP MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, TO ANY MEMBER OF THE OTHER GROUP OR ANY OTHER PERSON WITH RESPECT TO ANY OF THE TRANSACTIONS OR MATTERS CONTEMPLATED HEREBY (INCLUDING WITH RESPECT TO THE BUSINESS, ASSETS, LIABILITIES, CONDITION OR PROSPECTS (FINANCIAL OR OTHERWISE) OF, OR ANY OTHER MATTER INVOLVING, EITHER BUSINESS, OR THE SUFFICIENCY OF ANY ASSETS TRANSFERRED OR LICENSED TO THE APPLICABLE GROUP, OR THE TITLE TO ANY SUCH ASSETS, OR THAT ANY REQUIREMENTS OF APPLICABLE LAW ARE COMPLIED WITH RESPECT TO THE RESTRUCTURING OR THE DISTRIBUTION). EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY OTHER DISTRIBUTION DOCUMENT, EACH MEMBER OF EACH GROUP SHALL TAKE ALL OF THE BUSINESS, ASSETS AND LIABILITIES TRANSFERRED OR LICENSED TO OR ASSUMED BY IT PURSUANT TO THIS AGREEMENT OR ANY DISTRIBUTION DOCUMENT ON AN “AS IS, WHERE IS” BASIS, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE OR OTHERWISE ARE HEREBY EXPRESSLY DISCLAIMED.

## Article 11 COVENANTS

Section 11.01. *Books and Records; Access to Information.* Article 12 To the extent not previously transferred in accordance with Section 2.02(a) or Section 2.03, from and after the Distribution Date, ADS shall, and shall cause the members of the ADS Group to, deliver to Loyalty Ventures or any Loyalty Ventures Designee any books and records that are Loyalty Ventures Assets (or copies of relevant portions thereof if such books and records contain information not related to the LoyaltyOne Business) found to be in the possession of ADS or any member of the ADS Group in accordance with the applicable terms of the Transition Services Agreement and the applicable schedules thereto; *provided*

that without limiting any express delivery requirements under this Section 4.01(a) and the terms of the Transition Services Agreement, neither ADS nor any member of the ADS Group shall be required to conduct any general search or investigation of its files for such books and records other than with respect to Commercial Data. Notwithstanding anything in this Agreement to the contrary, ADS shall not transfer or otherwise disclose or deliver to Loyalty Ventures any confidential supervisory information (including confidential supervisory information as identified in 12 C.F.R. § 309.5(g)(8)) of a U.S. federal or state Governmental Authority or any information the disclosure of which by ADS is prohibited by Applicable Law.

(a) Without limiting the express delivery requirements of Section 4.01(a) or any Ancillary Agreement, for a period of seven <sup>12</sup> years after the Distribution Date, each Group shall afford promptly the other Group and its agents and, to the extent required by Applicable Law, authorized representatives of any Governmental Authority of competent jurisdiction, reasonable access (which shall include, to the extent reasonably requested, the right to make copies) during normal business hours to its books of account, financial and other records (including accountant's work papers, to the extent any required consents have been obtained), information (excluding any Commercial Data), employees and auditors to the extent necessary or useful for such other Group in connection with any audit, investigation, dispute or litigation, complying with their obligations under this Agreement or any Ancillary Agreement, any regulatory proceeding, any regulatory filings, complying with reporting disclosure requirements or any other requirements imposed by any Governmental Authority or any other reasonable business purpose of the Group requesting such access; *provided* that (i) any such access shall not unreasonably interfere with the conduct of the business of the Group providing such access and (ii) if any party reasonably determines that affording any such access to the other party would be commercially detrimental in any material respect or violate any Applicable Law or agreement to which such party or member of its Group is a party, or waive any Privilege applicable to such party or any member of its Group, the parties shall use commercially reasonable efforts to permit the compliance with such request in a manner that avoids any such harm or consequence.

(b) [Without limiting the express delivery requirements of Section 4.01(a) or any Ancillary Agreement, to the extent permitted under Applicable Law, until the end of the first full Loyalty Ventures fiscal year occurring after the Distribution Date (and for a reasonable period of time afterwards as required for each party to prepare consolidated financial statements or complete a financial statement audit for the fiscal year during which the Distribution Date occurs), each party shall use its commercially reasonable efforts to cooperate with the other party's information requests (other than with respect to any Commercial Data) to enable (i) the other party to meet its timetable for dissemination of its earnings releases, financial statements and management's assessment of the

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<sup>12</sup> **Note to Draft:** ADS to confirm.

effectiveness of its disclosure controls and procedures and its internal control over financial reporting in accordance with Items 307 and 308, respectively, of Regulation S-K promulgated under the Exchange Act; and (ii) the other party's auditors timely to complete their review of the quarterly financial statements and audit of the annual financial statements, including, to the extent applicable to such party, its auditor's audit of its internal control over financial reporting and management's assessment thereof in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, the SEC's and Public Company Accounting Oversight Board's rules and auditing standards thereunder and any other Applicable Laws.]<sup>13</sup>

Section 12.02. *Litigation Cooperation.* Article 13 Effective as of the Distribution Time, the applicable member of the Loyalty Ventures Group shall assume and thereafter be responsible for all Liabilities of either Group that may result from the Loyalty Ventures Assumed Actions and, subject to Section 5.04(c), all Liabilities and fees and costs relating to the defense of the Loyalty Ventures Assumed Actions, including attorneys', accountants', consultants' and other professionals' fees and expenses that have been incurred prior to the Distribution Time and are unpaid as of the Distribution Time, or, that are incurred on or after the Distribution Time. "**Loyalty Ventures Assumed Actions**" means (x) those Actions primarily related to the LoyaltyOne Business, including those in which any member of the ADS Group or any Affiliate of a member of the ADS Group is a defendant or a party against whom the claim or investigation is directed that are primarily related to the LoyaltyOne Business, (y) those Actions set forth on Schedule 4.02(a)(i) and (x) all Actions that Loyalty Ventures has elected to control the defense of as the Indemnifying Party pursuant to Section 5.04(b)[, but excluding those Actions set forth on Schedule 4.02(a)(ii)].<sup>14</sup> If any member of the ADS Group has any rights or claims against a Third Party insurer or other Third Party in connection with or relating to any Loyalty Ventures Assumed Action, such member shall, subject to Section 2.05, transfer and assign to the applicable member of the Loyalty Ventures Group all such rights or claims and cooperate with the Loyalty Ventures Group in connection with the enforcement and collection thereof. For the avoidance of doubt, effective as of the Distribution Time, Loyalty Ventures shall be entitled to all recovery, rights, claims, credits, causes of action, payments, awards and rights of set-off, in each case, with respect to the Loyalty Ventures Assumed Actions. ADS hereby agrees to transfer or pay, and to cause any applicable member of the ADS Group to transfer or pay, to Loyalty Ventures any such recovery, rights, claims, credits, causes of action, payments, awards and rights of set-off as promptly as possible.

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<sup>13</sup> **Note to Draft:** To discuss whether any additional financial information should be included for purposes of satisfying ADS's public reporting and financial statement preparation.

<sup>14</sup> **Note to Draft:** ADS to confirm if there is litigation primarily relating to the LoyaltyOne Business that should be retained by ADS.



(a) Effective as of the Distribution Time, the applicable member of the ADS Group shall assume and thereafter be responsible for all Liabilities of either Group that may result from the ADS Assumed Actions and, subject to Section 5.04(c), all fees and costs relating to the defense of the ADS Assumed Actions, including attorneys', accountants', consultants' and other professionals' fees and expenses that have been incurred prior to the Distribution Time and are unpaid as of or after the Distribution Time, or, that are incurred on or after the Distribution Time. "ADS Assumed Actions" means (x) those Actions primarily related to the ADS Business, including those in which any member of Loyalty Ventures Group or any Affiliate of a member of the Loyalty Ventures Group is a defendant or a party against whom the claim or investigation is directed that are primarily related to the ADS Business, (y) those Actions set forth on Schedule 4.02(b) and (z) all Actions that ADS has elected to control the defense of as the Indemnifying Party pursuant to Section 5.04(b).<sup>15</sup> If any member of the Loyalty Ventures Group has any rights or claims against a Third Party insurer or other Third Party in connection with or relating to any ADS Assumed Action, such member shall, subject to Section 2.05, transfer and assign to the applicable member of the ADS Group all such rights or claims and cooperate with the ADS Group in connection with the enforcement and collection thereof. For the avoidance of doubt, effective as of the Distribution Time, ADS shall be entitled to all recovery, rights, claims, credits, causes of action, payments, awards and rights of set-off, in each case, with respect to the ADS Assumed Actions. Loyalty Ventures hereby agrees to transfer or pay, and to cause any applicable member of the Loyalty Ventures Group to transfer or pay, to ADS any such recovery, rights, claims, credits, causes of action, payments, awards and rights of set-off as promptly as possible.

(b) Each party agrees that, at all times from and after the Distribution Time, if an Action relating primarily to its Business is commenced by a Third Party naming a member of each Group as defendants thereto, such action shall be deemed to be a Loyalty Ventures Assumed Action (in the case of an Action primarily related to the LoyaltyOne Business) or an ADS Assumed Action (in the case of an Action primarily related to the ADS Business) and the party as to which the Action primarily relates shall use its commercially reasonable efforts to cause the other party or member of its Group to be removed from such Action.

(c) The parties agree, that at all times from and after the Distribution Time, if any Action is commenced by a Third Party naming a member of each Group as a defendant thereto and the parties are not able to reasonably determine whether such Action primarily relates to the LoyaltyOne Business or the ADS Business, then the parties shall cooperate in good faith to determine which party and the members of its Group shall control and be responsible for such Action in accordance with the terms of this Section 4.02, and the parties will consult to the extent necessary or advisable with respect to such Action.

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<sup>15</sup> **Note to Draft:** To discuss clause (z).

(d) Each Group shall use commercially reasonable efforts to make available to the other Group and its attorneys, accountants, consultants and other designated representatives, upon written request, its directors, officers, employees and representatives as witnesses, and shall otherwise cooperate with the other Group, to the extent reasonably requested in connection with any Action arising out of either Group's Business prior to the Distribution Time in which the requesting Group may from time to time be involved.

(e) Notwithstanding the foregoing, this Section 4.02 shall not require the party to whom any request pursuant to Section 4.02(e) has been made to make available Persons or information if such party determines that doing so would, in the reasonable good faith judgment of such party, reasonably be expected to result in any violation of any Applicable Law or agreement or adversely affect its ability to successfully assert a claim of Privilege under Applicable Law; *provided*, that the parties shall use commercially reasonable efforts to cooperate in seeking to find a way to permit compliance with such obligations to the extent and in a manner that avoids such consequence.

Section 13.02. *Reimbursement.* Each Group providing information or witnesses to the other Group or otherwise incurring any out-of-pocket expense in connection with transferring books and records or otherwise cooperating under Section 4.01 or Section 4.02 shall be entitled to receive from the recipient thereof, upon the presentation of invoices therefor, payment for all reasonable and documented out-of-pocket costs and expenses (including outside attorney's fees but excluding reimbursement for general overhead, salary and employee benefits) actually incurred in providing such access, information, witnesses or cooperation.

Section 13.03. *Ownership of Information.* All information owned by one party (or a member of its Group) that is provided to the other party (or a member of its Group) under Section 4.01 or Section 4.02 shall be deemed to remain the property of the providing party. Unless specifically set forth herein or in any Ancillary Agreement, nothing contained in this Agreement shall be construed to grant or confer rights of license or otherwise in any such information.

Section 13.04. *Retention of Records.* Except as otherwise required by Applicable Law or agreed to in writing, each party shall, and shall cause the members of its Group to, retain any and all information in its possession or control relating to the other Group's Business in accordance with the document retention practices of ADS as in effect as of the date hereof. Neither party shall destroy, or permit the destruction, or otherwise dispose, or permit the disposal, of any such information, subject to such retention practice, unless, prior to such destruction or disposal, the party proposing (or whose Group member is proposing) such destruction or disposal (the "**Disposing Party**") provides not less than 30 days' prior written notice to the other party (the "**Receiving Party**"), specifying the information proposed to be destroyed or disposed of and the scheduled date for such destruction or disposal. If the Receiving Party shall request in writing prior to the scheduled date for such destruction or disposal that

any of the information proposed to be destroyed or disposed of be delivered to the Receiving Party, the Disposing Party shall promptly arrange for the delivery of such of the information as was requested at the expense of the Receiving Party; *provided* that, if the Disposing Party reasonably determines that any such provision of information would violate any Applicable Law or agreement to which such party or member of its Group is a party, or waive any Privilege applicable to such party or any member of its Group, the parties shall use commercially reasonable efforts to permit the prompt compliance with such request in a manner that avoids any such harm or consequence. Any records or documents that were subject to a litigation hold prior to the Distribution Date must be retained by the applicable party until such party or member of its Group is notified by the other party that the litigation hold is no longer in effect.

Section 13.05. *Confidentiality*. Each party acknowledges that it or a member of its Group may have in its possession, and, in connection with this Agreement and the Ancillary Agreements, may receive, Confidential Information of the other party or any member of its Group (including information in the possession of such other party relating to its clients or customers). Each party shall hold and shall cause its directors, officers, employees, agents, consultants and advisors (“**Representatives**”) and the members of its Group and their Representatives to hold in strict confidence and not to use, except as permitted by this Agreement, or any Ancillary Agreement all such Confidential Information CONCERNING THE OTHER GROUP UNLESS Article 14 such party or any of the members of its Group or its or their Representatives is compelled to disclose such Confidential Information by judicial or administrative process or by other requirements of APPLICABLE LAW OR Article 15 such Confidential Information can be shown to have been (i) in the public domain through no fault of such party or any of the members of its Group or its or their Representatives, (ii) lawfully acquired after the Distribution Date on a non-confidential basis from other sources not known by such party to be under any legal obligation to keep such information confidential or (iii) developed by such party or any of the members of its Group or its or their Representatives without the use of any Confidential Information of the other Group. Notwithstanding the foregoing, such party or member of its Group or its or their Representatives may disclose such Confidential Information to the members of its Group and its or their Representatives so long as such Persons are informed by such party of the confidential nature of such Confidential Information and are directed by such party to treat such information confidentially. The obligation of each party and the members of its Group and its and their Representatives to hold any such Confidential Information in confidence shall be satisfied if they exercise the same level of care with respect to such Confidential Information as they would with respect to their own proprietary information. If such party or any of a member of its Group or any of its or their Representatives becomes legally compelled to disclose any documents or information subject to this Section 4.06, such party will promptly notify the other party and, upon request, use commercially reasonable efforts to cooperate with the other party’s efforts to seek a protective order or other remedy. If no such protective order or other remedy is obtained or if the other party waives in writing

such party's compliance with this Section 4.06, such party or the member of its Group or its or their Representatives may furnish only that portion of the information which it concludes, after consultation with counsel, is legally required to be disclosed and will exercise its commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such information. Each party agrees to be responsible for any breach of this Section 4.06 by it, the members of its Group and its and their Representatives.

Section 15.02. *Privileged Information.* Article 16 The parties acknowledge that members of the ADS Group, on the one hand, and members of the Loyalty Ventures Group, on the other hand, may possess documents or other information regarding the other Group that is or may be subject to the attorney-client privilege, the work product doctrine or common interest privilege (collectively, "**Privileges**"; and such documents and other information collectively, the "**Privileged Information**"). Each party agrees to use commercially reasonable efforts to protect and maintain, and to cause their respective Affiliates to protect and maintain, any applicable claim to Privilege in order to prevent any of the other Group's Privileged Information from being disclosed or used in a manner inconsistent with such Privilege without the other party's consent. Without limiting the generality of the foregoing, a party and its Affiliates shall not, without the other party's prior written consent, (i) waive any Privilege with respect to any of the other party's or any member of its Group's Privileged Information, (ii) fail to defend any Privilege with respect to any such Privileged Information, or (iii) fail to take any other actions reasonably necessary to preserve any Privilege with respect to any such Privileged Information.

(a) Upon receipt by a party or any member of such party's Group of any subpoena, discovery or other request that calls for the production or disclosure of Privileged Information of the other party or a member of its Group, such party shall promptly notify the other party of the existence of the request and shall provide the other party a reasonable opportunity to review the information and to assert any rights it or a member of its Group may have under this Section 4.07 or otherwise to prevent the production or disclosure of such Privileged Information. Each party agrees that neither it nor any member of its Group will produce or disclose any information that may be covered by a Privilege of the party or a MEMBER OF ITS GROUP UNDER THIS Section 4.07 unless Article 17 the other party has provided its written consent to such production or disclosure (which consent shall NOT BE UNREASONABLY WITHHELD) OR Article 18 a court of competent jurisdiction has entered an order finding that the information is not entitled to protection under any applicable Privilege or otherwise requires disclosure of such information.

(a) In the event that any member of the ADS Group and any member of the Loyalty Ventures Group cooperate in the mutual defense of any Third Party Claim, such cooperation shall not constitute a waiver or qualification of such party's right to assert and defend any applicable claim to Privilege.

