

---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

---

**FORM 10-Q**

---

(Mark One)

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

For the quarterly period ended March 31, 2020  
OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 000-32259

**ALIGN TECHNOLOGY INC**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

94-3267295  
(I.R.S. Employer  
Identification Number)

2820 Orchard Parkway  
San Jose, California 95134  
(Address of principal executive offices)  
(408) 470-1000  
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, \$0.0001 par value	ALGN	The NASDAQ Stock Market LLC (NASDAQ Global Market)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

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.

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

The number of shares outstanding of the registrant's Common Stock, \$0.0001 par value, as of April 30, 2020 was 78,762,958.

**ALIGN TECHNOLOGY, INC.**

**INDEX**

PART I	<a href="#">FINANCIAL INFORMATION</a>	<a href="#">3</a>
ITEM 1.	<a href="#">FINANCIAL STATEMENTS (UNAUDITED):</a>	<a href="#">3</a>
	<a href="#">CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS</a>	<a href="#">3</a>
	<a href="#">CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME</a>	<a href="#">4</a>
	<a href="#">CONDENSED CONSOLIDATED BALANCE SHEETS</a>	<a href="#">5</a>
	<a href="#">CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY</a>	<a href="#">6</a>
	<a href="#">CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS</a>	<a href="#">7</a>
	<a href="#">NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS</a>	<a href="#">8</a>
ITEM 2.	<a href="#">MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</a>	<a href="#">26</a>
ITEM 3.	<a href="#">QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK</a>	<a href="#">37</a>
ITEM 4.	<a href="#">CONTROLS AND PROCEDURES</a>	<a href="#">38</a>
PART II	<a href="#">OTHER INFORMATION</a>	<a href="#">38</a>
ITEM 1.	<a href="#">LEGAL PROCEEDINGS</a>	<a href="#">38</a>
ITEM 1A.	<a href="#">RISK FACTORS</a>	<a href="#">39</a>
ITEM 2.	<a href="#">UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS</a>	<a href="#">55</a>
ITEM 3.	<a href="#">DEFAULTS UPON SENIOR SECURITIES</a>	<a href="#">55</a>
ITEM 4.	<a href="#">MINE SAFETY DISCLOSURES</a>	<a href="#">55</a>
ITEM 5.	<a href="#">OTHER INFORMATION</a>	<a href="#">55</a>
ITEM 6.	<a href="#">EXHIBITS</a>	<a href="#">56</a>
	<a href="#">SIGNATURES</a>	<a href="#">57</a>

*Invisalign, Align, the Invisalign logo, ClinCheck, Made to Move, Invisalign Assist, Invisalign Teen, Invisalign Go, Vivera, SmartForce, SmartTrack, SmartStage, SmileView, iTero, iTero Element, Orthocad, iCast and iRecord, among others, are trademarks and/or service marks of Align Technology, Inc. or one of its subsidiaries or affiliated companies and may be registered in the United States and/or other countries.*

**PART I—FINANCIAL INFORMATION**  
**ITEM 1 FINANCIAL STATEMENTS**  
**ALIGN TECHNOLOGY, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(in thousands, except per share data)**  
**(unaudited)**

	Three Months Ended March 31,	
	2020	2019
Net revenues	\$ 550,963	\$ 548,971
Cost of net revenues	156,607	146,875
Gross profit	394,356	402,096
Operating expenses:		
Selling, general and administrative	282,906	247,110
Research and development	41,532	37,503
Impairments and other charges	—	29,782
Total operating expenses	324,438	314,395
Income from operations	69,918	87,701
Interest income and other income (expense), net:		
Interest income	1,986	2,633
Other income (expense), net	(18,549)	(5,746)
Total interest income and other income (expense), net	(16,563)	(3,113)
Net income before provision for (benefit from) income taxes and equity in losses of investee	53,355	84,588
Provision for (benefit from) income taxes	(1,464,776)	8,796
Equity in losses of investee, net of tax	—	3,944
Net income	\$ 1,518,131	\$ 71,848
Net income per share:		
Basic	\$ 19.32	\$ 0.90
Diluted	\$ 19.21	\$ 0.89
Shares used in computing net income per share:		
Basic	78,592	79,860
Diluted	79,028	80,687

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

**ALIGN TECHNOLOGY, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
**(in thousands)**  
**(unaudited)**

	Three Months Ended March 31,	
	2020	2019
Net income	\$ 1,518,131	\$ 71,848
Net change in foreign currency translation adjustment	689	409
Change in unrealized gains (losses) on investments, net of tax	(194)	84
Other comprehensive income	495	493
Comprehensive income	<u>\$ 1,518,626</u>	<u>\$ 72,341</u>

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

**ALIGN TECHNOLOGY, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(in thousands, except per share data)  
(unaudited)

	March 31, 2020	December 31, 2019
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 790,696	\$ 550,425
Marketable securities, short-term	—	318,202
Accounts receivable, net of allowance for doubtful accounts of \$11,057 and \$6,756, respectively	533,004	550,291
Inventories	120,977	112,051
Prepaid expenses and other current assets	131,848	102,450
Total current assets	1,576,525	1,633,419
Property, plant and equipment, net	663,491	631,730
Operating lease right-of-use assets, net	70,366	56,244
Goodwill and intangible assets, net	73,751	75,692
Deferred tax assets	1,551,141	64,007
Other assets	29,566	39,610
Total assets	<u>\$ 3,964,840</u>	<u>\$ 2,500,702</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 72,690	\$ 87,250
Accrued liabilities	259,459	319,958
Deferred revenues	578,537	563,762
Total current liabilities	910,686	970,970
Income tax payable	109,128	102,794
Operating lease liabilities	53,745	43,463
Other long-term liabilities	38,292	37,306
Total liabilities	1,111,851	1,154,533
Commitments and contingencies (Notes 8 and 9)		
Stockholders' equity:		
Preferred stock, \$0.0001 par value (5,000 shares authorized; none issued)	—	—
Common stock, \$0.0001 par value (200,000 shares authorized; 78,759 and 78,433 issued and outstanding, respectively)	8	8
Additional paid-in capital	895,131	906,937
Accumulated other comprehensive income (loss), net	(193)	(688)
Retained earnings	1,958,043	439,912
Total stockholders' equity	2,852,989	1,346,169
Total liabilities and stockholders' equity	<u>\$ 3,964,840</u>	<u>\$ 2,500,702</u>

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

**ALIGN TECHNOLOGY, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(in thousands)  
(unaudited)

<b>Three Months Ended March 31, 2020</b>	<u>Common Stock</u>		<b>Additional Paid-In Capital</b>	<b>Accumulated Other Comprehensive Income (Loss), Net</b>	<b>Retained Earnings</b>	<b>Total</b>
	<u>Shares</u>	<u>Amount</u>				
Balance as of December 31, 2019	78,433	\$ 8	\$ 906,937	\$ (688)	\$ 439,912	\$ 1,346,169
Net income	—	—	—	—	1,518,131	1,518,131
Net change in unrealized gains (losses) from investments	—	—	—	(194)	—	(194)
Net change in foreign currency translation adjustment	—	—	—	689	—	689
Issuance of common stock relating to employee equity compensation plans	326	—	10,662	—	—	10,662
Tax withholdings related to net share settlements of equity awards	—	—	(45,395)	—	—	(45,395)
Stock-based compensation	—	—	22,927	—	—	22,927
Balance as of March 31, 2020	<u>78,759</u>	<u>\$ 8</u>	<u>\$ 895,131</u>	<u>\$ (193)</u>	<u>\$ 1,958,043</u>	<u>\$ 2,852,989</u>

<b>Three Months Ended March 31, 2019</b>	<u>Common Stock</u>		<b>Additional Paid-In Capital</b>	<b>Accumulated Other Comprehensive Income (Loss), Net</b>	<b>Retained Earnings</b>	<b>Total</b>
	<u>Shares</u>	<u>Amount</u>				
Balance as of December 31, 2018	79,778	\$ 8	\$ 877,514	\$ (2,774)	\$ 378,143	\$ 1,252,891
Net income	—	—	—	—	71,848	71,848
Net change in unrealized gains (losses) from investments	—	—	—	84	—	84
Net change in foreign currency translation adjustment	—	—	—	409	—	409
Issuance of common stock relating to employee equity compensation plans	427	—	9,609	—	—	9,609
Tax withholdings related to net share settlements of equity awards	—	—	(50,181)	—	—	(50,181)
Common stock repurchased and retired	(205)	—	(2,030)	—	(47,970)	(50,000)
Stock-based compensation	—	—	21,044	—	—	21,044
Balance as of March 31, 2019	<u>80,000</u>	<u>\$ 8</u>	<u>\$ 855,956</u>	<u>\$ (2,281)</u>	<u>\$ 402,021</u>	<u>\$ 1,255,704</u>

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

**ALIGN TECHNOLOGY, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)  
(unaudited)

	Three Months Ended March 31,	
	2020	2019
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income	\$ 1,518,131	\$ 71,848
Adjustments to reconcile net income to net cash provided by operating activities:		
Deferred taxes	(1,487,154)	7,586
Depreciation and amortization	20,738	18,316
Stock-based compensation	22,927	21,044
Non-cash operating lease cost	5,546	4,362
Impairments on equity investments	2,900	3,975
Impairments on long-lived assets	—	28,498
Equity in losses of investee	—	3,944
Other non-cash operating activities	12,566	5,101
Changes in assets and liabilities:		
Accounts receivable	13,761	(42,743)
Inventories	(10,496)	(13,280)
Prepaid expenses and other assets	(37,244)	(35,033)
Accounts payable	(12,034)	1,470
Accrued and other long-term liabilities	(69,103)	(5,183)
Long-term income tax payable	6,354	4,808
Deferred revenues	22,892	42,494
Net cash provided by operating activities	<u>9,784</u>	<u>117,207</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchase of property, plant and equipment	(46,085)	(35,261)
Purchase of marketable securities	(5,341)	(125,823)
Proceeds from maturities of marketable securities	42,641	80,306
Proceeds from sales of marketable securities	278,817	8,727
Repayment on unsecured promissory note	4,419	—
Other investing activities	1,760	(2,367)
Net cash provided by (used in) investing activities	<u>276,211</u>	<u>(74,418)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Proceeds from issuance of common stock	10,662	9,609
Common stock repurchases	—	(50,000)
Payroll taxes paid upon the vesting of equity awards	(45,395)	(50,181)
Other financing activities	—	(2,190)
Net cash used in financing activities	<u>(34,733)</u>	<u>(92,762)</u>
Effect of foreign exchange rate changes on cash, cash equivalents, and restricted cash	(11,007)	1,089
Net increase (decrease) in cash, cash equivalents, and restricted cash	240,255	(48,884)
Cash, cash equivalents, and restricted cash at beginning of the period	551,134	637,566
Cash, cash equivalents, and restricted cash at end of the period	<u>\$ 791,389</u>	<u>\$ 588,682</u>

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

**ALIGN TECHNOLOGY, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(unaudited)**

**Note 1. Summary of Significant Accounting Policies**

***Basis of Presentation***

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared by Align Technology, Inc. (“we”, “our”, or “Align”) in accordance with the rules and regulations of the Securities and Exchange Commission (“SEC”) and contains all adjustments, including normal recurring adjustments, necessary to state fairly our results of operations for the three months ended March 31, 2020 and 2019, our comprehensive income for the three months ended March 31, 2020 and 2019, our financial position as of March 31, 2020, our stockholders’ equity for the three months ended March 31, 2020 and 2019, and our cash flows for the three months ended March 31, 2020 and 2019. The Condensed Consolidated Balance Sheet as of December 31, 2019 was derived from the December 31, 2019 audited financial statements. It does not include all disclosures required by accounting principles generally accepted in the United States of America (“U.S.”).

The results of operations for the three months ended March 31, 2020 are not necessarily indicative of the results that may be expected for the year ending December 31, 2020 or any other future period, and we make no representations related thereto. The information included in this Quarterly Report on Form 10-Q should be read in conjunction with the Consolidated Financial Statements and notes thereto included in Item 8 of our Annual Report on Form 10-K for the year ended December 31, 2019.

***Use of Estimates***

The preparation of financial statements in conformity with generally accepted accounting principles (“GAAP”) in the U.S. requires our management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ materially from those estimates. On an ongoing basis, we evaluate our estimates, including those related to revenue recognition, useful lives of intangible assets and property and equipment, long-lived assets and goodwill, income taxes and contingent liabilities, the fair values of financial instruments, stock-based compensation, unsecured promissory note receivable, and valuation of investments in privately held companies among others. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities.

***Certain Risks and Uncertainties***

Due to the COVID-19 pandemic, we are subject to a greater degree of uncertainty than normal in making the judgments and estimates needed to apply our significant accounting policies. As COVID-19 continues to develop, we may make changes to these estimates and judgments, which could result in meaningful impacts to our financial statements in future periods. The extent and duration of the impact of the COVID-19 pandemic on our business is highly uncertain and difficult to predict, as the response to the pandemic is in its incipient stages and information is rapidly evolving. Because COVID-19 spreads readily through airways in nasal passages and the mouth, our principal customers, dentists and orthodontists and their patients, have been a primary focus of the protective and preventative efforts. For instance, in many countries, governments and dental regulatory associations acted quickly to prohibit non-essential dental procedures; thereby preventing our customers from conducting most or all business activities and materially adversely harming our sales and sales efforts. Furthermore, capital markets and economies worldwide have also been negatively impacted by the COVID-19 pandemic, and it is possible that it could cause a local and/or global economic recession.

The severity of the impact of the COVID-19 pandemic on our business will depend on a number of factors, including, but not limited to, the duration and severity of the pandemic and the extent and severity of the impact on our customers, all of which are uncertain and cannot be predicted. Our future results of operations and liquidity could be adversely impacted by delays in payments of outstanding receivable amounts beyond normal payment terms, supply chain disruptions and uncertain demand, and the impact of any initiatives or programs that we may undertake to address financial and operations challenges faced by our customers. Additionally, the uncertainty of future results and cash flows may impact our significant assumptions and estimates including the collectability of accounts and other receivables and realization of our deferred tax assets. As of the date of issuance of these condensed consolidated financial statements, the extent to which the COVID-19 pandemic may materially impact our financial condition, liquidity, or results of operations is uncertain.

## **Recent Accounting Pronouncements**

### *(i) New Accounting Updates Recently Adopted*

In June 2016, the Financial Accounting Standards Board ("FASB") issued ASU 2016-13, "*Financial Instruments - Credit Losses*" (Topic 326) to provide financial statement users with more decision-useful information about the expected credit losses on financial instruments and other commitments to extend credit held by a reporting entity at each reporting date. The amendments in this update replace the existing guidance of incurred loss impairment methodology with an approach that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. In November 2018, the FASB issued ASU 2018-19, "*Codification Improvements to Topic 326, Financial Instruments - Credit Losses*" which clarifies the scope of guidance in the ASU 2016-13. The updated guidance is effective for annual periods beginning after December 15, 2019, including interim periods within those fiscal years. We adopted this standard in the first quarter of fiscal year 2020 which did not have a material impact on our condensed consolidated financial statements and related disclosures.

In January 2017, the FASB issued ASU 2017-04, "*Intangibles—Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment*," to simplify the subsequent measurement of goodwill by eliminating step two from the goodwill impairment test. Under the amendments in this update, an entity will recognize an impairment charge for the amount by which the carrying value exceeds the fair value. The updated guidance is effective for fiscal years and interim periods within those years beginning after December 15, 2019 on a prospective basis. We adopted this standard in the first quarter of fiscal year 2020 which did not have any impact on our condensed consolidated financial statements and related disclosures.

In August 2018, the FASB issued ASU 2018-13, "*Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement*," to modify the disclosure requirements on fair value measurements in Topic 820, *Fair Value Measurement*. The updated guidance is effective for fiscal years and interim periods within those years beginning after December 15, 2019 on a prospective basis. We adopted this standard in the first quarter of fiscal year 2020 which did not have any impact on our condensed consolidated financial statements and related disclosures.

In August 2018, the FASB issued ASU 2018-15, "*Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40) Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*," to clarify the guidance on the costs of implementing a cloud computing hosting arrangement that is a service contract. Under the amendments in this update, the entity is required to follow the guidance in Subtopic 350-40, *Internal-Use Software*, to determine which implementation costs under the service contract to be capitalized as an asset and which costs to expense. The updated guidance is effective for fiscal years and interim periods within those years beginning after December 15, 2019 either on a retrospective or prospective basis. We adopted this standard in the first quarter of fiscal year 2020 on a prospective basis which did not have any impact on our condensed consolidated financial statements and related disclosures.

### *(ii) Recent Accounting Updates Not Yet Effective*

In December 2019, the FASB issued ASU 2019-12, "*Income Taxes (Topic 740) Simplifying the Accounting for Income Taxes*," to enhance and simplify various aspects of the income tax accounting guidance. The amendment removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing guidance to improve consistent application. The amendments are effective for fiscal years and interim periods within those fiscal years beginning after December 15, 2020. We are currently evaluating the impact of this guidance on our consolidated financial statements and related disclosures; however, we anticipate the adoption of the guidance will not have a material impact to our consolidated financial statements and related disclosures.

**Note 2. Investments and Fair Value Measurements**
**Marketable Securities**

We have no short-term or long-term marketable securities as of March 31, 2020.

As of December 31, 2019, the estimated fair value of our short-term marketable securities, classified as available for sale, are as follows (in thousands):

December 31, 2019	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Corporate bonds	210,891	142	(27)	211,006
U.S. government treasury bonds	70,587	65	(2)	70,650
U.S. government agency bonds	22,085	17	(1)	22,101
Commercial paper	14,426	—	—	14,426
Certificates of deposit	19	—	—	19
Total marketable securities, short-term	<u>\$ 318,008</u>	<u>\$ 224</u>	<u>\$ (30)</u>	<u>\$ 318,202</u>

We had no long-term marketable securities as of December 31, 2019.

Cash equivalents are not included in the tables above as the gross unrealized gains and losses are not material. We have no short-term marketable securities that have been in a continuous material unrealized loss position for greater than twelve months as of December 31, 2019. Amounts reclassified to earnings from accumulated other comprehensive income (loss), net related to unrealized gains or losses were not material for the three months ended March 31, 2020 and 2019. For the three months ended March 31, 2020 and 2019, realized gains or losses were not material.

Our fixed-income securities investment portfolio consists of investments that can have a maximum effective maturity of up to 40 months on any individual security. The securities that we invest in are generally deemed to be low risk based on their credit ratings from the major rating agencies. The longer the duration of these securities, the more susceptible they are to changes in market interest rates and bond yields. As interest rates increase, those securities purchased at a lower yield show a mark-to-market unrealized loss which are primarily due to changes in interest rates and credit spreads. We expect to realize the full value of all these investments upon maturity or sale. The weighted average remaining duration of these securities was approximately seven months as of December 31, 2019.

As the carrying value approximates the fair value for our short-term marketable securities shown in the table above, the fair value of our short-term marketable securities as of December 31, 2019 had a contractual maturity one year or less.

**Fair Value Measurements**

The following tables summarize our financial assets measured at fair value on a recurring basis as of March 31, 2020 and December 31, 2019 (in thousands):

Description	Balance as of March 31, 2020	Level 1	Level 2	Level 3
<b>Cash equivalents:</b>				
Money market funds	\$ 36,683	\$ 36,683	\$ —	\$ —
<b>Prepaid expenses and other current assets:</b>				
Israeli funds	3,293	—	3,293	—
Current unsecured promissory note	27,914	—	—	27,914
	<u>\$ 67,890</u>	<u>\$ 36,683</u>	<u>\$ 3,293</u>	<u>\$ 27,914</u>

Description	Balance as of December 31, 2019	Level 1	Level 2	Level 3
<b>Cash equivalents:</b>				
Money market funds	\$ 236,923	\$ 236,923	\$ —	\$ —
<b>Short-term investments:</b>				
Corporate bonds	211,006	—	211,006	—
Commercial paper	14,426	—	14,426	—
U.S. government treasury bonds	70,650	70,650	—	—
U.S. government agency bonds	22,101	—	22,101	—
Certificates of deposit	19	—	19	—
<b>Prepaid expenses and other current assets:</b>				
Israeli funds	3,226	—	3,226	—
Current unsecured promissory note	25,005	—	—	25,005
<b>Other assets:</b>				
Long-term unsecured promissory note	7,328	—	—	7,328
	<u>\$ 590,684</u>	<u>\$ 307,573</u>	<u>\$ 250,778</u>	<u>\$ 32,333</u>

The unsecured promissory note that was entered into in 2019 is classified as Level 3 in our fair value hierarchy as financial information of third parties may not be timely available and consequently we estimate the fair value based on the best available information at the measurement date. The original amount of the note was \$54.2 million which has decreased due to payments received. Refer to Note 4 “Equity Method Investments” of the Notes to Condensed Consolidated Financial Statements for more information.

#### **Investments in Privately Held Companies**

Our investments in equity securities of privately held companies without readily determinable fair values were \$3.0 million and \$5.9 million as of March 31, 2020 and December 31, 2019, respectively, and are reported as nonrecurring investments within other assets in our Condensed Consolidated Balance Sheet. Our investments in equity securities are considered Level 3 in the fair value hierarchy since the investments are in private companies without quoted market prices and we adjust the carrying value based on observable price changes. During the three months ended March 31, 2020 and March 31, 2019, we recorded impairment losses of \$2.9 million and \$4.0 million, respectively, resulting from observable price changes.

#### **Derivatives Not Designated as Hedging Instruments**

##### *Recurring foreign currency forward contracts*

We enter into foreign currency forward contracts to minimize the short-term impact of foreign currency exchange rate fluctuations on certain trade and intercompany receivables and payables. These forward contracts are classified within Level 2 of the fair value hierarchy. The net gain from the settlement of foreign currency forward contracts during the three months ended March 31, 2020 was \$15.6 million and the net gain from the settlement of foreign currency forward contracts during the three months ended March 31, 2019 was not material. As of March 31, 2020 and December 31, 2019, the fair value of foreign exchange forward contracts outstanding was not material.

The following table presents the gross notional value of all our foreign exchange forward contracts outstanding as of March 31, 2020 and December 31, 2019 (in thousands):

	March 31, 2020	
	Local Currency Amount	Notional Contract Amount (USD)
Euro	€67,500	\$ 74,274
Chinese Yuan	¥517,000	72,825
Canadian Dollar	C\$47,000	33,103
British Pound	£23,200	28,894
Brazilian Real	R\$150,000	28,765
Japanese Yen	¥2,685,000	24,916
Israeli Shekel	ILS26,000	7,349
Mexican Peso	M\$160,000	6,840
Australian Dollar	A\$5,500	3,375
		<u>\$ 280,341</u>

	December 31, 2019	
	Local Currency Amount	Notional Contract Amount (USD)
Euro	€97,000	\$ 108,870
Chinese Yuan	¥431,000	60,702
Canadian Dollar	C\$52,000	39,802
British Pound	£28,000	36,770
Brazilian Real	R\$130,000	32,185
Japanese Yen	¥3,000,000	27,604
Israeli Shekel	ILS63,700	18,439
Mexican Peso	M\$140,000	7,398
Australian Dollar	A\$3,000	2,101
		<u>\$ 333,871</u>

*Other foreign currency forward contract*

During the three months ended March 31, 2020, in anticipation for the closing of the exocad Global Holdings GmbH ("exocad") acquisition on April 1, 2020, we entered into a Euro foreign currency forward contract with a notional contract amount of €376.0 million. During the three months ended March 31, 2020, we recognized an unrealized loss of \$9.2 million within other income (expense), net in our Condensed Consolidated Statement of Operation as a result of the forward contract's fair value as of March 31, 2020.

**Note 3. Balance Sheet Components**

Inventories consist of the following (in thousands):

	March 31, 2020	December 31, 2019
Raw materials	\$ 59,136	\$ 54,947
Work in process	35,627	30,974
Finished goods	26,214	26,130
Total inventories	<u>\$ 120,977</u>	<u>\$ 112,051</u>

Prepaid expenses and other current assets consist of the following (in thousands):

	March 31, 2020	December 31, 2019
Tax related receivables	\$ 50,866	\$ 41,252
Prepaid software and maintenance	29,182	7,128
Current promissory note <sup>1</sup>	27,914	25,005
Other prepaid expenses and current assets	19,624	24,637
Other current receivables	4,262	4,428
Total prepaid expenses and other current assets	<u>\$ 131,848</u>	<u>\$ 102,450</u>

<sup>1</sup>Refer to Note 4 "Equity Method Investments" of the Notes to Condensed Consolidated Financial Statements for more information.

Accrued liabilities consist of the following (in thousands):

	March 31, 2020	December 31, 2019
Accrued payroll and benefits	\$ 87,526	\$ 162,486
Accrued expenses	50,669	55,529
Current operating lease liabilities	20,225	15,737
Accrued fixed assets	18,781	9,167
Accrued income taxes	15,324	14,130
Accrued professional fees	12,738	10,410
Others	54,196	52,499
Total accrued liabilities	<u>\$ 259,459</u>	<u>\$ 319,958</u>

We regularly review the balance for accrued warranty and update based on historical warranty trends. Actual warranty costs incurred have not materially differed from those accrued; however, future actual warranty costs could differ from the estimated amounts. Warranty accrual consists of the following activity (in thousands):

	Three Months Ended March 31,	
	2020	2019
Balance at beginning of period	\$ 11,205	\$ 8,551
Charged to cost of net revenues	3,724	3,133
Actual warranty expenditures	(3,140)	(1,451)
Balance at end of period	<u>\$ 11,789</u>	<u>\$ 10,233</u>

Deferred revenues consist of the following (in thousands):

	March 31, 2020	December 31, 2019
Deferred revenues - current	\$ 578,537	\$ 563,762
Deferred revenues - long-term <sup>1</sup>	\$ 36,628	\$ 35,503

<sup>1</sup> Included in other long-term liabilities within our Condensed Consolidated Balance Sheet

During the three months ended March 31, 2020 and 2019, we recognized \$551.0 million and \$549.0 million of revenue, respectively, of which \$95.5 million and \$68.4 million was included in the deferred revenues balance at December 31, 2019 and 2018, respectively.

Our unfilled performance obligations, including deferred revenues and backlog, as of March 31, 2020 were \$619.7 million. These performance obligations are expected to be recognized over the next one to five years.

#### Note 4. Equity Method Investments

On July 25, 2016, we acquired a 17% equity interest, on a fully diluted basis, in SmileDirectClub, LLC ("SDC") for \$46.7 million. Concurrently with the investment, we also entered into a supply agreement to manufacture clear aligners for SDC, which expired on December 31, 2019. The sale of aligners to SDC and the income from the supply agreement are reported in our Clear Aligner business segment. On July 24, 2017, we purchased an additional 2% equity interest in SDC for \$12.8 million.

The investment was accounted for as an equity method investment and recorded in our Condensed Consolidated Balance Sheet. We recorded our proportional share of SDC's losses within equity in losses of investee, net of tax, in our Condensed Consolidated Statement of Operations.

As a result of the arbitrator's decision regarding SDC announced on March 5, 2019, we were ordered to tender our SDC equity interest by April 3, 2019 for a purchase price equal to the "capital account" balance as of October 31, 2017 under the terms of the investment. In April 2019, based on the "capital account" value provided by SDC, we entered into an unsecured promissory note with SDC to receive \$54.2 million through February 1, 2021 in exchange for the tender of our membership interests. As a result, we derecognized the equity method investment balance of \$38.4 million in exchange for an unsecured promissory note of \$54.2 million and we recorded the difference of \$15.8 million as a gain in the second quarter of 2019 in other income in our Condensed Consolidated Statement of Operations. Although we tendered our membership interests pursuant to the arbitrator's decision, the parties did not agree on the amount of the "capital account" balance as of October 31, 2017 or the appropriate repurchase price for the membership units. On July 3, 2019, we filed a demand for arbitration regarding SDC's calculation of the "capital account" balance. The arbitration proceeding remains pending (Refer to Note 8 "Legal Proceedings" of the Notes to Condensed Consolidated Financial Statements for SDC legal proceedings discussion).

## Note 5. Goodwill and Intangible Assets

### Goodwill

The change in the carrying value of goodwill for the three months ended March 31, 2020, all attributable to our Clear Aligner reporting unit, is as follows (in thousands):

	Total
Balance as of December 31, 2019	\$ 63,924
Adjustments <sup>1</sup>	(640)
Balance as of March 31, 2020	\$ 63,284

<sup>1</sup> Adjustments were related to foreign currency translation within the measurement period.

During the fourth quarter of fiscal 2019, we performed the annual goodwill impairment testing and found no impairment as the fair value of our Clear Aligner reporting unit was significantly in excess of the carrying value.

### Intangible Long-Lived Assets

Acquired intangible long-lived assets are being amortized as follows (in thousands):

	Weighted Average Amortization Period (in years)	Gross Carrying Amount as of March 31, 2020	Accumulated Amortization	Accumulated Impairment Loss	Net Carrying Value as of March 31, 2020
Trademarks	15	\$ 7,100	\$ (2,080)	\$ (4,179)	\$ 841
Existing technology	13	12,600	(5,972)	(4,328)	2,300
Customer relationships	11	33,500	(18,870)	(10,751)	3,879
Reacquired rights	3	7,500	(7,500)	—	—
Patents	8	6,796	(3,377)	—	3,419
Other	2	618	(590)	—	28
Total intangible assets		\$ 68,114	\$ (38,389)	\$ (19,258)	\$ 10,467

	Weighted Average Amortization Period (in years)	Gross Carrying Amount as of December 31, 2019	Accumulated Amortization	Accumulated Impairment Loss	Net Carrying Value as of December 31, 2019
Trademarks	15	\$ 7,100	\$ (2,045)	\$ (4,179)	\$ 876
Existing technology	13	12,600	(5,831)	(4,328)	2,441
Customer relationships	11	33,500	(18,405)	(10,751)	4,344
Reacquired rights	3	7,500	(7,059)	—	441
Patents	8	6,796	(3,165)	—	3,631
Other	2	618	(583)	—	35
Total intangible assets		\$ 68,114	\$ (37,088)	\$ (19,258)	\$ 11,768

The total estimated annual future amortization expense for these acquired intangible assets as of March 31, 2020 is as follows (in thousands):

**Fiscal Year Ending December 31,**

	<b>Amortization</b>
Remainder of 2020	\$ 2,544
2021	3,372
2022	2,116
2023	1,495
2024	555
Thereafter	385
<b>Total</b>	<b>\$ 10,467</b>

Amortization expense for the three months ended March 31, 2020 and 2019 was \$1.3 million and \$1.5 million, respectively.

**Note 6. Credit Facility**

On February 27, 2018, we entered into a credit facility for a \$200.0 million revolving line of credit, with a \$50.0 million letter of credit sublimit, and a maturity date of February 27, 2021. The credit facility requires us to comply with specific financial conditions and performance requirements. The loans bear interest, at our option, at either a rate based on the reserve adjusted LIBOR for the applicable interest period or a base rate, in each case plus a margin. The base rate is the highest of the credit facility's publicly announced prime rate, the federal funds rate plus 0.50% and one month LIBOR plus 1.0%. The margin ranges from 1.25% to 1.75% for LIBOR loans and 0.25% to 0.75% for base rate loans. Interest on the loans is payable quarterly in arrears with respect to base rate loans and at the end of an interest period (and at three month intervals if the interest period exceeds three months) in the case of LIBOR loans. Principal, together with accrued and unpaid interest, is due on the maturity date. As of March 31, 2020, we had no outstanding borrowings under this credit facility and were in compliance with the conditions and performance requirements.

**Note 7. Impairments and Other Charges**

On March 5, 2019, we announced the outcome of the arbitration regarding SDC (Refer to *Note 8 "Legal Proceedings" of the Notes to Condensed Consolidated Financial Statements* for SDC legal proceedings discussion) which required Align to close its Invisalign stores and tender Align's equity interest in SDC by April 3, 2019. Accordingly, Align evaluated the ongoing value of the Invisalign stores' operating lease right-of-use assets and related leasehold improvements and other fixed assets in accordance with ASC 360, *Property, Plant and Equipment*. Based on the evaluation, Align determined that the carrying value of these assets were not recoverable. Align evaluated the fair value of these assets in accordance with ASC 820, *Fair Value Measurement*, and we considered the market participant's ability to generate economic benefits by using these assets in its highest and best use or by selling it to another market participant that would use the asset in its highest and best use. As a result, in the first quarter of 2019, we recorded impairment losses of \$14.2 million for operating lease right-of-use assets and \$14.3 million of leasehold improvements and other fixed assets. In addition, we also recorded \$1.3 million of employee severance costs and other charges.

