

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K
CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of report (Date of earliest event reported): June 14, 2018

DETERMINE, INC.
(Exact name of Company as specified in Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

000-29637
(Commission File No.)

77-0432030
(IRS Employee Identification No.)

615 West Carmel Drive, Suite 100
Carmel, Indiana 46032
(Address of Principal Executive Offices)

(650) 532-1500
(Issuer Telephone number)

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

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

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

Amendment of Business Financing Agreement

On June 14, 2018, Determine, Inc. (the “Company”) and its wholly owned subsidiary, Determine Sourcing Inc. entered into Amendment Number Eleven to the Amended and Restated Business Financing Agreement (the “Amendment”) with Western Alliance Bank, as successor in interest to Bridge Bank, N.A. (“Western Alliance Bank”). The Amendment, among other things, extends the maturity date of the Company’s existing credit facility with Western Alliance Bank (the “Credit Facility”) to July 31, 2019.

The summary set forth above does not purport to be complete and is qualified in its entirety by reference to the Amendment included in Exhibit 10.1 to this Current Report on Form 8-K, which is incorporated by reference herein.

Amendment of Limited Guaranty

In connection with the Amendment to the Credit Facility, on June 14, 2018, MILFAM II, L.P. (“MILFAM”), an affiliate of the estate of Lloyd I. Miller, III (“Mr. Miller”), the Company’s largest stockholder, entered into a Third Amended and Restated Limited Guaranty (the “Amended Guaranty”) with Western Alliance Bank. The Amended Guaranty (i) extends the term of the Second Amended and Restated Limited Guaranty entered into by MILFAM with Western Alliance Bank on June 1, 2017 (which was filed as an exhibit to our Current Report on Form 8-K filed on June 6, 2017) to August 10, 2019, and (ii) terminates the Second Amended and Restated Limited Guaranty entered into by the estate of Mr. Miller with Western Alliance Bank on June 1, 2017. The Amended Guaranty also provides that if the maturity date of the Credit Facility is subsequently amended, the term of the Amended Guaranty would automatically extend to a date ten (10) days following the extended maturity date under the Credit Facility, but no later than July 30, 2020.

The summary set forth above does not purport to be complete and is qualified in its entirety by reference to the Third Amended and Restated Limited Guaranty filed as Exhibit 10.2 to this Current Report on Form 8-K, which are incorporated by reference herein.

Guaranty Fee Agreement

In connection with the Amended Guaranty, on June 14, 2018, the Company entered into a Guaranty Fee Agreement (the “Fee Agreement”) with MILFAM, pursuant to which the Company agrees to pay MILFAM a commitment fee of \$108,000 and a monthly fee that shall accrue each calendar month during the term of the Amended Guaranty equal to ten percent of the commitment fee divided by twelve. The commitment fee and the accrued monthly fee shall be payable in cash by the Company upon the termination or expiration of the Amended Guaranty.

Additionally, in connection with the Amended Guaranty, on June 14, 2018, the Company entered into an Amendment to Guaranty Fee Agreement (the “Fee Agreement Amendment”) with MILFAM, Mr. Miller’s estate and Alimco Financial Corporation, an affiliate of Mr. Miller’s estate (collectively, the “Guarantors”). The Fee Agreement Amendment, among other things, amends the Guaranty Fee Agreement, dated as of June 1, 2017 (the “June 2017 Fee Agreement”), among the Company and the Guarantors, to eliminate the payment of certain shares of Company common stock in connection with any extension of the guarantees provided by the Guarantors under the June 2017 Fee Agreement and replaces such payment with a cash commitment fee of \$168,750 plus a monthly fee equal to ten percent of such commitment fee divided by twelve. The commitment fee and the accrued monthly fee shall be payable in cash by the Company upon the termination or expiration of the Amended Guaranty.

The summary set forth above does not purport to be complete and is qualified in its entirety by reference to the Fee Agreement filed as Exhibit 10.3 and the Fee Agreement Amendment filed as Exhibit 10.4 to this Current Report on Form 8-K, which is incorporated by reference herein.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth in Item 1.01 above is incorporated by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	<u>Amendment Number Eleven to Amended and Restated Business Financing Agreement, dated as of June 14, 2018.</u>
10.2	<u>Third Amended and Restated Limited Guaranty, dated June 14, 2018, between Western Alliance Bank and MILFAM II, L.P.</u>
10.3	<u>Guaranty Fee Agreement, dated June 14, 2018.</u>
10.4	<u>Amendment to Guaranty Fee Agreement, dated June 14, 2018.</u>

SIGNATURES

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

Dated: June 19, 2018

DETERMINE, INC.

By: /s/ John K. Nolan

Name: John K. Nolan

Title: Chief Financial Officer

EXHIBIT INDEX

Exhibit No.	Description
10.1	Amendment Number Eleven to Amended and Restated Business Financing Agreement, dated as of June 14, 2018.
10.2	Third Amended and Restated Limited Guaranty, dated June 14, 2018, between Western Alliance Bank and MILFAM II, L.P.
10.3	Guaranty Fee Agreement, dated June 14, 2018.
10.4	Amendment to Guaranty Fee Agreement, dated June 14, 2018.

AMENDMENT NUMBER ELEVEN TO AMENDED AND RESTATED BUSINESS FINANCING AGREEMENT

This AMENDMENT ELEVEN TO AMENDED AND RESTATED BUSINESS FINANCING AGREEMENT (this “**Amendment**”), dated as of June 14, 2018, is entered into by and among Western Alliance Bank, an Arizona corporation, as successor in interest to Bridge Bank, National Association (“**Lender**”), on the one hand, and Determine, Inc., a Delaware corporation, f/k/a Selectica, Inc. (“**Determine**”), and Determine Sourcing Inc., a Delaware corporation, f/k/a Selectica Sourcing Inc. (“**Sourcing**,” together with Determine, each a “**Borrower**,” and collectively “**Borrowers**”) on the other hand, with reference to the following facts:

A. Borrowers and Lender previously entered into that certain Amended and Restated Business Financing Agreement, dated as of July 25, 2014, as amended by that certain Amendment Number One to Amended and Restated Business Financing Agreement and Waiver of Defaults, dated as of December 31, 2014, that certain Amendment Number Two to Amended and Restated Business Financing Agreement, dated as of March 11, 2015, that certain Amendment Number Three to Amended and Restated Business Financing Agreement, dated as of June 5, 2015, that certain Amendment Number Four to Amended and Restated Business Financing Agreement and Waiver of Defaults, dated as of November 13, 2015, that certain Amendment Number Five to Amended and Restated Business Financing Agreement, dated as of February 3, 2016, that certain Amendment Number Six to Amended and Restated Business Financing Agreement, dated as of March 18, 2016, that certain Amendment Number Seven to Amended and Restated Business Financing Agreement, dated as of April 20, 2016, that certain Amendment Number Eight to Amended and Restated Business Financing Agreement and Waiver of Defaults, dated as of September 23, 2016, that certain Amendment Number Nine to Amended and Restated Business Financing Agreement dated as of January 23, 2017, and that certain Amendment Number Ten to Amended and Restated Business Financing Agreement, dated as of June 1, 2017 (as so amended, the “**Agreement**”);

B. Borrowers have requested that Lender make certain amendments to the Agreement;

C. Lender has agreed with such requests, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto hereby agree as follows:

1. **Defined Terms.** All initially capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Agreement.
2. **Amendments to Section 12.1.**

(a) Section 12.1 of the Agreement is hereby amended to amend and restate the following definitions in their entirety as follows:

“**Maturity Date**” means July 31, 2019 or such earlier date as Lender shall have declared the Obligations immediately due and payable pursuant to Section 7.2 hereof.