(b) Each of the ADS Group and the Loyalty Ventures Group covenants and agrees that, following the Distribution Time, Davis Polk & Wardwell LLP or any other internal or external legal counsel currently representing the Loyalty Ventures Group (each a “**Prior Company Counsel**”) may serve as counsel to the ADS Group and its Affiliates in connection with any matters arising under or related to this Agreement or the transactions contemplated by this Agreement or any Ancillary Agreement, including with respect to any litigation, Claim or obligation arising out of or related to this Agreement or any Ancillary Agreement or the transactions contemplated by this Agreement or any Ancillary Agreement, notwithstanding any representation by the Prior Company Counsel prior to the Distribution Time. The ADS Group and the Loyalty Ventures Group hereby irrevocably (i) waive any Claim they have or may have that a Prior Company Counsel has a conflict of interest or is otherwise prohibited from engaging in such representation and (ii) covenant and agree that, in the event that a dispute arises after the Distribution Time between the Loyalty Ventures Group (or any of its Affiliates) and the ADS Group (or any of its Affiliates), Prior Company Counsel may represent any member of the ADS Group and any Affiliates thereof in such dispute even though the interests of such Person(s) may be directly adverse to the Loyalty Ventures Group and even though Prior Company Counsel may have represented the Loyalty Ventures Group in a matter substantially related to such dispute.

(c) All communications between members of the ADS Group, on the one hand, and Prior Company Counsel, on the other hand, related to the transactions contemplated by this Agreement or any Ancillary Agreement shall be deemed to be attorney-client confidences that belong solely to such members of the ADS Group or the Prior Company Counsel (the “**Pre-Distribution Time Communications**”). Accordingly, the Loyalty Ventures Group shall not have access to any such Pre-Distribution Time Communications or to the files of Prior Company Counsel relating to such engagement related to the transactions contemplated hereby from and after the Distribution Time, and all books, records and other materials of the Loyalty Ventures Group in any medium (including electronic copies) containing or reflecting any of the Pre-Distribution Time Communications or the work product of legal counsel with respect thereto, including any related summaries, drafts or analyses, and all rights with respect to any of the foregoing, are hereby assigned and transferred to the ADS Group effective as of the Distribution Time (collectively, the “**ADS Group Privileged Materials**”). The ADS Group may cause all of the ADS Group Privileged Materials to be distributed to the ADS Group immediately prior to the Distribution Time with no copies thereof retained by the Loyalty Ventures Group or its respective representatives, and all such distributed ADS Group Privileged Materials shall be excluded from the transactions contemplated by this Agreement and each Ancillary Agreement. From and after the Distribution Time, in the event that any member of the Loyalty Ventures Group shall possess any ADS Group Privileged Materials, such member of the Loyalty Ventures Group shall promptly cause such ADS Group Privileged Materials to be distributed to the ADS Group in accordance with this Section 4.07(e) or destroyed, at the election

of Loyalty Ventures. In addition, from and after the Distribution Time, (i) the Loyalty Ventures Group and its representatives shall maintain the confidentiality of the ADS Group Privileged Materials and (ii) none of the members of the Loyalty Ventures Group or their respective representatives shall access or in any way, directly or indirectly, use or rely upon any ADS Group Privileged Materials (whether or not distributed to the ADS Group prior to the Distribution Time in accordance with this Section 4.07(e)). To the extent that any ADS Group Privileged Materials are not delivered to the ADS Group, the Loyalty Ventures Group agrees not to assert a waiver of any applicable Privilege or protection with respect to such materials. Without limiting the generality of the foregoing, from and after the Distribution Time, (a) the ADS Group shall be the sole holders of the Privileges with respect to the ADS Group Privileged Materials, and no member of the Loyalty Ventures Group shall be a holder thereof, (b) to the extent that files of Prior Company Counsel in respect of ADS Group Privileged Materials constitute property of the client, only the ADS Group shall hold such property rights, (c) Prior Company Counsel shall have no duty whatsoever to reveal or disclose any ADS Group Privileged Materials to the Loyalty Ventures Group by reason of any attorney-client relationship between Prior Company Counsel and the Loyalty Ventures Group and (d) after the Distribution Date, all communications between members of the Loyalty Ventures Group, on the one hand, and any attorneys retained by any member of the Loyalty Ventures Group, on the other hand, shall be deemed to be attorney-client confidences that belong solely to such members of the Loyalty Ventures Group or such attorneys. Each of the Loyalty Ventures Group and the ADS Group hereby acknowledges and confirms that it has had the opportunity to review and obtain adequate information regarding the significance and risks of the waivers and other terms and conditions of this Section 4.07(e), including the opportunity to discuss with counsel such matters and reasonable alternatives to such terms. This Section 4.07(e) is for the benefit of the ADS Group and Prior Company Counsel, and the ADS Group and Prior Company Counsel are intended third party beneficiaries of this Section 4.07(e). This Section 4.07(e) shall be irrevocable, and no term of this Section 4.07(e) may be amended, waived or modified, without the prior written consent of the ADS Group and Prior Company Counsel. The covenants and obligations set forth in this Section 4.07(e) shall survive for ten (10) years following the Distribution Time.

Section 18.02. *Limitation of Liability.* Except as otherwise provided in this Agreement, no party shall have any liability to any other party in the event that any information, books or records exchanged or provided pursuant to this Agreement is found to be inaccurate or the requested information, books or records is not provided, in the absence of willful misconduct by the party requested to provide such information, books or records. No party shall have any liability to any other party if any information, books or records is destroyed after commercially reasonable efforts by such party to comply with the provisions of Section 4.05.

Section 18.03. *Other Agreements Providing for Exchange of Information.* The rights and obligations granted under this Article 4 are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange, retention, rights to use, or confidential treatment of information set forth in any Ancillary Agreement. Notwithstanding anything in this Agreement to the contrary, (i) the Tax Matters Agreement shall govern the retention of Tax related records and the exchange of Tax related information and (ii) the Employee Matters Agreement shall govern the retention of employment and benefits related records.

Section 18.04. *Conduct of Incidents Subject to ADS Insurance.* (a) Loyalty Ventures, for itself and the members of its Group, acknowledges that coverage for the LoyaltyOne Business under the insurance policies of ADS and the members of the ADS Group (other than insurance policies, insurance contracts and claim administration contracts established in contemplation of the Distribution to cover only the Loyalty Ventures Group after the Distribution Time (the “**Post-Distribution Insurance Arrangements**”)) (the “**ADS Insurance Policies**”) will cease as of the Distribution Time, and that, except as set forth in this Section 4.10, neither ADS nor any member of its Group will purchase any “tail” policy or other additional or substitute coverage for the benefit of Loyalty Ventures or the members of the Loyalty Ventures Group relating to the LoyaltyOne Business applicable in any period after the Distribution Time.

(b) Notwithstanding the foregoing, ADS, for itself and the members of its Group, agrees that ADS or a member of its Group shall, with respect to (x) any act, circumstance, occurrence or incident arising prior to the Distribution Time that relates to the LoyaltyOne Business that is potentially covered by an occurrence-based insurance policy of ADS or any member of its Group (each, a “**ADS Occurrence-Based Policy**”) in effect prior to the Distribution Time, (y) any act, circumstance, occurrence or incident arising or occurring prior to the Distribution Time that relates to the LoyaltyOne Business that is potentially covered by an insurance policy of ADS or any member of its Group written on a “claims made” basis (“**ADS Claims-Made Policies**”) in effect prior to the Distribution Time, or (z) any act, circumstance, occurrence or incident arising or occurring prior to the Distribution Time that relates to the LoyaltyOne Business that is potentially covered by an insurance policy of ADS or any member of its Group written on a “loss discovered” basis (“**ADS Loss Discovered-Policies**” and together with the ADS Occurrence-Based Policies and the ADS Claims-Made Policies, the “**ADS Shared Policies**”) (i) not relinquish any of its rights, or take any actions (other than the making of claims under the ADS Shared Policies) that could reasonably be expected to reduce or otherwise limit the available coverage for any claim or incident arising prior to the Distribution Time that relates to the LoyaltyOne Business, under any of the ADS Shared Policies, (ii) upon request of Loyalty Ventures or any member of its Group, report such claim or incident to the appropriate insurer as promptly as practicable and in accordance with the terms and conditions of the applicable ADS Shared Policy and to use commercially reasonable efforts to administer such claims, (iii) include Loyalty Ventures and

the applicable member of its Group on material correspondence and possible litigation proceedings relating to such claim or incident and (iv) instruct that such proceeds are paid directly to the injured party in settlement of any claims, rather than to ADS or the members of its Group, or, if such proceeds are received by ADS or any member of its Group, pay such proceeds over to Loyalty Ventures or the applicable member of its Group; *provided* that Loyalty Ventures and the applicable members of its Group shall notify ADS promptly of any potential claim, shall cooperate in the investigation and pursuit of any claim, shall have the right to effectively associate in the pursuit of any claim, including the ability to withhold its consent to any proposed claim settlement (such consent not to be unreasonably conditioned, withheld or delayed) and shall bear all out-of-pocket expenses incurred by ADS or the members of its Group in connection with the foregoing; *provided further* that ADS and the members of its Group shall be obligated to use only commercially reasonable efforts to pursue any claims that are potentially covered by available ADS Shared Policies and shall not, for the avoidance of doubt, have any obligation to commence any litigation with respect to any matter potentially covered by any ADS Shared Policy unless the costs of such litigation are borne by Loyalty Ventures. Loyalty Ventures shall bear responsibility for any deductible payments required to be made under the ADS Shared Policies in respect of any such claims.

(c) If, after the Distribution Time, Loyalty Ventures or any of the members of its Group reasonably requires any information regarding claims data for renewal purposes or other information pertaining to a claim or to any occurrence or alleged wrongful acts which occurred prior to the Distribution Time (regardless of when such occurrences or alleged wrongful acts may be reported) that could reasonably be expected to give rise to a claim (including any pre-Distribution claims under any ADS Shared Policy) in order to give notice to or make filings with insurance carriers or claims adjustors or administrators or to adjust, administer or otherwise manage a claim, then, subject to the provisos in Section 4.10, ADS shall cause such information to be supplied to Loyalty Ventures or the applicable member of its Group, to the extent such information is in its possession and control or can be reasonably obtained by ADS (or the members of its Group), as applicable, reasonably promptly upon a written request therefore. In furtherance of the foregoing, if any Third Party requires the consent of ADS or any of the members its Group to the disclosure of claims data or information maintained by an insurance company or other Third Party in respect of any claim (including any pre-Distribution claims under any ADS Shared Policy), such consent shall not be unreasonably withheld, conditioned or delayed.

#### Section 18.05. *Trademark Phase Out.*

(a) As soon as reasonably practicable, but in any event within [one hundred eighty (180)]<sup>16</sup> days, following the Distribution Time, Loyalty Ventures shall, and shall cause its Subsidiaries to, cease any and all use of the ADS Names

<sup>16</sup> **Note to Draft:** To confirm timing for trademark phase-out.



and Marks and remove, conceal, cover, redact and/or replace the ADS Names and Marks from any and all Loyalty Ventures Assets and any other assets and materials under their possession or control bearing such ADS Names and Marks.

(b) Loyalty Ventures shall, and shall cause its Subsidiaries to, make all filings with any and all offices, agencies and bodies and take all other actions necessary to adopt new corporate names that do not contain or consist of, in whole or in part, the ADS Names and Marks (and provide ADS with written evidence thereof) as soon as reasonably practicable following the Distribution Time, but in any event no later than [twenty-four (24)] months thereafter.

Section 18.06. *Governance Matters.* The parties hereto shall take all necessary action within their power to cause Roger Ballou to be appointed as Chairman of the Board of Directors of Loyalty Ventures effective as of the Distribution Time (the “**Overlapping Board Member**”). The Overlapping Board Member’s term will expire after three years, with no opportunity for reelection.

## Article 19

### RELEASE; INDEMNIFICATION

#### Section 19.01. *Release of Pre-Distribution Claims.*

(a) Except Article 20 as provided in Section 5.01(b) and Article 21 as otherwise expressly provided in this Agreement or any Ancillary Agreement, each party does hereby, on behalf of itself and each member of its Group, and each of their successors and assigns, release and forever discharge the other party and the other members of such party’s Group, and their respective successors and assigns, and all Persons who at any time prior to the Distribution Time have been directors, officers, employees or attorneys serving as independent contractors of such other party or any member of its Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns (collectively, the “**Released Parties**”), from any and all demands, Claims, Actions and Liabilities whatsoever, whether at law or in equity, whether arising under any Contract, by operation of law or otherwise (and including for the avoidance of doubt, those arising as a result of the negligence, strict liability or any other liability under any theory of law or equity of, or any violation of law by any Released Party), existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Distribution Date. In furtherance of the foregoing, each party shall cause each of the members of its respective Group to, effective as of the Distribution Time, release and forever discharge each of the Released Parties of the other Group as and to the same extent as the release and discharge provided by such party pursuant to the foregoing provisions of this Section 5.01(a).

(a) Nothing contained in Section 5.01(a) shall impair any right of any Person identified in Section 5.01(a) to enforce this Agreement or any Ancillary

Agreement. Nothing contained in §Section 5.01(a) shall release or discharge any Person from:

(i) any Liability assumed, transferred, assigned, retained or allocated to that Person in accordance with, or any other Liability of that Person under, this Agreement or any of the Ancillary Agreements;

(ii) any Liability that is expressly specified in this Agreement (including §Section 2.06 and §Section 2.07) or any Ancillary Agreement to continue after the Distribution Time, but subject to any limitation set forth in this Agreement (including §Section 2.06 and §Section 2.07) or any Ancillary Agreement relating specifically to such Liability;

(iii) any Liability that the parties may have with respect to claims for indemnification, recovery or contribution brought pursuant to this Agreement or any Ancillary Agreement, which Liability shall be governed by the provisions of this Article 5, or, if applicable, the appropriate provisions of the Ancillary Agreements; or

(iv) any Liability the release of which would result in the release of any Person, other than a member of the ADS Group or any related Released Party; *provided, however*, that the parties hereto agree not to bring or allow their respective Subsidiaries to bring suit against the other party or any related Released Party with respect to any such Liability.

In addition, nothing contained in §Section 5.01(a) shall release any party or any member of its Group from honoring its existing obligations to indemnify, or advance expenses to, any Person who was a director, officer or employee of such party or any member of its Group, at or prior to the Distribution Time, to the extent such Person was entitled to such indemnification or advancement of expenses pursuant to then-existing obligations; *provided, however*, that to the extent applicable, §Section 5.02 hereof shall determine whether any party shall be required to indemnify the other or a member of its Group in respect of such Liability.

(b) No party hereto shall make, nor permit any member of its Group to make, any Claim or demand, or commence any Action asserting any Claim or demand, including any Claim of contribution or indemnification, against the other party, or any related Released Party, with respect to any Liability released pursuant to §Section 5.01(a).

(c) It is the intent of each of the parties by virtue of the provisions of this §Section 5.01 to provide for a full and complete release and discharge of all Liabilities existing or arising from all acts and events occurring or failing to occur or alleged to have occurred or to have failed to occur and all conditions existing or alleged to have existed on or before the Distribution Date between members of

the ADS Group, on the one hand, and members of the Loyalty Ventures Group, on the other hand, (including any Contract existing or alleged to exist between the parties on or before the Distribution Date), except as expressly set forth in Section 5.01(b) or as expressly provided in this Agreement or any Ancillary Agreement. At any time, at the reasonable request of either ADS or Loyalty Ventures, the other party hereto shall execute and deliver (and cause its respective Subsidiaries to execute and deliver) releases reflecting the provisions hereof.

Section 21.02. *Loyalty Ventures Indemnification of the ADS Group.*

Article 22 Effective as of and after the Distribution Time, Loyalty Ventures shall indemnify, defend and hold harmless each member of the ADS Group, each Affiliate thereof and each of their respective past, present and future directors, officers, employees and agents and the respective heirs, executors, administrators, successors and assigns of any of the foregoing (the “**ADS Indemnitees**”) from and against any and all Liabilities incurred or suffered by any of the ADS Indemnitees arising out of or in connection with (i) any of the Loyalty Ventures Liabilities, or the failure of any member of the Loyalty Ventures Group to pay, perform or otherwise discharge any of the Loyalty Ventures Liabilities, (ii) any breach by Loyalty Ventures or any member of the Loyalty Ventures Group of this Agreement or any Ancillary Agreement, (iii) the ownership or operation of the LoyaltyOne Business or the Loyalty Ventures Assets, whether prior to, on or after the Distribution Date, (iv) any payments made by ADS or any member of the ADS Group in respect of any Guarantee given or obtained by any member of the ADS Group for the benefit of any member of the Loyalty Ventures Group or the LoyaltyOne Business, or any Liability of any member of the ADS Group in respect thereof, and (v) any use of any ADS Names and Marks by Loyalty Ventures.

(b) Except to the extent set forth in Section 5.03(b), effective as of and after the Distribution Time, Loyalty Ventures shall indemnify, defend and hold harmless each of the ADS Indemnitees and each Person, if any, who controls any ADS Indemnitee within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all Liabilities caused by any untrue statement or alleged untrue statement of a material fact contained in the Form 10 or any amendment thereof, the Information Statement (as amended or supplemented if Loyalty Ventures shall have furnished any amendments or supplements thereto), the Equity Compensation Registration Statement or any offering or marketing materials prepared in connection with the Loyalty Ventures Financing Arrangements or caused by any omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Section 22.02. *ADS Indemnification of the Loyalty Ventures Group.*

Article 23 Effective as of and after the Distribution Time, ADS shall indemnify, defend and hold harmless each member of the Loyalty Ventures Group, each Affiliate thereof and each of their respective past, present and future directors, officers, employees and agents and the respective heirs, executors, administrators,

successors and assigns of any of the foregoing (the “**Loyalty Ventures Indemnitees**”) from and against any and all Liabilities incurred or suffered by any of the Loyalty Ventures Indemnitees and arising out of or in connection with (i) any of the ADS Liabilities, or the failure of any member of the ADS Group to pay, perform or otherwise discharge any of the ADS Liabilities, (ii) the ownership or operation of the ADS Business or the ADS Assets, whether prior to, on or after the Distribution Date, (iii) any breach by ADS or any member of the ADS Group of this Agreement or any Ancillary Agreement, and (iv) any use of any Loyalty Ventures Names and Marks by ADS.