**Note 8. Legal Proceedings**

*2018 Securities Class Action Lawsuit*

On November 5, 2018, a class action lawsuit against Align and three of our executive officers was filed in the U.S. District Court for the Northern District of California on behalf of a purported class of purchasers of our common stock between July 25, 2018 and October 24, 2018. The complaint generally alleges claims under the federal securities laws and seeks monetary damages in an unspecified amount and costs and expenses incurred in the litigation. On December 12, 2018, a similar lawsuit was filed in the same court on behalf of a purported class of purchasers of our common stock between April 25, 2018 and October 24, 2018 (together with the first lawsuit, the "Securities Actions"). On May 10, 2019, the lead plaintiff filed a consolidated complaint against Align and four of our executive officers alleging similar claims as the initial complaints on behalf of a purported class of purchasers of our common stock between April 25, 2018 and October 24, 2018. On June 24, 2019, defendants filed a motion to dismiss the consolidated complaint. On October 29, 2019, that motion to dismiss was granted with leave to amend. On November 29, 2019, the lead plaintiff filed an amended consolidated complaint against Align and two of our executive officers alleging similar claims as the initial complaints on behalf of a purported class of purchasers of

our common stock from May 23, 2018 and October 24, 2018. Defendants' motion to dismiss the amended consolidated complaint was filed on January 17, 2020. A hearing on the motion to dismiss is scheduled for June 4, 2020. Align believes these claims are without merit and intends to vigorously defend itself. Align is currently unable to predict the outcome of these lawsuits and therefore cannot determine the likelihood of loss nor estimate a range of possible loss.

#### *Shareholder Derivative Lawsuit*

In January 2019, three derivative lawsuits were filed in the U.S. District Court for the Northern District of California, purportedly on behalf of Align, naming as defendants the members of our Board of Directors along with certain of our executive officers. The allegations in the complaints are similar to those presented in the Securities Actions, but the complaints assert various state law causes of action including for breaches of fiduciary duty, insider trading, and unjust enrichment, among others. The complaints seek unspecified monetary damages on behalf of Align, which is named solely as a nominal defendant against whom no recovery is sought, as well as disgorgement and the costs and expenses associated with the litigation, including attorneys' fees. On February 26, 2019, the three lawsuits were consolidated. On April 10, 2019, the court stayed the consolidated action pending final disposition of the Securities Actions.

On April 12, 2019, a derivative lawsuit was also filed in California Superior Court for Santa Clara County, purportedly on behalf of Align, naming as defendants the members of our Board of Directors along with certain of our executive officers. The allegations in this complaint are similar to those in the derivative suits described above. On May 16, 2019, the court stayed this action pending final disposition of the Securities Actions.

On February 22, 2019, a purported stockholder sent a letter to Align pursuant to 8 Del. C. § 220 demanding certain books and records for the stated purpose of investigating potential breaches of duty, corporate mismanagement, and alleged wrongdoing by fiduciaries of the Company. On April 16, 2019, Align responded and refused the demand on several legal grounds. On June 10, 2019, the purported stockholder petitioned the Superior Court of the State of California, County of Santa Clara, to issue a writ of mandate commanding Align to provide the books and records requested. On August 23, 2019, Align filed a demurrer seeking to dismiss the petition, and on October 28, 2019, the Court issued an order sustaining Align's demurrer and dismissing the petition without an opportunity to amend. On December 19, 2019, the same purported stockholder filed a complaint in the Superior Court of California, County of Santa Clara, seeking an order from the Court compelling Align to permit the inspection of the same books and records that were previously requested, as well as requesting attorneys' fees. Align filed a demurrer seeking to dismiss this new complaint on March 12, 2020. Plaintiff has indicated it will file an amended complaint by May 18, 2020.

Align is currently unable to predict the outcome of this demand or of these lawsuits and therefore cannot determine the likelihood of loss nor estimate a range of possible loss.

#### *2020 Securities Class Action Lawsuit*

On March 2, 2020, a class action lawsuit against Align and two of our executive officers was filed in the U.S. District Court for the Southern District of New York on behalf of a purported class of purchasers of our common stock between April 24, 2019 and July 24, 2019. The complaint filed in the Southern District of New York alleges claims under the federal securities laws and seeks monetary damages in an unspecified amount and costs and expenses incurred in the litigation. The court entered an order approving a stipulation of the parties that defendants will have no obligation to respond to the complaint, until after the appointment of a lead plaintiff. On April 16, 2020, the Court approved the parties' stipulation to transfer the case to the U.S. District Court for the Northern District of California. No lead plaintiff has been appointed to date. Align believes these claims are without merit and intends to vigorously defend itself. Align is currently unable to predict the outcome of this lawsuit and therefore cannot determine the likelihood of loss nor estimate a range of possible loss.

#### *2020 Shareholder Derivative Lawsuit*

On May 4, 2020, a derivative lawsuit was filed in the U.S. District Court for the Northern District of California, purportedly on behalf of Align, naming as defendants the members of our Board of Directors along with certain of our executive officers. The allegations in the complaint are similar to those presented in the 2020 Securities Class Action Lawsuit, but this complaint asserts state law claims for breach of fiduciary duty and insider trading. The complaint seeks unspecified monetary damages on behalf of Align, which is named solely as a nominal defendant against whom no recovery is sought, as well as disgorgement and the costs and expenses associated with the litigation, including attorneys' fees. Align is currently unable to predict the outcome of this lawsuit and therefore cannot determine the likelihood of loss nor estimate a range of possible loss.

### *3Shape Litigation*

On November 14, 2017, Align filed six patent infringement lawsuits asserting 26 patents against 3Shape, a Danish corporation, and a related U.S. corporate entity, asserting that 3Shape's Trios intraoral scanning system and Dental System software infringe Align patents. Align filed two Section 337 complaints with the U.S. International Trade Commission ("ITC") alleging that 3Shape violates U.S. trade laws by selling for importation and importing its infringing Trios intraoral scanning system and Dental System software. Align's ITC complaints sought cease and desist orders and exclusion orders prohibiting the importation of 3Shape's Trios scanning system and Dental System software products into the U.S. The ITC conducted hearings in the Section 337 investigations in September and November 2018. On March 1, 2019, the Administrative Law Judge issued an Initial Determination in one of the Section 337 investigations, finding no violation of Section 337 by 3Shape. On April 26, 2019, the Administrative Law Judge issued an Initial Determination in the second Section 337 investigation, finding no violation of Section 337 by 3Shape. On August 20, 2019, the Commission vacated one Initial Determination and terminated the investigation. On November 22, 2019, the Commission affirmed a finding of no violation on modified grounds in the other investigation.

In addition to the two ITC Section 337 complaints, in November 2017, Align also filed four separate complaints in the U.S. District Court for the District of Delaware alleging patent infringement by 3Shape's Trios intraoral scanning system and Dental System software. Two of those cases were stayed pending the ITC determinations, while the other two cases proceeded. Trials in the latter two cases have been scheduled to begin on August 5, 2020 in one case and November 30, 2020 in the other. In a Delaware case corresponding to one of the terminated ITC investigations, the District Court lifted the stay and scheduled trial to begin on November 8, 2021. Certain of Align's asserted patents in the Delaware actions were found invalid by the District Court judge.

On May 9, 2018, 3Shape filed a complaint in the U.S. District Court for the District of Delaware alleging patent infringement by Align's iTero Element scanner of a single 3Shape patent. On June 14, 2018, 3Shape filed another complaint in the U.S. District Court for the District of Delaware alleging patent infringement by Align's iTero Element scanner of another 3Shape patent. On August 19, 2019, the Court consolidated the two actions, and on August 30, 2019, 3Shape filed an amended complaint alleging infringement of an additional patent. In that same case, Align asserted counterclaims against 3Shape for infringement of three additional Align patents, which have been severed and added to another patent infringement action brought by Align (described below). The case is active and in the early discovery phase, with trial scheduled to begin on April 12, 2021.

In December 2018, Align filed three additional patent infringement lawsuits asserting 10 additional patents against 3Shape as follows: On December 10, 2018, Align filed one Section 337 complaint with the ITC alleging that 3Shape violates U.S. trade laws by selling for importation and importing the infringing TRIOS intraoral scanning system, Trios Lab Scanners and TRIOS software, TRIOS Module software, Dental System software, and Ortho System Software. The ITC instituted the investigation, and an evidentiary hearing was held at the end of October 2019 before an Administrative Law Judge ("ALJ"). On April 30, 2020, the ALJ issued an initial determination. The ALJ determined that 3Shape has infringed on 7 of the 9 patent claims asserted by Align, found valid 6 of the 9 claims asserted by Align, and found a violation of Section 337 stemming from 3Shape's infringement of 4 claims in 2 of Align's asserted patents. The ALJ recommended an exclusion order and cease and desist order be entered against 3Shape's unlawful importation. The Initial Determination is now subject to review by the Commissioners at the ITC. Align may file a contingent petition for review of any findings it believes are incorrect. 3Shape may also petition for review of the Initial Determination. The Commission will then decide whether to review portions of or the entire Initial Determination.

In addition to the December 10, 2018 ITC Complaint, on December 11, 2018, Align filed two separate complaints in the U.S. District Court for the District of Delaware alleging patent infringement by 3Shape's Trios intraoral scanning system, Lab Scanners and Dental and Ortho System Software. One of the District Court cases was stayed pending the parallel ITC investigation. The remaining District Court case is in the early stages of discovery and pretrial proceedings. Align has dismissed without prejudice three previously-asserted patents from this case, and added the three patents previously asserted as counterclaims in the case filed by 3Shape in 2018 referenced above. Trial is scheduled for February 7, 2022.

On November 5, 2019, Align filed a complaint for patent infringement asserting an additional patent against 3Shape. On January 7, 2020, Align voluntarily dismissed the suit without prejudice, and Align currently asserts the patent in another existing litigation against 3Shape.

3Shape has sought to invalidate certain of Align's patents through petitions for inter partes review proceedings. Align disputes 3Shape's positions and intends to vigorously defend the validity of its patent rights.

Each of the District Court patent infringement complaints seek monetary damages and injunctive relief against further infringement.

On August 28, 2018, 3Shape filed a complaint against Align in the U.S. District Court for the District of Delaware alleging antitrust violations and seeking monetary damages and injunctive relief relating to Align's alleged market activities, including Align's assertion of its patent portfolio, in alleged clear aligner and intraoral scanning markets, and the Court scheduled trial to begin on May 10, 2021. Align filed a motion to dismiss 3Shape's complaint on October 17, 2018. Align also moved to stay the litigation pending the outcome of its motion to dismiss. The court granted Align's motion to stay. On August 15, 2019, the Magistrate Judge recommended that Align's motion to dismiss be granted, and, on September 26, 2019, the District Court Judge adopted the Magistrate Judge's Report and Recommendation, granted Align's motion to dismiss, and dismissed 3Shape's complaint with leave to amend. On October 28, 2019, 3Shape filed an amended complaint, and Align again moved to dismiss the complaint. A hearing on Align's motion to dismiss was held on February 13, 2020 before the Magistrate Judge, who will issue a written Report and Recommendation to the District Court judge.

Align is currently unable to predict the outcome of these lawsuits and therefore cannot determine the likelihood of loss, if any, nor estimate a range of possible loss.

#### *Simon & Simon*

On March 14, 2019, a dental practice named Simon and Simon, PC d/b/a City Smiles brought an antitrust action in the United States District Court for the District of Delaware on behalf of itself and a putative class of similarly situated practices seeking monetary damages and injunctive relief relating to Align's alleged market activities in alleged clear aligner and intraoral scanning markets. Align filed a motion to dismiss the complaint on April 5, 2019. On October 15, 2019, the Magistrate Judge issued a Report and Recommendation recommending that Align's motion be granted and that the plaintiffs' complaint be dismissed without prejudice. On October 29, 2019, Simon and Simon filed objections to the Magistrate Judge's Report and Recommendation, and Align responded on November 12, 2019. The Court ordered supplemental briefing, which was completed by April 10, 2020. On April 24, 2020, the Magistrate Judge issued a revised Report and Recommendation again recommending that Align's motion be granted and that the plaintiffs' complaint be dismissed without prejudice. On May 4, 2020, the plaintiff filed a notice of voluntary dismissal and stated an intent to file an amended complaint in a different jurisdiction. Align believes the plaintiffs' claims are without merit and intends to vigorously defend itself. Align is currently unable to predict the outcome of this lawsuit and therefore cannot determine the likelihood of loss, if any, nor estimate a range of possible loss.

#### *SDC Dispute*

In February 2018, Align received a communication on behalf of SDC Financial LLC, SmileDirectClub LLC, and the Members of SDC Financial LLC other than the Company (collectively, the "SDC Entities") alleging that the launch and operation of the Invisalign store pilot program constituted a breach of non-compete provisions applicable to the members of SDC Financial LLC, including Align. As a result of this alleged breach, SDC Financial LLC notified us that its members (other than Align) sought to exercise a right to repurchase all of Align's SDC Financial LLC membership interests for a purchase price equal to the current "capital account" balance of Align. The SDC Entities' communication also alleged that Align breached confidentiality provisions applicable to the SDC Financial LLC members and demanded that Align cease all activities related to the Invisalign store pilot project, close existing Invisalign stores and cease using SDC's confidential information. In April 2018, the SDC Entities instigated confidential arbitration proceedings and filed a complaint in the Chancery Court of Davidson County, State of Tennessee that sought, among other forms of relief, to preliminarily and permanently enjoin all activities related to the Invisalign store pilot project, require Align to close existing Invisalign stores, prohibit Align from opening any additional stores, and allow the SDC Entities to exercise a right to repurchase all of Align's SDC Financial LLC membership interests for a purchase price equal to Align's current "capital account" balance.

On June 29, 2018, the Chancery Court of Davidson County, State of Tennessee denied the SDC Entities' request for a temporary injunction to prevent Align from opening additional Invisalign stores. During December 2018, the parties participated in binding arbitration proceedings and presented closing arguments on January 23, 2019. The arbitrator issued his decision on March 4, 2019. The arbitrator found that Align breached the non-compete provision applicable to the members of SDC Financial LLC and that Align misused the SDC Entities' confidential information and violated fiduciary duties to SDC Financial LLC. The arbitrator ordered Align to close its Invisalign stores by April 3, 2019, and enjoined Align from opening new Invisalign stores or providing certain services in physical retail establishments in connection with the marketing and sale of clear aligners, and enjoined Align from using the SDC Entities' confidential information. The arbitrator extended the expiration date of specified aspects of the non-compete provision to August 18, 2022. The arbitrator also ordered Align to tender its SDC Financial LLC membership interests to the SDC Entities for a purchase price equal to the "capital account" balance as of October 31, 2017, to be determined in accordance with the applicable provisions of the SDC Operating Agreements. No

financial damages were awarded to the SDC Entities. The SDC Entities filed a motion to confirm the Award, which Align did not oppose, in the Circuit Court for Cook County, Illinois. The motion to confirm the Award was granted on April 29, 2019.

As required by the Award, on April 3, 2019, Align had closed its Invisalign stores, returned SDC's alleged confidential information, and tendered its membership interests for a purchase price that SDC claims to be Align's "capital account" balance as of October 31, 2017. Align disputes that the SDC Entities properly determined the value of Align's "capital account" balance as of October 31, 2017 as required by the SDC Operating Agreements and the Award. Consequently, on July 3, 2019, Align filed a confidential demand for arbitration challenging the propriety of the SDC Entities' determination of Align's "capital account" balance as of October 31, 2017. That arbitration proceeding remains pending and a hearing date is expected to be set once the sheltering restrictions associated with the COVID-19 pandemic are lifted. Relatedly, the SDC Entities filed a contempt petition with the Illinois court which confirmed the Award, asserting that Align had no right to contest the "capital account" determination as made by the SDC Entities. On September 4, 2019, the Illinois court denied in its entirety the contempt petition filed by the SDC Entities. The SDC Entities have appealed the denial of the contempt petition, and that appeal remains pending.

On August 19, 2019, the SDC Entities filed a separate confidential arbitration proceeding alleging that Align has violated the non-compete provisions applicable to the members of the SDC Entities by virtue of Align's alleged dealings with a third-party claimed to be a competitor of the SDC Entities. On March 20, 2020, the SDC Entities requested leave to amend their arbitration demand in order to assert new claims. Align has opposed the pending request to amend and has denied and intends to vigorously defend itself against all asserted allegations. The SDC Entities have yet to identify the range of damages they may seek to recover in the course of this arbitration and no hearing date has yet been set.

Align is currently unable to predict the outcome of these disputes and therefore cannot determine the likelihood of loss nor estimate a range of possible loss.

In addition to the above, in the course of Align's operations, Align is involved in a variety of claims, suits, investigations, and proceedings, including actions with respect to intellectual property claims, patent infringement claims, government investigations, labor and employment claims, breach of contract claims, tax, and other matters. Regardless of the outcome, these proceedings can have an adverse impact on us because of defense costs, diversion of management resources, and other factors. Although the results of complex legal proceedings are difficult to predict and Align's view of these matters may change in the future as litigation and events related thereto unfold; Align currently does not believe that these matters, individually or in the aggregate, will materially affect Align's financial position, results of operations or cash flows.

## **Note 9. Commitments and Contingencies**

### ***Other Commitments***

On January 15, 2019, we entered into a Purchase Agreement to purchase five floors of a building under construction in Petach Tivka, Israel for a purchase price of approximately \$27.0 million with an option to purchase additional three floors with progress payments due through 2020. During the fourth quarter of 2019, we exercised the option to purchase three additional floors and purchased one additional floor in the building for a purchase price of approximately \$24.4 million. As of March 31, 2020, we have a remaining commitment of \$21.4 million which is expected to be paid in 2020.

On October 3, 2019, we entered into a Promotional Rights Agreement (the "Agreement") for \$36.0 million with a third-party which includes certain advertising and media coverage. The expense related to the Agreement will be incurred over the period of April 1, 2020 through March 31, 2023.

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

As of March 31, 2020, we had no material off-balance sheet arrangements that have, or are reasonably likely to have, a current or future material effect on our consolidated financial condition, results of operations, liquidity, capital expenditures or capital resources other than certain items disclosed in *Note 10 "Commitments and Contingencies" of the Notes to Consolidated Financial Statements* included in our Annual Report on Form 10-K.

### Indemnification Provisions

In the normal course of business to facilitate transactions in our services and products, we indemnify certain parties: customers, vendors, lessors, and other parties with respect to certain matters, including, but not limited to, services to be provided by us and intellectual property infringement claims made by third parties. In addition, we have entered into indemnification agreements with our directors and our executive officers that will require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors or officers. Several of these agreements limit the time within which an indemnification claim can be made and the amount of the claim.

It is not possible to make a reasonable estimate of the maximum potential amount under these indemnification agreements due to the unique facts and circumstances involved in each particular agreement. Additionally, we have a limited history of prior indemnification claims and the payments we have made under such agreements have not had a material adverse effect on our results of operations, cash flows or financial position. However, to the extent that valid indemnification claims arise in the future, future payments by us could be significant and could have a material adverse effect on our results of operations or cash flows in a particular period. As of March 31, 2020, we did not have any material indemnification claims that were probable or reasonably possible.

### Note 10. Stockholders' Equity

#### Summary of Stock-Based Compensation Expense

As of March 31, 2020, the 2005 Incentive Plan (as amended) has a total reserve of 27,783,379 shares of which 4,662,468 shares are available for issuance.

Stock-based compensation is based on the estimated fair value of awards, net of estimated forfeitures, and recognized over the requisite service period. Estimated forfeitures are based on historical experience at the time of grant and may be revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. The stock-based compensation related to all of our stock-based awards and employee stock purchases for the three months ended March 31, 2020 and 2019 is as follows (in thousands):

	Three Months Ended March 31,	
	2020	2019
Cost of net revenues	\$ 1,347	\$ 1,112
Selling, general and administrative	18,130	16,890
Research and development	3,450	3,042
Total stock-based compensation	<u>\$ 22,927</u>	<u>\$ 21,044</u>

#### Restricted Stock Units ("RSUs")

The fair value of RSUs is based on our closing stock price on the date of grant. A summary for the three months ended March 31, 2020 is as follows:

	Number of Shares Underlying RSUs (in thousands)	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Unvested as of December 31, 2019	696	\$ 190.60		
Granted	251	272.24		
Vested and released	(259)	145.91		
Forfeited	(11)	233.45		
Unvested as of March 31, 2020	<u>677</u>	<u>\$ 237.27</u>	1.8	<u>\$ 117,738</u>

As of March 31, 2020, we expect to recognize \$133.4 million of total unamortized compensation cost, net of estimated forfeitures, related to RSUs over a weighted average period of 2.7 years.

#### Market-performance Based Restricted Stock Units ("MSUs")

We grant MSUs to our executive officers. Each MSU represents the right to one share of Align's common stock. The actual number of MSUs which will be eligible to vest will be based on the performance of Align's stock price relative to the

performance of a stock market index over the vesting period, and certain MSU grants are also based on Align’s stock price at the end of the performance period. The maximum number of MSUs which will be eligible to vest range from 250% to 300% of the MSUs initially granted and the vesting period is three years.

A summary for the three months ended March 31, 2020 is as follows:

	Number of Shares Underlying MSUs (in thousands)	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Unvested as of December 31, 2019	244	\$ 331.35		
Granted	156	242.04		
Vested and released	(173)	120.39		
Unvested as of March 31, 2020	227	\$ 430.50	1.9	\$ 39,529

As of March 31, 2020, we expect to recognize \$52.9 million of total unamortized compensation cost, net of estimated forfeitures, related to MSUs over a weighted average period of 1.9 years.

### **Employee Stock Purchase Plan (“ESPP”)**

In May 2010, our shareholders approved the 2010 Employee Stock Purchase Plan (the “2010 Purchase Plan”) which will continue until terminated by either the Board of Directors or its administrator. The maximum number of shares available for purchase under the 2010 Purchase Plan is 2,400,000 shares. As of March 31, 2020, we have 379,304 shares available for future issuance.

The fair value of the option component of the 2010 Purchase Plan shares was estimated at the grant date using the Black-Scholes option pricing model with the following weighted average assumptions:

	Three Months Ended March 31,	
	2020	2019
Expected term (in years)	1.0	1.4
Expected volatility	41.7 %	48.6 %
Risk-free interest rate	1.5 %	2.5 %
Expected dividends	—	—
Weighted average fair value at grant date	\$ 80.54	\$ 90.36

As of March 31, 2020, there was \$8.4 million of total unamortized compensation costs related to employee stock purchases which we expect to be recognized over a weighted average period of 0.7 year.

### **Note 11. Common Stock Repurchase Program**

In May 2018, we announced that our Board of Directors had authorized a plan to repurchase up to \$600.0 million of our common stock (“May 2018 Repurchase Program”).

In 2018, we repurchased on the open market approximately 0.1 million shares of our common stock at an average price of \$356.54 per share, including commissions, for an aggregate purchase price of approximately \$50.0 million. In 2018, we entered into an accelerated stock repurchase agreement (“ASR”) to repurchase \$50.0 million of our common stock which was completed in December 2018. We received a total of approximately 0.2 million shares for an average share price of \$213.18.

In 2019, we repurchased on the open market approximately 0.8 million shares of our common stock at an average price of \$264.93 per share, including commissions, for an aggregate purchase price of \$200.0 million. We also entered into an ASR to repurchase \$200.0 million of our common stock which was completed in September 2019. We received a total of 1.1 million shares for an average share price of \$176.61.

As of March 31, 2020, we have \$100.0 million available for repurchase under the May 2018 Repurchase Program.

### **Note 12. Accounting for Income Taxes**

During the three months ended March 31, 2020, we completed an intra-entity transfer of certain intellectual property rights and fixed assets to our Swiss subsidiary, where our EMEA regional headquarters is located beginning January 1, 2020.

The transfer of intellectual property rights did not result in a taxable gain; however, it did result in a step-up of the Swiss tax deductible basis in the transferred assets, and accordingly, created a temporary difference between the book basis and the tax basis of such intellectual property rights. Consequently, this transaction resulted in the recognition of a deferred tax asset and related one-time tax benefit of approximately \$1,493.5 million during the three months ended March 31, 2020, which is the net impact of the deferred tax asset recognized as a result of the additional Swiss tax deductible basis in the transferred assets and certain costs related to the transfer of fixed assets and inventory.

Our benefit from income taxes was \$1,464.8 million for the three months ended March 31, 2020 and our provision for income taxes was \$8.8 million for the three months ended March 31, 2019, representing effective tax rates of (2,745.3)% and 10.4%, respectively. Our effective tax rate differs from the statutory federal income tax rate of 21% for the three months ended March 31, 2020 mainly as a result of the aforementioned intra-entity transfer and the recognition of excess tax benefits related to stock-based compensation, partially offset by state income taxes and unrecognized tax benefits associated with certain foreign payments. Our effective tax rate differs from the statutory federal income tax rate of 21% for the three months ended March 31, 2019 mainly as a result of the recognition of excess tax benefits related to stock-based compensation and certain foreign earnings, primarily from the Netherlands and Costa Rica, being taxed at lower tax rates.

The decrease in our effective tax rate for the three months ended March 31, 2020 compared to the same period in 2019 is primarily attributable to the recognition of a deferred tax asset related to the intra-entity transfer of certain intellectual property rights during the three months ended March 31, 2020.

We exercise significant judgment in regards to estimates of future market growth, forecasted earnings and projected taxable income in determining the provision for income taxes and for purposes of assessing our ability to utilize any future benefit from deferred tax assets. We continue to assess the realizability of the deferred tax assets as we take into account new information.

We file U.S. federal, U.S. state, and non-U.S. income tax returns. Our major tax jurisdictions include U.S. federal, the State of California and Switzerland. For U.S. federal and state tax returns, we are no longer subject to tax examinations for years before 2015. We are currently under examination by the IRS for tax years 2015 and 2016. With few exceptions, we are no longer subject to examination by foreign tax authorities for years before 2013.

Our total gross unrecognized tax benefits, excluding interest and penalties, was \$51.1 million and \$46.7 million as of March 31, 2020 and December 31, 2019, respectively, a material amount of which would impact our effective tax rate if recognized. Our total interest and penalties accrued as of March 31, 2020 was not material. We have elected to recognize interest and penalties related to unrecognized tax benefits as a component of income taxes. The timing and resolution of income tax examinations is uncertain, and the amounts ultimately paid, if any, upon resolution of issues raised by the taxing authorities may differ materially from the amounts accrued for each year. Although it is possible that our balance of gross unrecognized tax benefits could materially change in the next 12 months, given the uncertainty in the development of ongoing income tax examinations, we are unable to estimate the full range of possible adjustments to this balance.

As of December 31, 2019, undistributed earnings of our foreign subsidiaries totaled \$452.6 million and substantially all of the earnings previously determined to be not indefinitely reinvested have been repatriated. Under the Global Intangible Low-Taxed Income provisions of the Tax Cuts and Jobs Act, U.S. income taxes have already been provided on the undistributed earnings that is indefinitely reinvested in our international operations; therefore, the tax impact upon distribution is limited to mainly state income and withholding taxes and is not significant.

### **Note 13. Net Income per Share**

Basic net income per share is computed using the weighted average number of shares of common stock outstanding during the period. Diluted net income per share is computed using the weighted average number of shares of common stock, adjusted for any dilutive effect of potential common stock. Potential common stock, computed using the treasury stock method, includes RSUs, MSUs and our ESPP.

The following table sets forth the computation of basic and diluted net income per share attributable to common stock (in thousands, except per share amounts):

	Three Months Ended March 31,	
	2020	2019
Numerator:		
Net income	\$ 1,518,131	\$ 71,848
Denominator:		
Weighted average common shares outstanding, basic	78,592	79,860
Dilutive effect of potential common stock	436	827
Total shares, diluted	79,028	80,687
Net income per share, basic	\$ 19.32	\$ 0.90
Net income per share, diluted	\$ 19.21	\$ 0.89

For the three months ended March 31, 2020 and 2019, potentially anti-dilutive shares excluded from diluted net income per share related to RSUs, MSUs and ESPP were not material.

#### Note 14. Supplemental Cash Flow Information

The supplemental cash flow information consists of the following (in thousands):

	Three Months Ended March 31,	
	2020	2019
Non-cash investing and financing activities:		
Fixed assets acquired with accounts payable or accrued liabilities	\$ 24,121	\$ 13,113
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 6,236	\$ 3,820
Financing cash flows from finance leases	\$ —	\$ 2,190
Right-of-use assets obtained in exchange for lease obligations:		
Operating leases	\$ 21,602	\$ 15,984
Finance leases	\$ —	\$ 51,064

#### Note 15. Segments and Geographical Information

##### Segment Information

Operating segments are defined as components of an enterprise for which separate financial information is available that is evaluated regularly by the Chief Operating Decision Maker (“CODM”), or decision-making group, in deciding how to allocate resources and in assessing performance. Our CODM is our Chief Executive Officer. We report segment information based on the management approach. The management approach designates the internal reporting used by CODM for decision making and performance assessment as the basis for determining our reportable segments. The performance measures of our reportable segments include net revenues, gross profit and income from operations. Income from operations for each segment includes all geographic revenues, related cost of net revenues and operating expenses directly attributable to the segment. Certain operating expenses are attributable to operating segments and each allocation is measured differently based on the specific facts and circumstances of the costs being allocated. Costs not specifically allocated to segment income from operations include various corporate expenses such as stock-based compensation and costs related to IT, facilities, human resources, accounting and finance, legal and regulatory, and other separately managed general and administrative costs outside the operating segments.

We group our operations into two reportable segments: Clear Aligner segment and Scanner segment.

- Our Clear Aligner segment consists of Comprehensive Products, Non-Comprehensive Products and Non-Case revenues as defined below:
  - Comprehensive Products include, but are not limited to, Invisalign Comprehensive and Invisalign First.

- Non-Comprehensive Products include, but are not limited to, Invisalign Moderate, Lite and Express packages and Invisalign Go.
- Non-Case includes, but not limited to, Vivera retainers along with our training and ancillary products for treating malocclusion.
- Our Scanner segment consists of intraoral scanning systems, which includes a single hardware platform and restorative or orthodontic software options, additional services and ancillary products. This segment includes our iTero scanner and OrthoCAD services.

These reportable operating segments are based on how our CODM views and evaluates our operations as well as allocation of resources. The following information relates to these segments (in thousands):

	Three Months Ended March 31,	
	2020	2019
Net revenues		
Clear Aligner	\$ 481,611	\$ 469,205
Scanner	69,352	79,766
Total net revenues	<u>\$ 550,963</u>	<u>\$ 548,971</u>
Gross profit		
Clear Aligner	\$ 351,492	\$ 351,358
Scanner	42,864	50,738
Total gross profit	<u>\$ 394,356</u>	<u>\$ 402,096</u>
Income from operations		
Clear Aligner	\$ 166,388	\$ 158,641
Scanner	14,389	28,259
Unallocated corporate expenses	(110,859)	(99,199)
Total income from operations	<u>\$ 69,918</u>	<u>\$ 87,701</u>
Depreciation and amortization		
Clear Aligner	\$ 10,121	\$ 9,090
Scanner	1,785	1,508
Unallocated corporate depreciation and amortization	8,832	7,718
Total depreciation and amortization	<u>\$ 20,738</u>	<u>\$ 18,316</u>
Impairments and other charges		
Clear Aligner	\$ —	\$ 29,782
Total impairments and other charges	<u>\$ —</u>	<u>\$ 29,782</u>

The following table reconciles total segment income from operations in the table above to net income before provision for (benefit from) income taxes and equity losses of investee (in thousands):

	Three Months Ended March 31,	
	2020	2019
Total segment income from operations	\$ 180,777	\$ 186,900
Unallocated corporate expenses	(110,859)	(99,199)
Total income from operations	69,918	87,701
Interest income	1,986	2,633
Other income (expense), net	(18,549)	(5,746)
Net income before provision for (benefit from) income taxes and equity in losses of investee	<u>\$ 53,355</u>	<u>\$ 84,588</u>

**Geographical Information**

Net revenues are presented below by geographic area (in thousands):

	Three Months Ended March 31,	
	2020	2019
Net revenues <sup>1</sup> :		
United States	\$ 271,705	\$ 279,005
Switzerland <sup>2</sup>	184,317	—
The Netherlands <sup>2</sup>	—	174,744
China	19,725	42,616
Other International	75,216	52,606
Total net revenues	<u>\$ 550,963</u>	<u>\$ 548,971</u>

<sup>1</sup> Net revenues are attributed to countries based on the location of where revenues are recognized by our legal entities.

<sup>2</sup> During the first quarter of 2020, we implemented a new international corporate structure. This changed the structure of our international procurement and sales operations from the Netherlands to Switzerland.

Tangible long-lived assets, which includes Property, plant and equipment, net, and Operating lease right-of-use assets, net, are presented below by geographic area (in thousands):

	March 31,	December 31, 2019
	2020	
Long-lived assets <sup>1</sup> :		
Switzerland <sup>2</sup>	\$ 229,010	\$ 7,755
United States	182,131	164,451
Costa Rica	85,573	82,083
China	84,127	73,174
The Netherlands <sup>2</sup>	1,504	226,286
Other International	151,512	134,225
Total long-lived assets	<u>\$ 733,857</u>	<u>\$ 687,974</u>

<sup>1</sup> Long-lived assets are attributed to countries based on the location of our entity that owns or leases the assets.

<sup>2</sup> As a result of the new international corporate structure changes, most of the long-lived assets were transferred from our Netherlands entity to our Switzerland entity during the first quarter of 2020.