“**Prime Rate**” means the greater of 4.75% per year or the variable per annum rate of interest most recently announced by Lender as its “Prime Rate.” Lender may price loans to its customers at, above, or below the Prime Rate. Any change in the Prime Rate shall take effect at the opening of business on the day specified in the public announcement of a change in Lender’s Prime Rate

3. **Amendment to Section 4.8.**

(a) Clauses (h) and (i) of Section 4.8 of the Agreement are hereby amended and restated in their entirety as follows:

(h) (1) Within 10 days after the end of each calendar month and (2) no later than 3 business days prior to each Advance, a borrowing base certificate, in form and substance satisfactory to Lender, setting forth Eligible Receivables and Receivable Amounts thereof as of, in the case of a borrowing base certificate delivered under clause (1) above, the last day of the preceding calendar month, and in the case of a borrowing base certificate delivered under clause (2) above, a date no earlier than three business days prior to the Advance.

(i) (1) Within 10 days after the end of each calendar month and (2) no later than 3 business days prior to each Advance, a detailed aging of each Borrower's receivables by invoice date, together with payable aging, deferred revenue report (showing short term vs. long term deferred revenue), billings detail, cash collections journal, credit memo report, and such other matters as Lender may request.

4. **Replacement Exhibit A.** Exhibit A to the Agreement is hereby replaced with Exhibit A attached hereto.

5. **Conditions Precedent to Effectiveness of Amendment.** The effectiveness of this Amendment is subject to and contingent upon the fulfillment of each and every one of the following conditions to the satisfaction of Lender:

(a) Lender shall have received this Amendment, duly executed by Borrowers;

(b) Lender shall have received (i) an Acknowledgment and Agreement of Guarantor, duly executed by MILFAM II, L.P., and ALIMCO, (ii) the Third Amended and Restated Limited Guaranty, duly executed by MILFAM II, L.P, and (iii) the Limited Partnership Resolution to Guaranty, duly executed by MILFAM II, L.P.;

(c) Lender shall have received the Acknowledgment and Agreement of Subordinate Creditors, duly executed by Neil Subin as Personal Representative of the Estate of Lloyd I. Miller, III, MILFAM II L.P., Lloyd I. Miller, III Trust A-4, Marli B. Miller Trust A-4, and ALIMCO ("**Subordinate Creditors**");

(d) Lender shall have received a copy of the Letters of Administration for the Estate of Lloyd I. Miller, III;

(e) No Event of Default or Default shall have occurred and be continuing; and

(f) All of the representations and warranties set forth herein and in the Agreement shall be true, complete and accurate in all respects as of the date hereof (except for representations and warranties which are expressly stated to be true and correct as of the date of the Agreement).

6. **Representations and Warranties.** In order to induce Lender to enter into this Amendment, each Borrower hereby represents and warrants to Lender that:

(a) No Event of Default or Default is continuing;

(b) All of the representations and warranties set forth herein and in the Agreement are true, complete and accurate in all respects (except for representations and warranties which are expressly stated to be true and correct as of the date of the Agreement); and

(c) This Amendment has been duly executed and delivered by Borrowers, and the Agreement continues to constitute the legal, valid and binding agreements and obligations of Borrowers, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, and similar laws and equitable principles affecting the enforcement of creditors' rights generally.

7 . **Counterparts; Telefacsimile Execution.** This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Amendment. Delivery of an executed counterpart of this Amendment by telefacsimile shall be equally as effective as delivery of a manually executed counterpart of this Amendment. Any party delivering an executed counterpart of this Amendment by telefacsimile also shall deliver a manually executed counterpart of this Amendment but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment.

8 . **Integration.** The Agreement as amended by this Amendment constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and thereof, and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof and thereof.

9 . **No Waiver.** The execution of this Amendment and the acceptance of all other agreements and instruments related hereto shall not be deemed to be a waiver of any Default or Event of Default, whether or not known to Lender and whether or not existing on the date of this Amendment.

10. **Release.**

(a) Each Borrower, each Guarantor signing an Acknowledgment and Agreement of Guarantor set forth below, and each Subordinate Creditor signing the Acknowledgment and Agreement of Subordinating Creditor, hereby absolutely and unconditionally releases and forever discharges Lender, and any and all participants, parent corporations, subsidiary corporations, affiliated corporations, insurers, indemnitors, successors and assigns thereof, together with all of the present and former directors, officers, agents and employees of any of the foregoing, from any and all claims, demands or causes of action of any kind, nature or description, whether arising in law or equity or upon contract or tort or under any state or federal law or otherwise, which such Borrower has had, now has or has made claim to have against any such person for or by reason of any act, omission, matter, cause or thing whatsoever arising from the beginning of time to and including the date of this Amendment, whether such claims, demands and causes of action are matured or unmatured or known or unknown. Each Borrower, each Guarantor signing an Acknowledgment and Agreement of Guarantor set forth below, and each Subordinate Creditor signing the Acknowledgment and Agreement of each Subordinate Creditor set forth below, each certify that it has read the following provisions of California Civil Code Section 1542:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

(b) Each Borrower, each Guarantor signing an Acknowledgment and Agreement of Guarantor set forth below, and each Subordinate Creditor signing the Acknowledgment and Agreement of each Subordinate Creditor set forth below, understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that even if it should eventually suffer additional damages arising out of the facts referred to above, it will not be able to make any claim for those damages. Furthermore, each Borrower, each Guarantor signing an Acknowledgment and Agreement of Guarantor set forth below, and each Subordinate Creditor signing the Acknowledgment and Agreement of each Subordinate Creditor set forth below, acknowledges that it intends these consequences even as to claims for damages that may exist as of the date of this release but which it does not know exist, and which, if known, would materially affect its decision to execute this Agreement, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

11. **Reaffirmation of the Agreement**. The Agreement as amended hereby remains in full force and effect.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Amendment as of the date first hereinabove written.

DETERMINE INC.,
a Delaware corporation

By /s/ John K. Nolan
Name: John K. Nolan
Title: CFO

DETERMINE SOURCING INC.,
a Delaware corporation

By /s/ John K. Nolan
Name: John K. Nolan
Title: CFO

Amendment Number Eleven to Amended and Restated Business Financing Agreement

WESTERN ALLIANCE BANK,
an Arizona corporation

By /s/ Josh Converse

Name: Josh Converse

Title: Vice President

Amendment Number Eleven to Amended and Restated Business Financing Agreement

Exhibit A
to
Amendment Number Eleven to Amended and Restated Business Financing Agreement

COMPLIANCE CERTIFICATE

TO: Western Alliance Bank, an Arizona corporation, as successor in interest to Bridge Bank, National Association (the “Lender”)
FROM: DETERMINE, INC., a Delaware corporation f/k/a Selectica, Inc., and DETERMINE SOURCING, INC., a Delaware corporation f/k/ Selectica Sourcing, Inc. (“Borrowers”)

The undersigned authorized officer of DETERMINE, INC. a Delaware corporation f/k/a Selectica, Inc., and DETERMINE SOURCING INC., a Delaware corporation f/k/a Selectica Sourcing, Inc., hereby certifies that in accordance with the terms and conditions of the Amended and Restated Business Financing Agreement between Borrowers and Lender (the “Agreement”), (i) Borrowers are in complete compliance for the period ending _____ with all required covenants except as noted below and (ii) all representations and warranties of Borrowers stated in the Agreement are true and correct as of the date hereof. Attached herewith are the required documents supporting the above certification. The Officer further certifies that these are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes.