(b) Effective as of and after the Distribution Time, ADS shall indemnify, defend and hold harmless each of the Loyalty Ventures Indemnitees and each Person, if any, who controls any Loyalty Ventures Indemnitee within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all Liabilities caused by any untrue statement or alleged untrue statement of a material fact contained in the Form 10 or any amendment thereof, the Information Statement (as amended or supplemented if Loyalty Ventures shall have furnished any amendments or supplements thereto), the Equity Compensation Registration Statement or any offering or marketing materials prepared in connection with the Loyalty Ventures Financing Arrangements or caused by any omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that such Liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based on information furnished by ADS solely in respect of the ADS Group and which information is set forth on Schedule 5.03(b).<sup>17</sup>

Section 23.02. *Procedures.* Article 24 The party seeking indemnification under Section 5.02 or Section 5.03 (the “**Indemnified Party**”) agrees to give prompt notice to the party against whom indemnity is sought (the “**Indemnifying Party**”) of the assertion of any claim, or the commencement of any suit, action or proceeding (each, a “**Claim**”) in respect of which indemnity may be sought hereunder and will provide the Indemnifying Party such information with respect thereto that the Indemnifying Party may reasonably request. The failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have prejudiced the Indemnifying Party.

(a) The Indemnifying Party shall be entitled to participate in the defense of any Claim asserted by any Third Party (“**Third Party Claim**”) and, subject to the limitations set forth in this Section 5.04, if it so notifies the Indemnified Party no later than 30 days after receipt of the notice described in Section 5.04(a), shall be entitled to control and appoint lead counsel for such defense, in each case at its

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<sup>17</sup> **Note to Draft:** This schedule to be limited to details provided by ADS regarding its equity securities, corporate address and name, and the description of the Distribution.

expense. If the Indemnifying Party does not so notify the Indemnified Party, the Indemnified Party shall have the right to defend or contest such Third Party Claim through counsel chosen by the Indemnified Party that is reasonably acceptable to the Indemnifying Party, subject to the provisions of this Section 5.04. The Indemnified Party shall provide the Indemnifying Party and such counsel with such information regarding such Third Party Claim as either of them may reasonably request (which request may be general or specific).

(b) If the Indemnifying Party shall assume the control of the defense of ANY Third Party Claim in accordance with the provisions of Section 5.04(b), Article 25 the Indemnifying Party shall obtain the prior written consent of the Indemnified Party (which shall not be unreasonably withheld) before entering into any settlement of such Third Party Claim, if the settlement does not release the Indemnified Party from all Liabilities and obligations with respect to such Third Party Claim or the settlement imposes injunctive or other equitable relief against the Indemnified Party or any of its related Indemnitees or is otherwise materially PREJUDICIAL TO ANY SUCH PERSON AND Article 26 the Indemnified Party shall be entitled to participate in (but not control) the defense of such Third Party Claim and, at its own expense, to employ separate counsel of its choice for such purpose; *provided* that in the event of a conflict of interest between the Indemnifying Party and the applicable Indemnified Party, the reasonable and documented fees and expenses of such separate counsel shall be at the Indemnifying Party's expense.

(a) Each party shall cooperate, and cause their respective Affiliates to cooperate, in the defense or prosecution of any Third Party Claim and shall furnish or cause to be furnished such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith.

(b) Each Indemnified Party shall use commercially reasonable efforts to collect any amounts available under insurance coverage, or from any other Person alleged to be responsible, for any Liabilities payable under Section 5.02 or Section 5.03 and the reasonable expenses incurred in connection therewith will be treated as Liabilities subject to indemnification hereunder.

(c) If any Third Party Claim shall be brought against a member of each Group, then such Action shall be deemed to be a Loyalty Ventures Assumed Action or an ADS Assumed Action in accordance with Sections 4.02(a) or 4.02(b), to the extent applicable, and Loyalty Ventures, in the case of any Loyalty Ventures Assumed Action, or ADS, in the case of any ADS Assumed Action, shall be deemed to be the Indemnifying Party for the purposes of this Article 5. In the event of any Action in which the Indemnifying Party is not also named defendant, at the request of either the Indemnified Party or the Indemnifying Party, the parties will use commercially reasonable efforts to substitute the Indemnifying Party or its applicable Affiliate for the named defendant in the Action.

Section 26.02. *Calculation of Indemnification Amount.* Any indemnification amount pursuant to Section 5.02 or Section 5.03 shall be paid (i) net of any amounts actually recovered by the Indemnified Party under applicable Third Party insurance policies or from any other Third Party alleged to be responsible therefor, and (ii) taking into account any Tax Benefit allowable to the Indemnified Party (using the methodology set forth in Section [•] of the Tax Matters Agreement to determine the amount of any such Tax Benefit) and any Tax cost incurred by the Indemnified Party arising from the incurrence or payment of the relevant Liabilities. ADS and Loyalty Ventures agree that, for United States federal income tax purposes, any payment made pursuant to this Article 5 will be treated as provided under Section 12(b) of the Tax Matters Agreement. If the Indemnified Party receives any amounts under applicable Third Party insurance policies, or from any other Third Party alleged to be responsible for any Liabilities, subsequent to an indemnification payment by the Indemnifying Party in respect thereof, then such Indemnified Party shall promptly reimburse the Indemnifying Party for any payment made by such Indemnifying Party in respect thereof up to the amount received by the Indemnified Party from such Third Party insurance policy or Third Party, as applicable.

Section 26.03. *Contribution.* If for any reason the indemnification provided for in Section 5.02 or Section 5.03 is unavailable to any Indemnified Party, or insufficient to hold it harmless, then the Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of such Liabilities in such proportion as is appropriate to reflect the relative fault of the ADS Group, on the one hand, and the Loyalty Ventures Group, on the other hand, in connection with the conduct, statement or omission that resulted in such Liabilities. In case of any Liabilities arising out of or related to information contained in the Form 10 or any amendment thereof, the Information Statement (as amended or supplemented if Loyalty Ventures shall have furnished any amendments or supplements thereto), the Equity Compensation Registration Statement or any offering or marketing materials prepared in connection with the Loyalty Ventures Financing Arrangements, the relative fault of the ADS Group, on the one hand, and the Loyalty Ventures Group, on the other hand, shall be determined by reference to, among other things, whether the untrue statement or alleged untrue statement of a material fact or the omission or alleged omission of a material fact relates to information supplied by Loyalty Ventures or any member of its Group, on the one hand, or ADS or any member of its Group (but solely to the extent such information is set forth on Schedule 5.03(b)), on the other hand.

Section 26.04. *Non-Exclusivity of Remedies.* Subject to Section 5.01, the remedies provided for in this Article 5 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Party at law or in equity; *provided* that the procedures set forth in Sections 5.04 and 5.05 shall be the exclusive procedures governing any indemnity action brought under this Agreement.

Section 26.05. *Survival of Indemnities.* The rights and obligations of any Indemnified Party or Indemnifying Party under this Article 5 shall survive the sale or other transfer of any party of any of its assets, business or liabilities.

Section 26.06. *Ancillary Agreements.* If an indemnification claim is covered by the indemnification provisions of an Ancillary Agreement, the claim shall be made under the Ancillary Agreement to the extent applicable and the provisions thereof shall govern such claim. In no event shall any party be entitled to double recovery from the indemnification provisions of this Agreement and any Ancillary Agreement.

Article 27  
MISCELLANEOUS

Section 27.01. *Notices.* Any notice, instruction, direction or demand under the terms of this Agreement required to be in writing shall be duly given upon delivery, if delivered by hand, facsimile transmission, mail, or e-mail transmission to the following addresses:

If to ADS to:

Alliance Data Systems Corporation  
7500 Dallas Parkway, Suite 700  
Plano, Texas 75024  
Attn: General Counsel  
Email: [generalcounsel@alliancedata.com](mailto:generalcounsel@alliancedata.com)

with a copy to:

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attn: Louis Goldberg  
Email: [louis.goldberg@davispolk.com](mailto:louis.goldberg@davispolk.com)

If to Loyalty Ventures to:

Loyalty Ventures Inc.  
[7500 Dallas Parkway, Suite 700  
Plano, Texas 75024  
Attn: General Counsel  
Email: [generalcounsel@alliancedata.com](mailto:generalcounsel@alliancedata.com)]

with a copy to:

Davis Polk & Wardwell LLP

450 Lexington Avenue  
New York, New York 10017  
Attn: Louis Goldberg  
Email: louis.goldberg@davispolk.com

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other party hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 27.02. *Amendments; No Waivers.* Article 28 Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by ADS and Loyalty Ventures, or in the case of a waiver, by the party against whom the waiver is to be effective.

(a) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 28.02. *Expenses.* ADS and Loyalty Ventures shall each bear the costs and expenses incurred or paid in connection with the Restructuring, the Distribution and any other related transaction, as applicable, set forth below their respective names on Schedule 6.03.<sup>18</sup> All other third-party fees, costs and expenses paid or incurred in connection with the foregoing (except as specifically allocated pursuant to the terms of this Agreement or any Ancillary Agreement) will be paid by the party incurring such fees or expenses, whether or not the Distribution occurs, or as otherwise agreed by the parties in writing.

Section 28.03. *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; *provided* that neither party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other party hereto. If any party or any of its successors or permitted assigns (i) shall consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions

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<sup>18</sup> **Note to Draft:** To discuss allocation of expenses.



shall be made so that the successors and assigns of such party shall assume all of the obligations of such party under the Distribution Documents.

Section 28.04. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such state.

Section 28.05. *Counterparts; Effectiveness; Third-Party Beneficiaries.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. The words “execution,” “signed,” “signature,” and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement shall include images of manually executed signatures transmitted by facsimile or other electronic format (including “pdf”, “tif” or “jpg”) and other electronic signatures (including DocuSign and AdobeSign). The use of electronic signatures and electronic records (including any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by Applicable Law. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). Except for Section 4.07 and the indemnification and release provisions of Article 5, neither this Agreement nor any provision hereof is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto and their respective successors and permitted assigns.

Section 28.06. *Entire Agreement.* This Agreement and the other Distribution Documents constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter hereof and thereof. No representation, inducement, promise, understanding, condition or warranty not set forth herein or in the other Distribution Documents has been made or relied upon by any party hereto or any member of their Group with respect to the transactions contemplated by the Distribution Documents. Without limiting Section 5.09 and subject to Section 6.08, in the event and to the extent that there shall be a conflict between the provisions of this Agreement and the provisions of any Ancillary Agreement, the Ancillary Agreement shall control with respect to the subject matter thereof, and this Agreement shall control with respect to all other matters; *provided*, that except as provided for in Section 2.04 to extent that there shall be a conflict between the provisions of this Agreement and the provisions of any Restructuring Agreement, this Agreement shall control with respect to all matters.

Section 28.07. *Tax and Employee Matters.* Except as otherwise expressly provided herein, this Agreement shall not govern (i) Tax matters (including any administrative, procedural and related matters thereto), which shall be exclusively governed by the Tax Matters Agreement and the Employee Matters Agreement or (ii) employee matters (including any labor, compensation plans, benefit plans and related matters thereto), which shall be exclusively governed by the Employee Matters Agreement. For the avoidance of doubt, to the extent of any inconsistency between this Agreement and either of the Tax Matters Agreement or Employee Matters Agreement, the terms of the Tax Matters Agreement or Employee Matters Agreement, as the case may be, shall govern.

Section 28.08. *Jurisdiction.* The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the Chancery Court of the State of Delaware and any state appellate court therefrom within the State of Delaware (or if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any federal or state court sitting in the State of Delaware and any federal or state appellate court therefrom), and each of the parties hereby irrevocably consents to the exclusive jurisdiction of such courts in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or outside of the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 6.01 shall be deemed effective service of process on such party.

Section 28.09. *WAIVER OF JURY TRIAL.* EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 28.10. *Termination.* Notwithstanding any provision of this Agreement to the contrary, the Board of Directors of ADS may, in its sole discretion and without the approval of Loyalty Ventures or any other Person, at any time prior to the Distribution terminate this Agreement and/or abandon the Distribution, whether or not it has theretofore approved this Agreement and/or the Distribution. In the event this Agreement is terminated pursuant to the preceding sentence, this Agreement shall forthwith become void and neither party nor any of its directors or officers shall have any liability or further obligation to the other party or any other Person by reason of this Agreement.

Section 28.11. *Severability.* If any one or more of the provisions contained in this Agreement should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a declaration, the parties shall modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner so that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 28.12. *Survival.* All covenants and agreements of the parties contained in this Agreement shall survive the Distribution Date indefinitely, unless a specific survival or other applicable period is expressly set forth herein.

Section 28.13. *Captions.* The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

Section 28.14. *Interpretation.* In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of its authorship of any of the provisions of this Agreement.

Section 28.15. *Specific Performance.* Each party to this Agreement acknowledges and agrees that damages for a breach or threatened breach of any of the provisions of this Agreement would be inadequate and irreparable harm would occur. In recognition of this fact, each party agrees that, if there is a breach or threatened breach, in addition to any damages, the other nonbreaching party to this Agreement, without posting any bond, shall be entitled to seek and obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction, attachment, or any other equitable remedy which may then be available to obligate the breaching party (i) to perform its obligations under this Agreement or (ii) if the breaching party is unable, for whatever reason, to perform those obligations, to take any other actions as are necessary, advisable or appropriate to give the other party to this Agreement the economic effect which comes as close as possible to the performance of those obligations (including transferring, or granting liens on, the assets of the breaching party to secure the performance by the breaching party of those obligations).

Section 28.16. *Performance.* Each party shall cause to be performed all actions, agreements and obligations set forth herein to be performed by any member of such party's Group.

Section 28.17. *Confidential Supervisory Information.* Notwithstanding any other provision of this Agreement, no disclosure, representation or warranty shall be made (or other action taken) pursuant to this Agreement that results in the disclosure of confidential supervisory information (including confidential supervisory information as identified in 12 C.F.R. § 309.5(g)(8)) of a Governmental Authority by any party to this Agreement to the extent prohibited by applicable law. To the extent legally permissible, appropriate substitute disclosures or actions, which may include the disclosure of underlying facts or circumstances that do not themselves constitute confidential supervisory information, shall be made or taken under circumstances in which the limitations of the preceding sentence apply.

*[Remainder of page intentionally left blank]*

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

**ALLIANCE DATA SYSTEMS  
CORPORATION**

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

**LOYALTY VENTURES INC.**

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

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LOYALTYONE, CO.

APPLICANT

Court File No. CV-23-00707017-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERICAL LIST**  
Proceeding Commenced at Toronto

**AFFIDAVIT OF JOSEPH L. MOTES III**

**STIKEMAN ELLIOTT LLP**

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**Lawyers for Bread Financial Holdings Inc.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF LOYALTYONE, CO.

APPLICANT

**AFFIDAVIT OF A. SCOTT DAVIDSON**  
(affirmed April 15, 2024)

I, A. Scott Davidson, of the City of Toronto in the Province of Ontario AFFIRM AND SAY:

1. I am a managing director at Kroll Canada Limited with over 25 years of professional experience in business valuations and financial advisory services.
2. I, and my colleague Kathryn Gosnell, were retained by Stikeman Elliott LLP to provide an expert opinion in this matter on behalf of Bread Financial Holdings, Inc., which we delivered on February 14, 2024 (the "**Davidson and Gosnell Report**"). On March 13, 2024, Andrew Harington of the Brattle Group, Inc. delivered a report responding to the Davidson and Gosnell Report on behalf of LoyaltyOne, Co (the "**Harington Report**").
3. We have been asked by Stikeman Elliott LLP to review and reply to the Harington Report. Attached as **Exhibit "A"** to this affidavit is a copy of the Reply Expert Report of A. Scott Davidson and Kathryn Gosnell dated April 15, 2024 (the "**Reply Report**")
4. The information and documents we relied upon in reaching the conclusions set out in the Reply Report are listed in Appendix C of the Davidson and Gosnell Report and Appendix B of the Reply Report.

5. Ms. Gosnell and I have completed the Reply Report in compliance with our duties as an expert to the Ontario Superior Court of Justice. Executed copies of our Form 53 - Acknowledgment of Expert's Duty in this matter are included as Appendix B to the Davidson and Gosnell Report.