**Note 16. Subsequent Event**

On March 3, 2020, we entered into a Sale and Purchase Agreement with CETP III Ivory S.a.r.l., Luxembourg to purchase all of the issued and outstanding shares of capital stock of exocad, a German dental computer-aided design/computer-aided manufacturing software company that offers fully integrated workflows to dental labs and dental practices. On April 1, 2020, we completed the acquisition for a purchase price of approximately \$430.0 million in cash, subject to certain adjustments, and exocad became a wholly owned subsidiary. We are in the process of determining the preliminary allocation of the purchase price to exocad's tangible assets and liabilities assumed.

**ITEM 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.**

*In addition to historical information, this quarterly report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These statements include, among other things, our expectations and intentions regarding our strategic objectives and the means to achieve them, our beliefs regarding the impact of technological innovation on target markets, our beliefs regarding digital dentistry and its potential to impact our business, our expectations for the impact of the exocad acquisition, our beliefs regarding the potential for clinical solutions and their utilization to increase sales of our Invisalign system as well as the complementary products and solutions themselves, our expectations regarding product mix and product adoption, our expectations regarding the utilization rates of our products, our expectations regarding existence and impact of seasonality, our expectations regarding the sales growth of our intra-oral scanner sales in international markets, our expectations regarding the productivity impact additional sales representatives will have on our sales, our expectations regarding the continued expansion of our international markets, including our expectation that international revenues will grow at a faster rate than Americas for the foreseeable future, our expectation regarding customer and consumer purchasing behavior, including expectations related to the consumer demand environment in China especially for U.S. based products and services, our expectations regarding competition, our expectations regarding the implications of the COVID-19 pandemic on the global economy, the businesses of our customers and our own revenues, results of operations and financial condition, our expectations regarding potential additional litigation with SDC Financial LLC and certain affiliates regarding the “capital account” balance and other matters, the level of our operating expenses and gross margins and other factors beyond our control, as well as other statements regarding our future operations, financial condition and prospects and business strategies. These statements may contain words such as “expects,” “anticipates,” “intends,” “plans,” “believes,” “estimates,” or other words indicating future results. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from those reflected in the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in Item 2 “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and in particular, the risks discussed below in Part 2, Item 1A “Risk Factors.” We undertake no obligation to revise or update these forward-looking statements. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements.*

The following discussion and analysis of our financial condition and results of operations should be read together with our condensed consolidated financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q and with our audited consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2019 as filed with the Securities and Exchange Commission.

**Overview**

Align Technology, Inc. (“We”, “Our”, “Align”) is a global medical device company engaged in the design, manufacture and marketing of Invisalign® clear aligners and iTero® intraoral scanners and services for orthodontics, and restorative and aesthetic dentistry. Align’s products are intended primarily for the treatment of malocclusion or the misalignment of teeth and are designed to help dental professionals achieve the clinical outcomes that they expect and the results patients desire. Our goal is to establish clear aligners as the principal solution for the treatment of malocclusions and our Invisalign clear aligners as the treatment solution of choice by orthodontists, general dental practitioners and patients globally. To date, over 8 million people worldwide have been treated with our Invisalign System.

To drive increased clear aligner and other product adoption by dental professionals, we bring to market solutions we believe will strengthen our digital dental platform for doctors, labs and partners, including establishing the iTero intraoral scanner as the preferred scanning device for 3D digital scans and integrating newly acquired CAD/CAM solutions and workflows into the markets for clear aligner orthodontics and dental restorative treatments. We intend to continue focusing on these efforts through execution of our strategic growth drivers. *For a further description of our strategic growth drivers, please review the Business Strategy section of our Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 28, 2020.*

The successful execution of our business strategy in 2020 and beyond may be affected by a number of factors including:

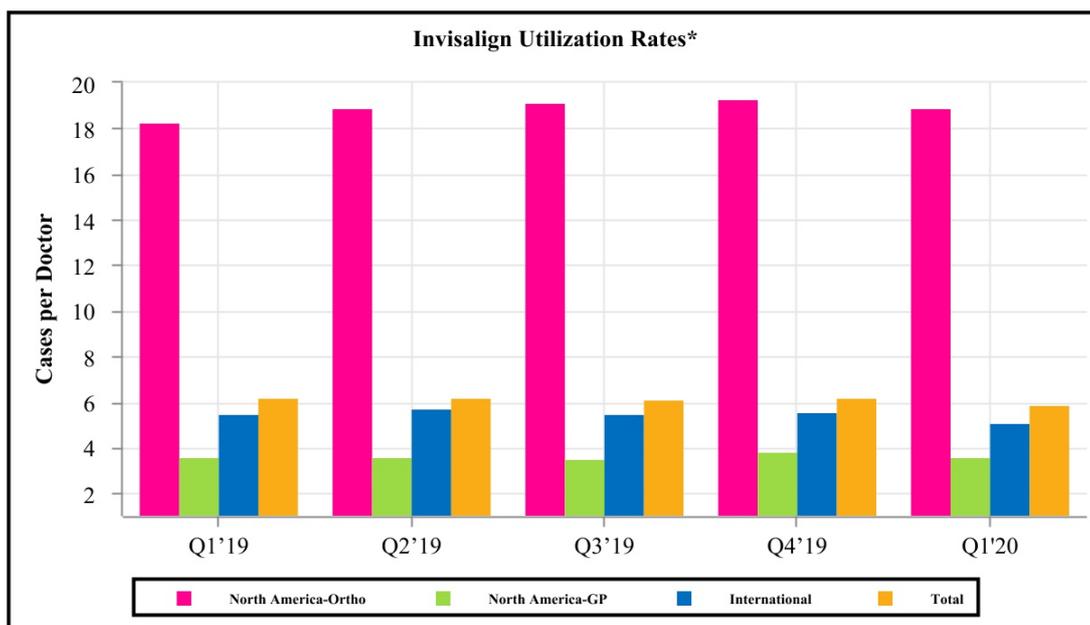
- *New Products, Feature Enhancements and Technology.* We believe product innovation to treat a wide range of cases from simple to complex drives greater treatment predictability, clinical applicability and ease of use for the dental professionals we serve which supports adoption of Invisalign treatment in their practices. Furthermore, we believe the digital revolution in dentistry is an important aspect of the experience for our customers and their patients, encouraging the utilization of our Invisalign solution. It therefore comprises an important component of our digital approach.

- *Invisalign*: Since 2018, we have launched or announced various new offerings including our Invisalign treatment with Mandibular Advancement, Invisalign Go, Invisalign First and Invisalign Moderate. In each instance, we have broadened and strengthened our reach into key markets and demographics central to our strategic plans.
- *iTero Scanner*: Over the last two years, we have expanded or announced several new aspects of our intraoral digital scanning solutions including the iTero Element, iTero Element Foundation and iTero Element 5D Imaging system, for which we announced in March 2020 that we had obtained FDA 501(K) clearance. The approval of the iTero Element 5D Imaging system opens the U.S. markets for sales of this unique solution that combines 3D data, intra-oral color photos and NIRI images into a single, integrated scan improving doctor experiences and improving engagement opportunities and communications with their patients.
- *exocad*. On March 3, 2020, we entered into a Sale and Purchase Agreement with CETP III Ivory S.a.r.l., Luxembourg to purchase all of the issued and outstanding shares of capital stock of exocad Global Holdings GmbH (“exocad”), a German dental computer-aided design/computer-aided manufacturing (“CAD/CAM”) software company that offers fully integrated workflows to dental labs and dental practices. We believe the acquisition of exocad will strengthen our digital platform by adding exocad’s expertise in restorative dentistry, implantology, guided surgery, and smile design to extend our digital solutions and paving the way for new, seamless cross-discipline dentistry in lab and at chairside. exocad also broadens our reach in digital dentistry with close to 200 partners and more than 35,000 licenses installed worldwide. On April 1, 2020, we completed the acquisition for a purchase price of approximately \$430.0 million in cash, subject to certain adjustments, and exocad became a wholly owned subsidiary. We are in the process of determining the preliminary allocation of the purchase price to exocad’s tangible assets and liabilities assumed.

We believe that over the long term, clinical solutions and treatment tools will increase adoption of Invisalign, sales of our intraoral scanners and integration of exocad CAD/CAM solutions chairside and in dental workflows; however, it is difficult to predict the rate of adoption which may vary by region and channel.

The use of iTero and other digital scanners for Invisalign case submission in place of PVS impressions continues to grow and remains a positive catalyst for Invisalign utilization. For the first quarter of 2020, total Invisalign cases submitted with a digital scanner in the Americas increased to 80.5%, up slightly from 79.5% in the fourth quarter of 2019. International scans increased to 68.7%, up from 64.7% in the fourth quarter of 2019.

- *Invisalign Adoption*. Our goal is to establish Invisalign as the treatment of choice for treating malocclusion ultimately driving increased product adoption and frequency of use by dental professionals, also known as “utilization rates.” Our quarterly utilization rates for the last five quarters are as follows:



\*Invisalign utilization rates are calculated by the # of cases shipped divided by the # of doctors to whom cases were shipped. Our International region includes EMEA and APAC. LATAM is excluded from above chart as it is immaterial.

- Total utilization rate in the first quarter of 2020 decreased to 5.9 cases per doctor compared to 6.2 cases per doctor in the first quarter of 2019.
  - *North America:* Utilization rate among our North American orthodontist customers increased to 18.9 cases per doctor in the first quarter of 2020 compared to 18.3 cases per doctor in the first quarter of 2019 while utilization rate among our North American GP was flat at 3.6 cases per doctor in both the first quarter of 2020 and 2019.
  - *International:* International doctor utilization rate was 5.1 cases per doctor in the first quarter of 2020 compared to 5.5 cases in the first quarter of 2019.

Over time, we expect utilization rates to gradually improve as a result of advancements in product and technology, which continue to strengthen our doctors' clinical confidence in the use of Invisalign clear aligners. In addition, since the teenage and younger market makes up 75% of the approximately 12 million total orthodontic case starts each year, and as we continue to drive adoption by teenage and younger patients through sales and marketing programs, we expect our utilization rates to improve. Our utilization rates, however, may fluctuate from period to period due to a variety of factors, including seasonal trends in our business along with adoption rates of new products and features.

- *Number of New Invisalign Doctors Trained.* We continue to expand our Invisalign customer base through the training of new doctors. During the three months ended March 31, 2020, we trained 4,635 new Invisalign doctors of which 2,035 were trained in the Americas region and 2,600 in the International region. In 2019, we trained a total of 22,275 new Invisalign doctors, of which 9,765 were trained in the Americas region and 12,510 in the International region.
- *International Invisalign Growth.* We continue to focus our efforts towards increasing Invisalign clear aligner adoption by dental professionals in the EMEA and APAC markets. Beginning in the second quarter of 2019, we experienced slower growth rates than prior periods in China primarily due to the US-China trade war and resulting economic uncertainty which caused headwind for consumer demand especially for consumption of luxury goods and considered purchases. We also believe there has been increased competitive activity from wires and bracket manufacturers and clear aligner suppliers. In addition, in the first quarter of 2020 the outbreak of the novel strain of coronavirus commonly referred to as COVID-19 caused significant disruption and uncertainty to our business, employees, doctors' practices, their patients and consumers. *For a further discussion of COVID-19 and its impact on our business, see the section entitled "COVID-19 Update" below.* Notwithstanding these current issues in China, we continue to see growth from our international orthodontists and GP customers and positive traction in the GP channel as we continue to segment our sales and marketing resources and programs specifically around each customer channel. In 2019, we continued to expand in our existing markets through targeted investments in sales coverage and professional marketing and education programs, along with consumer marketing in select country markets. We expect International revenues to grow at a faster rate than the Americas for the foreseeable future due to the outsized impact of COVID-19 on the U.S., our continued investment in international market expansion, the size of the market opportunities and our relatively low market penetration of these regions. Our future growth is dependent upon the continued growth of Invisalign adoption and international market penetration.
- *Increasing Competition.* Starting in the second quarter of 2019, we began experiencing slower adult case growth from North American orthodontists, reflecting a more competitive environment especially for the young adult demographic. Given increased awareness for direct to consumer clear aligners and heavy advertising spend from direct to consumer companies, case starts may be shifting away from traditional practices. We also believe that doctors are sampling alternative products and/or taking advantage of wires and brackets bundles that essentially give clear aligners away for free or at low prices. In the third quarter of 2019, we increased investment in consumer demand with a new advertising campaign for North America and expanding marketing programs such as our Concierge Service, which connects potential patients with Invisalign doctors increasing conversion and loyalty. In addition, we launched new sales tools and professional marketing materials and we also expect to see increased productivity from the sales representatives we added in 2019. If, however, we are unable to compete effectively with existing products or respond effectively to any products developed by new or existing competitors, our business could be harmed.

#### COVID-19 Update

In the first quarter of fiscal year 2020, our efforts to establish clear aligners as the principal solution for the treatment of malocclusions and our Invisalign clear aligners as the treatment solution of choice were markedly impacted by the COVID-19

pandemic. As a result of the COVID-19 pandemic, we began to experience a sudden downturn in sales initially in Asia, China in particular, starting in January. As the virus spread beyond China and into Europe and thereafter the U.S. in early March, a rapid deceleration of all sales commenced shortly thereafter as the practices of many of our customers were severely curtailed or completely closed. Consequently, through early March the first quarter of fiscal year 2020 was progressing consistent with our guidance but ended with net revenues of \$551.0 million, an increase of only 0.4% from the prior year comparable period. Clear aligner case volume was 359.4 thousand, essentially flat as compared to the prior year quarter. Scanner and services net revenues decreased by \$10.4 million as compared to the same period in 2019.

Since first being reported in Wuhan, China in December 2019, COVID-19 has extensively impacted the health and economic environments of virtually all regions globally. In January 2020, the World Health Organization (“WHO”) declared it a Public Health Emergency of International Concern. On February 28, 2020, the WHO raised its assessment of the COVID-19 threat from high to very high at a global level due to the continued increase in the number of cases and affected countries, and on March 11, 2020, the WHO characterized COVID-19 as a pandemic.

Our business may be particularly susceptible to the impact of the COVID-19 pandemic considering all or a material portion of our products may be viewed as discretionary purchases and therefore more susceptible to any global or regional recession that may result from efforts to prevent or delay the spread of the virus. Moreover, efforts to slow or prevent a recurrence of the spread of the virus are likely to continue to curtail the operations of our customers and their patients for an indeterminate period of time, impacting our operations as purchasing decisions are delayed or lost, logistics complexities as a result of closed customer offices, sales and marketing efforts are postponed, and manufacturing operations are curtailed to adjust to declining sales.

As we assess the possible future impacts to revenue, operations and financial condition from the COVID-19 pandemic, we are continually evaluating macroeconomic as well as industry-specific factors. For instance, among the many factors we are considering are governmental and societal reactions to the virus, the potential impacts of delays in the restarting of global and regional economic activities, high unemployment levels leading to lower discretionary spending and health insurance coverage, patient reluctance or fear of exposure as a result of orthodontic or dental office visits and other external factors related to COVID-19 that are beyond our control. For example, many jurisdictions have imposed a wide range of restrictions on the physical movement of our employees and vendors to limit the spread of COVID-19. Furthermore, if the COVID-19 pandemic has a substantial continuing impact on our employees or suppliers, our operations, including our ability to obtain the materials needed to manufacture our products and to actually manufacture and deliver our products to customers, may suffer, and in turn our results of operations, financial condition and overall financial performance may be harmed. Furthermore, if our employees, especially any key employees, or their families are sickened by COVID-19, our ability to respond or mitigate the impact of COVID-19 may be adversely impacted.

We have taken numerous steps, and will continue to take further actions, in our approach to addressing the COVID-19 pandemic. We have implemented our business continuity plans and our incident management team is in place to respond to changes in our environment quickly and effectively. As a result of the COVID-19 pandemic, we instructed employees at many of our offices across the globe (including our corporate headquarters) to work from home on a temporary basis. We have also taken additional measures in response to the COVID-19 pandemic including screening our employees and altering work environments to facilitate social distancing.

Furthermore, we are working to mitigate the impact of social distancing for our customers and their patients. These efforts include moving most of our clinical education program critical to doctor engagement online, launching our Invisalign Virtual Appointment tool that enables doctors to easily schedule and conduct virtual appointments with new and existing patients and launching the Invisalign Virtual Care Program that allows doctors to monitor patient treatment through mobile phones.

Moreover, we are supporting doctors with advice on safely extending clear aligner usage, maintaining patients at treatment stages and redirecting shipments to optimize patient care. Our support also extends to the financial challenges they may encounter with the assistance of industry experts and through strategic relationships with lenders that can help doctors improve their cash flow.

Overall, we believe our expenses in 2020 will remain consistent with 2019 levels. We intend to continue to closely monitor costs to help mitigate the impact of reduced revenues on our fiscal 2020 operating income. We have implemented initiatives to reduce discretionary spend including travel and entertainment; limited hiring to select positions, with a focus on our most critical areas; and postponing or canceling capital expenditures not deemed essential to our primary goal. *For a further discussion of our projected 2020 expenses, see the section entitled "2020 Expenses" below.*

The COVID-19 pandemic has impacted our employees, customers and the global economy in unprecedented ways and our results of operation, financial condition and overall financial results significantly. At this time, we anticipate varying levels

of revenue weakness in all or a material portion of our major markets during at least the second quarter and fiscal year 2020 overall. Given the uncertainties of the ongoing and future global response to the pandemic and the resulting economic downturn that could affect demand for our products, we are unable at present to determine the potential direct and indirect impacts of the COVID-19 pandemic on our future revenues and results of operations.

Please refer to “Risk Factors” for further discussion of the impact of the COVID-19 pandemic on our business.

### 2020 Expenses

Overall, we expect expenses in 2020 to slightly increase over 2019 levels; however, as a result of the financial impacts of COVID-19, we expect to control our discretionary spend, such as travel and meeting related expenses, and focus investments in the following key areas:

- Manufacturing capacity and facilities to enhance our regional capabilities;
- Sales and marketing, including additional direct sales force personnel and consumer marketing; and
- Product and technology innovation to enhance product efficiency and operational productivity.

We believe that these investments will position us to take advantage of a recovering market, increasing our revenues and growing our market share over the long term, but they could negatively impact our results of operations, particularly in the near term.

## Results of Operations

### Net Revenues by Reportable Segment

We group our operations into two reportable segments: Clear Aligner segment and Scanner segment.

- Our Clear Aligner segment consists of Comprehensive Products, Non-Comprehensive Products and Non-Case revenues as defined below:
  - Comprehensive Products include, but are not limited to, Invisalign Comprehensive and Invisalign First.
  - Non-Comprehensive Products include, but are not limited to, Invisalign Moderate, Lite and Express packages and Invisalign Go.
  - Non-Case includes, but is not limited to, Viverra retainers along with our training and ancillary products for treating malocclusion.
- Our Scanner segment consists of intraoral scanning systems, which includes a single hardware platform and restorative or orthodontic software options, additional services and ancillary products. This segment includes our iTero scanner and OrthoCAD services.

Net revenues for our Clear Aligner and Scanner segments by region for the three months ended March 31, 2020 and 2019 are as follows (in millions):

Net Revenues	Three Months Ended March 31,			
	2020	2019	Net Change	% Change
Clear Aligner revenues:				
Americas	\$ 255.6	\$ 245.3	\$ 10.3	4.2 %
International	195.8	194.9	0.9	0.5 %
Non-case	30.2	29.0	1.2	4.1 %
Total Clear Aligner net revenues	\$ 481.6	\$ 469.2	\$ 12.4	2.6 %
Scanner net revenues	69.4	79.8	(10.4)	(13.1)%
Total net revenues	\$ 551.0	\$ 549.0	\$ 2.0	0.4 %

Changes and percentages are based on actual values. Certain tables may not sum or recalculate due to rounding.

**Clear Aligner Case Volume by Region**

Case volume data which represents Clear Aligner case shipments by region for the three months ended March 31, 2020 and 2019 is as follows (in thousands):

Region	Three Months Ended March 31,			
	2020	2019	Net Change	% Change
Americas	213.5	213.2	0.3	0.1 %
International	145.9	146.3	(0.3)	(0.2) %
Total case volume	359.4	359.5	—	— %

*Changes and percentages are based on actual values. Certain tables may not sum or recalculate due to rounding.*

For the three months ended March 31, 2020, total net revenues increased by \$2.0 million as compared to the same period in 2019 primarily as a result of higher Clear Aligner average selling prices (“ASP”) that were partially offset by lower scanner net revenues in most regions.

**Clear Aligner - Americas**

For the three months ended March 31, 2020, Americas net revenues increased by \$10.3 million as compared to the same period in 2019 primarily due to higher ASP, which increased net revenues by \$9.9 million. Higher ASP was a result of July 2019 price increases across most products which contributed \$14.1 million to the revenue growth, a product mix shift towards products with higher ASP, primarily driven by decreased SDC revenues which carried a lower ASP, which increased net revenues \$7.6 million and lower net deferrals which increased net revenues by \$4.7 million. The ASP increases were partially offset by higher promotional discounts that reduced net revenues by \$14.6 million and unfavorable foreign exchange rates.

**Clear Aligner - International**

For the three months ended March 31, 2020, International net revenues increased by \$0.9 million as compared to the same period in 2019 primarily due to higher ASP that increased net revenues by \$1.4 million. Higher ASP was a result of July 2019 price increases across most products, along with a benefit from going direct in several additional countries and therefore we now recognize direct sales at full ASP rather than the discounted distributor ASP, which increased net revenues by \$13.9 million and lower net deferrals that increased net revenues by \$5.8 million. The increases in ASP were partially offset by higher promotional discounts that reduced net revenues by \$9.6 million, a product mix shift towards lower priced products that reduced net revenues by \$5.0 million and unfavorable foreign exchange rates that reduced net revenues by \$4.2 million.

**Clear Aligner - Non-Case**

For the three months ended March 31, 2020, non-case net revenues, consisting of Vivera Retainers, training fees and other product revenues, increased by \$1.2 million as compared to the same period in 2019. This was primarily due to increased Vivera volume across all regions which was partially offset by decreased training and other revenue.

**Scanner**

For the three months ended March 31, 2020, scanner and services net revenues decreased by \$10.4 million as compared to the same period in 2019. The decrease in the number of scanners recognized decreased net revenues by \$14.9 million and a decrease in scanner ASP also contributed to the decrease in net revenues by \$2.6 million. The decreases were partially offset by higher CAD/CAM services which increased net revenues by \$7.1 million due to a larger scanner install base.

**Cost of net revenues and gross profit (in millions):**

	Three Months Ended March 31,		
	2020	2019	Change
<b>Clear Aligner</b>			
Cost of net revenues	\$ 130.1	\$ 117.8	\$ 12.3
<i>% of net segment revenues</i>	27.0 %	25.1 %	
Gross profit	\$ 351.5	\$ 351.4	\$ 0.1
<i>Gross margin %</i>	73.0 %	74.9 %	
<b>Scanner</b>			
Cost of net revenues	\$ 26.5	\$ 29.0	\$ (2.5)
<i>% of net segment revenues</i>	38.2 %	36.4 %	
Gross profit	\$ 42.9	\$ 50.7	\$ (7.9)
<i>Gross margin %</i>	61.8 %	63.6 %	
<b>Total cost of net revenues</b>	<b>\$ 156.6</b>	<b>\$ 146.9</b>	<b>\$ 9.7</b>
<i>% of net revenues</i>	28.4 %	26.8 %	
Gross profit	\$ 394.4	\$ 402.1	\$ (7.7)
<i>Gross margin %</i>	71.6 %	73.2 %	

Changes and percentages are based on actual values. Certain tables may not sum or recalculate due to rounding.

Cost of net revenues for our Clear Aligner and Scanner segments includes personnel-related costs including payroll and stock-based compensation for staff involved in the production process, the cost of materials, packaging, shipping costs, depreciation on capital equipment and facilities used in the production process, amortization of acquired intangible assets and training costs.

**Clear Aligner**

For the three months ended March 31, 2020, our gross margin decreased as compared to the same period in 2019 primarily due to an increase in aligners per case driven by additional aligners in addition to idle capacity due to the impacts of COVID-19. These factors were offset in part by manufacturing efficiencies and higher ASP.

**Scanner**

For the three months ended March 31, 2020, our gross margin decreased compared to the same period in 2019 primarily driven by a decrease in manufacturing volumes and lower ASP. These factors were offset in part by higher service revenues.

**Selling, general and administrative (in millions):**

	Three Months Ended March 31,		
	2020	2019	Change
Selling, general and administrative	\$ 282.9	\$ 247.1	\$ 35.8
<i>% of net revenues</i>	51.3 %	45.0 %	

Changes and percentages are based on actual values. Certain tables may not sum or recalculate due to rounding.

Selling, general and administrative expense includes personnel-related costs including payroll, commissions and stock-based compensation for our sales force, marketing and administration in addition to media and advertising expenses, clinical education, trade shows and industry events, product marketing, equipment and maintenance costs, legal and outside service costs, depreciation and amortization expense and allocations of corporate overhead expenses including facilities and Information Technology ("IT").

For the three months ended March 31, 2020, selling, general and administrative expense increased compared to the same period in 2019 primarily due to higher expenses from advertising and marketing costs of \$13.2 million and higher compensation related costs of \$10.9 million mainly from increased headcount resulting in higher salaries expense, fringe benefits and stock-based compensation. We also incurred higher expenses from equipment, software and maintenance costs of \$5.7 million and legal and outside service costs of \$3.6 million.

**Research and development (in millions):**

	Three Months Ended March 31,		
	2020	2019	Change
Research and development	\$ 41.5	\$ 37.5	\$ 4.0
% of net revenues	7.5 %	6.8 %	

Changes and percentages are based on actual values. Certain tables may not sum or recalculate due to rounding.

Research and development expense includes the personnel-related costs including payroll and stock-based compensation and outside consulting expenses associated with the research and development of new products and enhancements to existing products and allocations of corporate overhead expenses including facilities and IT.

For the three months ended March 31, 2020, research and development expense increased compared to the same period in 2019 primarily due to higher equipment and material costs in addition to higher compensation costs mainly from increased headcount resulting in higher salaries expense, fringe benefits and stock-based compensation.

**Impairments and other charges (in millions):**

	Three Months Ended March 31,		
	2020	2019	Change
Impairments and other charges	\$ —	\$ 29.8	\$ (29.8)
% of net revenues	— %	5.4 %	

Changes and percentages are based on actual values. Certain tables may not sum or recalculate due to rounding.

For the three months ended March 31, 2020, there were no impairments and other charges while during the same period in 2019, we recorded impairments and other charges of \$29.8 million due to costs related to the Invisalign store closures. The impairments and other charges are comprised of operating lease right-of-use assets impairments of \$14.2 million, store leasehold improvement and other fixed asset impairments of \$14.3 million, and employee severance and other expenses of \$1.3 million (Refer to Note 7 “Impairments and Other Charges” and Note 8 “Legal Proceedings” of the Notes to Condensed Consolidated Financial Statements for more information).

**Income from operations (in millions):**

	Three Months Ended March 31,		
	2020	2019	Change
<b>Clear Aligner</b>			
Income from operations	\$ 166.4	\$ 158.6	\$ 7.7
Operating margin %	34.5 %	33.8 %	
<b>Scanner</b>			
Income from operations	\$ 14.4	\$ 28.3	\$ (13.9)
Operating margin %	20.7 %	35.4 %	
<b>Total income from operations</b> <sup>1</sup>	\$ 69.9	\$ 87.7	\$ (17.8)
Operating margin %	12.7 %	16.0 %	

Changes and percentages are based on actual values. Certain tables may not sum or recalculate due to rounding.

<sup>1</sup> Refer to Note 15 “Segments and Geographical Information” of the Notes to Condensed Consolidated Financial Statements for details on unallocated corporate expenses and the reconciliation to Condensed Consolidated Income from Operations.

**Clear Aligner**

For the three months ended March 31, 2020, our operating margin increased compared to the same period in 2019 primarily due to the impairments and other charges of \$29.8 million that were recorded during the three months ended March 31, 2019, which was partially offset by a lower Clear Aligner gross margin and higher operating expenses.

### Scanner

For the three months ended March 31, 2020, our operating margin decreased compared to the same period in 2019 primarily driven by a lower Scanner gross margin.

#### Interest income (in millions):

	Three Months Ended March 31,		
	2020	2019	Change
Interest income	\$ 2.0	\$ 2.6	\$ (0.6)
% of net revenues	0.4 %	0.5 %	

Changes and percentages are based on actual values. Certain tables may not sum or recalculate due to rounding.

Interest includes interest income earned on cash, cash equivalents and investment balances.

For the three months ended March 31, 2020, interest income decreased compared to the same periods in 2019 mainly due to lower interest rates.

#### Other income (expense), net (in millions):

	Three Months Ended March 31,		
	2020	2019	Change
Other income (expense), net	\$ (18.5)	\$ (5.7)	\$ (12.8)
% of net revenues	(3.4) %	(1.0) %	

Changes and percentages are based on actual values. Certain tables may not sum or recalculate due to rounding.

Other income (expense), net, includes foreign exchange gains and losses, gains and losses on foreign currency forward contracts, interest expense, gains and losses on equity investments and other miscellaneous charges.

For the three months ended March 31, 2020, other income (expense), net decreased compared to the same period in 2019 primarily due to foreign exchange losses and an unrealized loss on a foreign currency forward contract related to the anticipated exocad acquisition. These decreases were partially offset by realized gains on foreign currency forward contracts and a lower impairment charge on our equity investments in privately held companies.

#### Equity in losses of investee, net of tax (in millions):

	Three Months Ended March 31,		
	2020	2019	Change
Equity in losses of investee, net of tax	\$ —	\$ 3.9	\$ (3.9)
% of net revenues	— %	0.7 %	

Changes and percentages are based on actual values. Certain tables may not sum or recalculate due to rounding.

For the three months ended March 31, 2020, there were no equity in losses of investee, net of tax. After the second quarter of 2019, we no longer incur equity in losses of investee, net of tax related to SDC as we tendered our SDC equity interest on April 3, 2019 (Refer to Note 4 "Equity Method Investments" of the Notes to Condensed Consolidated Financial Statements for details on equity method investments).

#### Provision for (benefit from) income taxes (in millions):

	Three Months Ended March 31,		
	2020	2019	Change
Provision for (benefit from) income taxes	\$ (1,464.8)	\$ 8.8	\$ (1,473.6)
Effective tax rates	(2,745.3) %	10.4 %	

Changes and percentages are based on actual values. Certain tables may not sum or recalculate due to rounding.

During the three months ended March 31, 2020, we completed an intra-entity transfer of certain intellectual property rights and fixed assets to our Swiss subsidiary, where our EMEA regional headquarters is located beginning January 1, 2020. The transfer of intellectual property rights did not result in a taxable gain; however, it did result in a step-up of the Swiss tax deductible basis in the transferred assets, and accordingly, created a temporary difference between the book basis and the tax basis of such intellectual property rights. Consequently, this transaction resulted in the recognition of a deferred tax asset and related one-time tax benefit of approximately \$1,493.5 million during the three months ended March 31, 2020, which is the net impact of the deferred tax asset recognized as a result of the additional Swiss tax deductible basis in the transferred assets and certain costs related to the transfer of fixed assets and inventory.

Our benefit from income taxes was \$1,464.8 million for the three months ended March 31, 2020 and our provision for income taxes was \$8.8 million for the three months ended March 31, 2019, representing effective tax rates of (2,745.3)% and 10.4%, respectively. Our effective tax rate differs from the statutory federal income tax rate of 21% for the three months ended March 31, 2020 mainly as a result of the aforementioned intra-entity transfer and the recognition of excess tax benefits related to stock-based compensation, partially offset by state income taxes and unrecognized tax benefits associated with certain foreign payments. Our effective tax rate differs from the statutory federal income tax rate of 21% for the three months ended March 31, 2019 mainly as a result of the recognition of excess tax benefits related to stock-based compensation and certain foreign earnings, primarily from the Netherlands and Costa Rica, being taxed at lower tax rates.

The decrease in our effective tax rate for the three months ended March 31, 2020 compared to the same period in 2019 is primarily attributable to the recognition of a deferred tax asset related to the intra-entity transfer of certain intellectual property rights during the three months ended March 31, 2020.

### Liquidity and Capital Resources

We fund our operations from product sales. As of March 31, 2020 and December 31, 2019, we had the following cash and cash equivalents and short-term marketable securities (in thousands):

	March 31, 2020	December 31, 2019
Cash and cash equivalents	\$ 790,696	\$ 550,425
Marketable securities, short-term	—	318,202
<b>Total</b>	<b>\$ 790,696</b>	<b>\$ 868,627</b>

Cash equivalents and marketable securities are comprised of money market funds and highly liquid debt instruments which primarily include commercial paper, corporate bonds, U.S. government agency bonds, U.S. government treasury bonds and certificates of deposit.

As of March 31, 2020, approximately \$671.5 million of cash and cash equivalents was held by our foreign subsidiaries. Our intent is to permanently reinvest our earnings from our international operations going forward, and our current plans do not require us to repatriate them to fund our U.S. operations as we generate sufficient domestic operating cash flow and have access to external funding under our current revolving line of credit. Subsequent to quarter end, on April 1, 2020, we completed the acquisition of exocad for a purchase price of approximately \$430.0 million in cash, subject to certain adjustments, which was funded from cash on hand.