**Please indicate compliance status by circling Yes/No under “Complies” column.
All deliverables shall comply with the requirements set forth in the Agreement.**

<u>Reporting Covenant</u>	<u>Required</u>	Yes	No	<u>Complies</u>
Consolidated monthly financial statements	Within 30 days after the end of each month in which any Advance was outstanding (including the last period in each fiscal year) and no later than 15 days prior to each Advance	Yes	No	No
Borrowing Base Certificate	Within 10 days after the end of each calendar month and no later than 3 business days prior to each Advance	Yes	No	No
A/R & A/P Agings, deferred revenue report (showing short term vs. long term deferred revenue), billings detail, cash collections journal, and credit memo report	Within 10 days after the end of each calendar month and no later than 3 business days prior to each Advance	Yes	No	No
Consolidated quarterly financial statements	Within 45 days of the end of each calendar quarter	Yes	No	No
Compliance Certificate	Concurrent with the monthly, quarterly and annual financial statements	Yes	No	No
Consolidated annual financial statements (audited)	Within 120 days of each FYE	Yes	No	No
10K and 10Q reports	Within 5 business days of SEC filing dates	Yes	No	No
A/R & Collateral Audit	Annually	Yes	No	No
Board approved annual financial projections	30 days after the beginning of each FYE	Yes	No	No
 <u>Financial Covenant</u>	 <u>Required</u>	 <u>Actual</u>	 <u>Complies</u>	
Asset Coverage Ratio	2.00 to 1.00	___ to 1.00	Yes	No

Deposits

Deposits held at Western Alliance Bank:

\$ _____

Deposits held outside of Western Alliance Bank:

\$ _____

Amendment Number Eleven to Amended and Restated Business Financing Agreement

Comments Regarding Exceptions: See Attached.

Sincerely,

SIGNATURE

TITLE

DATE

BANK USE ONLY

Received by: _____
AUTHORIZED SIGNER

Date: _____

Verified: _____
AUTHORIZED SIGNER

Date: _____

Compliance Status Yes No

Amendment Number Eleven to Amended and Restated Business Financing Agreement

ACKNOWLEDGMENT AND AGREEMENT OF GUARANTOR

The undersigned, a guarantor of the obligations of Determine, Inc., a Delaware corporation, f/k/a Selectica, Inc. ("**Determine**"), and Determine Sourcing Inc., a Delaware corporation, f/k/a Selectica Sourcing Inc., ("**Sourcing**," together with Determine, each a "**Borrower**," and collectively "**Borrowers**"), to Western Alliance Bank, an Arizona corporation ("**Lender**"), pursuant to the Second Amended and Restated Limited Guaranty of the undersigned ("**Guaranty**"), hereby (i) acknowledges receipt of the foregoing Amendment; (ii) consents to the terms (including without limitation the release set forth in Section 10 of the Amendment) and execution thereof; (iii) reaffirms all obligations to Lender pursuant to the terms of its Guaranty; and (iv) acknowledges that, subject to the terms of the Guaranty, Lender may amend, restate, extend, renew or otherwise modify the Loan Documents and any indebtedness or agreement of Borrowers, or enter into any agreement or extend additional or other credit accommodations, without notifying or obtaining the consent of the undersigned and without impairing the obligations of the undersigned under the Guaranty.

MILFAM II L.P.,
a Delaware limited partnership

By MILFAM LLC,
a Delaware limited liability company
Its General Partner

/s/ Neil S. Subin

By: Neil S. Subin
Title: Manager

Amendment Number Eleven to Amended and Restated Business Financing Agreement

ACKNOWLEDGMENT AND AGREEMENT OF GUARANTOR

The undersigned, a guarantor of the obligations of Determine, Inc., a Delaware corporation, f/k/a Selectica, Inc. ("**Determine**"), and Determine Sourcing Inc., a Delaware corporation, f/k/a Selectica Sourcing Inc., ("**Sourcing**," together with Determine, each a "**Borrower**," and collectively "**Borrowers**"), to Western Alliance Bank, an Arizona corporation ("**Lender**"), pursuant to the Third Amended and Restated Limited Guaranty of the undersigned ("**Guaranty**"), hereby (i) acknowledges receipt of the foregoing Amendment; (ii) consents to the terms (including without limitation the release set forth in Section 10 of the Amendment) and execution thereof; (iii) reaffirms all obligations to Lender pursuant to the terms of its Guaranty; and (iv) acknowledges that, subject to the terms of the Guaranty, Lender may amend, restate, extend, renew or otherwise modify the Loan Documents and any indebtedness or agreement of Borrowers, or enter into any agreement or extend additional or other credit accommodations, without notifying or obtaining the consent of the undersigned and without impairing the obligations of the undersigned under the Guaranty.

**ALIMCO FINANCIAL CORPORATION f/k/a
ALLIANCE SEMICONDUCTOR CORPORATION,**
a Delaware corporation

By: /s/ Alan B. Howe
Name: Alan B. Howe
Title: CEO

Amendment Number Eleven to Amended and Restated Business Financing Agreement

ACKNOWLEDGMENT AND AGREEMENT OF SUBORDINATE CREDITORS AND ASSUMPTION OF SUBORDINATION AGREEMENT

The undersigned, each a subordinate creditor of the indebtedness of Determine, Inc., a Delaware corporation, f/k/a Selectica, Inc. ("**Determine**"), and Determine Sourcing Inc., a Delaware corporation, f/k/a Selectica Sourcing Inc., ("**Sourcing**," together with Determine, each a "**Borrower**," and collectively "**Borrowers**"), owing to, Western Alliance Bank, an Arizona corporation ("**Lender**"), pursuant to the Second Amended and Restated Subordination Agreement, dated as of December 27, 2016 (the "**Subordination Agreement**"), hereby (i) acknowledges receipt of the foregoing Amendment; (ii) consents to the terms (including without limitation the release set forth in Section 10) and execution thereof; (iii) reaffirms all obligations to Lender pursuant to the terms of the Subordination Agreement; and (iv) acknowledges that Lender may, subject to the terms of the Subordination Agreement, amend, restate, extend, renew or otherwise modify the Loan Documents between Borrowers and Lender, and any indebtedness or agreement of Borrowers, or enter into any agreement or extend additional or other credit accommodations, without notifying or obtaining the consent of the undersigned and without impairing the liability of the undersigned under the Subordination Agreement for all of Borrowers' present and future indebtedness to Lender.

Each of Lloyd I. Miller, III Trust A-4 and Marli B. Miller Trust A-4 (each a "**New Subordinated Creditor**") are assuming the position of, as successor in interest to, Lloyd I. Miller Trust A-4 under the Subordination Agreement. Each New Subordinated Creditor acknowledges the terms of the Agreement (as defined in the Amendment) and reaffirms and agrees to assume the Subordination Agreement, to be bound by its terms, and to be deemed a "Creditor" for all purpose thereunder.

LLOYD I. MILLER, III (DECEASED)

By: /s/ Neil S. Subin
Name: Neil S. Subin
Title: Executor of the Estate of Lloyd I. Miller, III

**ALIMCO FINANCIAL CORPORATION f/k/a
ALLIANCE SEMICONDUCTOR CORPORATION,**
a Delaware corporation

By: /s/ Alan B. Howe
Name: Alan B. Howe
Title: CEO

MILFAM II L.P.