**AFFIRMED** remotely by A. Scott Davidson, stated as being in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 15<sup>th</sup> day of April, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



DocuSigned by:  


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Robert J Reid LSO#88760P  
Commissioner for Taking Affidavits

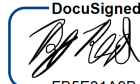
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A. Scott Davidson



This is Exhibit "A" referred to in the Affidavit of A. Scott Davidson affirmed by A. Scott Davidson of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 15 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  
  
EB5E31A9B41548B

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*Commissioner for Taking Affidavits (or as may be)*

**RJ REID**



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# **Loyalty Ventures Inc. and LoyaltyOne, Co.**

April 15, 2024

Expert Report in Reply to  
The Brattle Group Report  
dated March 13, 2024

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PRIVILEGED & CONFIDENTIAL

April 15, 2024

Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

Attention: Mr. Eliot Kolers

Dear Mr. Kolers:

**Re: Loyalty Ventures Inc. and LoyaltyOne Co.  
Expert Report in Reply to The Brattle Group Report Concerning  
Fairness and Solvency Issues  
CV-23-00696017-00CL**

## 1.0 Introduction

- 1.1 Stikeman Elliott LLP (“**Stikeman**” or “**you**”) has retained Kroll Canada Limited (“**Kroll**”), as independent and objective experts in the fields of business valuation, accounting, corporate financial advisory and related financial analysis, on behalf of your client, Bread Financial Holdings Inc. (“**Bread**”), formerly known as Alliance Data Systems Corporation (“**ADS**”)<sup>1</sup>, to assist in the above noted Companies’ Creditors Arrangement Act (“**CCAA**”) matter.
- 1.2 In connection with the above you have asked us to:
- Review the report entitled “Reply Expert Report” dated March 13, 2024 by The Brattle Group, Inc. (“**Brattle**”; the “**Brattle Report**”), attached to Mr. Andrew Harington’s affidavit of the same date; and
  - To the extent that we disagree with the analysis, comments and conclusions in the Brattle Report, provide you with this report (the “**Kroll Reply to Brattle Report**” or the “**Second Kroll Report**”) setting out observations, comments and critique of the Brattle Report.
- 1.3 We previously prepared a report in this matter entitled “Expert Report Concerning Fairness and Solvency Issues” dated February 14, 2024 (the “**Kroll Report**” or the “**First Kroll Report**”).

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<sup>1</sup> Prior to March 23, 2022.

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- 1.4 Our earlier report should be read in conjunction with this report. Terms used in that report are adopted herein. Similarly, other matters such as the background to this matter and other information are not repeated herein but are all adopted by reference.
  - 1.5 All amounts herein are expressed in United States Dollars (“\$”, or “USD”), unless otherwise noted.
  - 1.6 We understand that this report will be used as the basis for expert evidence at the hearing of the merits of this matter.
  - 1.7 This report constitutes an Expert Report under the standards of the Canadian Institute of Chartered Business Valuators (the “CICBV” or “CBV Institute”).

## 2.0 Summary of Kroll Conclusions in this Second Kroll Report

- 2.1 Based upon our review and analysis of the Brattle Report, the scope of which is set out in Appendix B, and with the assumptions, qualification (see Section 4.0), restrictions and limitations set out herein, we disagree with a number of the critiques, analyses and conclusions in the Brattle Report.
- 2.2 More specifically:

**a) No Change in Our First Kroll Report Conclusion; and LVI is Solvent Even Under Brattle’s LoyaltyOne Inputs**

Firstly, nothing in the Brattle Report causes us to change our conclusion in the First Kroll Report that the appropriate analysis in this matter is to assess fairness and solvency at the LVI level (as opposed to the LoyaltyOne level).

In this regard, the guarantee of LVI’s debt obligation was effectively only a contingency for LoyaltyOne as at the Spin Date that was dependent, in part, on the expected go-forward cash projection for BrandLoyalty and cannot be assessed without accounting for this dependency. This both:

- Confirms our response to Question #1 in the First Kroll Report that it is analysis at the LVI level that is appropriate; and
- Highlights that a scenario in which the entire debt burden is considered to rest with LoyaltyOne is the most punitive and, in our view, artificial.

Furthermore, though we disagree with Brattle’s adjustments for LoyaltyOne’s Spin Date cash flow projections at the Spin Date, LVI is solvent even if Brattle’s

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adjusted LoyaltyOne cash flow projections (which, as discussed below, assume a 100% certainty that Sobeys would exit the Air Miles program) are adopted.

We address this further in Section 7.0 (and Schedules 1, 2 and 3) below in this report.

**b) A Probability-weighted Solvency Analysis is Appropriate; Not Brattle’s Single-scenario Sobeys Exit Analysis**

In contrast to Brattle’s single-scenario LoyaltyOne solvency analysis based on the assumption that at the Spin Date there was 100% certainty of Sobeys departure from the Air Miles program, it would be appropriate to use a probability-weighted analysis for the “at risk” projected Sobeys cash flows if there was a possibility of a Sobeys exit at the Spin Date.

For greater certainty, this report provides the proper approach if there was a possibility of a Sobeys exit at the Spin Date but makes no determination as to whether or not there was such a possibility, or its likelihood if there was.

As at the Spin Date the then-future outcome of the Sobeys-related portion of the cash flows included in the Spin Date Projections could be seen to be binary: either those cash flows would ultimately be realized (as contemplated in the Spin Date Projections) or, if Sobeys exited, they would not be realized at all (as Brattle has modelled).

However, in the normal course in prospective financial analysis, the appropriate method is not to simply choose one of those potential outcomes (as Brattle has done). Instead, the appropriate method for cashflow projections is to apply probabilities to the various potential outcomes to quantify what might be referred to as the “expected value” arising from the various possible outcomes and the likelihood of each occurring. That expected value, being a probability-weighted measure, is the best measure of the financial outlook within the broad range of possible outcomes.

Applying that approach to the portion of the Spin Date Projections that represent the “at risk” projected Sobeys cash flows yields the best, probability-weighted measure of LoyaltyOne’s expected future financial performance at the Spin Date having due regard for the possibility of a future Sobeys exit.

**c) Kroll’s Disagreements with Brattle’s Inputs for LoyaltyOne Projected Cash Flows at the Spin Date**

We disagree with a number of the inputs Brattle uses in its LoyaltyOne solvency analysis.

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Those disagreements stem from our disagreements with adjustments that Brattle made to the LoyaltyOne cash flow projections that we used in our First Kroll Report.

Adjusting for those disagreements increases the projected cash flows of LoyaltyOne from the levels posited by Brattle.

We address this further in Section 8.0 below in this report.

**d) Having Corrected for Our Disagreements with Brattle's Adjustments, LoyaltyOne was Solvent on a Probability-weighted Analysis Even If it was More Likely Than Not that Sobeys Would Exit**

Our calculations under both the Projected Cash Flow Solvency Test and the Net Realizable Value Solvency Test show that LoyaltyOne was solvent at the Spin Date even if it was more likely than not that Sobeys would exit.

Our calculations:

- Start with the Brattle cash flow projections;
- Adjust those projections to incorporate our adjustments for some, but not all, of our disagreements with certain of those Brattle inputs;
- Use a probability-weighting approach to incorporate the financial effect of a Sobeys exit; and
- Show that LoyaltyOne is solvent even at exit probabilities at and well above 50%.

We address this further in Section 9.0 (and Schedules 4, 5 and 6) below in this report.

- 2.3 Set out immediately below is a table summarizing the probability percentages relating to the possibility of a Sobeys exit under each of the various LoyaltyOne solvency tests under the analyses in “(d)” above.<sup>2</sup> Those percentages (which we sometimes refer to herein as “**Sobeys Exit Percentages**”) are at or well in excess of 50%. Also shown are the relevant percentages for LVI, including when Brattle’s LoyaltyOne inputs are used, under the analyses in “(a)” above. For greater certainty:

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<sup>2</sup> “Kroll Inputs” in the table refers to the Brattle inputs but incorporating our adjustments for our disagreements with certain of those inputs.



- As stated in the title of the table, the Sobeys Exit Percentages are the percentage probabilities (as at the Spin Date) of a Sobeys exit, at which LoyaltyOne and LVI are still solvent. Hence there is also solvency at any exit probability below the indicated percentage amount;
- These Sobeys Exit Percentages can also be thought in the inverse. For example, a 75% probability shown in the table is the same as there being solvency if there is only as low as a 25% probability of Sobeys remaining as an Air Miles sponsor/customer; and
- As can be seen in the table, LVI is solvent under all analyses even if there is a 100% probability of a Sobeys exit (i.e., even if there is no probability of Sobeys remaining in the Air Miles program).

Summary of Percentages of Probability of a Sobeys Exit At or Below Which LoyaltyOne and LVI are Still Solvent					
	LoyaltyOne		LVI		
	Reference	Kroll Inputs	Reference	Brattle Inputs	Kroll Inputs
<u>Projected Cash Flow Test</u>	Sch. 4	75%	Sch. 1	100%	↑
<u>Net Realizable Value Test</u>					
Discounted cash flow approach	Sch. 5	80%*	Sch. 2	100%	↑
Comparable companies approach	Sch. 6	65%**	Sch. 3	100%	↑
Precedent transactions approach	Sch. 6	50%**	Sch. 3	100%	↑
*Based on Low Scenario discount rate from the First Kroll Report. Had the High Scenario or midpoint been used, the 80% would be even higher.					
**If multiples from the First Kroll Report were used, the percentages would be 85% and 75%, respectively.					

- 2.4 Our observations, comments, analyses, critiques and conclusions are discussed in further detail in the referenced sections below in this report (in the same order as they are listed above).
- 2.5 For brevity and to focus this reply on more material issues, our responses in this Second Kroll Report have been limited only to selected significant matters raised in the Brattle Report. Our silence in this report in respect of other matters raised in the Brattle Report should not be misinterpreted as our agreement with Brattle's positions or reasoning in respect of those other matters.

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## 3.0 Scope of Review

- 3.1 In completing our work in this matter, we reviewed and relied upon information contained in the items listed in Appendix B.
- 3.2 During our review, while relying on the above-noted financial and other information, we have not conducted an audit of the financial affairs of the companies.
- 3.3 Similarly, except to the extent described herein, we have not sought external verification of the financial and other information set out in our Scope of Review.

## 4.0 Qualification: Scope Limitation

- 4.1 As in the First Kroll Report, our conclusions are qualified because we did not have access to management of LoyaltyOne or LVI.<sup>3</sup> We were therefore unable to discuss with management matters addressed in our reports including, for example, details of the financial projections in effect at the Spin Date and, in particular in respect of this Second Kroll Report, issues around the likelihood, timing and potential financial consequences of a possible Sobeys exit from the Air Miles program as at the Spin Date.

## 5.0 Background and Related

- 5.1 Background and other matters are set out in the First Kroll Report are not repeated here.

## 6.0 Overview of the Brattle Report

- 6.1 For brevity, the overview of the Brattle Report immediately below is only a high-level summary and not meant to address all elements of the Brattle Report or the analysis and conclusions therein.

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<sup>3</sup> Though our scope of review did include Motes Affidavit. Mr. Motes was the sole director of LVI and LoyaltyOne before the Spin Transaction and remains the General Counsel, Executive Vice President, Chief Administrative Officer and Secretary of Bread.

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### Brattle's 100% Certainty Paradigm that Sobeys Will Exit

- 6.2 The main focus of the Brattle Report is the solvency of LoyaltyOne as at the Spin Date.
- 6.3 Based primarily on an instruction from retaining counsel to assume that the loss of Sobeys as a sponsor of the Air Miles program was “reasonably foreseeable”<sup>4</sup> at the Spin Date, Brattle concludes that LoyaltyOne was not solvent at the Spin Date.
- 6.4 We observe that over the course of its report:
- Brattle variously describes the likelihood, as at the Spin Date, of a Sobeys exit as “reasonably foreseeable”<sup>5</sup> and “foreseeable”<sup>6</sup>; and
  - In that regard, what Brattle begins as “I am instructed to assume”<sup>7</sup> morphs to Brattle’s “in my opinion”<sup>8</sup> and then ultimately gets recharacterized by Brattle as a “fact”.<sup>9</sup>
- 6.5 A fundamental component of Brattle’s analysis of LoyaltyOne’s solvency at the Spin Date is the financial impact of a possible Sobeys departure from the program as set out in the document prepared in September 2021 referred to as the “**LoyaltyOne Sobeys Loss Analysis**”, as appended at Exhibit T to the recent affidavit of Cynthia Hageman affirmed March 8, 2024 (the “**March 2024 Hageman Affidavit**”)<sup>10</sup>.
- 6.6 Kroll was not aware of the LoyaltyOne Sobeys Loss Analysis at the time we prepared the First Kroll Report; we saw it for the first time on receipt of the March 2024 Hageman Affidavit. As Ms. Hageman’s Exhibit T does not include the underlying excel workbook of the LoyaltyOne Sobeys Loss Analysis, we have been unable to verify its calculations or methodology.
- 6.7 At pages 48 to 57 of the Brattle Report (and in related schedules), Brattle describes various calculations to quantify the possible financial impact of a possible Sobeys departure in some detail. However, Brattle’s calculations in this regard effectively emanate from the LoyaltyOne Sobeys Loss Analysis document.
- 6.8 Furthermore, and importantly, all of Brattle’s analyses concerning the financial impact of a Sobeys exit are founded on it being a 100% certainty as at the Spin

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<sup>4</sup> Brattle Report, page 4, paragraph 10.

<sup>5</sup> Brattle Report, page 4, paragraph 10.

<sup>6</sup> For example, see Brattle Report, page 8, paragraph 25.

<sup>7</sup> Brattle Report, page 4, paragraph 10.

<sup>8</sup> See, for example, Brattle Report, page 10, paragraph 31.

<sup>9</sup> Brattle Report, page 39, paragraph 103.

<sup>10</sup> Brattle acknowledges this at page 53, paragraph 141 of the Brattle Report.

Date that Sobeys would exit the program (we refer to this as “**Brattle’s 100% Certainty Paradigm**”). Specifically:

- Brattle does not provide any probability overlay or sensitivity analyses in that regard. For example, Brattle does not address or canvass the financial impact of any possibility or probability that a Sobeys exit was less than a 100% certainty as at the Spin Date<sup>11</sup>; and
- Similarly, Brattle does not address or canvass the financial impact of any possibility or probability that a network effect on a Sobeys exit was less than a 100% certainty as at the Spin Date<sup>12</sup>.

### Three Questions Put to Brattle

Kroll Part A – Question 1 & 2: Should fairness be considered only at the LoyaltyOne level? If yes, was the Spin Transaction, including the TMA, financially fair from the perspective of LVI?

6.9 Brattle states that the TMA must be reviewed from the perspective of LoyaltyOne.<sup>13</sup>

Kroll Part B – Question 3: Were LVI and LoyaltyOne solvent as at the Spin Date?<sup>14</sup>

6.10 Brattle was instructed that the solvency of LVI was not relevant, and Brattle indicates that the value of BrandLoyalty had no effect on the solvency of LoyaltyOne.<sup>15</sup>

6.11 Brattle concludes that LoyaltyOne’s insolvency test must include all of LVI’s debt<sup>16</sup> and that LoyaltyOne was insolvent at the Spin Date.<sup>17</sup>

### Brattle’s Cash Flow Solvency Test

6.12 Brattle uses the same projections used in the First Kroll Report as a starting point.<sup>18</sup> Brattle then makes the following adjustments to LoyaltyOne’s projected cash flows (adjustments 1-7 are on a pretax basis):

<sup>11</sup> Even in circumstances of Brattle’s explicit reference to and quoting of Shannon Pratt concerning analyses also being “...performed on what is often referred to as a sensitivity case” (Brattle Report, page 75, paragraph 197).

<sup>12</sup> Brattle does have regard to a range of potential financial impact as illustrated in the LoyaltyOne Sobeys Loss Analysis source document, and for example, in respect of the impact of a Sobeys loss on collectors, selects the “mid-impact scenario” (Brattle Report, page 57, paragraph 154).

<sup>13</sup> Brattle Report, page 30.

<sup>14</sup> For brevity, the Brattle Report’s response to Kroll Part B – Question 4 on events post spin which caused insolvency isn’t summarized as its largely covered elsewhere in the summary.

<sup>15</sup> Brattle Report, pages 35 to 36.

<sup>16</sup> Brattle Report, page 37.

<sup>17</sup> Brattle Report, pages 75 and 103.

<sup>18</sup> Brattle Report, page 41.

- Adj. 1: LVI's corporate costs are allocated between LoyaltyOne (~\$10 million/year) and BrandLoyalty (~\$5 million/year) and deducted from LoyaltyOne's cash flows.<sup>19</sup>
- Adj. 2 - 4: Brattle was instructed that Sobeys' departure from Air Miles was reasonably foreseeable at the Spin Date and adjusted the projected cash flows for the following:<sup>20</sup>
  - Adj 2: The contribution projected to be earned from Sobeys directly is removed [REDACTED].<sup>21</sup>
  - Adj 3: The portion of Air Miles' collectors forecasted to be lost if Sobeys departs is projected, reducing cash flow by [REDACTED].<sup>22</sup>
  - Adj 4: The actual impact of the LoyaltyOne renegotiated contract with BMO in Fall 2022 on LoyaltyOne's contribution margin is deducted [REDACTED].<sup>23</sup>
- Adj. 6: The commitment fee on LVI's revolver of \$0.6 million per year is deducted.<sup>24</sup>
- Adj. 7: The Canada Revenue Agency ("CRA") tax litigation cost of \$3 million is deducted in 2025.<sup>25</sup>
- Adj. 9 & 11: As Brattle's solvency test has LoyaltyOne paying dividends to LVI to fund the debt obligations, Kroll's LoyaltyOne tax benefits on deductions of interest payments are reversed (\$9 million/year) and withholding tax is deducted (\$4 million/year).<sup>26</sup>

6.13 The overall effect of Brattle's adjustments is that LoyaltyOne's projected annual cash flows are reduced from ~\$15 million per year to negative ~\$50 million per year, and its cash balance drops from \$66 million in 2021 to negative \$156 million in 2026. As a result, Brattle concludes LoyaltyOne is insolvent.<sup>27</sup>

#### Brattle's Balance Sheet Test

6.14 Brattle takes the four net realizable value approaches from the First Kroll Report, adjusts the inputs, and compares the adjusted results to the \$675 million amount

<sup>19</sup> Brattle Report, pages 45 to 47.

<sup>20</sup> Brattle Report, page 4.

<sup>21</sup> Brattle Report, pages 48 to 52.

<sup>22</sup> Brattle Report, pages 52 to 58.

<sup>23</sup> Brattle Report, pages 58 to 62.