Our business has been materially adversely affected by the COVID-19 pandemic and the global and regional efforts by governments to mitigate its spread, and we expect the adverse impacts to our business to continue. We believe that our current cash balances and the borrowing capacity under our existing credit facility, if necessary, will be sufficient to fund our business for at least the next 12 months. However, as a result of the COVID-19 pandemic, we expect to experience reduced cash flow from operations as a result of decreased revenues and slower collections on our accounts receivable. For additional information regarding the impact of COVID-19 on our liquidity and capital resources, refer to *Item 1A "Risk Factors."*

Cash flows (in thousands):

	Three Months Ended March 31,	
	2020	2019
Net cash flow provided by (used in):		
Operating activities	\$ 9,784	\$ 117,207
Investing activities	276,211	(74,418)
Financing activities	(34,733)	(92,762)
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	(11,007)	1,089
Net increase (decrease) in cash, cash equivalents, and restricted cash	<u>\$ 240,255</u>	<u>\$ (48,884)</u>

### Operating Activities

For the three months ended March 31, 2020, cash flows from operations of \$9.8 million resulted primarily from our net income of approximately \$1.5 billion as well as the following:

#### Significant non-cash activities

- Deferred taxes of \$1.5 billion related to the one-time tax benefit associated with the intra-entity sale of certain intellectual property rights;
- Stock-based compensation of \$22.9 million related to equity awards granted to employees and directors;
- Depreciation and amortization of \$20.7 million related to our investments in property, plant and equipment and intangible assets; and
- Non-cash operating lease cost of \$5.5 million.

#### Significant changes in working capital

- Decrease of \$69.1 million in accrued and other long-term liabilities due to timing of payment and activities;
- Increase of \$37.2 million in prepaid expenses and other assets due to the timing of payments and activities; and
- Increase of \$22.9 million in deferred revenues corresponding to cases eligible under our additional aligner policy and timing of revenue recognition.

### Investing Activities

Net cash provided by investing activities was \$276.2 million for the three months ended March 31, 2020 which primarily consisted of maturities and sales of marketable securities of \$321.5 million and payments of \$4.4 million received on an unsecured promissory note issued by SDC in exchange for tendering our shares to them. These inflows were partially offset by purchases of property and plant and equipment purchases of \$46.1 million, purchases of marketable securities of \$5.3 million, and other investing activities of \$1.8 million.

For the remainder of 2020 we expect to invest an additional \$90.0 million to \$100.0 million in capital expenditures related to building purchases and improvements as well as additional manufacturing capacity to support our international expansion (Refer to *Note 9 "Commitments and Contingencies"* of the *Notes to Condensed Consolidated Financial Statements* for details on the purchase of a building in Petach Tivka, Israel).

### Financing Activities

Net cash used in financing activities was \$34.7 million for the three months ended March 31, 2020 which consisted of payroll taxes paid for equity awards through share withholdings of \$45.4 million which was partially offset by \$10.7 million of proceeds from the issuance of common stock.

### Common Stock Repurchases

As of March 31, 2020, we have \$100.0 million available for repurchase under the \$600.0 million repurchase program authorized by our Board of Directors in May 2018 (Refer to *Note 11 "Common Stock Repurchase Programs"* of the *Notes to Condensed Consolidated Financial Statements* for details on our stock repurchase programs).

## **Contractual Obligations**

Our contractual obligations have not significantly changed since December 31, 2019 as disclosed in our Annual Report on Form 10-K, other than obligations described in the Form 10-Q herein, including items disclosed in *Note 9 "Commitments and Contingencies"* and *Note 16 "Subsequent Event" of the Notes to Condensed Consolidated Financial Statements*. We believe that our current cash balances and the borrowing capacity under our existing credit facility, if necessary, will be sufficient to fund our business for at least the next 12 months. However, as a result of the COVID-19 pandemic, we expect to experience reduced cash flow from operations as a result of decreased revenues and slower collections on our accounts receivable. If we are unable to generate adequate operating cash flows and need more funds beyond our available liquid investments and those available under our credit facility, we may need to suspend our stock repurchase programs or seek additional sources of capital through equity or debt financing, collaborative or other arrangements with other companies, bank financing and other sources in order to realize our objectives and to continue our operations. There can be no assurance that we will be able to obtain additional debt or equity financing on terms acceptable to us, or at all. If adequate funds are not available, we may need to make business decisions that could adversely affect our operating results such as modifications to our pricing policy, business structure or operations. Accordingly, the failure to obtain sufficient funds on acceptable terms when needed could have a material adverse effect on our business, results of operations and financial condition.

## **Off-Balance Sheet Arrangements**

As of March 31, 2020, we had no off-balance sheet arrangements that have, or are reasonably likely to have, a current or future material effect on our consolidated financial condition, results of operations, liquidity, capital expenditures or capital resources other than certain items disclosed in *Note 9 "Commitments and Contingencies"* of the *Notes to Consolidated Financial Statements* included in our Annual Report on Form 10-K.

## **Critical Accounting Policies and Estimates**

Management's discussion and analysis of our financial condition and results of operations is based upon our Condensed Consolidated Financial Statements, which have been prepared in accordance with accounting principles generally accepted in the U.S. The preparation of condensed consolidated financial statements requires management to make estimates and judgments that affect the reported amounts of assets and liabilities, revenues and expenses and disclosures at the date of the financial statements. We evaluate our estimates on an on-going basis, including those related to revenue recognition, stock-based compensation, goodwill and finite-lived assets and related impairment, and income taxes. We use authoritative pronouncements, historical experience and other assumptions as the basis for making estimates. Actual results could differ from those estimates.

There have been no material changes to our critical accounting policies and estimates from the information provided in the "Critical Accounting Policies and Estimates" section of our Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the year ended December 31, 2019.

## **Recent Accounting Pronouncements**

See *Note 1 "Summary of Significant Accounting Policies"* of the *Notes to Condensed Consolidated Financial Statements* for a discussion of recent accounting pronouncements.

## **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

In the normal course of business, we are exposed to foreign currency exchange rate and interest rate risks that could impact our financial position and results of operations. In addition, we are subject to the broad market risk that is created by the global market disruptions and uncertainties resulting from the COVID-19 pandemic. Please refer to *Item 1A "Risk Factors"* for further discussion of the impact of the COVID-19 pandemic on our business.

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

Changes in interest rates could impact our anticipated interest income on our cash equivalents and investments in marketable securities. Our investments are fixed-rate short-term and long-term securities. Fixed-rate securities may have their fair market value adversely impacted due to a rise in interest rates, and, as a result, our future investment income may fall short of expectations due to changes in interest rates or we may suffer losses in principal if forced to sell securities which have declined in market value due to changes in interest rates. As of March 31, 2020, we had no investments in available-for-sale marketable securities. An immediate 10% change in interest rates would not have a material adverse impact on our future operating results and cash flows.

We do not enter into investments for trading or speculative purposes and have not used any derivative financial instruments to manage our interest rate risk exposure. Based on interest bearing liabilities we have as of March 31, 2020, we are not subject to risks from immediate interest rate increases.

### **Currency Rate Risk**

As a result of our international business activities, our financial results could be affected by factors such as changes in foreign currency exchange rates or economic conditions in foreign markets, and there is no assurance that exchange rate fluctuations will not harm our business in the future. We generally sell our products in the local currency of the respective countries. This provides some natural hedging because most of the subsidiaries' operating expenses are generally denominated in their local currencies. Regardless of this natural hedging, our results of operations may be adversely impacted by exchange rate fluctuations.

We primarily enter into foreign currency forward contracts to minimize the short-term impact of foreign currency exchange rate fluctuations on cash and certain trade and intercompany receivables and payables. These forward contracts are not designated as hedging instruments and do not subject us to material balance sheet risk due to fluctuations in foreign currency exchange rates. The gains and losses on these forward contracts are intended to offset the gains and losses in the underlying foreign currency denominated monetary assets and liabilities being economically hedged. These instruments are marked to market through earnings every period and generally are one month in original maturity. During the three months ended March 31, 2020, in anticipation for the closing of the exocad acquisition on April 1, 2020, we entered into a Euro foreign currency forward contract with a notional contract amount of €376.0 million. During the three months ended March 31, 2020, we recognized an unrealized loss of \$9.2 million within other income (expense), net in our Condensed Consolidated Statement of Operation as a result of the forward contract's fair value as of March 31, 2020. We do not enter into foreign currency forward contracts for trading or speculative purposes. As our international operations grow, we will continue to reassess our approach to managing the risks relating to fluctuations in currency rates. It is difficult to predict the impact forward contracts could have on our results of operations.

Although we will continue to monitor our exposure to currency fluctuations, and, where appropriate, may use forward contracts to minimize the effect of these fluctuations, the impact of an aggregate change of 10% in foreign currency exchange rates relative to the U.S. dollar on our results of operations and financial position could be material.

## **ITEM 4. CONTROLS AND PROCEDURES**

### ***Evaluation of disclosure controls and procedures.***

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we have evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Quarterly Report on Form 10-Q. Based upon that evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that our disclosure controls and procedures are effective as of March 31, 2020, to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure, and that such information is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms.

### ***Changes in internal control over financial reporting.***

There were no changes in our internal control over financial reporting during the quarter ended March 31, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II—OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

For a discussion of legal proceedings, refer to *Note 8 "Legal Proceedings" of the Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this Form 10-Q.*

## ITEM 1A. RISK FACTORS

*The following discussion is divided into two sections. The first, entitled "Risks Relating to our Business," discusses some of the risks that may affect our business, results of operations and financial condition. The second, captioned "Risks Related to our Common Stock," discusses some of the risks related to owning our common stock. You should carefully review both sections, as well as our consolidated financial statements and notes thereto and other information appearing in this Quarterly Report on Form 10-Q, for important information regarding these and other risks that may affect us. The fact we have chosen to list one section before the other or we have identified risks in either section earlier than others should not be interpreted to mean we deem any risks to be more or less important or more likely to occur than others or, if any do occur, that their impact may be any less significant than others. These risk factors should be considered in connection with evaluating the forward-looking statements contained in this report because they could cause our actual results and conditions to differ materially from those statements. Before you invest in Align, you should know that investing involves risks, including those described below. The risks below are not the only ones we face. If any of the risks actually occur, our business, financial condition and results of operations could be negatively affected, the trading price of our common stock could decline, and you may lose all or part of your investment.*

### **Risks Relating to our Business**

***Our results of operations have been materially adversely affected by the COVID-19 pandemic and the global and regional efforts by governments to mitigate its spread and we expect the adverse impacts to our business to continue.***

The spread of COVID-19 has created significant, widespread and unprecedented volatility, uncertainty, and economic instability, disrupting the global economy, our operations and the businesses of our customers and suppliers. Protective and preventative efforts to stop or minimize its spread have and continue to center on minimizing its transmission through decreased social interactions (social distancing). As a result of measures imposed by the governments in certain affected regions, many commercial activities, businesses and schools have been suspended as part of quarantines and other measures intended to contain this pandemic. Because COVID-19 spreads readily through airways in nasal passages and the mouth, our principal customers, dentists and orthodontists and their patients, have been a primary focus of the protective and preventative efforts. For instance, in many countries governments and dental regulatory associations acted quickly to prohibit non-essential dental procedures; thereby materially limiting or preventing our customers from conducting most or all business activities and materially adversely harming our sales and sales efforts.

In response to COVID-19, we have implemented numerous measures to minimize its spread for the health and safety of our employees, customers, patients and the communities in which we live and work as well as in accordance with guidelines, orders and decrees of governmental agencies throughout the world. These measures have included diagnostic screenings at our facilities, increased social distancing at clinical and manufacturing facilities, temporary closures of physical offices, manufacturing and treatment planning facilities, including our corporate headquarters in the U.S. and regional headquarters in Europe, the Americas and Asia, mandating that a large percentage of our global workforce work remotely, prohibiting non-essential travel, and converting our manufacturing facilities to produce personal protective equipment. The actions we have taken and any further health and safety measures we may be required or choose to implement in response to the pandemic are and may be highly disruptive to our business, and may ultimately prove insufficient to prevent employees or their relatives from getting ill, potentially severely. Even if these measures are completely or partially effective, if employees perceive them to be inadequate, or alternatively, overly burdensome, or they provide difficult to maintain over extended periods of time, productivity may decline or we may experience employee unrest, slowdowns or stoppages or other demands, we may be unable to timely meet customer demand or fulfill existing orders, the costs to deliver our products may increase or we may be required to store products that cannot be delivered to closed orthodontic and dental offices, and we may be subject to increased litigation, including for claims related to product liability and worker safety and working conditions.

As the economic impact of the implementation of the various protective and preventative measures continues to unfold, how and to what extent our business and financial results are or may be impacted as well as those of our customers and suppliers, and the financial health and stability of businesses and consumers overall depends on numerous evolving factors, many of which we cannot control nor accurately predict. Examples include:

- the duration, scope, and severity of the pandemic;
- future governmental actions mandated, or business and societal actions taken, in response to the pandemic;
- the impact on worldwide economic activity and employment rates and actions taken by central banks and governments;
- demand for products and services, particularly those that may be deemed discretionary or that can be delayed or cancelled, particularly in an environment of high unemployment;

- the liquidity and financial stability of consumers, customers, and patients, including their willingness to purchase our products and services at existing, or any, prices and delays paying for products or services, requests for extended payment terms, or payment defaults;
- the ability or willingness of our suppliers or others in our supply chains to timely provide materials and make deliveries on our behalf;
- travel restrictions, including those that adversely impair or prohibit patients from visiting their physicians and our sales personnel from interacting with customers;
- diversion of management as they focus on the short- and long-term ramifications of the pandemic;
- actions by our competitors such as price reductions, aggressive product promotions, and mergers and consolidations;
- the confidence of our customers and patients that our products and solutions are sanitary and safe to use;
- trade restrictions and sanctions;
- restrictions or limitations on the ability of our customers to effectively use digital platforms and applications when governmental mandates or societal pressures limit physical interactions with patients; and
- data privacy and cybersecurity risks from new or expanded use of online service platforms, including those that facilitate remote working and teledentistry.

A sustained downturn may also result in the carrying value of our goodwill or other intangible assets, including those as a result of the exocad acquisition that closed in April 2020, exceeding their fair value, which may require us to recognize an impairment to those assets.

The effects of the pandemic, including remote working arrangements for employees, may also impact our financial reporting systems and internal control over financial reporting, including our ability to ensure information required to be disclosed in our current, quarterly and annual reports under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure.

Events are changing rapidly and we cannot at this time predict the impact on our business or results of operations; however, the pandemic or the perception of its effects could continue to have a material adverse effect on our business, financial condition, results of operations, cash flows and stock price in the future. For instance, while general economic activity in certain countries such as China has begun to slowly return, it is uncertain when and to what extent dental and orthodontic care may resume, whether patients will feel safe visiting their physicians, and whether or not other countries can begin to return to normal economic activity in similar timeframes. Moreover, the pandemic could worsen in countries that are already afflicted, could continue to spread to additional countries, or could return to countries where the pandemic was thought to have been partially contained, each of which could further adversely impact our operations, the businesses of our orthodontist and dentist customers, and economic activity generally.

***Our net revenues are dependent primarily on our Invisalign System and iTero Scanners and any decline in sales or average selling price of these products for any reason, would adversely affect net revenues, gross margin and net income.***

Our net revenues are largely dependent on the sales of our Invisalign System of clear aligners and iTero intraoral scanners. Of the two, we expect net revenues from the sale of the Invisalign System, primarily our comprehensive products, will continue to account for the vast majority of our net revenues for the foreseeable future. Continued and widespread acceptance of the Invisalign System by orthodontists, GPs and consumers is critical to our future success. Our iTero scanners are used by dental professionals for restorative and orthodontic procedures as well as Invisalign System case submissions. Sales of our iTero scanners have grown, becoming a larger percentage of our overall revenues and as a means to further adoption of digital dentistry and the Invisalign System, and we expect the acquisition of exocad Global Holdings GmbH ("exocad") will complement our iTero scanners to support sales of our Invisalign System. If orthodontists and GPs experience a reduction in consumer demand for orthodontic services, if consumers prove unwilling to adopt Invisalign System treatment as rapidly or in the volumes we anticipate and at the prices offered, if orthodontists or GPs choose to use wires and brackets or competitive products rather than Invisalign, if sales of our iTero scanners decline or fail to grow sufficiently or as expected, if the acquisition of exocad does not produce the results expected, or if the average selling price of our products decline for any reason, particularly in the case of our Invisalign System as a result of a shift in product mix towards lower priced products or as a result of promotions, or competition, our operating results would be harmed.

***Competition in the markets for our products is increasing and we expect aggressive competition from existing competitors and other companies that may introduce new technologies in the future.***

The dental industry is in a period of immense and rapid transformation involving products, technologies, distribution channels and business models, much of which is based on digital transformation involving information technology, data, artificial intelligence, scanning, 3D printing, software and algorithms. While our clear aligner and iTero scanners facilitate this transition, there remains significant uncertainty concerning the technologies that will achieve market acceptance and, if adopted, whether and when they may become obsolete as new offerings become available.

Currently, our clear aligner products compete directly against traditional metal brackets and wires and increasingly against clear aligner products manufactured and distributed by new market entrants as well as traditional manufacturers of wires and brackets, both within and outside the U.S., and from traditional medical device companies, laboratories, startups and, in some cases, doctors themselves. Although the number and type of competitors varies by segment, geography and customer, we encounter a wide variety of competitors, including new and well-established regional competitors in certain foreign markets, as well as larger companies or divisions of larger companies with substantial sales, marketing, research and financial capabilities. Due in part to the expiration of certain of our key patents beginning in 2017, competition in the clear aligner market has increased. Competitors include existing larger companies able to leverage existing dental market channels to compete directly with us, direct-to-consumer (“DTC”) companies that provide clear aligners using a remote teledentistry model requiring little or no in-office care from trained and licensed physicians, and doctors themselves who can manufacture custom aligners in their offices using modern 3D printing technology. In addition, corresponding foreign patents began expiring in 2018 which has resulted in increased international competition. Large consumer product companies may also enter the orthodontic supply market.

The manipulation and movement of teeth and bone is a delicate process with potentially painful and debilitating results if not appropriately performed and monitored. Accordingly, we remain committed to delivering our solutions primarily through trained and skilled doctors. Invisalign Treatment requires a doctor's prescription and an in person physical examination of the patient's dentition before beginning treatment; however, with the advent of DTC providers accompanied by significant advertising campaigns, there has been a shift away from traditional practices that may impact our primary selling channels. We also believe doctors are sampling alternative products and/or taking advantage of wires and brackets bundles that essentially give clear aligners away for free or at reduced prices. In addition, we may also face competition in the future from new companies that introduce new technologies. We may be unable to compete with these competitors or one or more of these competitors may render our technology obsolete or economically unattractive. If we are unable to compete effectively with existing products or respond effectively to any new technologies, our business could be harmed. Increased competition has resulted in the past and may in the future result in volume discounting and price reductions, reduced gross margins and profitability, loss of market share, and result in the reduction of dental professionals' efforts and commitment to use our products, any of which could materially adversely affect our net revenues, volume growth, net income and stock price. We cannot assure that we will be able to compete successfully against our current or future competitors or that competitive pressures will not have a material adverse effect on our business, results of operations and financial condition.

***We are dependent on our international operations, which exposes us to foreign operational, political and other risks that may harm our business.***

Our key production steps are performed in operations located outside of the U.S. Technicians use a sophisticated, internally developed computer-modeling program to prepare digital clinical treatment plans (“ClinCheck”), which are then transmitted electronically to our aligner fabrication facilities. These digital files form the basis of the ClinCheck treatment plan and are used to manufacture aligner molds and aligners. Our digital treatment planning and aligner fabrication are performed in multiple international locations and we are continuing to establish these functions closer to our international customers to improve doctor and patient experiences and our operational efficiency. Also, in addition to research and development efforts conducted in the U.S., Russia, Israel and now Germany with the acquisition of exocad, we have operations in Israel and China where we assemble wands and manufacture our intraoral scanner. Our reliance on international operations exposes us to risks and uncertainties that may affect our business or results of operation, including:

- difficulties in hiring and retaining employees generally, as well as difficulties in hiring and retaining employees with the necessary skills to perform the more technical aspects of our operations;
- difficulties managing international operations, including any travel restrictions on us or our customers such as those recently imposed domestically and globally in response to the COVID-19 pandemic;
- fluctuations in currency exchange rates;
- import and export controls, license requirements and restrictions;
- controlling production volume and quality of the manufacturing process;

- political, military, social, economic, or business instability, acts of terrorism and acts of war, including increased levels of violence in Juarez, Mexico, Hong Kong or the Middle East. We cannot predict the effect on us of any future armed conflict, political instability or violence in these regions. In addition, some of our employees in Israel are obligated to perform annual reserve duty in the Israeli military and may be called for additional active duty under emergency circumstances. We cannot predict the full impact of these conditions on us, particularly if emergency circumstances or an escalation in political situations occur. If many of our employees are called for active duty, our operations in Israel and our business may not be able to function at full capacity;
- general geopolitical instability and the responses to it, such as the possibility of sanctions, trade restrictions and changes in tariffs, including recent sanctions against China and Russia and tariffs imposed by the U.S. and China and the possibility of additional tariffs or other trade restrictions between the U.S. and Mexico;
- interruptions and limitations in telecommunication services;
- production or material transportation delays or disruption, including as a result of customs clearance, violence, protests, workforce unrest, slowdowns or stoppages, police and military actions, or as a result of natural disasters, such as earthquakes or volcanic eruptions and pandemics like the current COVID-19 pandemic;
- burdens of complying with a wide variety of regional and local laws, including competition and anti-bribery laws;
- the impact of government-led initiatives to encourage the purchase or support of domestic vendors, which can affect the willingness of customers to purchase products from, or collaborate to promote interoperability of products with, companies whose headquarters or primary operations are not domestic;
- unexpected issues and expenses related to our corporate structure reorganization;
- reduced intellectual property rights protections as compared to the U.S.;
- longer payment cycles and greater difficulty in accounts receivable collection; and
- potential adverse tax consequences.

The United Kingdom's ("U.K.") withdrawal from the European Union ("EU") on January 31, 2020, commonly known as "Brexit," has exacerbated and may further exacerbate many of the risks and uncertainties described above. The withdrawal of the U.K. from the EU could, among other potential outcomes, adversely affect the tax, tax treaty, currency, operational, legal and regulatory regimes to which our businesses in the region are subject. The withdrawal could also, among other potential outcomes, disrupt the free movement of goods, services and people between the U.K. and the EU and significantly disrupt trade between the U.K. and the EU and other parties. Further, uncertainty around these and related issues could lead to adverse effects on the economy of the U.K., EU and the other economies in which we operate. As the withdrawal continues to unfold, the actual implications of Brexit in their entirety are unlikely to be known for years.

If any of the risks outlined above materialize in the future, we could experience production delays and lost or delayed revenues.

***We earn an increasingly larger portion of our total revenues from international sales and face risks attendant to those operations.***

We earn an increasingly larger portion of our total revenues from international sales generated through our foreign direct and indirect operations. Since our growth strategy depends in part on our ability to penetrate international markets and increase the localization of our products and services, we expect to continue to increase our sales and presence outside the U.S., particularly in markets we believe to have high-growth potential. Our international operations are subject to risks that are customarily encountered in non-U.S. operations, including:

- local political and economic instability;
- the engagement in activities by our employees, contractors, partners and agents, especially in countries with developing economies, that are prohibited by international and local trade and labor laws and other laws prohibiting corrupt payments to government officials, including the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act of 2010 and export control laws, in spite of our policies and procedures designed to ensure compliance with these laws;
- fluctuations in currency exchange rates;
- increased expense of developing, testing and making localized versions of our products; and
- health pandemics such as COVID-19 and natural disasters including weather and fires such as those common in California and recently in Australia.

Any of these factors, either individually or in combination, could materially impact our international operations and adversely affect our business as a whole.

***Demand for our products may not increase as rapidly as we anticipate due to a variety of factors including a weakness in general economic conditions and resistance to non-traditional treatment methods.***

Consumer spending habits are affected by, among other things, pandemics, prevailing economic conditions, levels of employment, salaries and wage rates, consumer confidence and consumer perception of current and future economic conditions. A decrease in U.S. or certain international economies or an uncertain economic outlook, both of which are occurring as a result of the COVID-19 pandemic, would adversely affect consumer spending habits which may, among other things, result in a decrease in the number of overall orthodontic case starts, reduced patient traffic in dentists' offices, reduction in consumer spending on elective, non-urgent, or higher value procedures or a reduction in the demand for dental services generally, each of which would materially adversely affect our sales and operating results. Weakness in the global economy results in a challenging environment for selling dental technologies and dentists may postpone investments in capital equipment, such as intraoral scanners and CAD/CAM software. In addition, Invisalign treatment, which currently accounts for the vast majority of our net revenues, represents a significant change from traditional orthodontic treatment involving metal brackets and wires, and customers and consumers may not find it cost-effective or preferable to traditional treatment. We have generally received positive feedback from orthodontists, GPs and consumers regarding Invisalign treatment as both an alternative to braces and as a clinical method for the treatment of malocclusion, but a number of dental professionals believe the Invisalign treatment is appropriate for only a limited percentage of patients. Increased market acceptance of all of our products will depend in part upon the recommendations of dental professionals, as well as other factors including effectiveness, safety, ease of use, reliability, aesthetics, and price compared to competing products and treatment methods.

***Our success may depend on our ability to develop, successfully introduce and achieve market acceptance of new products or product offerings.***

Our success depends on our ability to profitably develop, manufacture, market and obtain regulatory approval or clearance of new products and improvements to existing products. There is no assurance we can successfully develop, sell and achieve market acceptance of new or improved products and services. The extent of, and rate at which, market acceptance and penetration are achieved by new or future products or offerings is a function of many variables, including our ability to:

- correctly predict, timely develop and cost effectively manufacture or bring to market solutions that meet future customer needs and preferences with the features and functionality they desire or expect;
- allocate our research and development funding to products with higher growth prospects;
- ensure compatibility of our computer operating systems and hardware configurations with those of our customers;
- anticipate and rapidly respond to new competitive products, product offerings and technological innovations;
- differentiate our products and product offerings from our competitors as well as other products in our own portfolio and successfully articulate the benefits of those differences to our customers;
- innovate and develop new technologies and applications;
- qualify for third-party reimbursement for procedures using our products;
- obtain and adequately protect our intellectual property rights; and
- encourage customers to adopt new technologies.

If we fail to accurately predict customer needs and preferences or fail to produce viable technologies, we may invest heavily in research and development of products that do not lead to significant revenues. Even if we successfully innovate and develop new products and product enhancements, we may incur substantial costs in doing so and our profitability may suffer. In addition, even if our new products are successfully introduced, it may be difficult to gain market share and acceptance, particularly if doctors require education to understand the benefits of the new products or measure their success only after extended periods of time required to treat patients. For instance, it can take up to 24 months or longer to treat patients using our Invisalign System. Similarly, in 2018 we introduced our mandibular advancement treatment and expect it will require significant time and effort on our part to educate doctors of its benefits. Consequently, doctors may be unwilling to rapidly adopt our new products until they successfully complete one or more cases or until more historical clinical results are available.

Our ability to market and sell new products may also be subject to government regulation, including approval or clearance by the FDA and foreign governments. Any failure to successfully develop and introduce or achieve market acceptance of new products or enhancements to existing products could materially adversely affect our operating results and cause our net revenues to decline.

***We may experience declines in average selling prices of our products which may decrease our net revenues.***

We provide volume-based discount programs to our customers. In addition, we sell a number of products at different list prices which also differ based on region or country. If we change volume-based discount programs that affect our average selling prices; if we introduce price reductions or consumer rebate programs; if we expand discount programs or participation in these programs increases; if our critical accounting estimates materially differ from actual behavior or results; or if our geographic, channel, or product mix shifts to lower priced products or to products that have a higher percentage of deferred revenue, our average selling prices would be adversely affected. Moreover, we may find that some programs are unsuccessful

or, if successful, may drive demand in unexpected ways. Were any of the foregoing to occur, our net revenues, gross profit, gross margin and net income may decline.

***We may not achieve the anticipated benefits from our recent acquisition of exocad in the timeframe expected, or at all, which may have an adverse effect on our business and our financial results.***

We closed our acquisition of exocad on April 1, 2020. We acquired exocad for its dental CAD/CAM software technology and employees. We believe exocad's tools and features for diagnostic, restorative, implant, and orthodontic workflows will strengthen and extend our digital solutions; helping pave the way for new, seamless cross-discipline dentistry in labs and at chairside and extending our Invisalign and iTero solutions while broadening our reach in digital dentistry to exocad's existing and future customer base. However, for a variety of reasons, many of which are outside our control or ability to predict, there can be no guarantee that the acquisition will achieve the desired benefits and synergies or will result in additional sales of either Invisalign or iTero solutions or that the exocad software will continue to succeed in the marketplace.

In addition, successful post-acquisition integrations are difficult to accomplish under normal circumstances for companies with a history of acquisitions. As an organization, we do not have a history of significant acquisitions and attempting to integrate exocad in the midst of the COVID-19 pandemic poses challenges. As such, we may experience difficulties achieving the expected financial, technical or strategic benefits of the acquisition. Potential risks we may experience include:

- difficulties integrating the business of exocad in the timeframes expected or as anticipated and without adversely impacting our existing operations or the operations of exocad;
- technological difficulties uniting our product and service offerings to produce solutions that efficiently and effectively integrate with the workflows between physicians, laboratories and other market participants;
- slower adoption or lack of acceptance of CAD/CAM software in general alone or in combination with other rapidly evolving and groundbreaking advances that are fundamentally changing the dental industry and the way new and existing participants market and provide products and services to consumers;
- diversion of management resources;
- the inability to retain or attract key personnel;
- the failure to accurately estimate the potential markets and market shares for the companies' products, the nature and extent of competitive responses to the acquisition and the ability to achieve or exceed projected market growth rates;
- difficulties cost-effectively integrating and dealing with tax, employment, logistics, and other related issues unique to international operations, particularly when travel restrictions make collaboration efforts more difficult;
- the potential that our due diligence did not uncover risks and potential liabilities associated with the exocad;
- changes in consumer spending habits as a result of, among other things, prevailing economic conditions, levels of employment, salaries and wages and consumer confidence;
- the failure to successfully manage relationships with Align and exocad's historic customers, suppliers and strategic partners and develop new relationships;
- product development delays and errors;
- possible inconsistencies in standards, internal controls, procedures and policies which may make it more difficult to implement and harmonize company-wide financial reporting, forecasting and budgeting, accounting, billing, information technology and other systems;
- all or material portions of the expected synergies and benefits of the acquisition may change or disappear or may take longer to realize, particularly if the impact of the pandemic to the economy overall, or more specifically to orthodontic and dental practices, is lengthy or significant;
- negative impact on our GAAP and non-GAAP results of operations, financial condition, and liquidity from acquisition-related costs, charges, amortization of intangible assets and/or asset or goodwill impairment charges;
- outcomes or rulings in known, or as yet to be discovered, regulatory enforcement, litigation, anti-bribery and corruption or other similar matters that are, alone or in the aggregate, materially adverse;
- our ability to protect our intellectual property rights as well as protect our IT networks from cybersecurity threats and ensure customer and sensitive personal and health data remain secure;
- the potential impact of the acquisition on our future tax rates;
- the failure to successfully advocate the benefits or value proposition of the combined entity or its products to analysts and investors which may harm the market price of our common stock; and
- expectations regarding the continued growth of our international markets and difficulties predicting customer and consumer purchasing behavior, particularly in the midst and aftermath of the COVID-19 pandemic.

If we cannot successfully integrate exocad with our existing business, our results of operations and financial condition could be adversely affected, possibly materially.

***We are exposed to fluctuations in currency exchange rates, which could negatively affect our financial condition and results of operations.***

Although the U.S. dollar is our reporting currency, a growing portion of our net revenues and net income are generated in foreign currencies. Net revenues and net income generated by subsidiaries operating outside of the U.S. are translated into U.S. dollars using constantly fluctuating, often substantially, exchange rates. As a result, negative movements in exchange rates against the U.S. dollar have and may increasingly adversely affect our net revenues and net income in our consolidated financial statements. We enter into currency forward contract transactions in an effort to cover some of our exposure to currency fluctuations but there is no assurance these transactions will fully or effectively hedge our exposure to currency fluctuations, and, under certain circumstances, these transactions could have an adverse effect on our financial condition.