By: MILFAM LLC
Its: General Partner

By: /s/ Neil S. Subin
Name: Neil S. Subin
Title: Manager

THIRD AMENDED AND RESTATED LIMITED GUARANTY
as of June 14, 2018

To: WESTERN ALLIANCE BANK

1. The Guaranty.

(a) For valuable consideration, the undersigned ("Guarantor") hereby unconditionally guarantees and promises to pay promptly to Western Alliance Bank, an Arizona corporation, successor-in-interest to Bridge Bank N.A. ("Lender"), or order, in lawful money of the United States, any and all Indebtedness of Determine Inc., a Delaware corporation, f/k/a Selectica, Inc., and Determine Sourcing, Inc., a Delaware corporation, f/k/a Selectica Sourcing Inc. (individually and collectively, jointly and severally, the "Borrower") to Lender when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter. Except as otherwise provided in Sections 1(b) and (c), the liability of Guarantor under this Guaranty is not limited as to the principal amount of the Indebtedness guaranteed and includes, without limitation, liability for all interest, fees, indemnities (including, without limitation, hazardous waste indemnities), and other costs and expenses relating to or arising out of the Indebtedness. The liability of Guarantor is continuing and relates to any Indebtedness, including that arising under successive transactions which shall either continue the Indebtedness or from time to time renew it after it has been satisfied. This Guaranty is cumulative and does not supersede any other outstanding guaranties, and the liability of Guarantor under this Guaranty is exclusive of Guarantor's liability under any other guaranties signed by Guarantor. If more than one individual or entity sign this Guaranty, their obligations under this Guaranty shall be joint and several.

(b) Notwithstanding anything to the contrary contained in this Guaranty, the maximum liability of Guarantor to Lender pursuant to this Guaranty shall be an amount equal to \$2,000,000 (the "Initial Guaranteed Amount"). Lender may reduce (in its sole and absolute discretion), but not increase, the Initial Guaranteed Amount at any time during the term of this Guaranty without Guarantor's consent by written notice to Guarantor (the Initial Guaranteed Amount as may be reduced in accordance with the foregoing at any given time is referred to herein as the "Guaranteed Amount").

(c) Notwithstanding anything to the contrary contained in this Guaranty, this Guaranty shall terminate on August 10, 2019 (the "Termination Date"), unless prior to that date demand for payment is made; provided that upon the extension of the Maturity Date (as defined in the Financing Agreement), the Termination Date shall automatically extend to the date that is ten (10) days following the extended Maturity Date (as defined in the Financing Agreement) (such extension of the Termination Date, the "Additional Maturity Extension"). Notwithstanding the immediately foregoing sentence, the Termination Date shall in no event be later than July 30, 2020.

(d) This Guaranty replaces in its entirety that certain Second Amended and Restated Limited Guaranty, dated as of June 1, 2017, executed by Mr. Lloyd Miller, with the guaranteed amount of \$1,000,000, which guaranty is hereby cancelled and terminated and of no further force and effect as of the date of this Guaranty.

2. Definitions. As used herein:

(a) "Borrower" means the individual or the entity named in Paragraph 1 of this Guaranty and, if more than one, then any one or more of them.

(b) “Financing Agreement” means that certain Amended and Restated Business Financing Agreement dated as of July 25, 2014 by and between Borrower and Lender, as amended by that certain Amendment Number One to Amended and Restated Business Financing Agreement and Waiver of Defaults dated as of December 31, 2014, that certain Amendment Number Two to Amended and Restated Business Financing Agreement and Consent dated as of March 11, 2015, that certain Amendment Number Three to Amended and Restated Business Financing Agreement dated as of June 5, 2015, that certain Amendment Number Four to Amended and Restated Business Financing Agreement and Waiver of Defaults dated as of November 13, 2015, that certain Amendment Number Five to Amended and Restated Business Financing Agreement dated as of February 3, 2016, that certain Amendment Number Six to Amended and Restated Business Financing Agreement, dated as of March 18, 2016, that certain Amendment Number Seven to Amended and Restated Business Financing Agreement, dated as of April 20, 2016, that certain Amendment Number Eight to Amended and Restated Business Financing Agreement and Waiver of Defaults, dated as of September 23, 2016, that certain Amendment Number Nine to Amended and Restated Business Financing Agreement, dated as of January 23, 2017, that certain Amendment Number Ten to Amended and Restated Business Financing Agreement, dated as of June 1, 2017, and as may be further amended or restated from time to time.

(c) “Guarantor” means the individual or the entity signing this Guaranty and, if more than one, then any one or more of them, jointly and severally.

(d) “Indebtedness” means any and all debts, liabilities, and obligations of Borrower to Lender, now or hereafter existing, whether voluntary or involuntary and however arising, whether direct or indirect or acquired by Lender by assignment, succession, or otherwise, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, held or to be held by Lender for its own account or as agent for another or others, whether Borrower may be liable individually or jointly with others, whether recovery upon such debts, liabilities, and obligations may be or hereafter become barred by any statute of limitations, and whether such debts, liabilities, and obligations may be or hereafter become otherwise unenforceable. Indebtedness includes, without limitation, any and all obligations of Borrower to Lender for reasonable attorneys’ fees and all other costs and expenses incurred by Lender in the collection or enforcement of any debts, liabilities, and obligations of Borrower to Lender.

(e) “Non-Formula Advances” has the meaning given to such term in the Financing Agreement.

3. Obligations Independent. The obligations hereunder are independent of the obligations of Borrower or any other guarantor, and a separate action or actions may be brought and prosecuted against Guarantor whether action is brought against Borrower or any other guarantor or whether Borrower or any other guarantor be joined in any such action or actions. Anyone executing this Guaranty shall be bound by its terms without regard to execution by anyone else.

4. Rights of Lender. Guarantor authorizes Lender, without notice or demand and without affecting its liability hereunder, from time to time to: (a) renew, compromise, extend, accelerate, or otherwise change the time for payment, or otherwise change the terms, of the Indebtedness or any part thereof (subject only to the terms of the Financing Agreement), including increase or decrease of the rate of interest thereon, or otherwise change the terms of the Indebtedness; (b) receive and hold security for the payment of any Indebtedness and exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any such security; (c) apply such security and direct the order or manner of sale thereof as Lender in its discretion may determine; and (d) release or substitute any Guarantor or any one or more of any endorsers or other guarantors of any of the Indebtedness.

5. Guaranty to be Absolute. Subject to Sections 1(b) and (c), Guarantor agrees that until the Indebtedness has been paid in full and any commitments of Lender or facilities provided by Lender with respect to the Indebtedness have been terminated, Guarantor shall not be released by or because of the taking, or failure to take, any action that might in any manner or to any extent vary the risks of Guarantor under this Guaranty or that, but for this paragraph, might discharge or otherwise reduce, limit, or modify Guarantor’s obligations under this Guaranty. Subject to Sections 1(b) and (c), Guarantor waives and surrenders any defense to any liability under this Guaranty based upon any such action, including but not limited to any action of Lender described in the immediately preceding paragraph of this Guaranty. Subject to Sections 1(b) and (c), it is the express intent of Guarantor that Guarantor’s obligations under this Guaranty are and shall be absolute and unconditional.

6. Guarantor's Waivers of Certain Rights and Certain Defenses. Guarantor waives: (a) any right to require Lender to proceed against Borrower, proceed against or exhaust any security for the Indebtedness, or pursue any other remedy in Lender's power whatsoever; (b) any defense arising by reason of any disability or other defense of Borrower, or the cessation from any cause whatsoever of the liability of Borrower; (c) any defense based on any claim that Guarantor's obligations exceed or are more burdensome than those of Borrower; and (d) the benefit of any statute of limitations affecting Guarantor's liability hereunder, subject in all cases to Sections 1(b) and (c). No provision or waiver in this Guaranty shall be construed as limiting the generality of any other waiver contained in this Guaranty.