<sup>24</sup> Brattle Report, pages 62 to 64.

<sup>25</sup> Brattle Report, pages 64 to 65.

<sup>26</sup> Brattle Report, pages 66, 67, 72 and 73.

<sup>27</sup> Brattle Report, pages 73 to 75.

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of LVI's debt. Brattle concludes LoyaltyOne's value under each is below \$675 million and that LoyaltyOne is therefore insolvent.<sup>28</sup>

6.15 The adjustments made to each include:

- The indicated values from the offers from Project Angus are reduced for the Sobeys related adjustments (adj's 2-4 above).<sup>29</sup> Brattle also uses a different bidder set from the First Kroll Report to adjust the multiples down.<sup>30</sup>
- In the discounted cash flow approach, cash flows are reduced for the Sobeys and other adjustments (adj's 1-4, 6 above). The WACC used is increased to account for risks identified, primarily related to Sobeys.<sup>31</sup>
- In the comparable company and precedent transaction approaches, EBITDA is reduced for the Sobeys and other adjustments (adj's 1-4, 6 above). The multiples used were also reduced on account of, amongst other things, LoyaltyOne's customer concentration.<sup>32</sup>

## 7.0 No Change to Our First Kroll Report Conclusion; and LVI is Solvent Even Under Brattle's LoyaltyOne Inputs

### **No Change to our First Kroll Report Conclusion: Review of Fairness and Solvency at the LVI Level is Appropriate**

- 7.1 Nothing in the Brattle Report causes us to change our conclusion to Question #1 in our First Kroll Report that the appropriate analysis for consideration of the Tax Matters Agreement is to assess fairness and solvency at the LVI level (as opposed to the LoyaltyOne level).
- 7.2 We disagree with Brattle's positions (be they by instruction or otherwise<sup>33</sup>) that neither of our two Part A Questions nor, to the extent that they relate to LVI (as opposed to LoyaltyOne), our two Part B Questions, and our responses thereto in the First Kroll Report, are relevant. We find it a shortcoming of the Brattle's report that no analysis at the LVI level was completed by Brattle.

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<sup>28</sup> Brattle Report, pages 76 to 103.

<sup>29</sup> Brattle Report, page 82.

<sup>30</sup> Brattle Report, pages 78 to 82.

<sup>31</sup> Brattle Report, pages 83 to 96

<sup>32</sup> Brattle Report, pages 96 to 103.

<sup>33</sup> At page 5, paragraph 11 of the Brattle Report, Brattle indicates that it was "instructed to assume" that neither the fairness of the Spin Transaction nor the solvency of LVI at the time of the Spin Transaction are relevant, among other things. Brattle nonetheless seemingly provides some limited commentary in respect of these issues, including a statement that "Kroll has not undertaken a solvency test of LoyaltyOne" (Brattle Report, page 30, paragraph 81). This is an error made by Brattle – we did do a LoyaltyOne solvency analysis. As to the balance of Brattle's limited commentary, we generally disagree and/or believe that the substantive issue is ultimately one for legal determination.

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7.3 For ease of reference, a summary of our conclusions from the First Kroll Report in respect of the questions posed in Part A, and our conclusions in respect of LVI regarding the Part B questions, is as follows:

- Part A Concerning Fairness and Consideration Given and Received:
  - Question #1 – The Tax Matters Agreement must be considered from the perspective of LVI, not just from a LoyaltyOne perspective;
  - Question #2 – The Spin Transaction, including the arrangement under the Tax Matters Agreement, was fair, from a financial point of view, to LVI as at the Spin Date and the consideration received by LVI was not conspicuously less than that given to ADS;
- Part B Concerning Fairness and Consideration Given and Received:
  - Question #3 (in part) – LVI was solvent as at the November 5, 2021 Spin Date; and
  - Question #4 (in part) – Events that occurred in the time period from the Spin Date to the CCAA Date negatively impacted the solvency of LVI.

7.4 We do not repeat here the details of those Questions or our responses thereto. Instead, we refer the reader to the First Kroll Report.

7.5 Immediately below, however, we provide additional commentary on the problems with Brattle's position that all of the LVI debt service obligation must be applied in its entirety to LoyaltyOne in any LoyaltyOne cash flow solvency analysis and how those problems confirm our conclusion in response to Question #1 in the First Kroll Report that the appropriate analysis for consideration of the Tax Matters Agreement is at the LVI level.

7.6 In addition, we observe that LVI is solvent even under Brattle's LoyaltyOne inputs.

**Applying All Debt to LoyaltyOne is Artificial and Punitive to the LoyaltyOne Solvency Analysis and Confirms Our Response to Question #1 in the First Kroll Report**

7.7 In our LoyaltyOne cash flow test solvency calculations in response to Question #3 in the First Kroll Report, we applied all of the debt service (both principal and interest) to LoyaltyOne.

7.8 We did so:

- To present only the most conservative downside (or worst case) analysis of LoyaltyOne's solvency; and

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- In circumstances in which our opinion (reflected in our response to Question #1) is that the Tax Matters Agreement must be considered from the perspective of LVI (i.e., not just at the LoyaltyOne level).

7.9 In contrast, Brattle's position is that all of the LVI debt service obligation must be applied in its entirety to LoyaltyOne in any LoyaltyOne cash flow solvency analysis.<sup>34</sup> Brattle does so in circumstances in which Brattle's position is that no analysis of any sort at the LVI level is relevant in this matter.

7.10 We observe and comment as follows:

- We believe that the debt could never have been raised by LoyaltyOne directly. Debt of that magnitude would only be put in place in the circumstances of it relating to and being "backed" by both operating businesses – LoyaltyOne and BrandLoyalty. Hence the debt sitting in LVI in the first instance.
- As such, that the debt was guaranteed by LoyaltyOne is not because it was "LoyaltyOne's debt" but rather to provide security for the lenders in a downside scenario where repayment by LVI might be compromised.
- In our view this demonstrates the business and financial logic of considering the Spin Transaction (inclusive of the TMA) in the aggregate, thus confirming our conclusion to the same effect in response to Question #1 in the First Kroll Report.
- In our view, from a business and financial perspective, the above also "speaks to" the issue of burdening LoyaltyOne with the entirety of the debt service amounts in any stand-alone LoyaltyOne solvency analysis. The guarantee of the debt obligation is effectively only a contingency for LoyaltyOne as at the Spin Date, with that contingency being connected, in part, to the expected go-forward cash projection for BrandLoyalty.
- The debt obligation would effectively be "triple counted" if one were to apply it in its entirety in separate solvency analyses of each of a parent company and its two subsidiaries that had guaranteed the parent's debt. Hypothetically, the separate solvency calculations could deem one or the other of the subsidiaries to be insolvent even though the parent was solvent; an incoherent result.

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<sup>34</sup> Seemingly in part, if not in whole, based on an instruction to Brattle by retaining counsel to assume that LoyaltyOne could not subrogate any obligation for the debt service to BrandLoyalty (see Brattle Report, page 5, paragraph 11, assumption c).



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- Setting aside how, at law, the nature of the guarantee may (or may not) dictate the proper LoyaltyOne solvency analysis,<sup>35</sup> and with consideration to all of the above, we consider it to be artificial to anchor a LoyaltyOne solvency analysis on only the single scenario in which LoyaltyOne is burdened with the entirety of the debt obligation unless it is recognized that that scenario is the most punitive. Other scenarios where LoyaltyOne's contingent guarantee of the debt burden is measured at less than a 100% burden of the debt amount are much more relevant and likely to happen.

### **LVI is Solvent Even Under Brattle's LoyaltyOne Inputs**

#### Overview

- 7.11 Even if Brattle's 100% Certainty Paradigm is accepted, and if all of Brattle's adjustments to our LoyaltyOne solvency analysis were accepted (which we do not, as discussed elsewhere herein), then on Brattle's own analysis LVI remains solvent under all solvency tests at the Spin Date.
- 7.12 The reason that LVI is solvent at the Spin Date, even under lower cash flows for LoyaltyOne that reflect all of Brattle's adjustments (and Brattle's 100% Certainty Paradigm), is that LVI still had the BrandLoyalty cash flows expected at the Spin Date, and those (in combination with Brattle's suggested cash flows from LoyaltyOne) are sufficient to service the entirety of the LVI debt.<sup>36</sup>
- 7.13 To the extent that the probability of a Sobeys exit is found to be less than 100% then the projected cash flows of LoyaltyOne and, correspondingly those of LVI, are increased such that the LVI solvency conclusion is only further reinforced.
- 7.14 Similarly, to the extent that our disagreements with the Brattle inputs increase the projected cash flows and EBITDA of LoyaltyOne, they correspondingly also increase the projected cash flows and EBITDA of LVI. And, as LVI is already solvent even under the Brattle inputs, LVI's solvency is further enhanced with our adjustments for our disagreements also factored into that analysis.

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<sup>35</sup> We provide this commentary only from a business and financial perspective and make no comment as to how, at law, the nature of the guarantee may dictate the proper LoyaltyOne solvency analysis. We understand that to be a matter for legal determination.

<sup>36</sup> Brattle has presented no revised cash flow projections for BrandLoyalty or LVI as at the Spin Date. Accordingly, the same BrandLoyalty cash flows used in our LVI solvency analysis in response to Question #3 in our First Kroll Report, are also properly used in this analysis herein.

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Projected Cash Flow Test

- 7.15 Schedule 1 shows the details of our calculations of LVI's Projected Cash Flow Test using Brattle's inputs on the above basis including the impact of Brattle's 100% Certainty Paradigm.
- 7.16 As can be seen on Schedule 1, LVI is projected to be able to meet its financial obligations as they come due each year over the projection period to 2026. The cash flows projected for 2026 are meaningful and would be expected to continue at or above that level beyond 2026.
- 7.17 Just as we did above for the Projected Cash Flow Test of solvency, we also undertook similar analyses for the Net Realizable Value Test of solvency, using both the Earnings Based Approach (Discounted Cash Flow) and Market Approaches (Somewhat Comparable Companies and Precedent Transactions). These analyses are discussed immediately below.

Net Realizable Value Test: Discounted Cash Flow

- 7.18 As with the Projected Cash Flow test above, even if Brattle's 100% Certainty Paradigm is accepted, and if all of Brattle's adjustments to our LoyaltyOne solvency analysis were accepted, then on Brattle's own analysis LVI remains solvent at the Spin Date under the Net Realizable Value Test using Discounted Cash Flow.
- 7.19 Again, this is largely because LVI still had the BrandLoyalty cash flows expected at the Spin Date, in combination with Brattle's suggested cash flows from LoyaltyOne,
- 7.20 Schedule 2 shows our calculations.
- 7.21 The resulting DCF value exceeds the \$675 million of financial obligations such that the Net Realizable Value test is passed.

Net Realizable Value Test: Comparable Companies and Precedent Transactions

- 7.22 As with the above, even if Brattle's 100% Certainty Paradigm is accepted, and if all of Brattle's adjustments to our LoyaltyOne solvency analysis were accepted (which we do not), then on Brattle's own analysis LVI remains solvent at the Spin Date under the Net Realizable Value Test using both Comparable Companies and Precedent Transactions.
- 7.23 Schedule 3 shows our calculations.
- 7.24 The resulting value exceeds the \$675 million of financial obligations such that the Net Realizable Value test is passed.

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## 8.0 Kroll's Disagreements with Brattle's Inputs for LoyaltyOne Projected Cash Flows at the Spin Date

### Overview

- 8.1 We identified the need to adjust for the following Brattle inputs with which we disagree (either in their entirety or only with respect to quantum):
- Interest deductibility for income tax purposes by LoyaltyOne;
  - Deduction of withholding taxes;
  - CRA litigation costs;
  - Quantum of LoyaltyOne stand-alone costs; and
  - Additional items that we are unable to quantify.
- 8.2 In our calculations of the solvency of LoyaltyOne addressed in the next section of this report we incorporated adjustments for these specific inputs.
- 8.3 In the balance of this section, we discuss specifics of each of our adjustments/disagreements and identify the additional items that we are unable to quantify but which should require changes to the Brattle inputs.

### Interest Deductibility

- 8.4 In our cash flow analysis in the First Kroll Report, we reduced LoyaltyOne's income taxes in the projection period to give effect to the tax deductibility of LoyaltyOne's payment of interest on the LVI debt pursuant to the guarantee. This had a positive effect on projected cash flows because less income tax was projected to be paid.
- 8.5 Brattle modelled it differently, effectively saying that there would be no interest deduction for tax purposes for LoyaltyOne even if LoyaltyOne was required to service the debt. We believe that Brattle did so because Brattle assumed that the flow of funds would be from LoyaltyOne to LVI by way of dividends (which would also attract withholding taxes and thereby further reduce cash flows – see further below) and then LVI would, in turn, service the debt obligation from the net proceeds of the dividends that LVI received from LoyaltyOne.
- 8.6 You have instructed us (and, though we believe it to be a matter for legal determination, it seems reasonable to us for purposes of the LoyaltyOne solvency test analysis herein) that the flow of funds contemplated by Brattle is not consistent with the flow of funds that would arise in the circumstance of LoyaltyOne being called upon under the debt guarantee.

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- 8.7 Instead, LoyaltyOne would only have an obligation in respect of the guarantee of the debt if LVI were not able to pay. In those circumstances, LoyaltyOne would pay the lenders directly under the guarantee (i.e., the lenders would be looking directly to LoyaltyOne as guarantor).
- 8.8 You have further instructed us<sup>37</sup> to assume that it would likely be possible to structure those arrangements such that LoyaltyOne would, for its own income tax purposes, obtain a deduction for tax purposes of an amount equal to at least some, if not all, of the interest portion of the guarantee payments that it made. On that basis, whereas Brattle models no such deduction, we have modeled a full deduction.
- 8.9 In that regard we observe that, from a business and financial perspective in the circumstances of the cash flow solvency test contemplated herein, it is internally inconsistent that Brattle is effectively constructing a notional paradigm in which Brattle is proposing that, because of the guarantee, the focus of the LoyaltyOne solvency test must be limited to an examination of the degree to which only LoyaltyOne's projected cash flows can satisfy the debts of its parent LVI, with there being no consideration given to BrandLoyalty's projected cash flows that would otherwise also be available to LVI, yet at the same time effectively assuming that the normal course tax deductibility of the interest payments would not be available because those LoyaltyOne cash flows must be dividended up to LVI before being paid out under the guarantee.
- 8.10 We say this because there is no normal course "obligation" on LoyaltyOne to pay dividends to LVI. Presumably, this situation could only arise if LVI were in distress and that gives rise to a LoyaltyOne "obligation" directly to the lenders under the guarantee in which case LoyaltyOne would satisfy that obligation directly.

### **Withholding Taxes**

- 8.11 Brattle's deduction of some \$4 million of Canadian dividend withholding taxes from the LoyaltyOne cash flows each year follows directly from Brattle's assumption as to funds flow discussed above in respect of interest deductibility.
- 8.12 You have instructed us to assume that, in the same spirit as discussed above, it would likely be possible to structure the arrangements such that the withholding tax could be avoided. Accordingly, consistent with our adjustment for interest deductibility, we have correspondingly adjusted for withholding taxes as well.

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<sup>37</sup> Noting that we are not expert in income tax matters.

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### CRA Litigation Costs

- 8.13 Brattle models a \$3 million cash outflow for LoyaltyOne in 2025 relating to costs of pursuing the CRA litigation.
- 8.14 We have reversed that deduction on your instruction to us that Bread, rather than LoyaltyOne, would ultimately bear those costs (even though they would be paid by LoyaltyOne at first instance).

### Stand-Alone Cost Amount

- 8.15 Brattle imposes a cost (i.e., cash outflow) in the LoyaltyOne cash flow projections for costs that it says LoyaltyOne would incur if LoyaltyOne was operating on a stand-alone basis (i.e., separate and apart from LVI)<sup>38</sup> for purposes of the cash flow solvency test.
- 8.16 Brattle estimates the amount of that stand-alone cost to be some \$10 million per year based on assumptions concerning an allocation of LVI's approximately \$15 million of corporate costs as between BrandLoyalty and LoyaltyOne (based on their proportionate EBITDA; such that LoyaltyOne bears some two thirds of the total).
- 8.17 For purposes of our analyses elsewhere herein we have adopted a stand-alone cost deduction for LoyaltyOne but we disagree with Brattle's assumption as to the amount.
- 8.18 We reduced the amount to \$2 million per year based on the amount that was specifically quantified for LoyaltyOne stand-alone costs by PricewaterhouseCoopers LLP ("PwC") contemporaneously in its Quality of Earnings analysis in connection with Project Angus.<sup>39</sup> We view that measure as more reliable than Brattle's allocated amount.
- 8.19 We observe that the stand-alone costs quantified by PwC are significantly less than the costs allocated in the Brattle Report. We understand that the lower stand-alone costs for LoyaltyOne (as quantified in the PwC report) reflect the additional costs that would need to be expended by a third-party purchaser to continue to operate LoyaltyOne.

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<sup>38</sup> We also observe that the idea of LoyaltyOne standing alone seems to us to be at odds with Brattle's assumption concerning interest deductibility discussed earlier, that LoyaltyOne would nonetheless still be obligated to satisfy its guarantee obligation by paying dividends to LVI.

<sup>39</sup> Reflecting additional headcount needed in LoyaltyOne's finance, technology, and client services areas, as well as non-headcount technology, and net of savings from real estate and audit. See PwC's October 1, 2020. "Project Angus Due Diligence Report", page 7.