***As we continue to grow, we are subject to growth related risks, including risks related to excess or constrained capacity and operational inefficiencies at our manufacturing and treat facilities.***

We are subject to growth related risks, including excess or constrained capacity and pressure on our internal systems and personnel. In order to manage current operations and future growth effectively, we will need to continue to implement and improve our operational, financial and management information systems and to hire, train, motivate, manage and retain employees. We may be unable to manage such growth effectively. Any such failure could have a material adverse impact on our business, operations and prospects. We continue to establish additional order acquisition, treatment planning and manufacturing facilities closer to our international customers in order to provide doctors with a better experience, improve their confidence in using Invisalign to treat patients more often and provide redundancy should other facilities be temporarily or permanently unavailable. Our ability to plan, construct and equip additional order acquisition, treatment planning and manufacturing facilities is subject to significant risk and uncertainty, including risks inherent in the establishment of a facility, such as hiring and retaining employees and delays and cost overruns as a result of a number of factors, any of which may be out of our control and may negatively impact our gross margin. In addition, these facilities may be located in higher cost regions compared to Mexico and Costa Rica, which may negatively impact our gross margin. If the transition into additional facilities is significantly delayed or demand for our products exceeds our current expectations, we may be unable to fulfill orders timely, which may negatively impact our financial results, reputation and overall business. In addition, because we cannot immediately adapt our production capacity and related cost structures to changing market conditions, our facility capacity may at times exceed or fall short of our production requirements. For instance, as a result of the COVID-19 pandemic sales in the final weeks of the first quarter of 2020 declined substantially and operations at our manufacturing facilities declined shortly thereafter. If product demand decreases, remains lower or we fail to forecast demand accurately, we could be required to write off inventory or record excess capacity charges, which would lower our gross margin. Production of our intraoral scanners may also be limited by capacity constraints due to a variety of factors, including our dependency on third party vendors for key components in addition to limited production yields. Any or all of these problems could result in the loss of customers, provide an opportunity for competing products to gain market acceptance and otherwise harm our business and financial results.

***If we fail to sustain or increase profitability or revenue growth in future periods, our profitability may decline.***

If we are to sustain or increase profitability in future periods, we need to continue increasing our net revenues, while controlling expenses. Because our business is evolving, it is difficult to predict our future operating results or levels of growth or declines, and we have not in the past and may be unable in the future to sustain or regain our historical growth rates which may cause our profitability to decline.

***Our operating results have fluctuated in the past and may fluctuate in the future, making it difficult to predict the timing and amount of revenues, costs and expenditures.***

Our operating results have fluctuated in the past and we expect our future quarterly and annual operating results to fluctuate for a variety of reasons, particularly as we focus on adjusting to the impacts for COVID-19 and, under ordinary circumstances, increasing doctor and consumer demand for our products. Some of the factors that could cause our operating results to fluctuate include:

- limited visibility into and difficulty predicting from quarter to quarter, the level of activity in our customers' practices;
- changes in geographic, channel, or product mix;
- weakness in consumer spending and confidence as a result of high unemployment or a slowdown in the global, U.S. or other economies;
- higher manufacturing, delivery and inventory costs;
- competition in general and competitive developments in the market;
- changes in relationships with our dental support organizations and distributors, including timing of orders;

- changes in the timing of when revenues are recognized, including as a result of the timing of receipt of product orders and shipments, the introduction of new products and software releases, product offerings or promotions, modifications to our terms and conditions such as payment terms, or as a result of new accounting pronouncements or changes to critical accounting estimates including, without limitation, those estimates based on such matters as our predicted usage of additional aligners;
- the creditworthiness, liquidity and solvency of our customers and their ability to timely make payments when due;
- fluctuations in currency exchange rates against the U.S. dollar;
- our inability to scale, suspend or reduce production based on variations in product demand;
- increased participation in our customer rebate or discount programs could adversely affect our average selling prices;
- seasonal fluctuations, including those related to patient demographics such as teen buying habits in China and Europe as well as the number of doctors in their offices and their availability to take appointments;
- success of or changes to our marketing programs from quarter to quarter;
- our reliance on our contract manufacturers for the production of sub-assemblies for our intraoral scanners;
- increased advertising or marketing efforts or aggressive price competition from competitors;
- changes to our effective tax rate;
- unanticipated delays and disruptions in the manufacturing process caused by insufficient capacity or availability of raw materials, turnover in the labor force or the introduction of new production processes, power outages or natural or other disasters, pandemics or general economic conditions impacting the solvency of vendors in our supply chain beyond our control;
- underutilization of manufacturing and treat facilities;
- major changes in available technology or the preferences of customers may cause our current product offerings to become less competitive or obsolete;
- costs and expenditures in connection with litigation;
- costs and expenditures in connection with the establishment of treatment planning and fabrication facilities in international locations;
- costs and expenditures in connection with the hiring and deployment of direct sales force personnel;
- unanticipated delays in our receipt of patient records made through intraoral scanners for any reason;
- disruptions to our business due to political, economic or other social instability or any governmental regulatory or similar actions, including the impact of epidemics and pandemics such as COVID-19, any of which results in changes in consumer spending habits, limiting or restricting customer visits to orthodontists or general practitioners, as well as any impact on workforce absenteeism;
- inaccurate forecasting of net revenues, production and other operating costs;
- investments in research and development to develop new products and enhancements;
- material impairments in the value of our privately held companies; and
- timing of industry tradeshow.

To respond to these and other factors, we may make business decisions that adversely affect our operating results such as modifications to our pricing policy and payment terms, promotions, development efforts, product releases, business structure or operations. Most of our expenses, such as employee compensation and lease obligations, are relatively fixed in the short term. Moreover, our expense levels are based, in part, on our expectations regarding future revenues. As a result, if our net revenues for a particular period fall below expectations, we may be unable to adjust spending quickly enough to offset any shortfall in net revenues. Due to these and other factors, we believe that quarter-to-quarter comparisons of our operating results may not be meaningful. You should not rely on our results for any one quarter as an indication of our future performance.

***A disruption in the operations of our primary freight carrier or higher shipping costs could cause a decline in our net revenues or a reduction in our earnings.***

We are dependent on commercial freight carriers, primarily UPS, to deliver our products. If the operations of these carriers are disrupted for any reason, we may be unable to timely deliver our products to our customers. For instance, domestically and in certain international locations carriers are experiencing significant demand increases as a result of more online orders from consumers sheltering in place because of COVID-19. Alternatively, carriers are also experiencing a greater number of closed businesses making it difficult to deliver our products to our customers. If we cannot deliver our products on time and cost effectively, our customers may choose competitive offerings or create their own aligners causing our net revenues and gross margins to decline, possibly materially. In a rising fuel cost environment, our freight costs will increase. In addition, we earn an increasingly larger portion of our total revenues from international sales. International sales carry higher shipping costs which could negatively impact our gross margin and results of operations. If freight costs materially increase and we are unable to pass that increase along to our customers for any reason or otherwise offset such increases in our cost of net revenues, our gross margin and financial results could be adversely affected.

***If we are unable to accurately predict our volume growth and fail to hire a sufficient number of technicians in advance of such demand, or hire technicians faster than our actual growth projections, the delivery time of our products could be delayed or our costs may exceed our revenues, each of which could adversely affect our results of operations.***

Treatment planning is a key step leading to our manufacturing process which relies on sophisticated computer software. This requires new technicians to undergo a relatively long training process, often up to 120 days or longer. As a result, if we are unable to accurately predict our volume growth, we may have an insufficient number of trained technicians to deliver our products within the time frame our customers expect. Such a delay could cause us to lose existing customers or fail to attract new customers. This could cause a decline in our net revenues and net income and could adversely affect our results of operations. Conversely, if we hire and train technicians in anticipation of volume growth that does not materialize, materializes at a rate we do not anticipate, or if volumes decline, our costs and expenditures may outpace our revenue growth, harming our gross margins, operating expenses and financial results.

***Our information technology systems are critical to our business. System integration and implementation issues and system security risks could disrupt our operations, which could have a material adverse impact on our business and operating results.***

We rely on the efficient and uninterrupted operation of complex information technology systems ("IT systems"). All IT systems are vulnerable to damage or interruption from a variety of sources. As our business has grown in size and complexity, the growth has placed, and will continue to place, significant demands on such systems. To effectively manage this growth, our IT systems and applications require an ongoing commitment of significant resources to maintain, protect and enhance existing systems and develop new systems to keep pace with continuing changes in information processing technology, evolving industry and regulatory standards and changing customer preferences. Expanded remote working and increased customer usage of online technology platforms by us, our customers and suppliers to facilitate efforts to mitigate the spread of COVID-19 through social distancing have increased the demands on our IT systems and personnel. Moreover, we are continuing to transform certain business processes, extend established processes to new subsidiaries and/or implement additional functionality in our enterprise resource planning ("ERP") software system which entails certain risks, including difficulties with changes in business processes that could disrupt our operations, such as our ability to track orders and timely ship products, manage our supply chain and aggregate financial and operational data.

System upgrades and enhancements require significant expenditures and allocation of valuable employee resources. Delays in integration or disruptions to our business from implementation of these new or upgraded systems could have a material adverse impact on our financial condition and operating results.

Additionally, we continuously upgrade our customer facing software applications, specifically the ClinCheck software, MyAligntech and the Invisalign Doctor Site. Software applications frequently contain errors or defects, especially when first introduced or when new versions are released. The discovery of a defect or error in our software applications or IT systems, incompatibility with customers' computer operating systems and hardware configurations with a new release or upgraded version or the failure of our primary IT systems may result in various consequences, including, among others: delay or loss of revenues or delay in market acceptance, damage to our reputation, loss of market share to competition or increased service costs, any of which could have a material adverse effect on our business, financial condition or results of operations.

If the information we rely on to run our businesses were to be found to be inaccurate or unreliable, if we fail to properly maintain our IT systems and data integrity, or if we fail to develop new capabilities to meet our business needs in a timely manner, we could suffer operational disruptions, have customer disputes, fail to produce timely and accurate reports, have regulatory or other legal problems, experience increases in operating and administrative expenses, lose existing customers, have difficulty in attracting new customers or implementing our growth strategies, or suffer other adverse consequences. In addition, experienced computer programmers and hackers may be able to penetrate our network security or our cloud-based software servers hosted by third parties and misappropriate our confidential information or that of third parties, create system disruptions or cause shutdowns. Furthermore, sophisticated hardware and operating system software and applications that we either internally develop or procure from third parties may contain defects in design and manufacture, including "bugs" and other problems that can unexpectedly interfere with the operation of the system. The costs to eliminate or alleviate security problems, viruses and bugs could be significant, and the efforts to address these problems could result in interruptions that may have a material adverse impact on our operations, net revenues and operating results.

There can be no assurance that our process of improving existing IT systems, developing new IT systems to support our expanding operations, integrating new IT systems, protecting confidential patient health information, and improving service levels will not be delayed or that additional IT systems issues will not arise in the future. Failure to adequately protect and maintain the integrity of our IT systems and data may result in a material adverse effect on our financial position, results of operations and cash flows.

***If the security of our customer and patient information is compromised or we are unable to comply with data protection laws, patient care could suffer, and we could be liable for related damages, and our reputation could be impaired.***

We retain confidential customer financial as well as patient health information in our processing centers. Therefore, it is critical that our facilities and infrastructure remain secure and are also perceived by the marketplace and our customers to be secure. Despite the implementation of security measures, we have experienced breaches in the past and our infrastructure may be vulnerable to physical break-ins, computer viruses, programming errors or other technical malfunctions, hacking or phishing attacks by third parties, employee error or malfeasance or similar disruptive problems. For example, some companies have experienced an increase in phishing and social engineering attacks from third parties in connection with the COVID-19 pandemic. If we fail to meet our customer and patients' expectations regarding the security of their information, we could be liable for damages and our reputation and competitive position could be impaired. Affected parties could initiate legal or regulatory action against us, which could cause us to incur significant expense and liability or result in orders forcing us to modify our business practices. Concerns over our privacy practices could adversely affect others' perception of us and deter customers, advertisers and partners from using our products. In addition, patient care could suffer, and we could be liable if our IT systems fail to deliver correct information in a timely manner. We have cybersecurity insurance related to a breach event covering expenses for notification, credit monitoring, investigation, crisis management, public relations and legal advice. The policy also provides coverage for regulatory action defense including fines and penalties, potential payment card industry fines and penalties and costs related to cyber extortion; however, damage and claims arising from such incidents may not be covered or may exceed the amount of any coverage.

We are also subject to federal, state and foreign laws and regulations, including ones relating to privacy, data protection, content regulation, and consumer protection. We may be or become subject to data localization or data residency laws which generally require that certain types of data collected within a country be stored and processed only within that country or approved countries. Some countries, including Russia and China, have enacted, and others are considering enacting, data localization or data residency laws. If countries in which we have customers adopt data localization or data residency laws, we could be required to implement new or expand existing data storage protocols, build new storage facilities, and/or devote additional resources to comply with the requirements of such laws, any of which could have significant cost implications. We may also be subject to data export restrictions, or international transfer laws which prohibit or impose conditions upon the transfer of such data from one country to another. These laws and regulations are constantly evolving and may be interpreted, applied, created or amended in a manner that could adversely affect our business.

In addition, we must comply with numerous data protection requirements that span from individual state and national laws in the U.S. to multinational requirements in the EU. In the EU, we must comply with the General Data Protection Regulation which serves as a harmonization of EU data-privacy laws. We believe we have designed our product and service offerings to be compliant with the requirements of applicable data protection laws and regulations. Maintaining compliance with these laws and regulations is costly and could require complex changes in the way we do business or provide services to our customers and their patients. Additionally, our success may be dependent on the success of healthcare providers in managing data protection requirements.

***In order to deepen our market penetration and raise awareness of our brand and products, we may increase the amount we spend on marketing activities, which may not ultimately prove successful or an effective use of our resources.***

To increase awareness of our products and services domestically and internationally, we may increase the amount we spend on marketing activities. Our marketing efforts and costs are significant and include national and regional campaigns involving television, print media, social media and, more recently, alliances with professional sports teams and other strategic partners. We attempt to structure our advertising campaigns in ways we believe most likely to increase brand awareness and adoption; however, there is no assurance our campaigns will achieve the returns on advertising spend desired or successfully increase brand or product awareness sufficiently to sustain or increase our growth goals, which could have an adverse effect on our gross margin and business overall.

***Our success depends in part on our proprietary technology, and if we are unable to successfully enforce our intellectual property rights, our competitive position may be harmed. Litigating claims of this type is costly and could distract our management and cause a decline in our results of operations and stock price.***

Our success depends in part on our ability to maintain existing intellectual property ("IP") rights and to obtain and maintain further IP protection for our products, both in the U.S. and in other countries. Our inability to do so could harm our competitive position.

We intend to rely on our portfolio of issued and pending patent applications in the U.S. and in other countries to protect a large part of our IP and our competitive position; however, our currently pending or future patent filings may not result in the issuance of patents. Additionally, any patents issued to us may be challenged, invalidated, held unenforceable, circumvented, or may not be sufficiently broad to prevent third parties from producing competing products similar in design to our products. In addition, any protection afforded by foreign patents may be more limited than that provided under U.S. patents and IP laws. Certain of our key patents began to expire in 2017, which have resulted in increased competition and less expensive competitive products. We also rely on protection of our copyrights, trade secrets, know-how and proprietary information. We generally enter into confidentiality agreements with our employees, consultants and our collaborative partners upon commencement of a relationship with us; however, these agreements may not provide meaningful protection against the unauthorized use or disclosure of our trade secrets or other confidential information, and adequate remedies may not exist if unauthorized use or disclosure were to occur. Our inability to maintain the proprietary nature of our technology through patents, copyrights or trade secrets would impair our competitive advantages and could have a material adverse effect on our operating results, financial condition and future growth prospects. In particular, a failure to protect our proprietary rights might allow competitors to copy our technology, which could adversely affect our pricing and market share. In addition, in an effort to protect our IP we are currently, have in the past been, and may in the future be involved in litigation. The potential effects on our business operations resulting from litigation, whether or not ultimately determined in our favor or settled by us, are costly and divert the efforts and attention of our management and technical personnel from normal business operations.

Litigation, interferences, oppositions, re-exams, inter partes reviews, post grant reviews or other proceedings are, have been and may in the future be necessary in some instances to determine the validity and scope of certain of our IP rights, and in other instances to determine the validity, scope or non-infringement of certain patent rights claimed by third parties to be pertinent to the manufacture, use or sale of our products. Litigation, interference, oppositions, re-exams, inter partes reviews, post grant reviews, administrative challenges or other similar types of proceedings are unpredictable and may be protracted, expensive and distracting to management. The outcome of such proceedings could adversely affect the validity and scope of our patent or other proprietary rights, hinder our ability to manufacture and market our products, require us to seek a license for the infringing product or technology or result in the assessment of significant monetary damages. An unfavorable ruling could include monetary damages or, in cases where injunctive relief is sought, an injunction prohibiting us from selling our products. Any of these results from our litigation could adversely affect our results of operations and stock price.

***Obtaining approvals and complying with regulations enforced by the FDA and foreign regulatory authorities is expensive and time-consuming, and any failure to obtain or maintain approvals for our products or services or failure to comply with regulations could materially harm our sales, result in substantial penalties and cause harm to our reputation.***

Our products are considered medical devices and are subject to extensive and widely varying regulations in the U.S. and internationally. Before we can sell a new medical device in the U.S., or market a new use of or claim for an existing product, we must obtain FDA clearance or approval unless an exemption applies. Internationally, similar requirements apply on a country by country basis. In the U.S., FDA regulations are wide ranging and govern, among other things:

- product design, development, manufacturing and testing;
- product labeling;
- product storage;
- pre-market clearance or approval;
- complaint handling and corrective actions;
- advertising and promotion; and
- product sales and distribution.

It takes significant time, effort and expense to obtain and maintain FDA approvals of our products and services. In other countries, the requirements to obtain and maintain similar approvals may differ materially from those of the FDA. Moreover, there is no guarantee we will successfully obtain or maintain approvals in all or any of the countries in which we do business now or in the future. Even if we are successful, the time and effort may take significantly longer, and costs may be significantly greater. The impact of COVID-19 on normal governmental operations may delay our efforts to obtain and maintain approvals, possibly significantly. If approvals to market our products or services are delayed, whether in the U.S. or other countries, we may be unable to market our products or services in markets we deem important to our business. Were any of these risks to occur, our domestic or international operations may be materially harmed, and our business as a whole adversely impacted.

In addition, our failure to comply with applicable regulatory requirements could result in enforcement actions in the U.S. and other countries. For example, enforcement actions by the FDA may include one or more of the following sanctions:

- warning letters, fines, injunctions, consent decrees and civil penalties;
- repair, replacement, refunds, recall or seizure of our products;

- operating restrictions or partial suspension or total shutdown of production;
- refusing our requests for 510(k) clearance or pre-market approval of new products, new intended uses, or modifications to existing products;
- withdrawing clearance or pre-market approvals previously granted; and
- criminal prosecution.

We must also comply with facility registration and product listing requirements of the FDA and adhere to applicable Quality System regulations. The FDA enforces its Quality System regulations through periodic unannounced inspections. Our failure to satisfactorily correct an adverse inspection or to comply with applicable manufacturing regulations could result in enforcement action, and we may be required to find alternative manufacturers, which could be a long and costly process. Any enforcement action by the FDA or foreign governments could have a material adverse effect on us.

The sourcing and availability of metals that may be used in the manufacture of, or contained in, our products may be affected by laws and regulations in the U.S. or internationally regarding the use of minerals obtained from certain regions of the world like the Democratic Republic of Congo and adjoining countries. These laws and regulations may decrease the number of suppliers capable of supplying our needs for certain metals, thereby negatively affecting our ability to manufacture products in sufficient quantities or at competitive prices. We may furthermore suffer financial and reputational harm if customers require, and we are unable to deliver, certification that our products are conflict free. Regardless, compliance with these laws and regulations will require time and effort by our personnel and others and we will incur additional costs.

***We are required to annually assess our internal control over financial reporting and any adverse results from such assessment may result in a loss of investor confidence in our financial reports and have an adverse effect on our stock price.***

We have implemented and routinely assess, update and refine our internal control over financial reporting for its effectiveness. Pursuant to the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated by the SEC, we are required to furnish in our Form 10-K a report by our management regarding the effectiveness of our internal control over financial reporting. The report includes, among other things, an assessment of the effectiveness of our internal control over financial reporting as of the end of our fiscal year, including a statement as to whether or not our internal control over financial reporting is effective. This assessment must include disclosure of any material weaknesses in our internal control over financial reporting identified by management. Our internal controls may become inadequate because of changes in conditions including changes in personnel, updates and upgrades to existing software including our ERP software system, changes in accounting standards or interpretations of existing standards, and, as a result, the degree of compliance of our internal control over financial reporting with the existing policies or procedures may become ineffective. Establishing, testing and maintaining an effective system of internal control over financial reporting requires significant resources and time commitments on the part of our management and our finance staff, may require additional staffing and infrastructure investments and increases our costs of doing business. If we are unable to assert that our internal control over financial reporting is effective in any future period (or if our auditors are unable to express an opinion on the effectiveness of our internal controls or conclude that our internal controls are ineffective), the timely filing of our financial reports could be delayed or we could be required to restate past reports, and cause us to lose investor confidence in the accuracy and completeness of our financial reports in the future, which could have an adverse effect on our stock price.

***If we lose our key personnel or are unable to attract and retain key personnel, we may be unable to pursue business opportunities or develop our products.***

We are highly dependent on the key employees in our clinical engineering, technology development, sales, training and marketing personnel and management teams. The loss of the services provided by those individuals may significantly delay or prevent the achievement of our product development and other business objectives and could harm our business. Our future success will also depend on our ability to identify, recruit, train and retain additional qualified personnel, including orthodontists and production technicians in our treatment planning facilities. Few orthodontists are accustomed to working in a manufacturing environment since they are generally trained to work in private practices, universities and other research institutions. Thus, we may be unable to attract and retain personnel with the advanced qualifications necessary for the further development of our business. Furthermore, we may not be successful in retaining our key personnel or their services. If we are unable to attract and retain key personnel, our business could be materially harmed.

***If we infringe the patents or IP rights of other parties or are subject to a patent infringement claim, our ability to grow our business may be severely limited.***

Extensive litigation over patents and other IP rights is common in the medical device industry. We have been sued for infringement of third party's patents in the past and we may be the subject of patent or other litigation in the future. We periodically receive letters from third parties drawing our attention to their patent rights. While we do not believe we infringe

upon any valid and enforceable rights that have been brought to our attention, there may be other more pertinent rights of which we are presently unaware. The defense and prosecution of IP suits, interference proceedings and related legal and administrative proceedings could result in substantial expense to us and significant diversion of effort by our technical and management personnel. An adverse determination of any litigation or interference proceeding to which we may become a party could subject us to significant liabilities. An adverse determination of this nature could also put our patents at risk of being invalidated or interpreted narrowly or require us to seek licenses from third parties. Licenses may not be available on commercially reasonable terms or at all, in which event, our business would be materially adversely affected.

***We maintain single supply relationships for certain key machines and materials, and our business and operating results could be harmed if supply is restricted or ends or the price of raw materials used in our manufacturing process increases.***

We are highly dependent on manufacturers of specialized scanning equipment, rapid prototyping machines, resin and other advanced materials, as well as the optics, electronic and other mechanical components of our intraoral scanners. We maintain single supply relationships for many of these machines and materials technologies. In particular, our CT scanning and stereolithography equipment used in our aligner manufacturing and many of the critical components for the optics of our scanners are provided by single suppliers. We are also committed to purchasing the vast majority of our resin and polymer, the primary raw materials used in our manufacturing process for clear aligners, from a single source. If these or other suppliers encounter financial, operating or other difficulties or if our relationship with them changes, we may be unable to quickly establish or qualify replacement sources of supply and could face production interruptions, delays and inefficiencies. In addition, technology changes by our vendors could disrupt access to required manufacturing capacity or require expensive, time consuming development efforts to adapt and integrate new equipment or processes. Our growth may exceed the capacity of one or more of these manufacturers to produce the needed equipment and materials in sufficient quantities to support our growth. Conversely, in order to secure supplies for production of products, we sometimes enter into non-cancelable minimum purchase commitments with vendors, which could impact our ability to adjust our inventory to reflect declining market demands. If demand for our products is less than we expect, we may experience additional excess and obsolete inventories and be forced to incur additional charges and our profitability may suffer. In the event of technology changes, delivery delays, or shortages of or increases in price for these items, our business and growth prospects may be harmed.

***We depend on a single contract manufacturer and supplier of parts used in our iTero scanner and any disruption in this relationship may cause us to fail to meet the demands of our customers and damage our customer relationships.***

We rely on a third-party manufacturer to supply key sub-assemblies for our iTero Element scanner. If this manufacturer fails to deliver its components, if we lose its services or if we fail to negotiate or maintain acceptable terms, we may be unable to timely deliver our products and our business may be harmed. Furthermore, any difficulties encountered by this manufacturer with respect to obtaining supplies, hiring personnel and maintaining acceptable manufacturing standards, controls, procedures and policies could disrupt our ability to timely deliver our products. Finding a substitute manufacturer may be expensive, time-consuming or impossible and could result in a significant interruption in the supply of our intraoral scanning products. Any failure by our contract manufacturer that results in delays in our fulfillment of customer orders may cause us to lose revenues and suffer damage to our customer relationships.

***We primarily rely on our direct sales force to sell our products, and any failure to train and maintain our key sales force personnel could harm our business.***

Our ability to sell our products and generate revenues primarily depends upon our direct sales force within our Americas and International markets. We do not have any long-term employment contracts with our direct sales force and the loss of the services of key personnel may harm our business. In order to provide more comprehensive sales and service coverage, we have increased the size of our sales force to pursue growth opportunities within and outside of our existing geographic markets. Moreover, as we focus on market penetration, we have begun to segregate sales personnel to focus on specific markets such as orthodontists and GPs. It can take up to twelve months or more to train sales representatives to successfully market and sell our products and for them to establish strong customer relationships. As a result, if we are unable to retain our key sales personnel or quickly replace them with individuals of equivalent technical expertise and qualifications, if we are unable to successfully instill technical expertise in new and existing sales representatives, if we fail to establish and maintain strong relationships with our customers, or if our efforts at specializing our selling techniques prove unsuccessful or not cost-effective, our net revenues and our ability to maintain market share could be materially harmed. In addition, due to our large and fragmented customer base, we may not be able to provide all of our customers with product support immediately upon the launch of a new product. As a result, adoption of new products by our customers may be slower than anticipated and our ability to grow market share and increase our net revenues may be harmed.

***As compliance with healthcare regulations becomes more costly and difficult for us or our customers, we may be unable to grow our business.***

Participants in the healthcare industry are subject to extensive and frequently changing regulations under numerous federal, state, local and foreign laws administered by various governmental entities, some of which are, and others of which may be, applicable to our business.

Furthermore, our healthcare provider customers are also subject to a wide variety of laws and regulations that could affect the nature and scope of their relationships with us. The healthcare market itself is highly regulated and subject to changing political, economic and regulatory influences. Regulations implemented pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”), including regulations affecting the security and privacy of patient healthcare information held by healthcare providers and their business associates may require us to make significant and unplanned enhancements of software applications or services, result in delays or cancellations of orders, or result in the revocation of endorsement of our products and services by healthcare participants. The effect of HIPAA and newly enforced regulations on our business is difficult to predict, and there can be no assurance that we will adequately address the business risks created by HIPAA and its implementation or that we will be able to take advantage of any resulting business opportunities.

***Extensive and changing government regulation of the healthcare industry may be expensive to comply with and exposes us to the risk of substantial government penalties.***

In addition to medical device laws and regulations, numerous foreign, state and federal healthcare-related laws regulate our business, covering areas such as:

- storage, transmission and disclosure of medical information and healthcare records;
- prohibitions against the offer, payment or receipt of remuneration to induce referrals to entities providing healthcare services or goods or to induce the order, purchase or recommendation of our products; and
- the marketing and advertising of our products.

Complying with these laws and regulations could be expensive and time-consuming and could increase our operating costs or reduce or eliminate certain of our sales and marketing activities or our revenues.

***Our business exposes us to potential product liability claims, and we may incur substantial expenses if we are subject to product liability claims or litigation.***

Medical devices involve an inherent risk of product liability claims and associated adverse publicity. We may be held liable if any product we develop or any product that uses or incorporates any of our technologies causes injury or is otherwise found unhealthy or unsuitable. Although we intend to continue to maintain product liability insurance, adequate insurance may not be available on acceptable terms, if at all, and may not provide sufficient coverage against potential liabilities. A product liability claim, regardless of its merit or eventual outcome, could result in significant legal defense costs and damage our reputation. These costs would have the effect of increasing our expenses and diverting management’s attention away from the operation of our business and could harm our business.

***Business disruptions could seriously harm our future revenue and financial condition and increase our costs and expenses.***

Our global operations may be disrupted by natural or human induced disasters including, earthquakes, tsunamis, floods, drought, hurricanes, typhoons, wildfires, extreme weather conditions, power shortages, telecommunications failures, materials scarcity and price volatility, and medical epidemics or health pandemics. For instance, the COVID-19 pandemic has materially harmed our sales and business operations, the operations of our customers and the global economy overall. Climate change may increase both the frequency and severity of natural disasters and, consequently, risks to our operations and growth. The occurrence of business disruptions could harm our growth and expansion, result in significant losses, seriously harm our revenue, profitability and financial condition, adversely affect our competitive position, increase our costs and expenses, and require substantial expenditures and recovery time in order to fully resume operations. Our digital dental modeling is primarily processed in our facility located in San Jose, Costa Rica. The operations team in Costa Rica creates ClinCheck treatment plans using sophisticated computer software. In addition, our customer facing operations are located in Costa Rica. Our aligner molds and finished aligners are fabricated in Juarez, Mexico and, we have and are building additional facilities in China. Both locations in Costa Rica and Mexico are in earthquake zones and may be subject to other natural disasters. If there is a major earthquake or any other natural disaster in a region where one of these facilities is located, our ability to create ClinCheck treatment plans, respond to customer inquiries or manufacture and ship our aligners could be compromised which could result in our customers experiencing significant delays receiving their aligners and a decrease in service levels for a period of time. Moreover, our corporate headquarters and a portion of our research and development activities are located in California, which

suffers from earthquakes, periodic droughts, and wildfires affecting the health and safety of our employees. Any such business interruptions could materially and adversely affect our business, financial condition and results of operations.

***Changes in, or interpretations of, accounting rules and regulations, could result in unfavorable accounting charges.***

We prepare our consolidated financial statements in conformity with U.S. GAAP. These principles are subject to interpretation by the SEC and various bodies formed to interpret and create appropriate accounting policies. A change in these policies or in the way these policies are interpreted by us or regulators can have a significant effect on our reported results and may even retroactively affect previously reported transactions.

***If we fail to manage our exposure to global financial and securities market risk successfully, our operating results and financial statements could be materially impacted.***

The primary objective of our investment activities is to preserve principal. To achieve this objective, a majority of our marketable investments are investment grade, liquid, fixed-income securities and money market instruments denominated in U.S. dollars. If the carrying value of our investments exceeds the fair value, and the decline in fair value is deemed to be other-than-temporary, we will be required to write down the value of our investments, which could materially harm our results of operations and financial condition. Moreover, the performance of certain securities in our investment portfolio correlates with the credit condition of the U.S. financial sector. In an unstable credit or economic environment, such as what we are currently experiencing in connection with the COVID-19 pandemic, it becomes necessary to assess the value of our investments more frequently and we might incur significant realized, unrealized or impairment losses associated with these investments.

***If our goodwill or long-lived assets become impaired, we may be required to record a significant charge to earnings.***

Under GAAP, we review our goodwill and long-lived asset group for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. Additionally, goodwill is required to be tested for impairment at least annually. The qualitative and quantitative analysis used to test goodwill are dependent upon various assumptions and reflect management's best estimates. Changes in certain assumptions including revenue growth rates, discount rates, earnings multiples and future cash flows may cause a change in circumstances indicating that the carrying value of goodwill or the asset group may be impaired, but assessing these assumptions and predicting and forecasting future events can be materially more difficult in rapidly changing and unprecedented economic circumstances such as those we are experiencing with the COVID-19 pandemic. Large acquisitions, such as our recent acquisition of exocad, require ongoing fair value assessments of goodwill and purchased assets to determine if they have become impaired. Consequently, we may be required to record a significant charge to earnings in the financial statements during the period in which any impairment of goodwill or asset group are determined.

***We may experience unexpected issues and expenses associated with our corporate structure reorganization, including the relocation of our EMEA regional headquarters to Switzerland.***

We reorganized our corporate structure and intercompany relationships in January 2020 in an effort to more closely align our international business activities and to achieve financial and operational efficiencies. The implementation of this reorganization plan included the move of our EMEA regional headquarters from the Netherlands to Switzerland which has been time-consuming and costly, may be disruptive to our business, and may not be more efficient or effective in the future. This relocation is accompanied by a number of risks and uncertainties that may affect our results of operations and statement of cash flows, including:

- failure to retain key employees who possess specific knowledge or expertise and upon whom we are depending upon for the timely and successful transition;
- difficulties in hiring employees in Switzerland with the necessary skills and expertise; and
- increased costs due to transition of the operations to Switzerland along with higher costs of doing business in Switzerland.

If any of these risks materialize in the future, our operating results, statement of operations and cash flows may be adversely affected.

***Our effective tax rate may vary significantly from period to period.***

Various internal and external factors may have favorable or unfavorable effects on our future effective tax rate. These factors include, but are not limited to, changes in legal entity structure and/or activities performed within our entities, changes in tax laws, regulations and/or rates, new or changes to accounting pronouncements, changing interpretations of existing tax

laws or regulations, changes in the relative proportions of revenues and income before taxes in the various jurisdictions in which we operate that have differing statutory tax rates, changes in overall levels of pretax earnings, the future levels of tax benefits of stock-based compensation, settlement of income tax audits and non-deductible goodwill impairments. For example, our effective tax rate varied significantly in our first quarter of fiscal 2020 due to the relocation of our EMEA regional headquarters from the Netherlands to Switzerland effective January 1, 2020. Also, we may continue to experience significant variation in our effective tax rate related to excess tax benefits on stock-based compensation, particularly in the first quarter of each year when the majority of our equity awards vest.