7. [Reserved].

8. Waiver of Notices. Subject to Sections 1(b) and (c), Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of intent to accelerate, notices of acceleration, notices of any suit or any other action against Borrower or any other person, any other notices to any party liable on the Indebtedness (including Guarantor), notices of acceptance of this Guaranty, and notices of the existence, creation, or incurring of new or additional Indebtedness.

9. Waivers of Other Rights and Defenses.

(a) Guarantor waives any rights and defenses that are or may become available to Guarantor by reason of Sections 2787 to 2855, inclusive, of the California Civil Code.

(b) Guarantor waives all rights and defenses that Guarantor may have because any of the Indebtedness is secured by real property. This means, among other things: (i) Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower; and (ii) if Lender forecloses on any real property collateral pledged by Borrower: (1) the amount of the Indebtedness may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (2) Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower. This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because any of the Indebtedness is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(c) Guarantor waives any right or defense it may have at law or equity, including California Code of Civil Procedure Section 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

10. Security. To secure all of Guarantor's obligations hereunder, Guarantor assigns and grants to Lender a security interest in all moneys, securities, and other property of Guarantor now or hereafter in the possession of Lender, all deposit accounts of Guarantor maintained with Lender, and all proceeds thereof. Upon default or breach of any of Guarantor's obligations to Lender, Lender may apply any deposit account to reduce the Indebtedness, and may foreclose any collateral as provided in the Uniform Commercial Code and in any security agreements between Lender and Guarantor.

11. Subordination. Pursuant to that certain Second Amended and Restated Subordination Agreement, dated as of December 27, 2016, any security interest, lien, or other encumbrance that Guarantor may now or hereafter have on any property of Borrower in connection with that certain Junior Secured Convertible Promissory Note, dated as of March 11, 2015, that certain Junior Secured Convertible Promissory Note, dated as of December 16, 2015, that certain Junior Secured Convertible Promissory Note, dated as of December 27, 2016 issued by Borrower to Alimco Financial Corporation, or that certain Junior Secured Convertible Promissory Note, dated as of December 27, 2016 issued by Borrower to MILFAM II L.P., is subordinated to any security interest, lien, or other encumbrance that Lender may have on any such property.

12. Revocation of Guaranty.

(a) Subject to Sections 1(b) and (c), Guarantor absolutely, unconditionally, knowingly, and expressly waives any right to revoke this Guaranty as to future Indebtedness and, in light thereof, all protection afforded Guarantor under Section 2815 of the California Civil Code. Subject to Sections 1(b) and (c), Guarantor fully realizes and understands that, upon execution of this agreement, Guarantor will not have any right to revoke this Guaranty as to any future Indebtedness and, thus, may have no control over such Guarantor's ultimate responsibility for the Indebtedness. If, contrary to the express intent of this agreement, any such revocation is effective notwithstanding the foregoing waiver, Guarantor acknowledges and agrees that: (a) no such revocation shall be effective until written notice thereof has been received by Lender; (b) no such revocation shall apply to any Indebtedness in existence on such date (including any subsequent continuation, extension, or renewal thereof, or change in the interest rate, payment terms, or other terms and conditions thereof); (c) no such revocation shall apply to any Indebtedness made or created after such date to the extent made or created pursuant to a legally binding commitment of Lender which is, or is believed in good faith by Lender to be, in existence on the date of such revocation; (d) no payment by Borrower, or from any other source, prior to the date of such revocation shall reduce the obligations of such Guarantor hereunder; and (e) any payment by Borrower or from any source other than such Guarantor, subsequent to the date of such revocation, shall first be applied to that portion of the obligations, if any, as to which the revocation by such Guarantor is effective (and which are not, therefore, guaranteed by such Guarantor hereunder), and, to the extent so applied, shall not reduce the obligations of such Guarantor hereunder.

(b) In the event of the death of a Guarantor, the liability of the estate of the deceased Guarantor shall continue in full force and effect as to (i) the Indebtedness existing at the date of death, and any renewals or extensions thereof, and (ii) loans or advances made to or for the account of Borrower after the date of the death of the deceased Guarantor pursuant to a commitment made by Lender to Borrower prior to the date of such death. As to all surviving Guarantors, this Guaranty shall continue in full force and effect after the death of a Guarantor, not only as to the Indebtedness existing at that time, but also as to the Indebtedness thereafter incurred by Borrower to Lender.

(c) Subject to Sections 1(b) and (c), Guarantor acknowledges and agrees that this Guaranty may be revoked only in accordance with the foregoing provisions of this Section 12 and shall not be revoked simply as a result of any change in name, location, or composition or structure of Borrower, the dissolution of Borrower, or the termination, increase, decrease, or other change of any personnel or owners of Borrower.

13. Reinstatement of Guaranty. Subject to Sections 1(b) and (c), if this Guaranty is revoked, returned, or cancelled, and subsequently any payment or transfer of any interest in property by Borrower to Lender is rescinded or must be returned by Lender to Borrower, this Guaranty shall be reinstated with respect to any such payment or transfer, regardless of any such prior revocation, return, or cancellation.

14. Stay of Acceleration. In the event that acceleration of the time for payment of any of the Indebtedness is stayed upon the insolvency, bankruptcy, or reorganization of Borrower or otherwise, all such Indebtedness guaranteed by Guarantor shall nonetheless be payable by Guarantor immediately if requested by Lender.

15. No Deductions. Subject to Sections 1(b) and (c), all payments by Guarantor hereunder shall be paid in full, without setoff or counterclaim or any deduction or withholding whatsoever, including, without limitation, for any and all present and future taxes. In the event that Guarantor or Lender is required by law to make any such deduction or withholding, Guarantor agrees to pay on behalf of Lender such amount directly to the appropriate person or entity, or if the Guarantor cannot legally comply with the foregoing, Guarantor shall pay to Lender such additional amounts as will result in the receipt by Lender of the full amount payable hereunder. Guarantor shall promptly provide Lender with evidence of payment of any such amount made on Lender's behalf.

16. Information Relating to Borrower. Guarantor acknowledges and agrees that it shall have the sole responsibility for, and has adequate means of, obtaining from Borrower such information concerning Borrower's financial condition or business operations as Guarantor may require, and that Lender has no duty, and Guarantor is not relying on Lender, at any time to disclose to Guarantor any information relating to the business operations or financial condition of Borrower.

17. Borrower's Authorization. Where Borrower is a corporation, partnership, trust, or limited liability company, it is not necessary for Lender to inquire into the powers of Borrower or of the officers, directors, partners, members, managers, or agents acting or purporting to act on its behalf, and any Indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder, subject to any limitations on Guarantor's liability set forth herein.

18. Information Relating to Guarantor. Guarantor authorizes Lender to verify or check any information given by Guarantor to Lender, check Guarantor's credit references, verify employment, and obtain credit reports. Guarantor acknowledges and agrees that the authorizations provided in this paragraph apply to any individual general partner of Guarantor and to Guarantor's spouse and any such general partner's spouse if Guarantor or such general partner is married and lives in a community property state.