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**Other Disagreements: Operating Cost Savings, Working Capital Release, Mitigation of Sobeys Loss and Timing of Sobeys Loss (for which we made no quantitative adjustment)**

- 8.20 In addition to the above items for which we did explicitly adjust in our calculations elsewhere in this Second Kroll Report, we also believe that in the circumstances of a probabilized exit of Sobeys, there is likely a corresponding probability that both a portion of LoyaltyOne's operating costs would be reduced and that there would be a release of working capital<sup>40</sup> relative to what is otherwise in the projections and used by Brattle. Put another way, there would be additional cost savings/higher cash flows to LoyaltyOne than those calculated by Brattle without the Sobeys volumes. Brattle is silent in respect of any such operating cost reduction/savings and working capital release and we believe this to be a Brattle omission.
- 8.21 Because of a lack of information concerning the degree to which costs move with volume, specifically for the Sobeys volume, we are not able to quantify the operating cost savings. A similar difficulty exists in respect of working capital changes with the Sobeys volume. Accordingly, to avoid speculating as to those amounts, we have not reflected any such cost savings or working capital release in our calculations in this Second Kroll Report. However, as discussed further below, we believe that there could be substantial annual cost savings/higher cash flows in this regard. Accordingly, it is likely that our calculated Sobeys Exit Percentages elsewhere herein are meaningfully understated.
- 8.22 Similarly, even in the circumstances of a Sobeys exit, we have made no offsetting upward adjustment to projected cash flows for the possibility of a replacement for Sobeys. However, we observe that when Sobeys actually did exit, efforts were made to replace Sobeys (for example, we understand by Pattison Food Group, a Western Canadian regional grocer). Though we do not have specifics, as at the Spin Date there would presumably have been some expectation that the effect of a Sobeys exit could be mitigated to some degree. Accordingly, it is likely that our calculated Sobeys Exit Percentages calculated elsewhere herein are understated for this reason too.
- 8.23 Lastly, Brattle assumes that the impact of a Sobeys exit would be felt effective July 1, 2022 with a 6-month negative impact on 2022 cash flow of some [REDACTED]. We understand that while Sobeys' actual exit from the Air Miles program was announced in June 2022, its full impact was not immediate as Sobeys did not exit the program in the last of provinces until March 2023. While in our calculations herein we have not adjusted Brattle's analysis for any delay beyond July 1, 2022, doing so would further increase LoyaltyOne's projected cash flows herein, potentially substantially.

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<sup>40</sup> Or less "investment" in working capital required, thereby increasing projected cash flows.

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8.24 The items are discussed further immediately below.

#### Operating Cost Savings

- 8.25 While Brattle's estimation of the impact of a Sobeys departure, based on the LoyaltyOne Sobeys Loss Analysis, is described as contribution margin, the analysis implies that little of LoyaltyOne's annual operating expenses of some \$140 million per year would be saved, in spite of Sobeys representing a significant percentage of LoyaltyOne's revenue and accounting for a substantial amount of Air Miles issued (and more so in combination with the follow on impact of collectors and BMO).
- 8.26 As we understand it, those LoyaltyOne operating expenses include, amongst other things, payroll that accounts for about half of the annual expense, another approximately 15% relating to marketing activities, and another 15% related to data processing activities.<sup>41</sup>
- 8.27 While undoubtedly portions of these costs are somewhat fixed (i.e., they would still be incurred at some level even if the volume metrics of the business - number of Air Miles, revenue etc. - is reduced), we expect that given the nature of some of those costs (particularly headcount) and the magnitude of the volume reduction that Sobeys represents, some savings would be achieved beyond that set out in the Brattle contribution margin analysis.
- 8.28 Along those lines, in the first quarterly investor call following the announcement of Sobeys' departure in August 2022, LVI launched an operational efficiency program seeking to cut \$15 million in operating expenses across the organization.<sup>42</sup> By the following investor call in November 2022, the efficiency program had been upgraded to a 20% reduction in workforce and a \$25 million reduction in LVI's operating expenses.<sup>43</sup>
- 8.29 While we do not have the information necessary to quantify a further adjustment, given both the magnitude of the operating expenses and the relative magnitude of the Sobeys business to LoyaltyOne, we believe that there could be substantial annual cost savings / higher cash flows in this regard.
- 8.30 To be clear however, in our calculations of the solvency of LoyaltyOne addressed in the next section of this report we have not reflected any adjustment in this regard.

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<sup>41</sup> L1 Model\_August 2021\_AugFcst\_v10\_BofA\_vNewStructure\_v3.xlsx.xlsx, Tab: AirMiles (USD). Operating expenses is 'Cost of Operations' less 'Cost of Redemptions Expense', which is part of Cost of Goods Sold.

<sup>42</sup> August 11, 2022. LVI 8-K Investor Presentation, page 27.

<sup>43</sup> Headcount reduction per: November 8, 2022. LVI Earnings Call Transcript, page 5. Operating expense reduction per: November 8, 2022. LVI 8-K Investor Presentation, page 27.

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### Working Capital

- 8.31 We have not reflected any higher cash flows as a result of a release of (or lower investment in) working capital arising from a Sobeys exit.
- 8.32 However, because Sobeys represents almost a quarter of LoyaltyOne's projected revenue each year, its exit would likely result in meaningfully less working capital required to be invested in the LoyaltyOne balance sheet. Brattle is silent in this regard.
- 8.33 We expect that there would be both of the following:
- A one-time release in the period immediately following a Sobeys exit as, in particular, accounts receivable are collected. Though we do not have the information necessary to model it with precision, we believe that this amount could be substantial, perhaps tens of millions of dollars. At a high level, for example, we observe that LoyaltyOne's total accounts receivable balance was projected to be some \$200 million by the end of 2022.<sup>44</sup> As a significant sponsor, Sobeys would likely represent a significant amount of that receivable and with Sobeys' departure, LoyaltyOne would no longer be carrying the Sobeys portion going forward.
  - A lesser amount of additional investment in working capital as growth that was reflected in the Spin Date Projections would be lower without Sobeys. Again, while difficult to quantify with precision, we expect that this could be several million dollars each year over the projection period.
- 8.34 Again, in our calculations of the solvency of LoyaltyOne addressed in the next section of this report we have not reflected any adjustment in this regard.

## **9.0 Having Corrected for Our Disagreements with Brattle's Adjustments, LoyaltyOne is Solvent on a Probability-weighted Analysis Even If it was More Likely Than Not that Sobeys Would Exit**

### **Overview**

- 9.1 Firstly, concerning the Projected Cash Flow Test, as noted in the Conclusions section above, our calculations show that LoyaltyOne was solvent at the Spin Date

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<sup>44</sup> Per Spin Date Projections. See First Kroll Report, Schedule 15.



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- if it is found that the then-probability of Sobeys departure was 75% or less.<sup>45</sup> This is based on us adopting Brattle's inputs except to the extent that we disagree with them.<sup>46</sup>
- 9.2 Put another way, specifically concerning LoyaltyOne, when we adjusted the Brattle analysis for some (but not all) of Brattle's inputs with which we disagree, the probability threshold concerning a Sobeys' exit was calculated to be 75%.
- 9.3 This means that Brattle's LoyaltyOne insolvency conclusion fails even if it is found that there was as high as a 75% probability, as at the Spin Date, of Sobeys departure.<sup>47</sup>
- 9.4 Furthermore, even the 75% threshold is likely too low given additional disagreements we have with Brattle's inputs (discussed in the preceding section) but have not quantified at this time.
- 9.5 As noted earlier, the above is from a probability-weighted perspective, where a probability percentage is applied to the amount of the downward cash flow adjustment that Brattle says needs to be "backed out" of the Spin Date Projections for a Sobeys exit, there are still sufficient cash flows going forward from the Spin Date for LoyaltyOne to be able to meet its financial obligations as they come due.
- 9.6 The corresponding probability percentages under the Net Realizable Value solvency tests are 80%, 65% and 50% using Discounted Cash Flow, Comparable Companies and Precedent Transactions, respectively. Again, these percentages are likely also too low given the additional disagreements we have with Brattle's input but have not quantified at this time meaning the likelihood of Sobeys leaving would have to be even higher before LoyaltyOne could be projected to be insolvent following the Spin Date.
- 9.7 We highlight that, for simplicity:
- In the DCF analysis we have used our 9.5% (Low Scenario) discount rate from the First Kroll Report to convert the projected future cash flows to a capital sum at present value as at the Spin Date. Had we used the 8.5% (High Scenario) discount rate, or the midpoint of our concluded range of discount rates of 9.0%, the 80% probability percentage would have been even higher; and

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<sup>45</sup> For greater certainty, our report makes no determination on whether there was such a possibility or its likelihood if there was.

<sup>46</sup> And, in some cases, adopting them for purposes of this analysis for reasons set out herein even though we disagree with them (as discussed above in this report).

<sup>47</sup> In this analysis Brattle's inputs for Sobeys based on the LoyaltyOne Sobeys Loss Analysis are adopted without change, including the timing of that departure and the associated financial effect on LoyaltyOne.

- In these Comparable Companies and Precedent Transactions analyses we continued to use Brattle's selected multiples even though we disagree with them. If we had used our multiples from the First Kroll Report in these analyses the probability percentages would have been even higher, increasing to 85% and 75%, respectively.

9.8 For ease of reference, we repeat the earlier table summarizing these probability percentages.

Summary of Percentages of Probability of a Sobeys Exit At or Below Which LoyaltyOne and LVI are Still Solvent					
	LoyaltyOne		LVI		
	Reference	Kroll Inputs	Reference	Brattle Inputs	Kroll Inputs
<u>Projected Cash Flow Test</u>	Sch. 4	75%	Sch. 1	100%	↑
<u>Net Realizable Value Test</u>					
Discounted cash flow approach	Sch. 5	80%*	Sch. 2	100%	↑
Comparable companies approach	Sch. 6	65%**	Sch. 3	100%	↑
Precedent transactions approach	Sch. 6	50%**	Sch. 3	100%	↑
*Based on Low Scenario discount rate from the First Kroll Report. Had the High Scenario or midpoint been used, the 80% would be even higher.					
**If multiples from the First Kroll Report were used, the percentages would be 85% and 75%, respectively.					

9.9 Concerning the solvency of LVI, as our adjustments for our disagreements with the Brattle inputs increase the projected cash flows of LoyaltyOne, they correspondingly also increase the projected cash flows of LVI. And, as LVI was shown to be solvent even under the Brattle inputs (see Section 8.0 above), LVI's solvency is only further enhanced with our adjustments for our disagreements also factored into that analysis. This is shown in the above table by the upward arrows in the far-right column.

9.10 Our LoyaltyOne calculations under each of the solvency tests are discussed immediately below.

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## Details

### Projected Cash Flow Test

9.11 Schedule 4 shows the details of our calculations of LoyaltyOne's Projected Cash Flow Test using Brattle's inputs but incorporating our adjustments for the disagreements discussed in Section 8.0 above, specifically:

- Interest deductibility for income tax purposes by LoyaltyOne;
- Deduction of withholding taxes;
- CRA litigation costs; and
- Quantum of LoyaltyOne stand-alone costs.

9.12 As can be seen on Schedule 4:

- We projected beyond 2026, for another 10 years to 2036, to provide a more complete financial picture.
- At a Sobeys exit probability of 75%, LoyaltyOne's future cash flows for the period to 2036 are such that:
  - LoyaltyOne is able to meet its financial obligations (including debt repayment and debt service obligations) as they come due.<sup>48</sup>
  - By 2032, LoyaltyOne generates positive net cash flows which grow in subsequent years.
- In our modelling we have reflected that LoyaltyOne would draw modestly upon the revolver facility as required for a short period in the projection period. You have instructed us that for purposes of this analysis it is reasonable to assume that the revolver would be available. Consistent with this, we observe that Brattle includes the cash outflows for the commitment fees for the revolver. In any event, that revolver draw would be extinguished (and an operating cash balance re-established) on refinancing in 2027 (which refinancing is also contemplated by Brattle).
- We highlight that the 2027 refinancing is not a refinancing to bring debt back up to the original debt level. Instead, it is reflected in our calculations

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<sup>48</sup> We note that, for simplicity, and to be consistent with Brattle's analysis, we have not increased cash flows for any amount of working capital that we believe would also be "released" on a Sobeys exit. Doing so would only enhance the conclusion herein and raise the observed Sobeys exit probability percentage. Similarly, we have not reduced operating expenses. See Section 11.0 for more concerning our adjustments for our disagreements with Brattle.

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as only an amount necessary to then extinguish the revolver draw and re-establish LoyaltyOne's operating cash balance at the Spin Date. Put another way, the borrowing in 2027 is meaningfully less than the amount of original principal that is projected to be paid off prior to 2027. The actual refinancing amount could be higher which would only make LoyaltyOne more liquid. We note that it is, of course, prudent financial management to maintain financial leverage in any business in normal course. While debt financing in any business always has repayment terms, there is never an expectation that no new borrowings will replace debt that has been paid off as that would result in a business being fully equity financed which is not an optimal capital structure. In any event, the projection beyond 2027 shows that LoyaltyOne would continue to meet its obligations, including debt repayment and debt service.

#### Net Realizable Value Test: Discounted Cash Flow

- 9.13 Schedule 5 shows the details of our calculations of LoyaltyOne's Discounted Cash Flow Test using Brattle's inputs but incorporating our adjustments for the disagreements just as we did for the Projected Cash Flow Test above.
- 9.14 As can be seen on Schedule 5, even at an 80% probability of Sobeys exit, the resulting DCF value exceeds the \$675 million of financial obligations such that the Net Realizable Value test is passed.
- 9.15 Again, as noted earlier, in this DCF analysis we used our 9.5% (Low Scenario) discount rate from our First Kroll Report. Had we used the 8.5% (High Scenario) discount rate, or the midpoint of the 9.0%, the 80% probability percentage would have been even higher.

#### Net Realizable Value Test: Comparable Companies and Precedent Transactions

- 9.16 Schedule 6 shows the details of our calculations of LoyaltyOne's Comparable Companies and Precedent Transactions analyses using Brattle's inputs but again also incorporating our adjustments for the disagreements (to the extent that they impact on EBITDA which is the earnings metric to which multiples are applied in these analyses).
- 9.17 As can be seen on Schedule 6, even at 65% and 50% probabilities of Sobeys exit, the resulting values under the Comparable Companies analysis and Precedent Transactions analysis, respectively, exceed the \$675 million of financial obligations such that the Net Realizable Value test is passed under both.
- 9.18 Again, as noted earlier, in these analyses we used Brattle's selected multiples. Had we used our multiples from the First Kroll Report then the probability percentages would have been even higher, increasing to 85% and 75%, respectively.

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## **10.0 Assumptions**

- 10.1 In forming our conclusions herein, we have made assumptions as may be noted elsewhere herein.
- 10.2 Information indicating assumptions contrary from those above or others set out in this report would require a review of our observations, comments and conclusions herein.

## **11.0 Independence**

- 11.1 Our report has been prepared in conformity with the practice standards of the Canadian Institute of Chartered Business Valuators by persons acting independently and objectively.
- 11.2 The fees payable under the terms of our engagement agreement are not contingent upon an action or event resulting from the use of our report.

## **12.0 Restrictions**

- 12.1 This report is not intended for general circulation or publication nor is it to be reproduced or used for any purpose other than that outlined above without our written permission in each specific instance. We do not assume any responsibility or liability for losses occasioned to you or any other party as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.
- 12.2 The preparation of a financial analysis is a complex process that generally is not susceptible to partial analysis. Alteration of any one part of the analysis may change the observations set out in this report. We recommend consideration of the observations, commentary, and calculations as a whole so that the analysis can be best understood.

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12.3 We reserve the right (but will be under no obligation) to review and/or revise any and all assumptions and/or calculations included or referred to in this report and, if we consider it necessary, to revise our calculations in light of any information which becomes known to us after the date of this report.