***Changes in tax laws or tax rulings could negatively impact our income tax provision and net income.***

As a U.S. multinational corporation, we are subject to changing tax laws both within and outside of the U.S. Changes in tax laws or tax rulings, or changes in interpretations of existing tax laws, could affect our income tax provision and net income or require us to change the manner in which we operate our business. In addition, governmental tax authorities are increasingly scrutinizing the tax positions of companies. Many countries in Europe, as well as a number of other countries and organizations, have recently proposed or recommended changes to existing tax laws or have enacted new laws. For example, the Organization for Economic Cooperation and Development (“OECD”) has been working on a “Base Erosion and Profit Shifting Project,” which is focused on a number of issues, including the shifting of profits between affiliated entities in different tax jurisdictions. The OECD has issued and is expected to continue to issue, guidelines and proposals that may change various aspects of the existing framework under which our tax obligations are determined in many of the countries in which we do business.

***We are subject to risks associated with our strategic investments. Impairments in the value of our investments and unsecured promissory note could negatively impact our financial results.***

We have invested in privately held companies for strategic reasons and to support key business initiatives, and we may not realize a return on our strategic investments. Many of such companies generate net losses and the market for their products, services or technologies may be slow to develop. Further, valuations of privately held companies are inherently complex due to the lack of readily available market data. If we determine that our investments have experienced a decline in value or our unsecured promissory note with SmileDirectClub is determined to be uncollectible, which may be more likely as a result of the COVID-19 pandemic, particularly if its impact to global and domestic economies is sustained and widespread or any recovery is slow, we may be required to record impairments which could be material and could have an adverse impact on our financial results.

***We may acquire other businesses, products or technologies in the future which could require significant management attention, disrupt our business, dilute shareholder value and adversely affect our results of operations.***

In order to remain competitive or achieve long-term business objectives, we may acquire, or make investments in, complementary companies, products or technologies. Alternatively, we may not be able to find suitable acquisition targets in the future, and we may not be able to complete acquisitions on favorable terms, if at all. If we do complete acquisitions, we may not ultimately strengthen our competitive position or achieve our goals or desired synergies, and any acquisitions we complete could be viewed negatively by our customers, securities analysts and investors. In addition, if we fail to successfully integrate any acquisitions or the technologies acquired, our revenue and results of operations could be adversely affected or we may inherit IT security and privacy compliance issues when we integrate acquired products and systems. Any integration process may require significant time and resources and we may not successfully evaluate or utilize the acquired technology or personnel, or accurately forecast the financial impact of an acquired business, including accounting charges. We may have to pay cash, incur debt or issue equity securities to pay for any acquisition, any of which could adversely affect our liquidity, financial condition or the value of our common stock. The sale of equity or issuance of debt to finance any acquisition could result in dilution to our shareholders. The occurrence of indebtedness would result in increased fixed obligations and could also include covenants or other restrictions that would impede our ability to manage our operations.

Moreover, opposition to one of more acquisitions could lead to negative ratings by analysts or investors, give rise objections by one or more stockholders or result in shareholder activism, any of which could harm our stock price. Acquisitions can also lead to large non-cash charges that can have an adverse effect on our results of operations as a result of write-offs for items such as future impairments of intangible assets and goodwill or the recording of stock-based compensation.

**Risks Related to our Common Stock**

***Historically, the market price for our common stock has been volatile.***

The market price of our common stock could be subject to wide price fluctuations in response to various factors, many of which are beyond our control. The factors include:

- the impact on global and regional economies as a result of the COVID-19 pandemic;
- quarterly variations in our results of operations and liquidity or changes in our forecasts and guidance;
- changes in recommendations by the investment community or in their estimates of our net revenues or operating results;
- speculation in the press or investment community concerning our business and results of operations;
- announcements by competitors or new market entrants;
- strategic actions by us or our competitors, such as management changes, material transactions or acquisitions;
- announcements regarding stock repurchases, sales of our common stock, credit agreements and debt issuances;
- announcements of technological innovations or new products or product offerings by us, our customers or competitors;
- key decisions in pending litigation
- sales of stock by us, our officers or directors; and
- general economic market conditions.

In addition, the stock market, in general, and the market for technology and medical device companies, in particular, have experienced extreme price and volume fluctuations that have often been unrelated to or disproportionate to the operating performance of those companies. These broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance. Historically, class action litigation is often brought against an issuing company following periods of volatility in the market price of its securities and we have not been excepted from such litigation.

***We cannot guarantee we will continue to repurchase our common stock, and any repurchases may not achieve our objectives.***

We have a history of recurring stock repurchase programs intended to return capital to our investors. Any authorization or continuance of our share repurchase programs is contingent on a variety of factors, including our financial condition, results of operations, business requirements, and our board of directors' continuing determination that share repurchases are in the best interests of our stockholders and in compliance with all applicable laws and agreements. There is no assurance that we will continue to repurchase stock consistent with historical levels or at all, or that our stock repurchase programs will have a beneficial impact on our stock price.

***Future sales of significant amounts of our common stock may depress our stock price.***

A large percentage of our outstanding common stock is currently owned by a small number of significant stockholders. These stockholders have sold in the past, and may sell in the future, large amounts of common stock over relatively short periods of time. Sales of substantial amounts of our common stock in the public market by our existing stockholders may adversely affect the market price of our common stock. Such sales could create public perception of difficulties or problems with our business and may depress our stock price.

## **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

There were no stock repurchases during the three months ended March 31, 2020. As of March 31, 2020, we have \$100.0 million available for repurchase under the \$600.0 million repurchase program authorized by our Board of Directors in May 2018 (Refer to *Note 11 "Common Stock Repurchase Programs"* of the *Notes to Condensed Consolidated Financial Statements* for details on our stock repurchase programs).

## **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

Not applicable.

## **ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

## **ITEM 5. OTHER INFORMATION**

None

**ITEM 6. EXHIBITS**

(a) Exhibits:

<b>Exhibit Number</b>	<b>Description</b>	<b>Filing</b>	<b>Date</b>	<b>Exhibit Number</b>	<b>Filed herewith</b>
<a href="#">10.1</a>	<a href="#">Sale and Purchase Agreement between CETP III Ivory S.a.r.l., and Align Technology, Inc. and its indirect wholly owned German subsidiary, mertus 602. GmbH, dated March 3, 2020</a>				*
<a href="#">31.1</a>	<a href="#">Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>				*
<a href="#">31.2</a>	<a href="#">Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>				*
<a href="#">32.1</a>	<a href="#">Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>				*
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.				*
101.SCH	XBRL Taxonomy Extension Schema Document				*
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document				*
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document				*
101.LAB	XBRL Taxonomy Extension Label Linkbase Document				*
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document				*



Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

**CETP III Ivory S.à r.l.**

(as the Seller)

and

**mertus 602. GmbH**

(as the Purchaser)

as well as

**Align Technology, Inc.**

(as the Guarantor)

**Sale and Purchase Agreement**

regarding

all Shares in

**exocad Global Holdings GmbH**

## CONTENTS

1. Definitions	5
2. Current Status	5
3. Sale and Transfer of the Sold Shares and the Shareholder Loan Receivable	7
4. Purchase Price	8
5. Preliminary Purchase Price	9
6. 2019 Financial Statements and Share Purchase Price Determination	10
7. Repayment of Bank Debt	14
8. Payments and Default	14
9. Closing Condition	15
10. Closing Date; Closing; Closing Actions	16
11. Seller's Guarantees	18
12. Seller's Covenants	23
13. Remedies	26
14. Limitation of the Seller's Liability	31
15. Tax Warranties and Tax Indemnity	35
16. Purchaser's and Guarantor's Representations and Warranties	41
17. Purchaser's Covenants	42
18. Purchaser's Indemnity	43
19. Seller's Remedies	45
20. Guarantor's Undertaking	45
21. Exit Bonuses	45
22. Confidentiality	46
23. Miscellaneous	47
24. Governing Law and Place of Jurisdiction	50
25. Severability	50
Exhibit 1 Definitions	51

## **Index of Exhibits**

<b>Exhibit 1</b>	Definitions
<b>Exhibit 2.1(d)</b>	Subsidiaries
<b>Exhibit 2.2(a)</b>	Facilities Agreement
<b>Exhibit 2.2(b)</b>	Financing Collateral
<b>Exhibit 2.3(a)</b>	Shareholder Loan
<b>Exhibit 2.4-1</b>	Advisory Board Resignation Letter
<b>Exhibit 2.4-2</b>	Shareholders' Resolution exocad Group GmbH
<b>Exhibit 2.5(a)</b>	International Managers
<b>Exhibit 2.5(b)-1</b>	Shareholders' Resolutions Company
<b>Exhibit 2.5(b)-2</b>	Shareholders' Resolutions Subsidiaries
<b>Exhibit 2.6</b>	Related Party Agreements
<b>Exhibit 3.2(b)</b>	Shareholder Loan Termination Agreement
<b>Exhibit 3.3</b>	Certain Seller's Shareholders' Consent
<b>Exhibit 4.1(b)-1</b>	Effective Date Cash
<b>Exhibit 4.1(b)-2</b>	Effective Date Debt
<b>Exhibit 4.1(b)-3</b>	Effective Date Working Capital
<b>Exhibit 5</b>	Sample Purchase Price Calculation
<b>Exhibit 6.2</b>	Form of Adjusted Purchase Price Statement
<b>Exhibit 6.3</b>	Accounting Standards
<b>Exhibit 10.2(c)</b>	Closing Disclosure Letter
<b>Exhibit 10.3</b>	Closing Confirmation
<b>Exhibit 11.6</b>	Further Seller's Guarantees
<b>Exhibit 11.7</b>	List of Knowledge Bearers
<b>Exhibit 12.1-1</b>	Conduct of Business
<b>Exhibit 12.1-(a)</b>	Shareholders' Resolution regarding Conduct of Business - Company
<b>Exhibit 12.1-(b)</b>	Shareholders' Resolution regarding Conduct of Business - Group Companies
<b>Exhibit 12.2(b)</b>	Permitted Leakage: Arms' Length Consideration
<b>Exhibit 12.2(e)</b>	Permitted Leakage: Service / Advisory Agreements
<b>Exhibit 12.2(f)</b>	Permitted Leakage: Otherwise Disclosed
<b>Exhibit 12.3</b>	Related Party Agreements
<b>Exhibit 14.7</b>	Copy of executed W&I insurance
<b>Exhibit 18.2(b)</b>	Waiver



## **Index of Schedules**

<b>Schedule 15.2</b>	Tax Disclosures
<b>Schedule 2-1 to the Exhibit 11.6</b>	2018 Financial Statements
<b>Schedule 2-2 to the Exhibit 11.6</b>	2018 Holding Financial Statements
<b>Schedule 3 to the Exhibit 11.6</b>	Material Agreements
<b>Schedule 4 to the Exhibit 11.6</b>	Leased Real Estate
<b>Schedule 5(a) to the Exhibit 11.6</b>	Key Employees
<b>Schedule 5(d) to the Exhibit 11.6</b>	Pensions
<b>Schedule 5(g) to the Exhibit 11.6</b>	Freelancer
<b>Schedule 6(a) to the Exhibit 11.6</b>	Owned IP Right(s)
<b>Schedule 6(b) to the Exhibit 11.6</b>	Disclosure regarding Other IP Rights
<b>Schedule 6(f) to the Exhibit 11.6</b>	Distributed Main Products
<b>Schedule 6(g)(ii) to the Exhibit 11.6</b>	Fraunhofer Licenses
<b>Schedule 6(g)(iv) to the Exhibit 11.6</b>	Black Duck Report
<b>Schedule 6(l) to the Exhibit 11.6</b>	Judgements, Challenges regarding IP Rights
<b>Schedule 6(m) to the Exhibit 11.6</b>	Employee Inventions
<b>Schedule 7(a) to the Exhibit 11.6</b>	Insurances
<b>Schedule 8 to the Exhibit 11.6</b>	Litigation
<b>Schedule 9(a) to the Exhibit 11.6</b>	Permits
<b>Schedule 9(b) to the Exhibit 11.6</b>	Disclosure regarding Administrative Proceedings
<b>Schedule 11 to the Exhibit 11.6</b>	Disclosure regarding Conduct of Business since Effective Date

## Sale and Purchase Agreement

by and between

- (1) **CETP III Ivory S.à r.l.**, a limited liability company (*société à responsabilité limitée*) under the laws of Luxembourg, having its registered address at 2 Avenue Charles de Gaulle, 1653 Luxembourg, Grand Duchy of Luxembourg, registered with the Luxembourg trade and companies register (*registre de commerce et des sociétés*) under registration number B208374,

– “**Seller**” –

- (2) **mertus 602. GmbH**, a limited liability company under the laws of the Federal Republic of Germany, having its registered office at c/o Hogan Lovells International LLP, Untermainanlage 1, 60329 Frankfurt am Main, registered with the commercial register of the local court (*Amtsgericht*) of Frankfurt am Main under number HRB 118007,

– “**Purchaser**” –

and

- (3) **Align Technology, Inc.**, a stock corporation under the laws of Delaware, USA, having its registered office at 2820 Orchard Parkway, San Jose, California 95134, USA,

– “**Guarantor**” –

(the Seller, the Purchaser and the Guarantor are together referred to as the “**Parties**”, and each of them as a “**Party**”).

### RECITALS

- (A) The Seller is the sole shareholder of exocad Global Holdings GmbH, a limited liability company (*Gesellschaft mit beschränkter Haftung*) organized under the laws of Germany, with its seat in Darmstadt, Germany, and registered with the commercial register (*Handelsregister*) at the local court (*Amtsgericht*) in Darmstadt under registration number HRB 99230 (the “**Company**”).
- (B) The Group (as defined below) is engaged in the development and marketing of software for the computer-based construction and manufacturing (CAD/CAM) as well as related activities, in particular in the dental market. The Group’s business, taken as a whole, as presently conducted, disregarding the transactions contemplated by this sale and purchase agreement (the “**Agreement**”) shall hereinafter be referred to as the “**Business**”.
- (C) By entering into this Agreement, the Seller wishes to sell and transfer to the Purchaser, and the Purchaser, having carried out a due diligence review of the Group and its Business usual in the context of an auction process, wishes to acquire from the Seller, all shares in the Company as well as a certain receivable under an existing shareholder loan (the “**Transaction**”).
- (D) The Guarantor is the ultimate parent company of the Purchaser.
- (E) By entering into this Agreement, the Guarantor wishes to accede to all of the Purchaser’s obligations and liabilities under or in connection with this Agreement (*Schuldbeitritt*) so as to

guarantee the due and full performance or fulfillment, respectively, of all such obligations and liabilities of the Purchaser.

(F) The Parties confirm that they have freely discussed and negotiated all and any Sections of this Agreement.

## 1. Definitions

The definitions used in this Agreement shall have the meaning set out in **Exhibit 1**, unless otherwise specified herein.

## 2. Current Status

### a. The Company

- (i) The Company is incorporated and registered as specified in Recital (A).
- (ii) The entire registered share capital of the Company (the “**Share Capital**”) amounts to EUR 45,905 (in words: Euro forty five thousand nine hundred five).
- (iii) The entire Share Capital is held by the Seller and is divided into 45,455 ordinary shares recorded under the consecutive numbers 1 through 45,455 in the current shareholder's list (the “**Ordinary Shares**”) and 450 preferred shares recorded under the consecutive numbers 45,456 through 45,905 in the current shareholder's list (the “**Preferred Shares**” and together with the Ordinary Shares and any other shares in the Company existing, the “**Sold Shares**” and each a “**Sold Share**”).
- (iv) The Company holds directly or indirectly shares in the entities as set out in more detail in **Exhibit 2.1(d)** (each a “**Subsidiary**” and collectively the “**Subsidiaries**” and together with the Company, the “**Group**” or the “**Group Companies**”, and each individually a “**Group Company**”).

### b. Current Financing Status

- (i) Certain Group Companies are parties as borrowers and/or guarantors to the facilities agreements as set forth in **Exhibit 2.2(a)** (collectively the “**Facilities Agreement**”) together with the related security documents, fee and syndication letters, hedging agreements, accession letters, collectively referred to as the “**Finance Documents**”).
- (ii) The debt under the Facilities Agreements is secured by certain security interests as set forth in **Exhibit 2.2(b)** (collectively with any other collateral granted to the lenders under or in connection with the Finance Documents, the “**Financing Collateral**”).
- (iii) As at the Effective Date, an amount of [\*\*\*] (including accrued but unpaid interest) was outstanding under the Finance Documents.

### c. Shareholder Loan

- (i) On 26 September 2016, the Seller (as lender) has granted to exocad Holding GmbH (as borrower) a certain shareholder loan as set out in **Exhibit 2.3(a)** (as amended from time to time, the “**Shareholder Loan**”) under a shareholder loan agreement (the “**Shareholder Loan Agreement**”).

- (ii) As at the Effective Date, an amount of EUR 41,380,771 (in words: Euro forty one million three hundred eighty thousand seven hundred seventy one) (including accrued but unpaid interest) was outstanding under the Shareholder Loan.

d.  Advisory Board

- (i) An advisory board exists at the level of exocad Group GmbH (the “**Advisory Board**”), which currently has four members. As of the date of this Agreement (“**Signing Date**”), the members of the Advisory Board are [\*\*\*].
- (ii) On the Scheduled Closing Date, the Seller will deliver to the Purchaser a resignation letter, including a waiver of claims, for each member of the Advisory Board substantially in the form as attached in **Exhibit 2.4-1** (an “**Advisory Board Resignation Letter**”), to become effective upon Closing.
- (iii) On the Scheduled Closing Date, pursuant to Section 10.2(f), the Purchaser will cause exocad Holding GmbH to adopt a shareholder's resolution of exocad Group GmbH in the form as attached in **Exhibit 2.4-2**, (i) granting discharge (*Entlastung*) to each member of the Advisory Board that has resigned, and (ii) waiving any claims against such members, except for fraud (*Arglist*) and willful misconduct (*Vorsatz*), including bribery and/or corruption (“**Shareholders’ Resolution exocad Group GmbH**”).

e.  Managers of the Company and certain Group Companies

- (i) As of the Signing Date, Mr. Tillmann Steinbrecher and Mr. Maik Gerth (“**Managers**”) are the managing directors of the Company, exocad Holding GmbH, exocad Group GmbH and exocad GmbH. The (managing) directors of the other Group Companies (the “**International Managers**” and together with the Managers, the “**Group Managers**”) are listed in **Exhibit 2.5(a)**.
- (ii) On the Scheduled Closing Date, pursuant to Sections 10.2(g) and 10.2(h), the Purchaser
  - (1) shall adopt a shareholder's resolution as shareholder of the Company, substantially in the form as attached in **Exhibit 2.5(b)-1**, (a) granting discharge (*Entlastung*) to each of the Managers and (b) waiving any claims against each of the Managers, except for fraud (*Arglist*) and willful misconduct (*Vorsatz*), including bribery and/or corruption (the “**Shareholders’ Resolutions Company**”); and
  - (2) shall procure that the Group Companies as shareholders of their respective Subsidiaries adopt shareholder's resolutions, substantially in the form as attached in **Exhibit 2.5(b)-2**, (a) granting discharge (*Entlastung*) to each of the respective Group Managers and (b) waiving any claims against each of the respective Group Managers, except for fraud (*Arglist*) and willful misconduct (*Vorsatz*), including bribery and/or corruption (the “**Shareholders’ Resolutions Subsidiaries**”).

f.  Related Party Agreements

The Group Companies have entered into the agreements as set forth in **Exhibit 2.6** with or for the benefit of the Seller and/or the Seller's Affiliates (collectively “**Related Party Agreements**”).

For purposes of this Agreement, “**Affiliate**” means any affiliated company (*verbundenes Unternehmen*), irrespective whether German or foreign, within the meaning of sections 15 et seqq. of the German Stock Corporation Act (*Aktiengesetz*), and shall have an equivalent meaning if the entity is subject to a foreign jurisdiction as well as any corporation, company or other entity or partnership which Controls, or is Controlled, or is under common Control, directly or through one or more intermediaries, as long as such Control exists.

“**Control**” and “**Controlling**” means the power to influence (*beherrschen*), direct or cause the direction of the management and policies of a person, whether (i) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other corporate body, or (ii) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating that or any other corporate body.

### 3. Sale and transfer of the Sold Shares and the shareholder loan receivable

#### a. Sale and purchase of the Sold Shares

The Seller hereby sells, and subject to the condition precedent (*aufschiebende Bedingungen*) that (i) the Closing Condition (as defined in Section 9.1) has been fulfilled or duly waived in accordance with this Agreement and (ii) the Closing Action pursuant to Section 10.2(a) has been performed or duly waived in accordance with this Agreement, transfers (*überträgt*) to the Purchaser the Sold Shares, and the Purchaser hereby accepts such sale and transfer of the Sold Shares with effect as of the Closing Date (as defined below).

#### b. Sale and purchase of Shareholder Loan Receivable

- (i) The Seller hereby sells, and subject to the condition precedent (*aufschiebende Bedingungen*) that (i) the Closing Condition (as defined in Section 9.1) has been fulfilled or duly waived in accordance with this Agreement and (ii) the Closing Action pursuant to Section 10.2(a) has been performed or duly waived in accordance with this Agreement, assigns (*tritt ab*) to the Purchaser the claim for repayment of the outstanding principal amount under the Shareholder Loan and the claim for payment of unpaid interest accrued on the Shareholder Loan until and including / as of the Closing Date (collectively, the “**Shareholder Loan Receivable**”), and the Purchaser hereby accepts such sale and assignment of the Shareholder Loan Receivable as of the Closing Date (as defined below).
- (ii) The Seller shall terminate on or prior to the Scheduled Closing Date, but only with effect upon the transfer of the Shareholder Loan Receivable, the Shareholder Loan Agreement and cancel and waive all claims and obligations thereunder, if any, except for the Shareholder Loan Receivable, which is sold and will be assigned to the Purchaser pursuant to Section 3.2(a) above, with effect as of the Closing Date by means of and in accordance with the terms and conditions of a separate termination and waiver agreement, substantially in the form attached hereto as **Exhibit 3.2(b)** (the “**Shareholder Loan Termination Agreement**”).
- (iii) At the latest on the fifth (5<sup>th</sup>) Business Day prior to the Scheduled Closing Date, the Seller shall deliver to the Purchaser a notice (the “**Shareholder Loan Notice**”) stating with binding effect (but for obvious clerical errors (*Schreibfehler*)) for purposes of Section 4.2 the as of the date of the notification applicable total amount of the Shareholder Loan Receivable (the total amount of the Shareholder Loan Receivable as notified by the Seller to the Purchaser in the Shareholder Loan Notice accordance with this Section 3.2(c), the “**Shareholder Loan Notice Amount**”). The Seller shall

ensure that the Shareholder Loan Notice Amount shall be the final amount of Shareholder Loan as of the Scheduled Closing Date, that no repayments of this amount shall be made until and including the Scheduled Closing Date and that the principal amount under the Shareholder Loan will not be increased until and including the Scheduled Closing Date.

c.  Certain Consents

Copies of the spousal consents of [\*\*\*], the originals of which are in certified form, as shareholders of the Seller, in accordance with, and to the extent required by, section 1365 of the German Civil Code (*Bürgerliches Gesetzbuch* – “**BGB**”) are attached as **Exhibit 3.3**.

d.  Economic Effect; Transfer of Risk

The Sold Shares are sold to the Purchaser with economic effect (*mit wirtschaftlicher Wirkung*) as of 31 December 2019, 24:00 hrs. (CET) (the “**Effective Date**”), including the right to receive all profits for the Company’s current fiscal year as well as all profits for previous fiscal years of the Company, not yet distributed. As of the Effective Date, subject to Section 11, all risks and burdens pertaining to the Sold Shares, the Company, the other Group Companies and the Business shall pass to the Purchaser within the meaning of Section 446 BGB.

#### 4. **Purchase Price**

a.  Share Purchase Price

(i) The total purchase price owed by the Purchaser for the sale and transfer of the Sold Shares from the Seller to the Purchaser (the “**Share Purchase Price**”) shall be the aggregate of

(1) the Base Amount;

plus

(2) the Effective Date Cash

minus

(3) the Effective Date Debt

plus

(4) the amount, if any, by which the Effective Date Working Capital exceeds the Target Working Capital or *minus* the amount, if any, by which the Effective Date Working Capital falls short of the Target Working Capital.

(ii) For purposes of this Agreement:

“**Base Amount**” shall be equal to a cash amount of EUR 390,000,000 (in words: Euro three hundred ninety million). The Parties agree and confirm that the calculation and determination of the Base Amount has been unanimously made by and among the Parties and the Parties therefore irrevocably mutually waive any rights they may have to challenge or rescind or otherwise modify the calculation of the Base Amount irrespective of the legal and/or factual basis.

“**Effective Date Cash**” shall be defined as shown in Exhibit 4.1(b)-1;

“**Effective Date Debt**” shall be defined as shown in Exhibit 4.1(b)-2;

“**Effective Date Working Capital**” shall be defined as shown in Exhibit 4.1(b)-3.

“**Target Working Capital**” shall be EUR [\*\*\*].

b.  Shareholder Loan Purchase Price

The purchase price for the Shareholder Loan Receivable (the “**Shareholder Loan Purchase Price**”) shall be an amount equal to the Shareholder Loan Notice Amount (plus applicable interest, for and under the Shareholder Loan Agreement, for each calendar day by which the Closing is delayed beyond the Scheduled Closing Date as of which the Shareholder Loan Notice Amount was calculated).

c.  Aggregate Purchase Price

The aggregate amounts of the Share Purchase Price and the Shareholder Loan Purchase Price is hereinafter referred to as the “**Purchase Price**”.

d.  VAT

The Parties assume that the sale and transfer of the Sold Shares and the Shareholder Loan Receivable is exempt from VAT, and no Party shall waive with respect to any of transactions hereunder any exemption from VAT. To the extent that VAT becomes chargeable on any of such transaction, the Purchaser shall pay to the Seller in cash an amount equal to such VAT in addition to the Purchase Price or other amount payable under this Agreement, as applicable, if and to the extent the Seller is liable *vis-à-vis* the Tax Authorities with regard to such VAT, and the Seller shall issue an invoice complying with applicable VAT law in all material respects.

5. **Preliminary Purchase Price**

Based on the information available to the Parties on the date of this Agreement and assuming that Closing will take place on 1 April 2020, the Parties estimate the Purchase Price to be EUR 376,033,682 (in words: three hundred seventy six million thirty three thousand six hundred eighty two Euro) (the “**Preliminary Purchase Price**”).

A sample calculation of the Purchase Price consisting of (i) a sample calculation of the Share Purchase Price and (ii) a sample calculation of the Shareholder Loan Purchase Price is attached hereto as Exhibit 5 (the “**Sample Purchase Price Calculation**”), provided, however that the calculation of the Share Purchase Price shall be based on the consolidated account frame (*Kontenrahmen*) at the level of the Company for the Group in which each line item of current assets and deferred tax each item of liabilities other than equity and deferred tax liability items shall be allocated to either Effective Date Cash, Effective Date Debt or Effective Date Working Capital. In case of discrepancies between the provisions of Sections 4 and the Sample Purchase Price Calculation, the provisions of Section 4 shall prevail.

6. **2019 Financial Statements and Share Purchase Price Determination**

a.  After the Signing Date, the Seller shall cause the Company to (i) prepare by no later than March 15, 2020 the consolidated financial statements (*Jahresabschluss*) of the Group consisting of a balance sheet (*Bilanz*) and a profit and loss statement (*Gewinn- und*

*Verlustrechnung*) (the “**2019 Financial Statements**”) and (ii) procure that the 2019 Financial Statements will be audited by Ernst & Young.

b.□ The Seller shall cause that the audit is completed by 1 June 2020. The Parties agree that in case the audit is not completed by Ernst & Young due to or as a result of circumstances being outside of the control of the Seller and/or any of the Group Companies, any delay in completion of the audit shall not constitute or be deemed to be a breach of the Seller’s obligation under this Section 6.2. Within twenty (20) Business Days of the completion of the audit of the 2019 Financial Statements, the Seller shall provide to the Purchaser (i) a copy of the audited 2019 Financial Statements and (ii) a written statement in the form as attached hereto as **Exhibit 6.2** (the “**Adjusted Purchase Price Statement**”) setting forth:

- (i) the Effective Date Cash;
- (ii) the Effective Date Debt;
- (iii) the Effective Date Working Capital;
- (iv) the Purchase Price calculated in accordance with Section 4 above; and
- (v) the Adjustment Amount (as defined below), if any.

c.□ Accounting Standards

The 2019 Financial Statements shall be prepared

- (i) in accordance with the accounting principles set forth in **Exhibit 6.3**,
- (ii) complying with the principle of accounting and valuation consistency (*Bilanzierungs- und Bewertungskontinuität*), in particular by applying the same valuation criteria (*Bewertungskriterien*), depreciation principles (*Abschreibungsgrundsätze*), foreign exchange calculation principles and election rights (*Wahlrechte*) as applied in the respective consolidated 2017 and/or 2018 financial statements for exocad GmbH, in each case to the extent applicable, and
- (iii) applying German general accounting principles (*Grundsätze ordnungsgemäßer Buchführung*) pursuant to the German Commercial Code,

whereas lit. (a) shall prevail over lit. (b) and lit. (c), and lit. (b) shall prevail over lit. (c) should it be impossible to comply with lit. (a) through lit. (c) concurrently, unless the prevalence of lit. (b) over lit. (c) would result in an audit qualification in which case lit. (c) shall prevail over lit. (b).

d.□ Cooperation

After Closing, the Purchaser shall, in case the Closing occurs prior to the final determination of the Purchase Price, and shall cause the Group Companies to, provide the Seller and its (managing) directors, advisors, accountants or other representatives (collectively together with the Seller’s Affiliates (excluding the Group Companies) the “**Seller’s Representatives**”) with all relevant documents, information and assistance which are in the opinion of the Seller relevant for the preparation of the 2019 Financial Statements and the Adjusted Purchase Price Statement. This shall include the right of the Seller and the Seller’s Representatives to visit and inspect all properties, assets and premises of the Group Companies during normal business hours, the right to examine, copy (at their own cost) or photograph any assets,

documents, records and accounts and to discuss with the management of the Group Companies all matters which are in the opinion of the Seller relevant for the preparation of the 2019 Financial Statements and the Adjusted Purchase Price Statement, provided, however, that the business interruption for the Group Companies and their respective management and employees shall be kept at a minimum.

e.□ Objections by the Purchaser

The Purchaser shall raise its objections against the 2019 Financial Statements and the Adjusted Purchase Price Statement, if any, by providing the Seller within forty five (45) Business Days (dispatch (*Absendung*)) after receipt of the 2019 Financial Statements and the Adjusted Purchase Price Statement or if the Purchaser receives the 2019 Financial Statements and the Adjusted Purchase Price Statement prior to Closing, within forty five (45) Business Days (dispatch (*Absendung*)) after the Closing Date, as the case may be, with

- (i) a written statement of objections (the “**Notice of Objections**”) specifying to the extent reasonable possible and practicable (in particular in the given time) which items therein are disputed by the Purchaser (the “**Disputed Items**”) and
- (ii) a revised version of the Adjusted Purchase Price Statement (the “**Revised Adjusted Purchase Price Statement**”) taking both the Purchaser’s and the Seller’s position on the Disputed Items into account.