19. Guarantor's Covenants. Subject to Sections 1(b) and (c), until the Indebtedness has been paid in full and any commitments of Lender or facilities provided by Lender with respect to the Indebtedness have been terminated and each and every term, covenant, and condition of this Guaranty is fully performed, Guarantor agrees:

(a) to provide the following financial information and statements in form and content acceptable to Lender, and such additional information as requested by Lender from time to time:

(i) Guarantor's annual financial statements upon request of Lender. Such statements must be in form satisfactory to Lender and be certified and dated by Guarantor and show Guarantor's financial condition. Such statements must include, without limitation, a listing of all assets and liabilities, a listing of all sources of income and of the uses of income, the amount and sources of contingent liabilities, identification of joint owners as to listed assets, and an annual projection of sources and uses of income;

(ii) additional information as requested by Lender from time to time regarding the financial condition of any corporations, partnerships, limited liability companies, or other entities in which Guarantor owns, directly or indirectly, a material interest; and

(iii) copies of Guarantor's federal income tax return (with all forms K-1 attached) together with a statement of any contributions made by Guarantor to any subchapter S corporation or trust, and, if requested by Lender, copies of any extensions of the filing date.

20. Taxes. Guarantor represents and warrants that it is organized and resident in the United States of America. If Guarantor must make a payment under this Guaranty, Guarantor represents and warrants that it will make the payment from one of its U.S. resident offices to a U.S. office of Lender so that no withholding tax is imposed on the payment. If notwithstanding the foregoing, Guarantor makes a payment under this Guaranty to which withholding tax applies, then Guarantor shall pay any taxes (other than taxes on net income (a) imposed by the country or any subdivision of the country in which Lender's principal office or actual lending office is located and (b) measured by the United States taxable income Lender would have received if all payments under or in respect of this Guaranty were exempt from taxes levied by Guarantor's country) that are at any time imposed on any such payments under or in respect of this Guaranty including, but not limited to, payments made pursuant to this paragraph. Further, Guarantor shall also pay to Lender, on demand, all additional amounts that Lender specifies as necessary to preserve the after-tax yield Lender would have received if such taxes had not been imposed.

21. Change of Status. Guarantor shall not enter into any consolidation, merger, or other combination unless Guarantor is the surviving business entity. Further, Guarantor shall not change its legal structure unless (a) Guarantor obtains the prior written consent of Lender, such consent not to be unreasonably withheld, conditioned or delayed, and (b) all Guarantor's obligations under this Guaranty are assumed by the new business entity.

22. Notices. All notices required under this Guaranty shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to the addresses on the signature page of this Guaranty, or sent by facsimile to the fax numbers listed on the signature page, or to such other addresses as Lender and Guarantor may specify from time to time in writing. Notices sent by (a) first class mail shall be deemed delivered on the earlier of actual receipt or on the fourth business day after deposit in the U.S. mail, postage prepaid, (b) overnight courier shall be deemed delivered on the next business day, and (c) teletype shall be deemed delivered when transmitted.

23. Successors and Assigns. This Guaranty (a) binds Guarantor and Guarantor's executors, administrators, successors, and assigns, provided that Guarantor may not assign its rights or obligations under this Guaranty without the prior written consent of Lender, and (b) inures to the benefit of Lender and Lender's indorsees, successors, and assigns. Lender may, with notice to Guarantor and without affecting Guarantor's obligations hereunder, sell, assign, grant participations in, or otherwise transfer to any other person, firm, or corporation the Indebtedness and this Guaranty, in whole or in part. Guarantor agrees that Lender may disclose to any assignee or purchaser, or any prospective assignee or purchaser, of all or part of the Indebtedness any and all information in Lender's possession concerning Guarantor, this Guaranty, and any security for this Guaranty.

24. Amendments, Waivers, and Severability. No provision of this Guaranty may be amended or waived except in writing; provided, however, that the Guaranteed Amount may be reduced by Lender (in its sole and absolute discretion) without the consent or approval of Guarantor. Subject to Sections 1(b) and (c), no failure by Lender to exercise, and no delay in exercising, any of its rights, remedies, or powers shall operate as a waiver thereof, and no single or partial exercise of any such right, remedy, or power shall preclude any other or further exercise thereof or the exercise of any other right, remedy, or power. The unenforceability or invalidity of any provision of this Guaranty shall not affect the enforceability or validity of any other provision of this Guaranty.

25. Costs and Expenses. Subject to Sections 1(b) and (c), Guarantor agrees to pay all reasonable attorneys' fees, including allocated costs of Lender's in-house counsel, and all other costs and expenses which may be incurred by Lender (a) in the enforcement of this Guaranty or (b) in the preservation, protection, or enforcement of any rights of Lender in any case commenced by or against Guarantor or Borrower under the Bankruptcy Code (Title 11, United States Code) or any similar or successor statute.

26. Governing Law and Jurisdiction. This Guaranty shall be governed by and construed under the laws of the State of California. Guarantor irrevocably (a) submits to the non-exclusive jurisdiction of any federal or state court sitting in the State of California in any action or proceeding arising out of or relating to this Guaranty and (b) waives to the fullest extent permitted by law any defense asserting an inconvenient forum in connection therewith. Service of process by Lender in connection with such action or proceeding shall be binding on Guarantor if sent to Guarantor by registered or certified mail at its address specified below.

27. Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER, HAS DETERMINED FOR ITSELF THE NECESSITY TO REVIEW THE SAME WITH ITS LEGAL COUNSEL, AND KNOWINGLY AND VOLUNTARILY WAIVES ALL RIGHTS TO A JURY TRIAL.

28. Reference Provision.

(a) In the event the Jury Trial waiver is not enforceable, the parties elect to proceed under this Judicial Reference Provision.

(b) With the exception of the items specified in Section 28(c) below, any controversy, dispute or claim (each, a "Claim") between the parties arising out of or relating to this Agreement or any other document, instrument or agreement between the undersigned parties (collectively in this Section, the "Loan Documents"), will be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("CCP"), or their successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to the reference proceeding. Except as otherwise provided in the Loan Documents, venue for the reference proceeding will be in the state or federal court in the county or district where the real property involved in the action, if any, is located or in the state or federal court in the county or district where venue is otherwise appropriate under applicable law (the "Court").

(c) The matters that shall not be subject to a reference are the following: (i) nonjudicial foreclosure of any security interests in real or personal property, (ii) exercise of self-help remedies (including, without limitation, set-off), (iii) appointment of a receiver and (iv) temporary, provisional or ancillary remedies (including, without limitation, writs of attachment, writs of possession, temporary restraining orders or preliminary injunctions). This reference provision does not limit the right of any party to exercise or oppose any of the rights and remedies described in clauses (i) and (ii) or to seek or oppose from a court of competent jurisdiction any of the items described in clauses (iii) and (iv). The exercise of, or opposition to, any of those items does not waive the right of any party to a reference pursuant to this reference provision as provided herein.

(d) The referee shall be a retired judge or justice selected by mutual written agreement of the parties. If the parties do not agree within ten (10) days of a written request to do so by any party, then, upon request of any party, the referee shall be selected by the Presiding Judge of the Court (or his or her representative). A request for appointment of a referee may be heard on an ex parte or expedited basis, and the parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP § 170.6, each party shall have one peremptory challenge to the referee selected by the Presiding Judge of the Court (or his or her representative).

(e) The parties agree that time is of the essence in conducting the reference proceedings. Accordingly, the referee shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within fifteen (15) days after the date of selection of the referee, (ii) if practicable, try all issues of law or fact within one hundred twenty (120) days after the date of the conference and (iii) report a statement of decision within twenty (20) days after the matter has been submitted for decision.

(f) The referee will have power to expand or limit the amount and duration of discovery. The referee may set or extend discovery deadlines or cutoffs for good cause, including a party's failure to provide requested discovery for any reason whatsoever. Unless otherwise ordered based upon good cause shown, no party shall be entitled to "priority" in conducting discovery, depositions may be taken by either party upon seven (7) days written notice, and all other discovery shall be responded to within fifteen (15) days after service. All disputes relating to discovery which cannot be resolved by the parties shall be submitted to the referee whose decision shall be final and binding.