Yours truly,



A. Scott Davidson  
Managing Director  
Kroll Canada Limited



Katie Gosnell  
Senior Director  
Kroll Canada Limited

## Loyalty Ventures Inc. and LoyaltyOne, Co.

Schedule 1

## Kroll Reply Report

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LVI Projected Cash Flow Test Using Brattle Inputs for LoyaltyOne

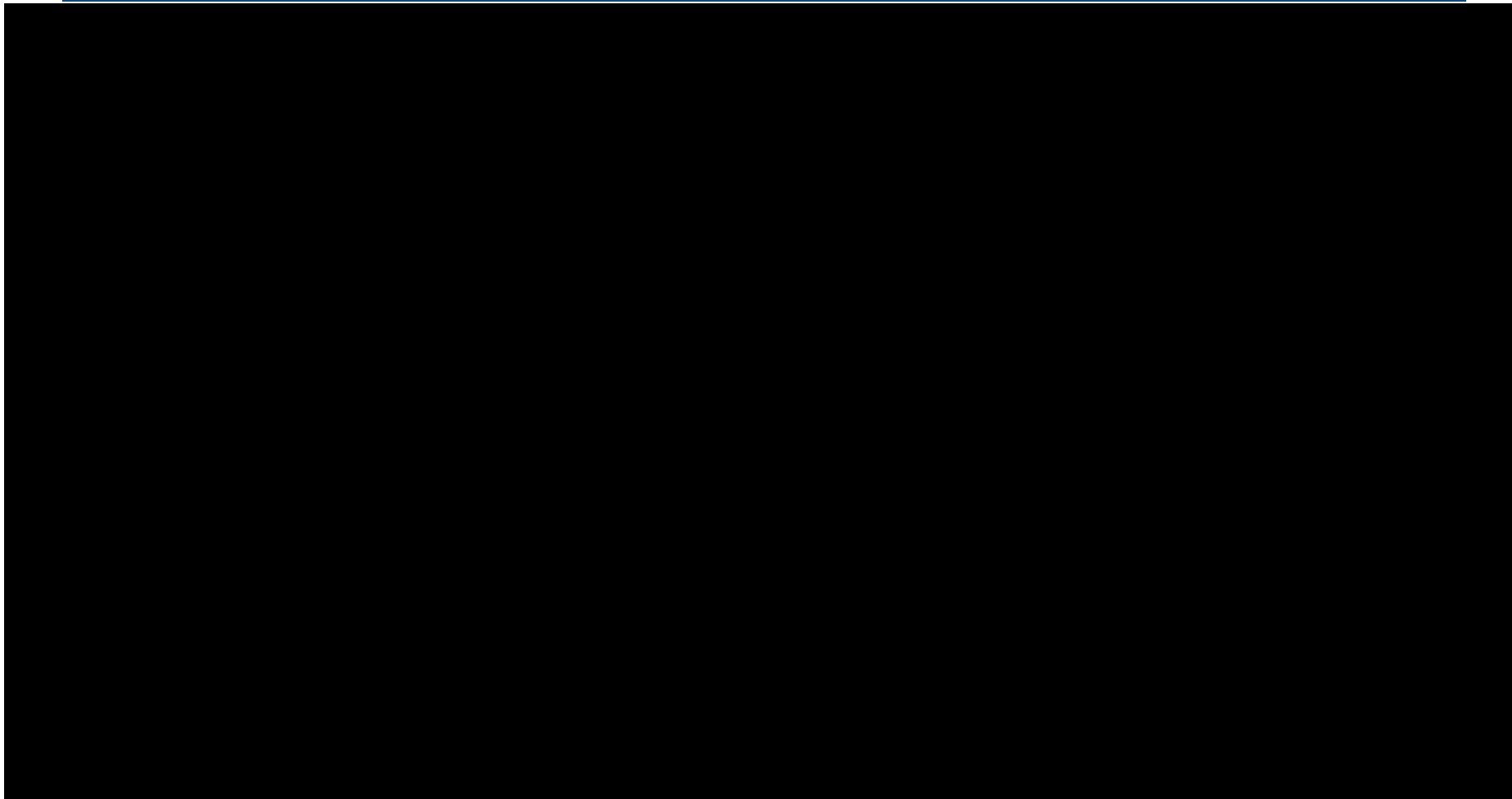
From November 5, 2021, to 2026

(\$USD, millions; unless otherwise noted)

	Notes	Nov 5 - Dec 31					
		2021	2022	2023	2024	2025	2026
<b>Part A: Cash Flows and Balances</b>							
Operating Activities	[1]	\$ 70	\$ 187	\$ 154	\$ 156	\$ 175	\$ 190
Investing Activities	[1]	(47)	(95)	(51)	(48)	(48)	(43)
Financing Activities	[1]	-	(51)	(51)	(51)	(51)	(51)
Brattle Adjustments	[2]	(2)	(24)	(63)	(63)	(65)	(63)
Total net cash flows		22	17	(10)	(5)	12	33
Cash (Beginning)	[1]	89	111	128	117	112	124
Cash (Ending)		\$ 111	\$ 128	\$ 117	\$ 112	\$ 124	\$ 156
<b>Part B: Observations</b>							
On a projected cash flow basis, is LVI able to meet its financial obligations as they come due, by year?	[3]	Yes	Yes	Yes	Yes	Yes	Yes

## Notes

[1] Per First Kroll Report, Schedule 13.





## Loyalty Ventures Inc. and LoyaltyOne, Co.

Schedule 2

## Kroll Reply Report

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LVI Discounted Cash Flow Approach Using Brattle Inputs

As at November 5, 2021

(\$USD, millions; unless otherwise noted)

	Reference	Notes	Nov 5 - 31-Dec 2021	2022	2023	2024	2025	2026	Terminal Year
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Adjustments to calculate free cash flow

Less: Income tax	27%		(11)	(49)	(40)	(44)	(49)	(52)	
Less: Capex		[1]	(6)	(25)	(26)	(28)	(28)	(28)	
Add: Tax shield on capital expenditures		[1]	1	5	5	6	6	6	
Less: Increase in LVI working capital (Add decrease)		[1]	38	53	8	(3)	1	4	
Less: Increase in Redemption Settlement Assets (Add decrease)		[1]	(41)	(70)	(25)	(20)	(20)	(15)	

Discounted Cash Flow

Terminal multiple		[4]							\$ 109
									11.8x
									\$ 1,285
Year factors			0.08	0.65	1.65	2.65	3.65	4.65	
Discount rate and factors	10.50%	[4]	0.992	0.937	0.848	0.767	0.694	0.628	0.628

Total of discounted free cash flow ('Get')Observation:

Does Indicated Net Realizable Value Exceed the \$675 million Financial Obligation?

Yes

Loyalty Ventures Inc. and LoyaltyOne, Co.

Schedule 2

Kroll Reply Report

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LVI Discounted Cash Flow Approach Using Brattle Inputs

As at November 5, 2021

(\$USD, millions; unless otherwise noted)

Notes

[1] Per First Kroll Report, Schedule 2.

[2] Per Brattle Report, Schedule 4.1.

[3] Brattle's three Sobeys inputs.

Brattle Sobeys Inputs

Notes

2022

2023

2024

2025

2026

[4] Discount rate and terminal multiple per First Kroll Report, Schedule 2 Low Scenario. With a WACC of 11.5%, the highest rate mentioned in the Brattle Report, the value still exceeds \$675.

Loyalty Ventures Inc. and LoyaltyOne, Co.  
Kroll Reply Report

Schedule 3

LVI Market Approach: Somewhat Comparable Companies &amp; Precedent Transactions Using Brattle Inputs

As at November 5, 2021

(\$USD, millions; unless otherwise noted)

LVI Enterprise Value	Comparable Company Approach with Brattle Inputs			Precedent Transaction Approach with Brattle Inputs		
	Notes	Low	High	Notes	Low	High
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
EBITDA Multiple	[3]	5.5x	7.5x	[3]	5.1x	7.1x
Enterprise value		\$ 639	\$ 872		\$ 587	\$ 820
Memo - Enterprise Value Midpoint			\$ 755			\$ 704
<u>Observation:</u>						
Does Indicated Net Realizable Value Exceed the \$675 million Financial Obligation?			Yes			Yes

## Notes

[1] Per First Kroll Report, Schedule 3.

[2] Per Brattle Report Schedule 4.2.

[3] Per Brattle Report Schedule 3.3 and 3.4.

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## Loyalty Ventures Inc. and LoyaltyOne, Co.

Schedule 4

## Kroll Reply Report

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LoyaltyOne Projected Cash Flow Test Using Brattle Inputs But Adjusted for Inputs for Which We Disagree and A Lower Probability of Sobeys Departure: 75%

From November 5, 2021, to 2036

(\$USD, millions; unless otherwise noted)

	Notes	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
<b>Part A: Cash Flows</b>																	
Operating activities with Kroll adjustments	[1], [8]	\$ 49	\$164	\$ 91	\$ 87	\$ 89	\$ 92	\$ 94	\$ 96	\$ 98	\$100	\$102	\$104	\$106	\$108	\$110	\$112
Investing activities	[2], [8]	(45)	(87)	(42)	(37)	(38)	(33)	(34)	(34)	(35)	(36)	(37)	(37)	(38)	(39)	(40)	(40)
Financing activities																	
Refinancing cash Inflow	[7]	-	-	-	-	-	-	90	-	-	-	-	-	-	-	-	-
Revolver Interest	[8]	-	-	-	-	-	-	(0)	-	-	-	-	-	-	-	-	-
Debt principal and interest	[7]	(4)	(73)	(74)	(74)	(72)	(70)	(76)	(75)	(73)	(70)	(68)	(66)	(63)	(61)	(54)	-
Net cash flows		1	4	(24)	(24)	(20)	(11)	74	(14)	(10)	(6)	(3)	1	5	8	17	72
<b>Part B: Cash Balances</b>																	
Cash (beginning)	[2]	\$ 66	\$ 67	\$ 70	\$ 46	\$ 22	\$ 2	\$ -	\$ 66	\$ 52	\$ 42	\$ 36	\$ 33	\$ 34	\$ 38	\$ 47	\$ 63
Net cash flows (per above)		1	4	(24)	(24)	(20)	(11)	74	(14)	(10)	(6)	(3)	1	5	8	17	72
Cash (ending) - pre revolver		67	70	46	22	2	(8)	74	52	42	36	33	34	38	47	63	135
Draw/Repayment on revolver		-	-	-	-	-	8	(8)	-	-	-	-	-	-	-	-	-
Cash (ending) - post revolver		\$ 67	\$ 70	\$ 46	\$ 22	\$ 2	\$ -	\$ 66	\$ 52	\$ 42	\$ 36	\$ 33	\$ 34	\$ 38	\$ 47	\$ 63	\$135
<b>Part C: Revolver Draws</b>																	
Revolver (beginning)		-	-	-	-	-	-	8	-	-	-	-	-	-	-	-	-
Revolver draw / (repayment)		-	-	-	-	-	8	(8)	-	-	-	-	-	-	-	-	-
Revolver (ending)		\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Part D: Observation</b>																	
On a projected cash flow basis, is LoyaltyOne able to meet its financial obligations as they come due, by year?		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Loyalty Ventures Inc. and LoyaltyOne, Co.

Kroll Reply Report

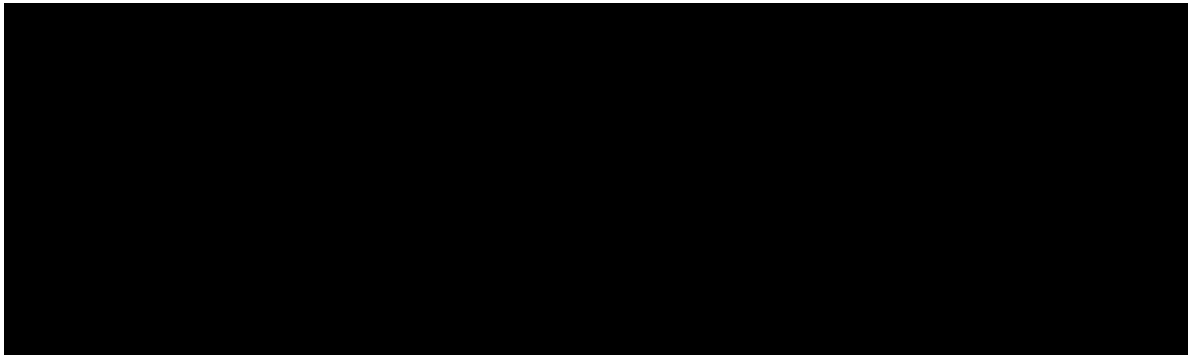
LoyaltyOne Projected Cash Flow Test Using Brattle Inputs But Adjusted for Inputs for Which We Disagree and A Lower Probability of Sobeys Departure: 75%

From November 5, 2021, to 2036

(\$USD, millions; unless otherwise noted)

Notes

[1] Reflects LoyaltyOne's cash flow from operating activities from Spin Date Projections, adjusted for Kroll inputs.



[2] Per First Kroll Report; adopted by Brattle.

[3] LoyaltyOne expense related to stand-alone operating costs amount set out in the PwC Quality of Earnings report in connection with Project Angus. Amount converted to USD.

[4] Brattle's three Sobeys inputs, but at a lower probability of Sobeys' departure from the Air Miles program.

Brattle Sobeys Inputs	Notes	2021	2022	2023	2024	2025	2026
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[5] Per Brattle Report.

[6] For simplicity in this analysis, and to be consistent with the Brattle presentation, we have ignored any corresponding adjustment in working capital related to Sobeys exit. We observe, however, that making such an adjustment would increase the cash flows projected herein for LoyaltyOne.

[7] Consistent with Brattle's observation of debt refinancing, debt issuance in 2027. Proceeds used to repay revolver and increase operating cash. Additional interest reflected - see footnote 8.

## Loyalty Ventures Inc. and LoyaltyOne, Co.

Schedule 4

## Kroll Reply Report

Page 3 of 3

LoyaltyOne Projected Cash Flow Test Using Brattle Inputs But Adjusted for Inputs for Which We Disagree and A Lower Probability of Sobeys Departure: 75%

From November 5, 2021, to 2036

(\$USD, millions; unless otherwise noted)

## Notes

[8] Revolver interest is calculated based on an interest rate of 5.5%. 5.5% was selected as the maximum revolver interest rate is 0.75% below the interest rate on TLB (per November 3, 2021 Credit Agreement pg. 4), which peaks at 6.26% in 2027 (per Brattle Report Schedule 2.2.2.). Interest is calculated based on prior year's revolver balance to maintain simplicity. Although any revolver draws would decrease the revolver commitment fee, for simplicity we did not apply any such decreases.

[9] Assumes LoyaltyOne is able to deduct interest for tax purposes and would not pay withholding taxes. We have also assumed a 6% interest rate post 2026 (see footnote 10) on debt including that from the 2027 refinancing (see footnote 7).

Principal and Interest Payments	Notes	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
Debt outstanding at year end	[5], [7]						\$422	\$455	\$397	\$340	\$282	\$225	\$168	\$110	\$ 53	\$ -	\$ -
Weighted average interest rate	[9]							6%	6%	6%	6%	6%	6%	6%	6%	6%	6%
Debt interest payments - Kroll calculation								\$ 25	\$ 24	\$ 21	\$ 18	\$ 15	\$ 11	\$ 8	\$ 5	\$ 2	\$ -
Debt interest payments - Brattle Report	[5]	\$ 5	\$ 31	\$ 32	\$ 31	\$ 29	26										
Interest after tax rate of	27%	4	23	23	23	21	19	18	18	15	13	11	8	6	3	1	-
TLA principal payment	[2], [7]	-	13	13	13	13	13	13	13	13	13	13	13	13	13	13	-
TLB principal payment	[2], [7]	-	38	38	38	38	38	38	38	38	38	38	38	38	38	38	-
Refinancing principal payment	[7]	-	-	-	-	-	-	7	7	7	7	7	7	7	7	2	-
Total LoyaltyOne Debt Obligation		\$ 4	\$ 73	\$ 74	\$ 74	\$ 72	\$ 70	\$ 76	\$ 75	\$ 73	\$ 70	\$ 68	\$ 66	\$ 63	\$ 61	\$ 54	\$ -

[9] Weighted average interest rate on LVI's debt at December 31, 2026.

	Notes	TLA	TLB
Debt outstanding - year end 2026	[5]	\$109	\$313
Percentage of total debt outstanding		26%	74%
Interest rates - year end 2026	[5]	5%	6%
Weighted average interest rate			6%

[10] Operating and investing cash flows grown by 2% post 2026, in line with the long term growth rates used in the First Kroll Report and Brattle Report.



Loyalty Ventures Inc. and LoyaltyOne, Co.

Schedule 5

**Kroll Reply Report**

Page 2 of 2

LoyaltyOne Discounted Cash Flow Approach Using Brattle Inputs But Adjusted for Inputs for Which We Disagree and A Lower Probability of Sobeys

Departure: 80%

As at November 5, 2021

(\$USD, millions; unless otherwise noted)

Notes

- [1] Per First Kroll Report, Schedule 15. The Brattle Report has also adopted these inputs from the Spin Date Projections as a starting point.
- [2] LoyaltyOne's standalone operational cost amount per the PwC Quality of Earnings report issued in connection with Project Angus.
- [3] Per Brattle Report, Schedule 4.1.
- [4] Brattle's three Sobeys inputs, but at a lower probability of Sobeys' departure from the Air Miles program.

Brattle Sobeys Inputs

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Notes	2022	2023	2024	2025	2026
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Kroll selected probability

[REDACTED]

- [5] Discount rate and terminal multiple per First Kroll Report Schedule 15 Low Scenario & Brattle Report Schedule 3.2. If the discount rate were raised to 10.5%, LoyaltyOne would be solvent at a Sobeys probability of 65%.



**Loyalty Ventures Inc. and LoyaltyOne, Co.**  
**Kroll Reply Report**

LoyaltyOne Market Approach: Somewhat Comparable Companies & Precedent Transactions Using Brattle Inputs But Adjusted for Inputs for Which We Disagree (other than the Multiples) and A Lower Probability of Sobeys Departure

As at November 5, 2021

(\$USD, millions; unless otherwise noted)

LoyaltyOne Comparable Company Enterprise Value

Adjusted 2021E EBITDA  
 Sobeys adjustment at %  
 LoyaltyOne EBITDA with Sobeys adjustment

EBITDA Multiple

**Enterprise value**

Memo - Enterprise Value Midpoint

Observation:

Does Indicated Net Realizable Value Exceed the \$675 million Financial Obligation?

Comparable Company Approach with Brattle Inputs and Kroll Adjustments			
	Notes	Low	High
	[1]		
65%	[4]		
	[5]		
			Yes

LoyaltyOne Precedent Transaction Enterprise Value

Adjusted 2021E EBITDA  
 Sobeys adjustment at %  
 LoyaltyOne EBITDA with Sobeys adjustment

EBITDA Multiples per Brattle

**Enterprise value**

Memo - Enterprise Value Midpoint

Observation:

Does Indicated Net Realizable Value Exceed the \$675 million Financial Obligation?

Precedent Transaction Approach with Brattle Inputs and Kroll Adjustments			
	Notes	Low	High
	[1]		
50%	[4]		
	[5]		
			Yes



## Appendix A

### Curriculum Vitae of A. Scott Davidson



A. Scott Davidson, HBA, CPA, CA, CBV joined Kroll (then Duff & Phelps) in 2010 (on the acquisition of his firm). He is a Managing Director in the Toronto office and leads the Canadian Disputes, Investigations and Valuation practices. Scott has more than 30 years of experience in business valuation, financial advisory services and expert testimony.