If and to the extent that the Purchaser does not at all, or not timely, provide the Notice of Objections and the Revised Adjusted Purchase Price Statement, the Purchaser shall be deemed to have agreed to the 2019 Financial Statements and the Adjusted Purchase Price Statement provided by the Seller and the 2019 Financial Statements and the Adjusted Purchase Price Statement shall become final and binding upon the Parties.

f.□ Resolving of Disputed Items

If the Purchaser has timely delivered a Notice of Objections and a Revised Adjusted Purchase Price Statement in accordance with Section 6.5, the Parties shall discuss the Disputed Items in good faith in order to reach an agreement on such Disputed Items and any adjustments (if any) to be made to the 2019 Financial Statements and/or Adjusted Purchase Price Statement. To the extent that the Seller and the Purchaser reach an agreement on the Disputed Items, the 2019 Financial Statements and the Adjusted Purchase Price Statement shall become final and binding regarding such positions.

g.□ Neutral Expert

If and to the extent the Parties are unable to reach such agreement within twenty (20) Business Days after the Purchaser has provided the Notice of Objections and the Revised Adjusted Purchase Price Statement, the Disputed Items still unresolved between the Parties shall, upon request of the Purchaser or the Seller be decided by PwC as a neutral expert (the “**Neutral Expert**“), with an individual to lead such process, who has to be an equity partner within his/her organization and has to have at least ten (10) years of respective professional experience as transaction finance advisor. If PwC refuses to act as a Neutral Expert, another person shall be appointed as Neutral Expert by the German Institute of Public Accountants (*Institut der Wirtschaftsprüfer in Deutschland e.V.*) upon written request of either Party. The following shall apply with respect to the Neutral Expert:

- (i) Either Party has the right to retain the Neutral Expert to decide the unresolved Disputed Items in accordance with the provisions set forth in this Agreement. The retaining Party shall immediately notify the other Party that it has retained the Neutral Expert.
- (ii) The Neutral Expert shall act as an expert (*Schiedsgutachter*), not as an arbitrator (*Schiedsrichter*).
- (iii) The Purchaser and the Seller shall cooperate with and assist, and shall cause their respective professional advisors and accountants to cooperate with and assist, and the Purchaser shall cause the Group Companies to cooperate with and assist the Neutral Expert in conducting its review. This shall include providing the Neutral Expert with the 2019 Financial Statements, the Adjusted Purchase Price Statement, the Notice of Objections, the Revised Adjusted Purchase Price Statement and all other documents and information reasonably required by the Neutral Expert for the preparation of its decision (including the working papers of Ernst & Young). The Neutral Expert shall immediately submit copies of all documents and other data made available by a Party to the respective other Party.
- (iv) The Neutral Expert shall give the Purchaser and the Seller adequate opportunity to present their point of view in writing and at least one (1) oral hearing is to be held in the presence of the Purchaser, the Seller and their respective professional advisors and accountants. The retaining Party shall instruct the Neutral Expert to use its best efforts to deliver its written opinion with reasons for the decisions to the Parties by registered mail as soon as reasonably practical, but not later than thirty (30) Business Days after the issues in dispute have been referred to the Neutral Expert.
- (v) The Neutral Expert's decision and the 2019 Financial Statements and Adjusted Purchase Price Statement as determined by the Neutral Expert shall be final and binding on the Parties (except for intentional malfeasance, calculation errors or other obvious mistakes (section 319 para. 1 sentence 1 BGB)) for the purpose of determining the Purchase Price.

#### h. Costs in Connection with the 2019 Financial Statements

The costs of the Group in connection with the preparation and audit of the 2019 Financial Statements and the Adjusted Purchase Price Statement shall be borne by the Company, provided, however, that the audit shall, in aggregate, not cost more than EUR [\*\*\*] (net of VAT); any excess shall be borne by the Seller. The Seller shall bear its costs in connection with the preparation of the 2019 Financial Statements and the Adjusted Purchase Price Statement. The Purchaser shall bear the costs and expenses of its review of the 2019 Financial Statements and the Adjusted Purchase Price Statement and of the preparation of the Notice of Objections and Revised Adjusted Purchase Price Statement, if any. The costs and expenses of the Neutral Expert shall be allocated between the Purchaser and the Seller in the decision of the Neutral Expert by applying the principles of sections 91 *et seq.* of the German Code of Civil Procedure (*Zivilprozessordnung*). Any advance payments requested by the Neutral Expert shall (i) be borne in equal shares by the Purchaser and the Seller and (ii) be settled among them against the respective final payment obligation pursuant to this Section 6.8.

#### i. Final 2019 Financial Statements

The 2019 Financial Statements and the Adjusted Purchase Price Statement shall be final and binding if and to the extent,

- (i) the Purchaser has not provided a Notice of Objections regarding the 2019 Financial Statements and/or has not provided a Revised Adjusted Purchase Price Statement with regard to the Adjusted Purchase Price Statements in accordance with Section 6.5;
- (ii) the Seller and the Purchaser have reached an agreement concerning the Disputed Items (if any) in accordance with Section 6.6; or
- (iii) the Neutral Expert has decided about the unresolved Disputed Items pursuant to Section 6.7.

The final and binding 2019 Financial Statements and Adjusted Purchase Price Statement determined in accordance with this Section 6.9 are referred to herein as the “**Final Purchase Price Statement**”.

j.  Adjustment Amount

If (i) the Purchase Price determined in the Final Purchase Price Statement exceeds the Preliminary Purchase Price, the Purchaser shall pay to the Seller an amount equal to such excess, or (ii) the Purchase Price determined in the Final Purchase Price Statement falls short of the Preliminary Purchase Price, the Seller shall pay to the Purchaser an amount equal to such shortfall (any such amount to be paid by the Purchaser or the Seller, the “**Adjustment Amount**”).

k.  Due Date of Adjustment Amount

The Adjustment Amount becomes due on the tenth (10<sup>th</sup>) Business Day after 2019 Financial Statements have become final and binding upon the Parties in accordance with Section 6.9. For the avoidance of doubt, any undisputed adjustment amounts, *i.e.* amounts which are not subject to any Notice of Objections, shall become due on the tenth (10<sup>th</sup>) Business Day following the lapse of the thirty (30) Business Day period set forth in Section 6.5.

## 7. **Repayment of Bank Debt**

- a.  On the Scheduled Closing Date, the Purchaser shall discharge all liabilities under the Finance Documents outstanding as of the Scheduled Closing Date on behalf of the relevant Group Companies by (re)paying all out-standing amounts (including accrued and unpaid interest as well as break costs, fees, prepayment and all other charges and costs relating to the Finance Documents) (the aforementioned outstanding liabilities, the “**Bank Repayment Amount**”).
- b.  The estimated Bank Repayment Amount shall be notified by the Seller to the Purchaser on the fifth (5<sup>th</sup>) Business Day prior to the Scheduled Closing Date and the final Bank Repayment Amount shall be notified by the Seller to the Purchaser on the second (2<sup>nd</sup>) Business Day prior to the Scheduled Closing Date on the basis of a written notice provided by the lenders under the Finance Documents (“**Finance Parties**”) or the relevant facilities agents on their behalf.
- c.  The Seller shall, in form and substance as agreed with the Purchaser prior to execution thereof, deliver to the Purchaser no later than two (2) Business Day prior to the Scheduled Closing Date a pdf-copy of the executed letter from or an executed agreement with the Finance Parties and/or the security agent under the Finance Documents (such letter or agreement, the “**Release Letter**”) releasing and/or retransferring at Closing automatically with receipt of the Bank Repayment Amount, as the case may be, all Financing Collateral or, if and to the extent such release and/or retransfer is legally or technically not possible at Closing, as soon as it is legally and technically possible thereafter, subject only to payment of

the Bank Repayment Amount to one or more bank accounts as designated by the Financing Parties (or the relevant agents or security agents on behalf of the Finance Parties) in the Release Letter (together “**Finance Parties’ Bank Account**”).

## 8. **Payments and Default**

### a. Modes of Payment

Any payments by the Parties under or in connection with this Agreement shall be made in Euros and shall be made by irrevocable wire transfer of immediately available funds, free and clear of any costs, fees, taxes and other charges (other than costs, fees, taxes or other charges of the recipient’s bank). Any such payment shall be deemed to be made only upon the irrevocable and unconditional crediting of the amount payable (without deduction of any costs, fees, taxes or other charges other than those of the recipient’s bank) to the relevant bank account of the respective Party.

### b. Seller’s Bank Account

Any payments due and payable to the Seller under this Agreement shall be made into the following bank account, or such other bank account within the European Union as the Seller may notify to the Purchaser by a written notice (including e-mail) no later than five (5) Business Days prior to the due date of the respective payment (the “**Seller’s Bank Account**”):

[\*\*\*]

Please note that “EUR” is part of the 20 digit IBAN number and so needs to be included when wiring the funds-

### c. Purchaser’s Bank Account

Any payments due and payable to the Purchaser under this Agreement shall be made into the bank account within the European Union as the Purchaser has to notify to the Seller by a written notice (including e-mail) no later than five (5) Business Days prior to the due date of the respective payment (the “**Purchaser’s Bank Account**”):

### d. Default Interest

Any failure by a Party to make any payment hereunder on the date when it is due in accordance with this Agreement shall result in such Party’s immediate default, without any reminder being required, unless the respective Party provides reasonable evidence to the receiving Party that it has wired the respective payment on the due date and such amount is received at the respective recipient’s account (which is to be notified without undue delay by the receiving Party) within one (1) Business Day after the due date. Without prejudice to any other contractual or statutory rights of the other Party, in order to compensate the other Party for the damages incurred in case of default, the amount due shall bear default interest from and including the date that is one (1) Business Day after the date it became due until and excluding the date of actual receipt by the other Party at an interest rate of [\*\*\*].

### e. No Set Off; No Right of Retention

Except as expressly provided otherwise herein, neither Party shall be entitled (i) to set off (*aufrechnen*) any rights or claims it may have against any rights or claims the respective other Party may have under or in connection with this Agreement or (ii) to refuse to perform any obligation it may have under or in connection with this Agreement on the grounds that it has a

right of retention (*Zurückbehaltungsrecht*), unless the rights or claims to be set off or the right of retention (*Zurückbehaltungsrecht*) have been expressly and specifically acknowledged (*ausdrücklich anerkannt*) in writing by the respective other Party or have been established by a final decision (*rechtskräftig festgestellt*) of a competent court (*Gericht*) or arbitral tribunal (*Schiedsgericht*).

## 9. Closing Condition

### a. Closing Condition

The respective obligations of the Seller and the Purchaser to take the Closing Actions and to effect the Closing (as defined in Section 10.1 below) are subject to the satisfaction of the condition precedent (*aufschiebende Bedingung*) (the “**Closing Condition**”) that neither [\*\*\*] has given or threatened in writing to give or has been given notice of termination of their respective employment/service agreement with exocad Group GmbH both dated 12 February 2010 (as amended from time to time) prior to and including 31 March 2020.

### b. No Interference

The Purchaser and the Guarantor undertake not to, and shall procure (*steht dafür ein*) that their Affiliates will not, take any action, enter into any transaction or into any agreement to effect any transaction (including any merger or acquisition), that might result in a merger control filing obligation for a Party in relation to the Transaction or might otherwise reasonably be expected to make it more difficult to consummate, or otherwise prevent, delay or interfere with the consummation of the transactions contemplated under this Agreement.

### c. Waiver

The Purchaser may waive the fulfillment of the Closing Condition set forth in Section 9.1, in whole or in part, by written notice to the Seller. The effect of any waiver of the Closing Condition (in whole or in part) shall be limited to eliminating the need that the Closing Condition be satisfied and, unless otherwise agreed, shall not limit or prejudice any claims that the either Party may have against the respective other Party with respect to any circumstances relating to the respective Closing Condition.

## 10. Closing Date; Closing; Closing Actions

### a. Place and Time of Closing

The consummation of the Transaction (the “**Closing**”) shall occur at 10:00 hrs. CEST, on 1 April 2020, provided that none of the events set forth in Section 9.1 have occurred before that date, at the offices of Latham & Watkins LLP in Maximilianstraße 13, 80539 Munich, Germany, or at any other time, date or place mutually agreed upon in writing by the Seller and the Purchaser (the “**Scheduled Closing Date**”). The date on which the Closing actually occurs and on which the last of the Closing Action has taken place or has been duly waived shall be referred to as the “**Closing Date**”. “**Business Day**” means any day, other than Saturdays and Sundays, on which banks are open for general business in Frankfurt am Main (Germany), Munich (Germany), London (United Kingdom) and Luxembourg (Grand Duchy of Luxembourg) as well as in San José, California (USA).

### b. Closing Actions

On the Scheduled Closing Date, the Seller and the Purchaser (as the case may be) shall, in prompt succession, take, or cause to be taken, the following actions as set forth in

Section 10.2(a) to 10.2(h) simultaneously (*Zug um Zug*) in the sequence as set out below (the “**Closing Actions**”), provided that the documents to be exchanged in fulfillment of the Closing Actions are physically available to the legal advisors of the Parties on the Scheduled Closing Date at the place at which the Closing shall take place and those documents, of which agreed form versions are attached to this Agreement, are substantially in the form as attached hereto:

- (i) The Purchaser shall pay an amount equal to the Preliminary Purchase Price into the Seller’s Bank Account and such amount shall be finally credited to the Seller’s Bank Account;
- (ii) The Purchaser shall pay the Bank Repayment Amount on behalf of the relevant Group Companies into the Finance Parties’ Bank Account and the Bank Repayment Amount shall be finally credited to the Finance Parties’ Account;
- (iii) The Seller and the Purchaser shall execute the Closing Disclosure Letter, substantially in the form as attached in **Exhibit 10.2(c)**;
- (iv) The Seller shall deliver the Shareholder Loan Termination Agreement to the Purchaser;
- (v) The Seller shall deliver to the Purchaser duly executed Advisory Board Resignation Letters for each of [\*\*\*];
- (vi) The Purchaser shall procure that the Shareholders’ Resolution exocad Group GmbH is passed;
- (vii) The Purchaser shall pass the Shareholders’ Resolution Company; and
- (viii) The Purchaser shall, and shall cause the respective Group Companies to, pass the Shareholders’ Resolutions Subsidiaries.

c.  Closing Confirmation

Following the performance (or valid waiver in accordance with Section 10.4) of the Closing Actions, the Seller and the Purchaser shall execute a closing confirmation substantially in the form as attached in **Exhibit 10.3** (the “**Closing Confirmation**”) confirming the due fulfillment and/or waiver, as the case may be, of the Closing Condition and the due performance and/or waiver, as the case may be, of the Closing Actions. The legal effect of the Closing Confirmation shall be to serve as *prima facie* evidence that the Closing Condition has been fulfilled and/or duly waived and that the Closing Actions have been performed and/or duly waived. However, the execution of the Closing Confirmation shall not limit or prejudice any rights of the Parties arising under or in connection with this Agreement or under applicable law.

d.  Waiver of Closing Actions

The Seller and the Purchaser may waive the performance of any of the Closing Actions (or parts thereof) by way of written agreement, provided that (i) each of the Closing Actions pursuant to Sections 10.2(a), 10.2(b), 10.2(f), 10.2(g) and 10.2(h) may be unilaterally waived in writing by the Seller, and (ii) each of the Closing Actions pursuant to Sections 10.2(c), 10.2(d) and 10.2(e) may be unilaterally waived in writing by the Purchaser. Any such waiver shall not prejudice any rights or remedies which may be available to the waiving Party under or in connection with this Agreement and may include a requirement that the relevant Closing

Action (or parts thereof) shall be fulfilled as soon as possible, and the waiving Party shall be entitled to request such due performance after the Closing Date.

e.□ Consequences of Non-Satisfaction of the Closing Condition or Non-Performance of Closing Actions

(i) Termination Rights

The Seller shall be entitled to terminate this Agreement by way of rescission (*Rücktritt*) with effect for all Parties by giving written notice (including fax or e-mail) thereof to the Purchaser if either:

- (1) Closing has not taken place by 30 April 2020 (the “**Long Stop Date**”) at the latest, although the Closing Condition is fulfilled; or
- (2) the actual payment of the Preliminary Purchase Price by the Purchaser under this Agreement to be made on the Scheduled Closing Date pursuant to Section 10.2(a) is not made and the final receipt of such payment on the Seller’s Bank Account as set forth under Section 10.2(a) above has not occurred in full at the latest on the second (2<sup>nd</sup>) Business Day following the day when it was due in accordance with the terms of this Agreement.

(ii) Consequences of Termination

In the event of a termination of this Agreement in accordance with and except as otherwise provided in this Section 10.5, the Parties shall have no claims and liability against each other under this Agreement except that, unless the failure by the Seller to perform any of its obligations relevant for the Closing to occur under this Agreement at or prior to such date shall have resulted in the Closing not to occur:

- (1) the Purchaser shall pay to the Seller on the fifth (5<sup>th</sup>) Business Day after the rescission a lump-sum amount of EUR [\*\*\*] to compensate the Seller for any damages, costs and expenses incurred in connection with the transactions contemplated under this Agreement;
- (2) notwithstanding and in addition to the Seller’s claim under sub-paragraph (i) above, the Purchaser shall remain liable to the Seller for any damages (within the meaning of sections 249 *et seq.* BGB) incurred by the Seller and/or the Group as a result of the termination of this Agreement and/or the non-occurrence of Closing whereas the amount of the Lump-Sum Compensation paid to the Seller shall be set off against any such damages (*Anrechnung des pauschalisierten Schadensersatzes*); and
- (3) Sections 10.5(b) (*Consequences of Termination*), 19 (*Seller’s Remedies*), 20 (*Guarantor’s Undertaking*), 22 (*Confidentiality*), 23 (*Miscellaneous*), 24 (*Governing Law and Place of Jurisdiction*) and 25 (*Severability*) of this Agreement shall also survive and remain in full force and effect after a termination of this Agreement.

11. Seller’s Guarantees

a.□ The Parties have intensively discussed and negotiated if and to what extent the Seller shall be liable for defects relating to the Sold Shares, the Shareholder Loan Receivable, the Group and the Business and have decided to depart from the statutory warranties regarding a sale

(gesetzliche Kaufgewährleistung). Instead, they have agreed to replace the statutory system and provide for an independent catalogue of specific rights of the Purchaser individually agreed between the Parties as set forth in Sections 11, 12, 13, 14 and 15. Subject to the limitations of liabilities and the explicit restrictions and exclusions of certain legal rights agreed in this Agreement, the Seller represents and warrants to the Purchaser by way of an independent promise of guarantee (*selbständiges Garantieverprechen*) pursuant to section 311 paragraph 1 BGB that the statements set out in Sections 11.2 to 11.5 and in 11.6 and **Exhibit 11.6** (each a “**Seller’s Guarantee**” and together the “**Seller’s Guarantees**” and the Seller’s Guarantees pursuant to Sections 11.2 through 11.5 the “**Fundamental Guarantees**”) are true and correct as at the Signing Date and the Fundamental Guarantees also as of the Closing Date, unless a different date is set out in the relevant Seller’s Guarantee, whereby it is understood and agreed by the Parties that:

- (i) the Seller’s Guarantees and the Tax Warranties shall be the sole and exclusive guarantees (*i.e.* there shall be no other guarantees, confirmations or assurances) by the Seller under or in connection with this Agreement;
- (ii) the Seller’s Guarantees and the Tax Warranties are given on the grounds (*Geschäftsgrundlage*) that for the purpose of giving the Seller’s Guarantees and the Tax Warranties (i) the Seller may not have first-hand knowledge with respect to the subject matters of the Seller’s Guarantees set forth in Exhibit 11.6 or the Tax Warranties and, except as explicitly and specifically set out in Section 11.7, neither the Seller nor any of its managers (*gérant*), employees or advisors have independently examined or verified the underlying facts, matters, circumstances or statements made in such Seller’s Guarantees set forth in Exhibit 11.6 or the Tax Warranties or the Exhibits or the Schedules as prepared by the Company or any other Group Company and their management, but had rather to rely on documentation and information made available by the management and employees of the Group Companies as well as the reasonable assurances given by the management and employees of the Group Companies in the inquiry as set out in Section 11.7(b) and the related disclosures, provided that all of the foregoing shall not in any way change any liability of the Seller which it explicitly has under the provisions of this Agreement, and (ii) nothing in this Agreement shall imply a duty of the Seller (including its managers (*gérant*), employees or advisors) to make specific or other enquiries or researches of whatever nature, in particular beyond the inquiry as set out in Section 11.7(b) and (iii) the lack of (x) such first-hand knowledge, (y) the ability to independently verify such Seller’s Guarantees and such Tax Warranties, and (z) such examinations or verifications of the Seller, or the need to rely on reasonable assurances made by the management and employees of the Group Companies shall as such in no event be regarded as acting in a fraudulent manner (*keine Arglist aufgrund von Angaben “ins Blaue hinein” wegen unterbliebener Untersuchungen oder Überprüfungen des Verkäufers*), and the Purchaser waives any rights and/or claims against the Seller based on such legal grounds - other than for other intent or wilful misconduct of the Seller - to the largest extent legally permissible.

b.□ Power and Authority

- (i) On the Signing Date and on the Closing Date,
  - (1) the Seller has the full corporate and legal authority to enter into this Agreement and to carry out the Transaction. This Agreement has been duly

executed by or on behalf of the Seller and constitutes its binding obligation; and

- (2) There is, to the Seller's Knowledge, no action, suit, investigation or proceeding pending or threatened against the Seller before any Governmental Authority which challenges or seeks to prevent the Transaction.

**"Governmental Authority"** means for the purposes of this Agreement (i) any government, governmental or quasi-governmental authority, entity, ministry, department, commission, board, agency or instrumentality; (ii) any court, tribunal, or judicial or arbitral body, whether federal, state, provincial, local or foreign; and (iii) anybody exercising or entitled to exercise any administrative, executive, judicial, legislative, regulatory or taxing authority or power of any nature.

- (ii) On the Signing Date and on the Closing Date, no insolvency or similar proceedings have been, or to the Seller's Knowledge have been threatened to be, opened over the assets of the Seller. The Seller is not illiquid (*zahlungsunfähig*) or over-indebted (*überschuldet*) within the meaning of sections 16 *et seqq.* German Insolvency Code (*Insolvenzordnung* – "**InsO**") or any other comparable applicable insolvency laws of other applicable jurisdictions, in particular the Grand Duchy of Luxembourg.

c.□ Title to Sold Shares and others

On the Signing Date and on the Closing Date:

- (i) The Company has been duly established and is validly existing under the laws of Germany.
- (ii) The Seller is the sole legal and beneficial owner of the Sold Shares as set out in Section 2.1(c) and the Sold Shares are free from any third party rights and clear of any encumbrances (*Belastungen*) for the benefit of any third party, are validly issued and the contributions thereon (*Einlagen*) are fully paid up and have not been repaid or returned in whole or in part in any breach of Section 30 of the German Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*); there is no additional contribution obligation (*Nachschusspflicht*). Neither the Sold Shares nor any shares in any of the Subsidiaries are subject to any (i) trust arrangement (*Treuhandverhältnis*), sub-participation (*Unterbeteiligung*) or similar arrangement, (ii) pending transfer or other disposition (*Verfügung*), (iii) sale, contribution or other contractual arrangement creating an obligation to transfer or encumber or (iv) shareholder's resolution on the redemption (*Einziehung*) of such shares.
- (iii) The information in Preamble (A) and in Section 2.1 is complete and correct.
- (iv) The Sold Shares constitute the entire share capital of the Company, and the shares in the Subsidiaries as referred to in Exhibit 2.1(d) constitute the entire share or other equity capital of the Group Companies, all as set forth therein. Neither the Seller, nor any Seller's Affiliate nor any other third party has, with respect to any Sold Shares or such shares in Subsidiaries, any pre-emptive right (*Vorkaufsrecht*), right of first refusal (*Vorerwerbsrecht*), subscription right (*Bezugsrecht*), option right (*Optionsrecht*), conversion right (*Wandlungsrecht*) or similar right, or is party to an agreement that may result in any such rights. There are no agreements which require

the allotment, issue or transfer of any debentures in, or securities of, the Group Companies.

- (v) No Group Company is a party to any written and binding agreement relating to the acquisition or sale of, or a similar transaction involving, any interests in other legal entities or any business (*Betrieb*) or parts thereof (*Betriebsteile*), other than agreements which have already been fully performed by all parties thereto.
- (vi) Regarding any of the Group Companies there are no silent partnerships (*stille Beteiligung*), stock-appreciation rights, stock-based performance units, “phantom” stock rights or other agreements, arrangements or commitments of any character (contingent or otherwise) pursuant to which any person is or may be entitled to receive any payment or other value based on the revenues, earnings or financial performance, stock price performance or other similar attribute of any Group Company.

d.  Subsidiaries

On the Signing Date and on the Closing Date,

- (i) the Subsidiaries have been duly established and are validly existing under the laws of their respective jurisdiction or formation; and
- (ii) except under the Finance Documents, the shares in the Subsidiaries as set out in Exhibit 2.1(d) are free from any third party rights and clear of any encumbrances (*Belastungen*), are validly issued and the contributions thereon (*Einlagen*) are fully paid up and have not been repaid; there is no additional contribution obligation (*Nachschusspflicht*); and
- (iii) there are no agreements with or commitments towards third parties outside the Group, providing for the issuance of additional shares in any of the Subsidiaries.

e.  Ownership of the Shareholder Loans Receivable

On the Signing Date and on the Closing Date,

- (i) the information in Section 2.3 is complete and correct;
- (ii) the Seller is the sole and unrestricted owner of the Shareholder Loan Receivable; and
- (iii) the Shareholder Loan Receivable is free and clear of any third party rights.

f.  Operational Guarantees

**Exhibit 11.6** sets out further Seller’s Guarantees.

g.  Seller’s Knowledge

- (i) For the purpose of and in connection with this Agreement, “**Seller’s Knowledge**” means exclusively the actual and individual knowledge (*positive Kenntnis*) of the Seller’s managers (*gérant*) as set forth in **Exhibit 11.7** or another natural person managing director of the Seller at the relevant point in time (each a “**Knowledge Bearer**”) at the Signing Date (and for purposes of the Closing Disclosure Letter, at the date of the Closing Disclosure Letter) after the written (including by e-mail)

inquiry pursuant to Section 11.7(b). Whenever there is a reference to “subject to Seller’s Knowledge” this shall be read and understood as “to Seller’s Knowledge”.

Seller’s Knowledge shall be determined

- (1) for each Knowledge Bearer separately, i.e., there shall be no attribution of knowledge between the Knowledge Bearers; and
- (2) without the attribution of any actual knowledge of any person, other than in the course of the inquiry as provided to [\*\*\*] – or another natural person managing director of the Seller – as one of the Knowledge Bearers by an Inquired Individual pursuant to Section 11.7(b); and
- (3) without the attribution of any deemed knowledge of any person.

Any liability of the Seller with regard to constructive knowledge or with regard to information available in any files, documents or correspondence of the Group or the Seller or any of the Knowledge Bearers, but not actually known by the respective Knowledge Bearer (*aktenmäßig verfügbar, aber nicht positiv bekannt*), shall be excluded and waived and therefore do not form part of Seller’s Knowledge.

- (ii) No earlier than one (1) calendar day prior to the Signing Date and one (1) calendar day prior to the Closing Date for purposes of the preparation and issuance of the Closing Disclosure Letter, [\*\*\*] – or another natural person managing director of the Seller – as one of the Knowledge Bearers discussed (in case of the Closing Disclosure Letter, will discuss) the Seller’s Guarantees and the Tax Warranties with each of [\*\*\*] (each an “**Inquired Individual**”) and inquired them, on the basis of a (written) document providing the Seller’s Guarantees and the Tax Warranties and the Exhibits and Schedules thereto, whether to the individual actual knowledge of each of the Inquired Individuals at the time of their inquiry by [\*\*\*] – or another natural person managing director of the Seller – there are any facts or circumstances that would render the Seller’s Guarantees and the Tax Warranties which are qualified “to the Seller’s Knowledge” or “subject to Seller’s Knowledge” as being not true or incorrect as at the respective date of such inquiry. Notwithstanding the provisions set forth in Section 14.9, the Parties agree that the information explicitly provided by the Inquired Individuals to [\*\*\*]– or another natural person managing director of the Seller – during such inquiry shall be attributable to the Knowledge Bearers’ actual knowledge as at the relevant date as set forth above.

“**Closing Disclosure Letter**” shall mean a disclosure letter substantially in the form as attached in Exhibit 10.2(c), according to which the Seller warrants to the Purchaser by way of an independent promise of guarantee irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) in accordance with section 311 para. 1 BGB that, to the Seller’s Knowledge, the statements set forth in Sections 11.2 through 11.5, Section 15.2 and in Exhibit 11.6 are correct as of the date of the Closing Disclosure Letter, with the understanding that the Seller shall disclose any facts and circumstances which have occurred between the Signing Date (excluding) and (including) the date of the Closing Disclosure Letter and which had resulted in a breach of the Tax Warranties in Section 15.2 and/or the Seller’s Guarantees in Sections 11.2 through 11.5 and/or in Exhibit 11.6 had they been given as at the Closing Date. For the avoidance of doubt, the Closing Disclosure Letter shall not establish any rights of the Purchaser to rescind or challenge or contest or nullify this Agreement and shall not extent the liability of the Seller towards the Purchaser under

this Agreement beyond what has been explicitly agreed between the Parties in this Agreement.

- h.□ The Seller does not make any representations, warranties or guarantees regarding the Sold Shares, the Shareholder Loan Receivable, the Group Companies and/or the Business other than the Seller's Guarantees and the Tax Warranties as set forth and based on the terms of this Agreement. The Purchaser hereby expressly confirms and agrees to acquire the Sold Shares, the Shareholder Loan Receivable, the Group Companies and the Business based upon Purchaser's own inspection, examination and evaluation/assessment with respect thereto, including the due diligence investigation with assistance of the Purchaser's Representatives as was usual in the context of an auction process (as defined below) (the "**Due Diligence**"), without reliance upon any express or implied representations, warranties or guarantees of any nature made by the Seller except for the Seller's Guarantees and the Tax Warranties. Without limiting the generality of the foregoing, the Purchaser acknowledges that the Seller gives no representation, warranty or guarantee with respect to:
- (i) any projections, estimates or budgets delivered or made available to the Purchaser or its Affiliates or any of their respective (managing) directors, employees, agents, advisors or other representatives ("**Purchaser's Representatives**") of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) or the future business operations of the Group Companies; or
  - (ii) any other information or documents made available to the Purchaser's Representatives with respect to the past, current or future business or the Group, except as expressly set forth in the Seller's Guarantees and the Tax Warranties.

## 12. Seller's Covenants

### a.□ Conduct of Business

During the period from the Signing Date until the Closing, except for the transactions disclosed and described in reasonable detail in **Exhibit 12.1-1** or for any transactions contemplated by or any facts or events explicitly disclosed in this Agreement, the Seller shall

- (i) in its capacity as shareholder of the Company, if and to the extent permitted by mandatory law, instruct the Company by passing a shareholder's resolution of the Company, substantially in the form as attached hereto as **Exhibit 12.1□(a)**,
- (ii) with respect to the Subsidiaries, if and to the extent permitted by mandatory law, exercise its rights as shareholder of the Company to instruct the Subsidiaries by causing the Company in its capacity as direct shareholder of exocad Holding GmbH to pass a shareholder's resolution of exocad Holding GmbH, substantially in the form as attached hereto as **Exhibit 12.1□(b)**,

not to take any of the following actions without the Purchaser's prior consent (e-mail sufficient), which shall not be unreasonably withheld, conditioned or delayed, and deemed to be granted if the Purchaser does not object to the proposed action within five (5) Business Days after having received a duly substantiated written (e-mail sufficient) request by the Seller describing the relevant facts and circumstances:

1. adopt any domination, profit and loss transfer or any other enterprise agreements (*Unternehmensverträge*) within the meaning of sections 291 and 292 of the German

Stock Corporation Act (*Aktiengesetz*) or similar corporate agreements under the laws of other jurisdictions, in each case involving any Group Company;

2. enter into any merger, split-off, spin-off, conversion or any other restructuring, recapitalization or reorganization, in particular under the German Transformation Act (*Umwandlungsgesetz*) or any equivalent provision under other applicable laws, in each case involving any Group Company;
3. (i) redeem any shares in any of the Group Companies or (ii) liquidate any of the Group Companies or (iii) elect new auditors for any of the Group Companies;
4. appoint, dismiss or execute any changes to the service or employment agreement of any (aa) (managing) director, (bb) officer or (cc) employee, in case of (bb) and (cc) with an annual gross base salary of EUR 100,000 (in words: one hundred thousand Euros) or more or an equivalent amount in a foreign currency;
5. introduce any (new) monetary benefits for any (managing) director, officer or employee of any Group Company resulting in cost and liabilities in an aggregate amount in excess of EUR 500,000 (in words: five hundred thousand Euros) per annum;
6. elect any auditors for any Group Company for the financial year 2020;
7. sell, transfer, create any encumbrances on or otherwise dispose of any Material IP or Proprietary Software or (i) terminate or (ii) sell any licenses, in each case of (i) and (ii) outside the ordinary course of business of the Group;
8. incur any new financial indebtedness (i) for borrowed money in excess of EUR 100,000 (in words: one hundred thousand Euros) in the individual case and EUR 500,000 (in words: five hundred thousand Euros) in the aggregate, in each case other than (aa) among Group Companies and (bb) in the ordinary course of business consistent with past practice or (ii) with the Seller or any Seller's Affiliate;
9. pay or otherwise discharge, or provide security for, any material liabilities (whether matured, unmatured, asserted or unasserted, contingent or otherwise), other than (i) the regular servicing of any debt under or pursuant to the Finance Documents, (ii) the discharge of trade accounts payable, both in the ordinary course of business and (iii) security granted, paid or otherwise discharged among Group Companies;
10. terminate any Material Agreement, except for cause in case of a material breach by a party of a Material Agreement other than a Group Company;
11. enter into any sale, assignment, lease or other form of disposal, in each case outside the ordinary course of business, of any fixed assets (*Anlagevermögen*) other than transactions among Group Companies, for a value exceeding EUR 50,000 (in words: fifty thousand Euros) in the individual case and EUR 100,000 (in words: one hundred thousand Euros) in the aggregate;
12. cancel, settle or waive any claim or pending or threatened litigation or arbitration involving the Group Company exceeding EUR 250,000 (in words: two hundred and fifty thousand Euros) in the individual case and EUR 500,000 (in words: five hundred thousand Euros) in the aggregate; or
13. enter into any written binding agreement to do any of the foregoing.

b.□ No Leakage

During the period from the beginning of the calendar day following the Effective Date until the Closing, the Seller shall procure and is responsible that no Leakage, other than Permitted Leakage, occurs.