(g) Except as expressly set forth herein, the referee shall determine the manner in which the reference proceeding is conducted including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the reference proceeding. All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except that when any party so requests, a court reporter will be used at any hearing conducted before the referee, and the referee will be provided a courtesy copy of the transcript. The party making such a request shall have the obligation to arrange for and pay the court reporter. Subject to the referee's power to award costs to the prevailing party, the parties will equally share the cost of the referee and the court reporter at trial.

(h) The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a court proceeding, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision at the close of the reference proceeding which disposes of all claims of the parties that are the subject of the reference. Pursuant to CCP § 644, such decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court and any such decision will be final, binding and conclusive. The parties reserve the right to appeal from the final judgment or order or from any appealable decision or order entered by the referee. The parties reserve the right to findings of fact, conclusions of laws, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

(i) If the enabling legislation which provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by reference procedure will be resolved and determined by arbitration. The arbitration will be conducted by a retired judge or justice, in accordance with the California Arbitration Act §1280 through §1294.2 of the CCP as amended from time to time. The limitations with respect to discovery set forth above shall apply to any such arbitration proceeding.

(j) THE PARTIES RECOGNIZE AND AGREE THAT ALL CONTROVERSIES, DISPUTES AND CLAIMS RESOLVED UNDER THIS REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS, HIS OR HER OWN CHOICE, EACH PARTY KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, AGREES THAT THIS REFERENCE PROVISION WILL APPLY TO ANY CONTROVERSY, DISPUTE OR CLAIM BETWEEN OR AMONG THEM ARISING OUT OF OR IN ANY WAY RELATED TO, THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

29. Remedies. All rights and remedies provided in this Guaranty and any instrument or agreement referred to herein are cumulative and are not exclusive of any rights or remedies otherwise provided by law. Any single or partial exercise of any right or remedy shall not preclude the further exercise thereof or the exercise of any other right or remedy.

30. Severability. The illegality or unenforceability of any provision of this Guaranty or any instrument or agreement referred to herein shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Guaranty or any instrument or agreement referred to herein.

31. No Novation. This Guaranty amends and restates in its entirety, and continues the obligations of Guarantor set forth in, that certain Second Amended and Restated Limited Guaranty, dated as of June 1, 2017 (the "Prior Guaranty"), by Guarantor in favor of Lender. Nothing herein contained shall be construed as a substitution or novation of the obligations of Guarantor outstanding under the Prior Guaranty, which obligations shall remain in full force and effect, except to the extent that the terms thereof are modified hereby.

[Remainder of page intentionally left blank. Signature page follows.]

Executed as of the date set forth on the first page.

**MILFAM II L.P.,
a Delaware limited partnership**

**By MILFAM LLC,
a Delaware limited liability company
Its General Partner**

/s/ Neil S. Subin
By: Neil S. Subin
Title: Manager

Address for notices to Lender:
Western Alliance Bank
Attn: Josh Converse
55 Almaden Boulevard, Suite 100
San Jose, CA 95113

Address for notices to Guarantor:
Neil S. Subin
3300 South Dixie Highway, Suite 1-365
West Palm Beach, Florida 33405
Tel: (561) 287-5399
Fax: (619) 923-2908

ACKNOWLEDGED AND AGREED (solely with respect to Section 1(d)
above):

LLOYD I. MILLER, III (DECEASED)

By /s/ Neil S. Subin
Name: Neil S. Subin
Title: Executor of the Estate of Lloyd I. Miller, III

GUARANTY FEE AGREEMENT

This Guaranty Fee Agreement (this “*Agreement*”) sets forth the terms of a guaranty fee arrangement entered into and made effective as of June 14, 2018 (“the *Effective Date*”) by and between the Guarantor, as defined below, and Determine, Inc., a Delaware corporation (the “*Company*” and, collectively with the Guarantor, the “*Parties*” and each a “*Party*”).

RECITALS

WHEREAS, pursuant to the Third Amended and Restated Limited Guaranty, dated of even date herewith (the “*Guaranty*”), entered into by MILFAM II L.P. (the “*Guarantor*”) and Western Alliance Bank, as successor in interest to Bridge Bank, National Association (“*Lender*”), the Guarantor agreed to serve as a limited guarantor of \$2 million of the Company’s loan from Lender made pursuant to the Amended and Restated Business Financing Agreement, dated as of July 25, 2014, as amended (the “*Credit Agreement*”), between the Company and Lender, as such guaranteed amount may be reduced in accordance with the terms of the Guaranty (such guaranteed amount as is in effect on any specific date during the term of this Agreement, the “*Guaranteed Amount*”);

WHEREAS, the Guaranty was entered into to satisfy certain conditions for Lender related to the Credit Agreement; and

WHEREAS, the Guarantor has agreed to guarantee the payment obligations of the Company with respect to the Guaranteed Amount under the Credit Agreement, and in consideration thereof, the Company has agreed to pay the Guarantor an arm’s length guaranty fee, as described herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual promises hereinafter set forth, the Parties hereto agree as follows:

1. Guaranty Payment. In consideration of the Guaranty, the Company shall cause to be paid to the Guarantor (i) a commitment fee equal to \$108,000 (the “*Guaranty Amount*”) and (ii) a monthly fee that shall accrue each calendar month during the term of the Guaranty equal to ten percent (10%) of the Guaranty Amount divided by twelve (12) (the “*Monthly Fee*”). The Guaranty Amount and the then accrued Monthly Fee shall be payable in cash by the Company to the Guarantor in accordance herewith upon the termination or expiration of the Guaranty.

2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to the principles of conflicts of laws of any jurisdiction).

3. Severability. If any provision in this Agreement shall be found or be held to be invalid or unenforceable, then the meaning of said provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement which shall remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by any Party. In such event, the Parties shall use good faith efforts to negotiate a substitute, valid and enforceable provision or agreement that most nearly affects the Parties’ intent in entering into this Agreement.

4. Successors and Assigns. This Agreement, and the obligations and rights of the Parties hereunder, shall be binding upon and inure to the benefit of the Parties’ respective heirs, personal representatives, successors and assigns.

5. Assignment. The Company may not assign this Agreement, its rights or responsibilities hereunder, without the prior written authorization of the Guarantor. Any assignment in derogation of the foregoing shall be void.

6. Amendment. This Agreement may not be amended or modified, nor may any of its terms be waived, except by written instruments signed by the Company and the Guarantor.

7 . Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient (a) upon receipt, when delivered personally or by courier, (b) the next business day after sent, when sent by overnight delivery service, (c) upon delivery if given by electronic mail during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, or (d) three (3) business days after being deposited in the U.S. mail as certified or registered mail, return receipt requested, with postage prepaid, if in each instance such notice is addressed to the party to be notified at such Party's address as set forth on the signature pages hereto or as subsequently modified by written notice.

8 . Sufficiency of Consideration. The Parties jointly and severally represent, warrant and covenant that each has received full and sufficient consideration for all grants made and obligations undertaken, in this Agreement.

9 . Taxes. Each Party hereto shall be responsible for any and all taxes levied as a result of the performance of each Party's respective activities under this Agreement.

10 . Entire Agreement. This Agreement, along with the Guaranty, shall constitute the full and entire understanding and agreement between the Parties with regard to the subjects hereof and thereof, and any and all other written or oral agreements existing between the Parties hereto are expressly canceled.

11 . Headings. The headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

12 . Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall be deemed to constitute one instrument.