Scott has been named to Who's Who Legal: Consulting Experts, a publication focused solely on identifying the world's leading consulting experts in the categories of Financial Advisory and Valuation – Quantum of Damages and Arbitration Expert Witnesses.

Scott has completed numerous valuations of companies involved in a variety of industries for various purposes, including financial litigation support, corporate finance activities, financial reporting and income tax. He has been retained on matters in a number of geographies and jurisdictions. He has qualified as an expert and has given evidence on business valuation, damage quantification and other financial issues in matters in various Courts and before various arbitral panels and other triers of fact.

He has completed numerous expert valuation and other reports quantifying financial loss/damages pursuant to a wide variety of litigation and dispute matters, including post-acquisition purchase price disputes, intellectual property disputes, shareholder disputes, dissent and oppression, breach of contract and other contract disputes, construction disputes, franchise disputes, product pricing, product liability, breach of fiduciary duty, securities violations and disputes, expropriation, fidelity bond and business interruption insurance claims and negligent and fraudulent misrepresentation.

He has also been appointed as mediator and as arbitrator on commercial disputes.

Scott has also provided financial advisory services as intermediary in corporate mergers, acquisitions, divestitures and finance transactions (including fairness opinions); transfer pricing consulting and related valuation services in connection with international corporate reorganizations, disputes and compliance matters; and investigative accounting reviews in civil and corporate matters.

Scott is the author of various publications, including numerous articles for professional journals and a speaker and lecturer for professional organizations.

Scott is a graduate of the Ivey School of Business, University of Western Ontario. He is a Chartered Professional Accountant and a Chartered Business Valuator. Scott is a past director of the CICA Investigative and Forensic Accounting Alliance.

Scott is also Past Chair of the Board of Governors of St. Clement's School, Toronto, an independent, university preparatory school for girls.

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## Notable Larger, International and Arbitration Assignments

- Financial expert on a number of disputes relating to large construction projects where the amounts at issue range in the hundreds of millions of dollars.
- Financial expert on behalf of property developer concerning losses suffered from being deprived of opportunity to purchase and developed lands - \$300 million issue.
- Financial expert retained by defendant in international arbitration (Singapore) of \$200 million dispute concerning quick-serve restaurant chain in China.
- Financial / valuation expert retained in numerous disputes concerning cannabis companies operating in Canada and the United States.
- Financial expert retained by defendant retailer in \$1 billion multi-year class action litigation.
- Financial expert on behalf of insurers in international arbitration concerning political risk insurance claim relating to European mining project - \$100 million issue.
- Financial / valuation expert retained by defendants in large family dispute concerning the values of various private company interests, the propriety of many non-arm's length transactions and the investments made by various trusts over a 30+ year period.
- Financial expert retained to assess solvency of a well-known loyalty program.
- Financial expert retained by claimant in international arbitration (Japan) of \$1 billion dispute involving alleged breach of contract for the long term supply of uranium.
- Financial expert retained by defendants in multi-billion-dollar health care cost recovery litigation.
- Financial expert retained by Atomic Energy of Canada Limited ("AECL") in a \$1 billion dispute involving increased costs and lost profits in connection with the supply of medical isotopes and the construction of dedicated nuclear isotope facilities.
- Financial expert retained by international consumer goods company in post-acquisition purchase price dispute relating to \$400 million acquisition of a European company with operations in various geographies, particularly Europe and Asia.
- Financial / valuation expert retained by Chinese / other companies to assess fair value in several Cayman Islands Section 238 dissent matters (business enterprise values in \$ billions).

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- Financial expert on \$100 million course-of-construction insurance claim and related litigation concerning alleged contractor negligence in installation of tubing and shut off rods in nuclear reactor and consequent multi-year delay.
  - Financial expert retained by Barrick Gold Corporation in \$800 million dispute with Xstrata plc, and Goldcorp over unsuccessful acquisition of El Morro copper/gold project in Chile.
  - Financial expert retained by European consumer products company in 100 million Euro franchise and contract disputes relating to use of trademarks and brands in business operations in EMEA (Europe, Middle East and Africa).
  - Financial expert retained by defendant in parallel U.S. and Canadian multi-billion dollar class action suits against public mining company relating to financial disclosures concerning cost estimates and delays on international mining project.
  - Financial expert retained by major North American automaker to assist with fair value and damages quantification in oppression and dissent action brought by minority shareholder of public subsidiary in connection with going-private transaction.
  - Financial expert concerning quantum of merger synergies in connection with antitrust regulatory review of multi-billion dollar acquisition in the oil and gas industry.
  - Financial expert retained by major international uranium producer in dispute over multi-year supply contract and related arrangements.
  - Financial expert retained by mining company plaintiff in Peruvian arbitration concerning increased costs and lost profits due to delays on mine project.
  - Financial / valuation expert retained by former Directors of now-insolvent public company and their D&O insurers relating to breach of fiduciary duty and related claims brought by various lenders and other creditors.

### **Expert Witness Experience for the Years 2003 - 2023**

*Some 75 testimonies over career – predominantly at trials and arbitrations:*

- Telco – Financial expert retained by major telco player to quantify losses suffered due to loss of access to shared wireless network - \$1 billion issue – 2023.
- Big Oil – Financial expert retained by supermajor to address off-shore oil project cost issues in arbitration – \$50 million issue - 2023.
- Pakootas et al v. Teck Metals – Deposition testimony in Washington, USA matter as financial expert for Teck concerning potential molybdenum mine project and related issues – 2023.

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- Quick Service Restaurant chain ats regional development agent – Financial expert retained by international QSR chain to address damages and valuation issues in international arbitration of dispute with development agent – \$70 million issue - 2023.
  - Toronto Transit Commission ats Walsh – Financial expert on behalf of TTC concerning costs, losses and related financial matters relating to the construction of the Steeles West station as part of the the Toronto-York Spadina Subway Extension (TYSSE) Project - \$200 million issue – 2023.
  - FGL Holdings and Kingstown Capital - Valuation expert retained to assess fair value in Cayman Islands Section 238 dissent matter – 2022.
  - Remington Development Corporation v. Canadian Pacific Railway Company et al – Financial expert concerning losses suffered by Remington from being deprived of opportunity to purchase and develop lands in Calgary - \$300 million issue – 2022.
  - Shoppers Drug Mart re: Ontario store Associates – Financial expert on behalf of defendant Shoppers Drug Mart in multi-year class action litigation - \$1 billion issue - 2022.
  - B v. Fcompany (disguised) – Financial expert on behalf of former CEO in arbitration concerning various matters including stock option valuation and non-arm’s length transactions – 2022.
  - Cresco v. Fiorello Pharmaceuticals – Deposition testimony in New York, USA matter as financial expert for Cresco entities concerning losses suffered and related issues in connection with failed acquisition of New York based cannabis company – 2022.
  - Energizer re: Duracell – Financial expert on behalf of Energizer in action related to alleged misuse of various trademarks – 2022.
  - Atomic Energy of Canada Limited re: Canada Forgings – Financial expert on behalf of AECL concerning losses and other financial issues in action relating to the procurement process for the refurbishment of nuclear reactors – 2022.
  - Toll Brothers re: Southern California Gas Company – Deposition testimony in California, USA matter as financial expert for Toll Brothers concerning ability to pay and related financial issues – 2021.
  - Insurers and Investment Fund (disguised) – Financial expert on behalf of insurers in international arbitration concerning political risk insurance claim relating to European mining project - \$100 million issue – 2021.
  - F v. XYZ LLP (disguised) – Financial expert on behalf of international accounting firm in action brought by former partner – 2020.

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- Sport Maska dba CCM Hockey re: Bauer – Financial expert on behalf of CCM in trademark infringement claim concerning ice skates – 2020.
  - Sport Maska dba CCM Hockey re: Bauer – Financial expert on behalf of CCM in patent infringement claim concerning ice skates - \$60 million issue – 2020.
  - Bourgeois v. Ford Credit of Canada Limited Class Action – Financial / damages expert on behalf of Ford in class action in Quebec Superior Court concerning rebates on financed vehicles - \$70 million issue – 2019.
  - Bourdages v. DaimlerCanada Chrysler Inc. Class Action – Financial / damages expert on behalf of Chrysler in class action in Quebec Superior Court concerning rebates on financed vehicles - \$65 million issue – 2019.
  - C v. T (disguised) – Damages expert in international arbitration concerning alleged breach of contract for the long term supply of uranium - \$1 billion issue – 2019.
  - Stikeman Elliott LLP re: Morgan Stanley – Damages expert on behalf of Stikemans concerning losses suffered by Morgan Stanley solar division relating to major solar panel installation project - \$150 million issue – 2018.
  - Credit Suisse AG re: Ferdinand Dippenaar et al – Deposition testimony in Nevada, USA matter as valuation and financial expert for defendants/insurers concerning various D&O claims – 2017.
  - Elder Advocates of Alberta Society et al re: Her Majesty the Queen in Right of Alberta and Alberta Health Services – Financial expert relating to accommodation charges in long term care facilities – 2016/17.
  - Mr. C v. Messrs. ABD (disguised) – Valuation expert in private arbitration relating to shareholder oppression and fair value buyout of minority interest in large private company – \$450 million issue – 2016.
  - York University re: Access Copyright – Valuation and financial expert in Federal court in matter relating to fair-dealing guidelines and royalties on copyright-protected works – 2016.
  - EquiGenesis Corporation and Canada Revenue Agency – Valuation expert in Tax Court concerning various valuation issues – 2016.
  - Teva Canada v. Pfizer – Teva’s financial expert in a pharmaceutical patent dispute concerning losses suffered as a result of having been wrongfully held off the market – 2014.
  - Barrick Gold Corp v. Xstrata, Goldcorp and New Gold – Barrick’s financial expert on loss/damages re: El Morro mine in Chile - \$800 million issue – 2011.

- 
- Atomic Energy of Canada Limited re: Nordion Inc. – AECL’s financial expert re: losses and other financial issues concerning non-continuation of dedicated isotope facility project – \$1.6 billion issue – 2011.
  - Ontario Securities Commission re: Sextant and Otto Spork – OSC witness on valuation matters – 2011.
  - ratiopharm re: Patented Medicines Pricing Review Board – Expert witness for ratiopharm concerning drug profitability – 2010.
  - BP Global – Expert witness for BP concerning losses suffered in breach of contract – 2010.
  - Coal Valley Resources Limited re: Milner Power – Expert witness for Coal Valley (subsidiary of Sherritt International) concerning rates of return in the coal mining industry – 2009.
  - Crystalline Data Structures et al and Brainhunter (Ottawa) Inc. – Expert witness for Brainhunter concerning valuation and losses suffered by plaintiff – 2008.
  - Neighbouring Rights Collective of Canada – Expert witness for NRCC concerning financial matters relevant to proposed tariff on commercial radio – 2007.
  - Ontario Lottery and Gaming Corporation and Laserdata Technology Inc. – Expert witness for OLG concerning losses suffered by plaintiff – 2005.
  - Linton et al ats Sandor re: RE/MAX Horizons Inc. – Expert witness on valuation for Lawyers Professional Indemnity Fund – 2004.
  - Essroc Canada Limited and Towne Concrete Forming Ltd. – Expert witness for Essroc concerning losses suffered by plaintiff – 2004.
  - Westinghouse Canada Inc. et al ats New Brunswick Power Corporation – Expert witness for Westinghouse concerning losses suffered by NB Power – 2003.
  - Daimler Chrysler Canada Inc. et al v. Coopers & Lybrand et al – Expert witness for Daimler Chrysler on losses suffered by Chrysler pension funds on investments in Castor Holdings – 2003.
  - Mark Shoom, In Trust and Magnum Financial Corp. and Promis Systems Corporation Ltd. – Expert witness for Promis concerning fair value of plaintiff’s shares of public company – 2003.
  - 1248671 Ontario Inc. v. Michael Foods Inc. – Expert witness for Michael Foods concerning losses suffered on breach of contract – 2003.



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## **Publications and Presentations**

Authored various articles for professional journals and spoke at professional and academic conferences including the following:

- Articles appearing in various journals concerning matters including the impact of debt guarantees on business value, valuations of high technology companies, valuing trust assets, the use of probability assessments in business valuations / financial damage quantifications and financial aspects of intellectual property licensing and royalty rates
- 2006 The Advocates Society: Advanced Litigation Skills Program (on challenging business valuation experts at trial)
- 2007 Insight: Dealing with Dissent and Oppression, Actions and Remedies (panel moderator)
- 2008 Osgoode Hall Law School Professional Development seminar on Litigating Shareholder Disputes (on accounting and valuation issues)
- 2009 ADR Institute of Canada Annual National Conference (on using experts in mediation and arbitration)
- 2012 contributing author “Damages in Intellectual Property Cases in Canada” and “Accounting of Profits in Intellectual Property Cases in Canada” by Duff & Phelps
- 2019 Moderator and panelist of American Bar Association panel presentation on M&A Post-Acquisition Disputes
- 2020 Panelist on Damages at Tel Aviv International Arbitration Day
- 2020 Panelist on Quantification of Damages at CanArbWeek (Canadian Arbitration Week)
- 2021 Experts Panelist at CanArbWeek (Canadian Arbitration Week)

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**Professional Experience**

2022 – cont. *Senior Director*  
2021 – 2022 *Director*  
2018 – 2021 *Vice President*

**Kroll Canada Limited, Toronto, ON (formerly Duff & Phelps Canada Ltd.)**

- Kroll is a global financial services firm with expertise in complex valuation, corporate finance, disputes and investigations and regulatory consulting. Kroll also advises the world’s leading standard setting bodies on valuation issues and best practices. Kroll’s more than 2,000 professionals are located in over 70 offices in 20 countries.

2015 –2018 *Associate*

**Cohen Hamilton Steger & Co. Inc., Toronto, ON**

- Cohen Hamilton Steger is a business valuation, damages quantifications and forensic accounting firm with offices in Toronto and Ottawa.

2014 - 2015 *Senior Staff Accountant, Assurance*

2012 – 2014 *Staff Accountant, Assurance*

**Ernst & Young, Toronto, ON**

- Ernst & Young is a major public accounting and consulting firm.

**Academic and Professional Qualifications**

Bachelor of Commerce (Honours), Queen’s University	2012
Chartered Professional Accountant (CPA, CA)	2015
Chartered Financial Analyst (CFA)	2016
Chartered Business Valuator (CBV), Placed 2 <sup>nd</sup> in Canada on the Membership Qualification Exam	2017

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## **Representative Engagements**

Business Valuation – Retained in numerous cases to prepare business valuation reports and critique opposing expert reports in the context of litigation and tax planning/corporate reorganizations for a variety of industries including telecommunications, consumer products and manufacturing.

Quantification of Financial Loss – Retained in a number of cases to prepare expert reports quantifying the damages in relation to intellectual property infringement claims.

Cannabis Experience (selected) – Retained to value the damages associated with the alleged breach of contract of a supplier agreement between two Canadian-based cannabis companies. Retained to quantify the damages relating to a frustrated acquisition of an SSO by an MSO in the United States.

Expropriation – Retained in a number of cases to quantify damages associated with the expropriation of a variety of businesses. Appeared at OMB mediation.

Land Claims – Retained in a number of cases to prepare and critique expert reports proposing a model for establishing the value of historical monetary losses incurred based on equitable principles for cases heard by the Specific Claims Tribunal.

Shareholder Disputes – Retained to value a shareholder's interest for the purposes of a buyout in accordance with the shareholders agreement.

## **Professional Associations**

Member of the CICBV Education Committee

Member of the CICBV Continuing Professional Development Management Advisory Council

Member of the 2022 CICBV Congress Organizing Committee

Member of the 2022 CICBV Toronto Workshop Committee

## **Publications – Books**

2020 Contributing Author of Chapter 19 Monetary Relief – Quantum for the Intellectual Property Disputes Law Book

## **Other**

Member of The York School's Finance Committee. The York School is a co-educational independent school delivering the IB curriculum from JK to Grade 12.

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## Appendix B

### Scope of Review

In preparing our report, we have reviewed and relied on information contained in the following:

1. First Kroll Report, including the scope of review set out therein;
2. Brattle Report;
3. March 2024 Hageman Affidavit including the LoyaltyOne Sobeys Loss Analysis appended thereto;
4. Affidavit of Joseph L. Motes III affirmed March 25, 2024;
5. Project Angus Due Diligence Report prepared by PwC dated October 1, 2020;  
and
6. November 8, 2022. LVI 8-K Investor Presentation.

We did not undertake any audit, review or other procedures of any kind to verify the accuracy or completeness of the above information, other than as may be noted in this report.



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#### About Kroll

Kroll is the world's premier provider of services and digital products related to governance, risk and transparency. We work with clients across diverse sectors in the areas of valuation, expert services, investigations, cyber security, corporate finance, restructuring, legal and business solutions, data analytics and regulatory compliance. Our firm has nearly 5,000 professionals in 30 countries and territories around the world. For more information, visit [www.kroll.com](http://www.kroll.com).

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED AND IN  
THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LOYALTYONE, CO.

APPLICANT

Court File No. CV-23-00707017-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding Commenced at Toronto

**AFFIDAVIT OF A. SCOTT DAVIDSON**

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**Lawyers for Bread Financial Holdings Inc.**

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LOYALTYONE, CO.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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**REPLY MOTION RECORD  
(Motions relating to Tax Matters Agreement  
returnable April 29-30, 2024)**

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