13 . Expenses. The Company agrees to reimburse the Guarantor on demand for all documented fees, costs, and expenses (including reasonable out-of-pocket attorneys' fees and expenses) for the preparation, amendment, negotiation, administration, defense, collection and enforcement of this Agreement and the Guaranty (including, without limitation, those incurred in connection with appeals or insolvency proceedings) or otherwise incurred with respect to the Company.

IN WITNESS WHEREOF, this Guaranty Fee Agreement has been duly executed as of the date first set forth above:

“Company”

DETERMINE, INC.

By: /s/ John K. Nolan

Name: John K. Nolan

Title: Chief Financial Officer

Address for notices:

Determine, Inc.
615 West Carmel Drive, Suite 100
Carmel, IN 46032
Attention: John K. Nolan
Fax: (650) 532-1540
E-mail: jnolan@determine.com

With a copy to:

DLA Piper LLP (US)
2000 University Avenue
East Palo Alto, CA 94303
Attention: Eric Wang
Fax: (650) 687-1205
E-mail: eric.wang@dlapiper.com

“Guarantor”

**MILFAM II L.P.,
A Delaware limited partnership**

**By MILFAM LLC,
A Delaware limited liability company
Its General Partner**

By: /s/ Neil S. Subin

Name: Neil S. Subin

Title: Manager

Address for notices:

Neil S. Subin
3300 South Dixie Highway, Suite 1-365
West Palm Beach, FL 33405

With a copy to:

O'Melveny & Myers LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
Attention: C. Brophy Christensen
Email: bchristensen@omm.com

AMENDMENT TO GUARANTY FEE AGREEMENT

This Amendment (this “**Amendment**”), dated as of June 14, 2018, to that certain Guaranty Fee Agreement, dated as of June 1, 2017 (the “**Agreement**”), is entered into by and among each of Determine, Inc., a Delaware corporation (the “**Company**”), and the Guarantors. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Agreement.

RECITALS

A. The Company is seeking to amend the Credit Agreement to extend the term of the Credit Agreement, which extension would automatically extend the termination date of the Guaranties pursuant thereto.

B. Pursuant to the Agreement, if the Additional Maturity Extension (as defined in the Guaranties) occurs, the Company is obligated to issue to the Guarantors the Additional Extension Payment Shares.

C. The Company and the Guarantors desire to amend the Agreement to change the form and timing of the payment to the Guarantors by the Company in connection with the extension of the Maturity Date (as defined in the Credit Agreement).

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and covenants contained herein, the Company and the Guarantors hereby agree as follows:

1. **Amendment of Additional Extension Fee.** Section 1(b) of the Agreement is hereby amended by deleting it in its entirety and substituting the following therefor:

“**Additional Extension Fee.** If the Maturity Date (as defined in the Credit Agreement) is extended to July 31, 2019, the Company shall cause to be paid to the Guarantors (i) a commitment fee equal to \$168,750 in the aggregate (the “**Additional Guaranty Amount**”) and (ii) a monthly fee that shall accrue each calendar month during the term of the Guaranty equal to ten percent (10%) of the Additional Guaranty Amount divided by twelve (12) (the “**Additional Monthly Fee**”). The Guarantors shall be paid the percentage of the Additional Guaranty Amount and the Additional Monthly Fees as set forth on Exhibit A hereto. If payable, the Additional Guaranty Amount and the then accrued Additional Monthly Fee shall be payable in cash by the Company to the Guarantors in accordance herewith upon the termination or expiration of the Guaranties.”

2. **Deletion of Adjustment Provision.** Section 1(c) of the Agreement is hereby amended by deleting such section in its entirety.

3. **Amendment to Section 2(a).** Section 2(a) of the Agreement is hereby amended to delete the reference to “and the Additional Extension Payment Shares”.

4. **Amendment to Section 2(c)**. Section 2(c) of the Agreement is hereby amended by deleting it in its entirety and substituting the following therefor:

Purchase Entirely for Own Account. The Payment Shares to be received by such Guarantor hereunder will be acquired for such Guarantor's own account, not as nominee or agent, and not with a view to the resale or distribution of any part thereof in violation of the Securities Act 1933, as amended (the "**1933 Act**"), and such Guarantor has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of the 1933 Act, without prejudice, however, to such Guarantor's right at all times to sell or otherwise dispose of all or any part of such Payment Shares in compliance with applicable federal and state securities laws. Nothing contained herein shall be deemed a representation or warranty by such Guarantor to hold the Payment Shares for any period of time. Neither such Guarantor nor any affiliate of such Guarantor is a broker-dealer registered with the SEC under the Securities Exchange Act of 1934, as amended, or an entity engaged in a business that would require it to be so registered."

5. **Amendment to Sections 2(d) and 2(e)**. Sections 2(d) and 2(e) of the Agreement are both hereby amended to delete the reference to "and Additional Extension Payment Shares (if received)", respectively.

6. **Amendment to Section 2(f)**. Section 2(f) of the Agreement is hereby amended to delete the references to (i) "and Additional Extension Payment Shares (if received)" and (ii) "or Additional Extension Payment Shares (if received)".

7. **Amendment to Section 3(a)**. Section 3(a) of the Agreement is hereby amended by deleting the reference to "Additional Extension Payment Shares" therein and replacing "Additional Guaranty Amount and the Additional Monthly Fee" therefor.

8. **Amendment to Section 3(e)**. Section 3(e) of the Agreement is hereby amended by adding " , as amended from time to time," after "This Agreement" and before "shall constitute the full and entire".

9. **Amendment to Exhibit A**. Exhibit A of the Agreement is hereby amended by deleting such exhibit in its entirety and replacing Exhibit A attached hereto therefor.

10. **Miscellaneous**.

a. **Cessation as Guarantor**. Mr. Miller, and his estate, shall cease to be a Guarantor effective immediately upon the execution of this Amendment by the parties hereto.

b. **Effectiveness**. This Amendment is hereby ratified and confirmed in all respects and such Agreement remains in full force and effect pursuant to the terms thereof, except as otherwise modified herein.

c. **Counterparts**. This Amendment may be executed in any number of counterparts, each of which shall be an original, but all of which together shall be deemed to constitute one instrument.

d. **Governing Law**. This Amendment shall be governed by and construed in accordance with the laws of the State of New York (without regard to the principles of conflicts of laws of any jurisdiction).

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first written above.

“Company”

DETERMINE, INC.

By: /s/ John K. Nolan

Name: John K. Nolan

Its: Chief Financial Officer

“Guarantors”

LLOYD I. MILLER, III (DECEASED)

By: /s/ Neil S. Subin

Name: Neil S. Subin

Its: Executor of the Estate of Lloyd I. Miller, III

MILFAM II L.P.

By: MILFAM LLC

Its: General Partner

By: /s/ Neil S. Subin

Name: Neil S. Subin

Its: Manager

ALIMCO FINANCIAL CORPORATION f/k/a

ALLIANCE SEMICONDUCTOR CORPORATION

By: /s/ Alan B. Howe

Name: Alan B. Howe

Its: CEO

EXHIBIT A

PAYMENT SHARES ALLOCATION

Guarantor	Number of Payment Shares
Lloyd I. Miller, III	8,334
MILFAM II L.P.	8,334
Alimco Financial Corporation f/k/a Alliance Semiconductor Corporation	33,333
Totals:	50,000

ADDITIONAL GUARANTY AMOUNT AND ADDITIONAL MONTHLY FEE PERCENTAGE

Guarantor	Percentage
MILFAM II L.P.	33.33%
Alimco Financial Corporation f/k/a Alliance Semiconductor Corporation	66.67%