“**Leakage**” shall mean any of the following actions or matters carried out or existing or agreed to be carried out (in each case up to Closing) in any particular case to or for the benefit or account of (i) the Seller, or (ii) an Affiliate of the Seller, (iii) any individual person, who is a relative (*Angehöriger*) within the meaning of Section 15 of the German Tax Code (*Abgabenordnung – AO*) of any shareholder of the Seller, (iv) any individual person, who is a relative (*Angehöriger*) or related legal entity, in each case within the meaning of section 138 German Insolvency Code (*Insolvenzordnung*) of any shareholder of the Seller or (v) any entity under Control of any person pursuant to (iii) or (iv), or (vi) any entity acting as manager or investment advisor of any of the foregoing persons (in each case excluding the Group Companies) (collectively the “**Seller’s Affiliates**”):

14. any dividend or similar distribution (whether in cash or in kind) declared, paid or made by any Group Company;
15. any cost, expense, bonus, fees or commissions to any advisor, broker or finder, or any transaction or exit bonuses to any (managing) director or employee of the Group Companies in connection with the Transaction or the execution of this Agreement, in each case, paid or reimbursed by a Group Company;
16. any return of capital (whether by reduction of capital or redemption or purchase of shares or otherwise) by any Group Company or any amount payable on the repurchase, redemption or reduction of any share capital in any Group Company;
17. any assumption, fulfilment or issuance of any guarantees or securities for any obligation of or for a liability legally or commercially owed by a Seller and/or Seller’s Affiliate;
18. any asset transfer, purchase or disposal between a Group Company and the Seller or any of the Seller’s Affiliates other than in the ordinary course of a trading activity and at arm’s length terms;
19. any lending or borrowing between a Group Company and the Seller or any of the Seller’s Affiliates and any increase or reduction thereof; and
20. any binding agreement to do any of the foregoing, and
21. any taxes arising out of or in connection with any of the above,

provided that, for the avoidance of doubt, (i) any Permitted Leakage and (ii) actions or matters under (a) through (h) above to or for the benefit of a Group Company and/or any third party which is not a Seller or a Seller’s Affiliate shall not constitute Leakage and shall not be prohibited.

“**Permitted Leakage**” shall mean any distribution, payment, cost, action, matter or transaction

1. specifically and explicitly provided for in this Agreement, such as, e.g. the Shareholder Loan Receivable and its repayment;

2. in relation to which the Group Companies have received an arm's-length consideration, benefit or service or the Group Companies have otherwise been adequately compensated or reimbursed for and all of which are exclusively and finally listed in **Exhibit 12.2(b)**;
3. resulting in or qualifying as internal administration or overhead costs of the Group Companies incurred in connection with the preparation of the Transaction;
4. approved by the Purchaser in writing after the date hereof (including fax or e-mail);
5. made in fulfilment of management service or employment agreements entered into by the Group Companies and/or made towards directors, managers or managing directors of the Group Companies and/or the members of the Advisory Board or any other corporate body under the relevant agreements (advisory/service/employment) existing as of the date hereof and exclusively and finally listed in **Exhibit 12.2(e)**; or
6. disclosed in **Exhibit 12.2(f)**.

In case of a breach of the Seller's Covenant pursuant to this Section 12.2, following Closing, the Seller shall pay to the relevant Group Companies or, at the Purchaser's election, the Purchaser on a Euro-for-Euro basis a sum equal to the amount of Leakage received by the Seller or any of the Seller's Affiliates.

c.  Related Party Agreements

Except as otherwise set forth on **Exhibit 12.3**, prior to the Closing, the Sellers shall cause all Related Party Agreements to be terminated and settled and all liabilities of the Group Companies thereunder to be fully discharged at the expense of the Seller as of no later than immediately prior to the Closing.

d.  No Other Seller's Covenants

The Seller's obligations under Section 12.1 through 12.3 (collectively the "**Seller's Covenants**") shall lapse (*erlöschen*) as of the Closing. The Seller's Covenants shall be the sole and exclusive covenants for the respective period of time (*i.e.* there shall be no other covenants) by the Seller under or in connection with this Agreement.

### 13. Remedies

a.  Self-Contained Regime

The Parties hereby expressly exclude the application of sections 434 through 453 BGB as well as any and all statutory warranty claims thereunder and hereby agree that the Seller's Guarantees in particular do not qualify as guarantees (*Beschaffheitsgarantien*) within the meaning of sections 443 and 444 BGB, and that the consequences of any breach of the Seller's Guarantees, the Seller's Covenants and of any other obligations, covenants, agreements, undertaking by or claim against the Seller under or in connection with this Agreement shall exclusively be governed by the terms and conditions of this Agreement. Furthermore, the Parties confirm that the limitations to the Seller's Guarantees and Seller's Covenants as specified in this Section 13 or otherwise in this Agreement shall form an integral part of the Seller's Guarantees and the Seller's Covenants, and that the Seller's Guarantees and the Seller's Covenants are only given subject to such provisions and limitations.

b. Administration of Purchaser Claims

7. The Purchaser undertakes to notify the Seller as to any potential breach of any of the Seller's Guarantees or Seller's Covenants or any other obligation, covenant, agreement, undertaking by or claim against the Seller under or in connection with this Agreement (the "**Purchaser Claim**") without undue delay, but in any event within a period of three (3) weeks as from the Purchaser's or the Purchaser's Representatives' respective actual knowledge of the relevant facts or circumstances relating to a Purchaser Claim in order to preserve any rights and claims under this Agreement, provided, however, that any failure to duly notify the Seller shall not forfeit the Purchaser's Claim, but the Purchaser shall only be forfeited from making a claim for an increase in damages caused by such non-compliance; provided that such notice (the "**Claim Notice**") shall state the nature of the Purchaser Claim in reasonable detail, including the amount involved to the extent such amount can already be reasonably determined at the time when such notice is given.
8. In case of any Purchaser Claim, the Seller may attempt to remedy the notified potential breach (alleged to give rise to the Purchaser Claim). If the Seller fails to remedy the potential breach within a period not to exceed one (1) calendar month after the Seller has received a Claim Notice or the potential breach cannot be remedied or the Seller has finally refused towards the Purchaser in writing to remedy the breach, the Purchaser shall be entitled to claim from the Seller compensation of any Losses suffered by the Purchaser or the Group Companies in accordance with this Agreement.
9. Without prejudice to the validity of the Purchaser Claim, the Purchaser shall allow, and shall procure (*steht dafür ein*) that the Group Companies allow, the Seller and its Seller's Representatives to investigate the matter and circumstances alleged to give rise to such Purchaser Claim, and whether and to what extent any amount is payable in respect of such Purchaser Claim, and, for such purpose, the Purchaser shall give, and shall procure (*steht dafür ein*) that the Group Companies give, in each case at their own cost such reasonably requested information and assistance, including reasonable access to the Purchaser's and the Group Companies' premises and personnel during normal business hours and including the right to examine and copy or photograph any assets, accounts, documents and records as the Seller and its Seller's Representatives may reasonably request. This provision shall also apply in case of court or arbitration proceedings pending among the Parties in connection with this Agreement, provided, however, that in such case the Seller shall have to bear the Group Companies' costs and expenses for any such assistance and access.

c. Calculation of Damages

[\*\*\*].

d. Consideration of Advantages

10. Any liability of the Seller for a Purchaser Claim shall be excluded if and to the extent:
  - i. the amount of the Purchaser Claim is actually recovered under insurance policies or claims against third parties (with the Purchaser hereby undertaking to pursue any such insurance claim or claim against third parties with the care of a prudent business man and to the extent legally possible, but always being permitted to take the interest of the Business, in particular customer and

supplier relations, into account) or would have been recovered if the insurance policies of the Group Companies in effect prior to the Closing Date had been maintained after the Closing;

- ii. the Purchaser Claim arises, or the amount of the Purchaser Claim is increased, as a result of changes in circumstances or changes in the legal position (including changes in law, statute, ordinance, rule, regulation, general accounting policies or administrative practice of Governmental Authorities) which occurred after the Signing Date;
  - iii. the Purchaser Claim is based on the same circumstances or facts that have already been considered or claimed in relation to any other claim of the Purchaser against the Seller under this Agreement (no double dip);
  - iv. the matter to which the Purchaser Claim relates has explicitly been taken into account in the 2019 Financial Statements as a write-off (*Abschreibung*), value adjustment (*Wertberichtigung*), liability (*Verbindlichkeit*) or provision (*Rückstellung*), not including however, general adjustments or provisions made for the relevant risk category (e.g. *Pauschalwertberichtigungen, Pauschalrückstellungen*);
  - v. either the Purchaser or any of the Purchaser's Representatives, or (following the Closing Date) any of the Group Companies or any of their respective (managing) directors, employees or other representatives have aggravated (*erhöht*) such Purchaser Claim or any Losses resulting therefrom or failed to mitigate Losses pursuant to section 254 BGB; or
  - vi. in case of Purchaser Claims other than Exempted Claims, the Purchaser has failed to comply with any of its covenants, obligations and other commitments under Section 13.2 or Section 13.6 or Section 17.1, in which case, however, only such increase of Loss or similar shall be forfeited which is actually caused by such non-compliance.
11. Any payments actually made by the Seller in order to discharge a liability, which is or becomes excluded or reduced under this Section 13.4, shall be refunded by the Purchaser to the Seller without undue delay upon the notification of the Purchaser by the Seller thereof.

e.□ Effects of Knowledge

12. A Purchaser Claim cannot be raised against the Seller, and the Seller's liability shall be excluded if and to the extent the facts or circumstances giving rise to a Purchaser Claim are known on the Signing Date by the Purchaser or any of the Purchaser's Representatives based on the standard of a person that is aware of the legal framework, laws and regulations applicable to the Business and the Group Companies and that has performed a professional due diligence exercise customary for transactions of the size and kind as the Transaction.
13. The Purchaser shall, other than with respect to Tax Warranties pursuant to Section 15, be deemed to have positive knowledge of all matters explicitly set out in this Agreement, including its Exhibits and Schedules, as well as all matters Fairly Disclosed in:

- vii. other than with respect to Exempted Claims, the written statements (including in e-mails) made, and written answers given (including in e-mails), to the Purchaser and/or the Purchaser's Representatives during the question & answer (Q&A) process instituted with respect to the Due Diligence and written correspondence (including in e-mails) with any of (A) the Group's representatives (including the Subsidiaries' (managing) directors, employees, advisors and counsel) and/or (B) the Seller and/or the Seller's Representatives, including in the course of the negotiation of this Agreement; or
- viii. other than with respect to Exempted Claims, in the electronic data room [\*\*\*] The contents of the Data Room has been set aside in electronic form on a USB memory stick (the "**USB Stick DR**"). One (1) copy of the USB Stick DR have been handed over to the Seller, two (2) copies of the USB Stick DR has been handed over to the Purchaser and two (2) copies of the USB Stick DR have been handed over to the acting notary on the Signing Date, in each case together with a freeze letter from the provider of the Data Room, provided, however, that this Section 13.5(b)(ii) shall not apply to Exempted Claims. The Parties hereby instruct the acting notary to keep these USB Sticks in custody for a period of five (5) years after the Closing and grant each Party access to these USB Sticks, unless the Seller and the Purchaser jointly instruct the acting notary otherwise in writing. The acting notary shall only release the USB Sticks in his custody to the Parties (one USB Stick to the Purchaser and one USB Stick to the Seller) upon the joint written request of the Seller and the Purchaser or upon expiry of the aforementioned custody period, but each Party may at its own cost request at any time prior thereto a copy of such USB Stick. The notary bears no obligations for proper storage and readability of the USB Sticks.

For the purposes of this Agreement, "**Fairly Disclosed**" shall mean disclosed in a manner/description and at a place in the Data Room that is not misleading and in such reasonable detail that the relevant circumstances, facts and/or risks could be identified by an experienced and professional (A) purchaser and/or (B) advisor, in each case by applying the standard of care of a prudent businessman (*ordentlicher Geschäftsmann*) that has been advised by appropriately experienced professional advisers for a transaction of the size and kind of the Transaction.

f.  Cooperation regarding Third Party Claims

- 14. In case of circumstances that may give rise to a Purchaser Claim and which relate to court rulings, awards or decisions of any arbitral tribunals or public orders issued or third party claims raised against the Purchaser or any of the Group Companies (collectively the "**Third Party Claim**"), any liability of the Seller shall be subject to the Purchaser's full and strict compliance with the obligation to procure (*steht dafür ein*) that, in each case to the extent legally permitted and permissible for the Purchaser pursuant to the terms of the W&I Insurance,
- ix. the Seller shall without undue delay be properly informed and provided with all relevant documentation and assistance by the Purchaser regarding any judgment, ruling, decision, order, claim or proceeding which may give rise to a Third Party Claim (including copies of those documents that relate to or trigger a certain time limit (*fristbezogene Dokumente*));

- x. the Seller shall be given the opportunity to comment on, participate in and review any reports, audits, meetings and other measures or actions taken in respect of a Third Party Claim, provided, however, that the Seller has to comply with the Purchase's reasonable timing suggestions in any such respect;
  - xi. no admission of liability, disposal, settlement, compromise or binding declaration shall be made by or on behalf of the Purchaser or any Group Companies *vis-à-vis* any court, arbitral tribunal, public authority or third party regarding a Third Party Claim without the prior written instruction or written consent (including fax and e-mail) of the Seller;
  - xii. such measures or actions (not including, however, the selection of the advisors to be retained) shall be taken or omitted as the Seller may instruct to avoid, defend, dispute, appeal, resist, contest, compromise, settle or otherwise administer such Third Party Claim;
  - xiii. if legally permitted and requested by the Seller, the Group Companies give the Seller the opportunity to defend or settle the Third Party Claim at the Seller's sole discretion, provided, however, that the Seller shall be obliged to take the interest of the Business, in particular customer and supplier relations, into account. The Seller shall insofar be entitled to participate in and direct all negotiations and correspondence with the relevant third party and to appoint and instruct legal counsel to act on behalf and as representative of the Group Companies (and the Purchaser shall procure (*steht dafür ein*) that the Group Companies issue any power of attorney as may be required for such purpose).
15. If the Seller is not in breach of a Seller's Guarantee or Seller's Covenant or any other obligation, covenant, agreement, undertaking or claim under or in connection with this Agreement relating to a Third Party Claim based on an enforceable arbitral award in accordance with Section 24.2 below or if the respective Third Party Claim has been withdrawn by such third party, any costs and expenses reasonably incurred by such Seller in connection with the defense of such alleged Third Party Claim shall be borne by the Purchaser as set forth in the enforceable arbitral award. The failure of the Purchaser to fully comply with its obligations under this Section 13.6 shall release the Seller from its obligations and liabilities with regard to any Purchaser Claim in respect of such Third Party Claim, if and to the extent such non-compliance has caused the Third Party Claim or increased the amount under or pursuant to the Third Party Claim.
16. This Section 13.6 shall not apply if the Third Party Claim results in a claim of the Purchaser under the W&I Insurance taken out by the Purchaser, and the Insurer under Purchaser's W&I Insurance decides to take over the defense against such Third Party Claim. The preceding sentence shall not apply with regard to Third Party Claims that might reasonably result in a breach of a Fundamental Guarantee; provided that in case the Purchaser receives conflicting instructions from the Seller and the Insurer, the Seller and the Insurer shall endeavour to come to a joint position as to the relevant instruction and if they fail to do so, the Seller or the Insurer shall have the final instruction right, whoever has the greater liability exposure from the respective Third Party Claim. The Purchaser, if and to the extent exercising its discretion, shall act as prudent businessmen (*ordentlicher Geschäftsmann*) using reasonable commercial efforts to avoid and mitigate damages; in such case, the Purchaser shall be obliged,

before exercising its discretion, to (i) provide the Seller with the instructions received from the Insurer and (ii) take into consideration the arguments of both the Seller and the Insurer.

g.  No Gross-up

The Seller shall in no event owe to the Purchaser any gross-up for Taxes falling due in connection with any compensation for any Losses received from the Seller.

h.  Adjustment of Share Purchase Price

Any payment by the Seller or the Purchaser or the Guarantor under this Agreement for damages or otherwise shall be deemed to be and treated as a subsequent adjustment of the Share Purchase Price.

**14. Limitation of the Seller's Liability**

a.  All Purchaser Claims shall be time-barred (*verjährt*) [\*\*\*] after the Closing Date, except for:

17. all claims arising from a breach of any of the Fundamental Guarantees which shall be time-barred (*verjährt*) on [\*\*\*]; and
  18. all claims arising as a result of a willful (*vorsätzlich*) or fraudulent (*arglistig*) breach of any of the Seller's obligations under this Agreement, which shall be time-barred (*verjährt*) in accordance with the statutory provisions set forth in sections 195, 199 BGB; and
  19. all claims pursuant to Section 15, which shall be time-barred (*verjährt*) as set forth therein,
- (collectively the "**Time Limitations**").

b.  Suspension of Purchaser Claims

The Time Limitations for any Purchaser Claim shall be suspended (*gehemmt*) pursuant to section 209 BGB only by commencing of arbitral proceedings in accordance with Section 24.2 by the Purchaser pursuant to section 204 para. 1 no. 11 BGB. Section 203 BGB shall not apply.

c.  All Purchaser Claims

20. arising as a result of a willful (*vorsätzlich*) or fraudulent (*arglistig*) breach of the Seller's obligations under this Agreement;
21. resulting from a breach of specific performance to transfer the Sold Shares and/or the Shareholder Loan Receivable to the Purchaser under this Agreement (*Erfüllungsanspruch*); and
22. resulting from a breach of a Seller's Guarantee contained in Sections 11.2 (*Power and Authority*) and 11.3 (*Title to Sold Shares*) and 11.4 (*Subsidiaries*) as well as 11.5 (*Ownership of Shareholder Loan Receivables*); and
23. resulting from a breach of the Seller's Covenant pursuant to Section 12.1 (*Conduct of Business*) or Section 12.2 (*No Leakage*);

24. resulting from a breach of the Seller's specific obligation towards the Purchaser explicitly provided for
- xiv. pursuant to Sections 6.1, 6.2, 6.4, 6.6, 6.7(c), 6.7(d) (if Seller is the retaining Party), 6.8 and 6.10;
  - xv. pursuant to Sections 7.2 and 7.3;
  - xvi. pursuant to Section 8;
  - xvii. pursuant to Section 10.2(c), 10.2(d) and 10.2(e);
  - xviii. pursuant to Section 12.3;
  - xix. pursuant to Sections 21(b) and 21(d); and
  - xx. pursuant to Section 22.

are collectively referred to as the "**Exempted Claims**".

d.  De Minimis Amount; Deductible

Subject to any other limitation or exclusion of Seller's liability under this Agreement, the Seller shall only be liable for Losses resulting from any Purchaser Claim if and to the extent that such Losses exceed an amount of [\*\*\*] in the individual case (provided that a series of claims based on similar facts or circumstances is considered to be one such claim) and the aggregate amount of all Losses resulting from individual Purchaser Claims exceeds an amount of [\*\*\*], in which case only the amount of Losses exceeding the Deductible shall be recoverable (*Freibetrag*), subject to the other provisions of this Section 14.

The limitations of this Section 14.4 shall not apply to any Exempted Claims.

e.  Liability Cap

The Seller's aggregate liability for any and all claims of the Purchaser under or in connection with this Agreement, including for breaches of any of the Seller's Guarantees, Tax Warranties, or any other obligation, covenant, indemnity, agreement, undertaking or any claim under Section 15 or claim under or in connection with this Agreement, except for Purchaser Claims as a consequence of Exempted Claims and/or breaches thereof, shall not exceed an amount of EUR [\*\*\*]. The Seller's overall liability under or in connection with this Agreement, including for Exempted Claims and/or breaches resulting therein, but except for claims of the Purchaser arising as a result of fraudulent (*arglistige*) or willful (*vorsätzliche*) breaches of the Seller's obligations under or in connection with this Agreement, shall in no event exceed an aggregate amount of 100% (in words: one hundred per cent) of the Purchase Price.

f.  No other Remedies

The remedies which the Purchaser may have against any of the Seller under or in connection with this Agreement, including for breaches of any of the Seller's Guarantees and Tax Warranties or any other claim under Section 15, Seller's Covenants or any other obligation, covenant, agreement, undertaking or claim under or in connection with this Agreement, shall solely be governed by this Agreement and shall be the exclusive remedies available to the Purchaser. If and to the extent permitted by law, any claims and remedies other than those

explicitly provided for in this Agreement, regardless of their nature, amount or legal basis, are hereby expressly excluded and waived by the Purchaser, such waiver hereby being accepted by the Seller.

g. □ W&I Insurance

The Purchaser declares that it intends to take out, at its free discretion and choice, a warranty and indemnity insurance under an insurance policy on or about the date hereof (the “**W&I Insurance**” and the relevant insurance provider as therein identified, the “**Insurer**”) to obtain warranty and indemnity insurance coverage for the Seller’s Guarantees, the Tax Warranties and the Purchaser’s claims under Section 15. The Purchaser irrevocable and unconditionally agrees that, notwithstanding any other provision of this Agreement and regardless of whether the Purchaser actually takes out an effective W&I Insurance the following shall apply (Exhibit 14.7 contains a copy of the executed W&I Insurance):

25. It is hereby acknowledged and agreed by the Parties that any liability of the Seller for any claims of the Purchaser against the Seller under or in connection with this Agreement, including for breaches of any of the Seller’s Guarantees, Tax Warranties or any (other) claim under Section 15 or any other indemnities, covenants, agreements or undertakings set forth in this Agreement, except for Purchaser Claims as a consequence of Exempted Claims and/or breaches by the Seller resulting therein, in excess of the Liability Cap shall be excluded and be [\*\*\*]; with the clarification that this shall in no event affect a liability on the basis of a reason (*Haftung dem Grunde nach*) [\*\*\*] (the “**Liability Exclusion**”). Consequently, the Purchaser’s sole recourse for any claims under or in connection with this Agreement, including for breaches of any of the Seller’s Guarantees, Tax Warranties or any claim under Section 15 or any other indemnities, covenants, agreements or undertakings set forth in this Agreement, except for Purchaser Claims as a consequence of Exempted Claims and/or breaches resulting therein, beyond the Liability Cap shall, to the extent applicable, be only against the Insurer if the Purchaser has taken out a W&I Insurance; otherwise, the Purchaser acknowledges and agrees that no further recourse is available to the Purchaser against the Seller for any claims under or in connection with this Agreement beyond the Liability Cap, except for Purchaser Claims as a consequence of Exempted Claims and/or breaches resulting therein. The Purchaser expressly acknowledges, and the other Parties agree, that the risk of non-implementation of the W&I Insurance as well as the validity and collectability risk in respect of the W&I Insurance and hence, the risk to successfully claim and/or recover from the Insurer any Losses of the Purchaser under or in connection with this Agreement, including in connection with any breaches of any of the Seller’s Guarantees, Tax Warranties or any (other) claim under Section 15 or any other indemnities, covenants, agreements or undertakings set forth in this Agreement, except for Exempted Claims and/or breaches resulting therein, shall solely and irrevocably rest with the Purchaser.
26. If and to the extent that any Purchaser Claim in connection with a breach of a Fundamental Guarantee and/or any other claim of the Purchaser which is not already covered by the Liability Exclusion as set forth in lit. (a) above is subject to a valid and collectible claim of the Purchaser against the Insurer under the W&I Insurance, any liability of any Seller for such claim shall also be excluded, provided, however, that the Purchaser has no obligation to try to recover any such claim under the W&I Insurance coverage.

27. The Purchaser shall procure (*steht dafür ein*) that under the W&I Insurance the Insurer shall not be entitled to subrogate against the Seller except if the payment under the W&I Insurance or any loss as defined in the W&I Insurance arises out of the Seller's fraud (*Arglist*) or willful misconduct (*Vorsatz*). If the Insurer makes any claims against the Seller under or in connection with the W&I Insurance or otherwise, the Purchaser shall indemnify and hold harmless the Seller from any damages, losses and liabilities resulting therefrom, including all out-of-pocket costs and expenses, legal fees and expenses and disbursements and Taxes resulting from or arising in connection therewith, except the claim arises out of the Seller's fraud (*Arglist*) or willful misconduct (*Vorsatz*).
28. The Purchaser hereby undertakes and covenants to the Seller that no amendments to or waivers of, the subrogation provisions or the rights of third party provisions of the W&I Insurance will be made without the prior written consent of the Seller to the extent it would relate to the Seller or its liability.

For the avoidance of doubt, should the Purchaser decide not to take out a W&I Insurance, the Purchaser hereby confirms to the Seller that the liability regime as agreed between the Parties herein shall remain unaffected.

#### h.□ Exclusion of Statutory Liability Regime

Without limiting the generality of Section 14.6, in particular, any right of the Purchaser to lower the Purchase Price or any portion thereof (*Minderung*), to withdraw (*Rücktritt*) from this Agreement or to require the winding up of the Transaction contemplated hereunder on any other legal basis (*e.g.* by way of *großer Schadensersatz* or *Schadensersatz statt der ganzen Leistung*), any claims for breach of pre-contractual obligations (*culpa in contrahendo*) – it being clarified in particular that it is agreed that such claims may not and cannot be based on any alleged requirement of the Seller (or for any person whose knowledge is attributed, or purported to be attributed, to the Seller) under or in connection with this Agreement to undertake investigations or inquiries in respect of Seller's Guarantees and Tax Warranties (whether qualified by Seller's Knowledge or not) as it is understood and agreed that the Seller's Guarantees and Tax Warranties and any Purchaser Claim shall solely be governed by the terms of this Agreement and that the Purchaser Claim shall solely entail such consequences as expressly provided for in this Agreement in respect of the Purchaser Claim, including but not limited to claims arising under sections 241 para. 2, 311 para. 2 and 3 BGB or ancillary obligations (*Nebenflichten*), including but not limited to claims arising under sections 241 para. 2, 280 BGB, or based on the principles of disturbance of the fundamentals of the transaction (*Störung der Geschäftsgrundlage*), or ancillary obligations (*positive Forderungsverletzung*) are hereby expressly excluded and waived (*verzichtet*) by the Purchaser, such waiver hereby being accepted by the Seller.

If and to the extent the exclusion of claims based on the principles of disturbance of the fundamentals of the transaction (*Störung der Geschäftsgrundlage*) is, despite the risk allocation agreed upon between the Parties in this Agreement, held invalid, such exclusion shall be construed, to the extent legally permissible, to set the thresholds for such principles to apply particularly high and to limit respective remedies to adjustment of this Agreement under exclusion of the right to withdraw (*Rücktritt*). Further, all remedies of the Purchaser for defects of the purchase object, including but not limited to claims arising under sections 437 through 441 BGB, and the right to rescind (*anfechten*) this Agreement are hereby expressly excluded and waived (*verzichtet*) by the Purchaser, such waiver hereby being accepted by the Seller.

The limitations of this Section 14.8 as well as any other limitations and exclusions of liability pursuant to this Agreement shall not apply to any rights and remedies for fraudulent deceit (*arglistige Täuschung*) by the Seller or the Seller's own willful misconduct (*Vorsatz*), in which case statutory law shall apply.

The Seller's liability for (i) fraud (*Arglist*) and willful misconduct (*Vorsatz*) by any vicarious agent (*Erfüllungsgehilfe*) of the Seller, if any, within the meaning of section 278 BGB, (ii) any claims based on the application (including analogous application) of section 166 BGB, (iii) claims based on any attribution of knowledge or responsibility, including in respect of vicarious agent (*Erfüllungsgehilfe*) or other third parties, or (iv) claims or rights based on tort or any other legal grounds is, under and in connection with this Agreement, comprehensively and for all purposes excluded to the largest extent legally permissible.

i.  The Purchaser acknowledges and agrees that

29. the Purchaser has made its own evaluation of the adequacy and accuracy of any past information, forecasts, estimates, budgets or projections (including the reasonableness of the assumptions underlying the same);
30. no (managing) director, board member (including the members of the Advisory Board), employee or advisor of any of the Group Companies is or was at any time authorized to act on behalf of or as vicarious agent (*Erfüllungsgehilfe*) for the Seller in the performance of its duties as Seller or under or in connection with this Agreement; and
31. the Seller shall have no liability to the Purchaser whatsoever in the event any of the persons mentioned under Section 14.9(b) or any advisor or vicarious agent (*Erfüllungsgehilfe*) of the Seller carelessly or negligently or intentionally (*fahrlässig oder vorsätzlich*) failed or fails to disclose information in any respect or way to the Purchaser at any time before Closing concerning the Business or the assets, liabilities or affairs of the Group Companies.

## 15. Tax Warranties and Tax indemnity

a.  Definitions

“**Indemnification Tax Benefit**” has the meaning given to it in Section 15.3(a)(vi);

“**Indemnified Taxes**” means (a) any Taxes imposed on a Group Company relating to the Pre-Effective Date Tax Period irrespective of whether assessed before or after the Closing Date, (b) Taxes resulting from any constructive dividends or any measures outside the ordinary course of business in the period from the Effective Date until the Closing Date, and (c) any Taxes resulting from any payments, or undertakings to pay, regarding any bonuses, costs and expenses to any person (including any managers and employees of the Group Companies);

“**Non-US Entities**” mean Group Companies that are not a “domestic corporation” within the meaning of Section 7701(a) of the United States Internal Revenue Code.

“**Pre-Effective Date Tax Period**” means any taxable period (*Veranlagungszeiträume, Erhebungszeiträume, Voranmeldungszeiträume*) or portions thereof ending before or on the Effective Date;

“**Tax**” means any tax within the meaning of section 3 paragraphs 1 through 4 of the German Fiscal Code (*Abgabenordnung – AO*), including but not limited to, corporate income tax,

taxes withheld from wages or other employment taxes as well as any and all incidental tax charges (*steuerliche Nebenleistungen*), including, but not limited to interest or special charges for late payment or late performance (*Verzugszinsen oder Säumniszuschläge*) related to the forenamed taxes or custom duties as well as all social security charges including payments and liabilities owed as secondary liabilities (*Haftungsschulden*) as well as any equivalent tax under the laws of any other jurisdiction (including but not limited to US Taxes). For the avoidance of doubt, it is the common understanding that deferred taxes (*latente Steuern* and similar concepts) are not taxes within the meaning of this definition;

“**Tax Audit**” means any tax audit, inspection or similar investigation by any Tax Authority;

“**Tax Authority**” means any taxing or other authority competent to impose any liability in respect of Taxes or responsible for the administration and/or collection of taxation or enforcement of any law in relation to Taxes;

“**Tax Indemnification Claim**” has the meaning given to it in Section 15.3(a);

“**Tax Proceeding**” shall mean any administrative or judicial proceeding or action relating directly or indirectly, fully or in part to Indemnified Taxes (including but not limited to Tax assessments, Tax Audits, inquiries, examinations, negotiations, disputes, court proceedings or decisions, meeting with Tax Authorities, correspondence by letter, fax message or email with any Tax Authority);

“**Tax Refund**” has the meaning given to it in Section 15.4(a);

“**Tax Return**” means any return, form and other statement filed or required to be filed by a Group Company for Taxes relating to a Pre-Effective Date Tax Period;

“**Tax Warranties**” has the meaning given to it in Section 15.2(a).

“**US Taxes**” mean for U.S. taxes purposes any taxes on state, local, or non-U.S. income, gross receipts, license, payroll, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

b.□ Tax Warranties

32. Except as disclosed in **Schedule 15.2**, each Seller hereby warrants to the Purchaser by way of an independent guarantee undertaking (*selbständiges Garantiewersprechen*) pursuant to section 311 (1) BGB that the statements set forth below are true and accurate as of the Signing Date (the “**Tax Warranties**”):

- xxi. To the Seller’s Knowledge, all Group Companies have timely filed all Tax Returns (other than with respect to social security charges and US Taxes) as required under applicable laws and with the appropriate Tax Authority and have duly and timely fulfilled all other existing legal obligations in respect of applications, declarations and filings of Taxes (other than with respect to social security charges and US Taxes), in each case to the extent the Taxes relate to a Pre-Effective Date Tax Period.
- xxii. To the Seller’s Knowledge, all Group Companies have (taking into account any permitted extension) timely paid all material Taxes (other than social

security charges and US Taxes) shown as payable on any valid and enforceable Tax assessment notice issued by any Tax Authority or on any Tax Return filed by them, other than Taxes for which a suspension of enforcement of Tax payment obligation (*Aussetzung der Vollziehung*) has been granted, in each case to the extent the Taxes relate to a Pre-Effective Date Tax Period.

- xxiii. To the Seller's Knowledge, all material Tax related documents (including electronically stored data, but excluding any transfer pricing documentation) required to be maintained by the Group Companies by applicable laws have been properly maintained by the respective Group Company and are available at the respective Group Company.
- xxiv. To the Seller's Knowledge, there are no Tax audits, objections or litigation currently pending or announced in writing with respect to the Group Companies.

### 33. Remedies

- xxv. After Closing, the Purchaser shall be obliged to notify the Seller in writing of the factual or possible breach or non-fulfilment of any of the Tax Warranties within twenty (20) Business days after it obtained actual knowledge of the breach giving a reasonably detailed description of the underlying circumstances and, if possible, the estimated amount of the claim. Section 13.2 shall apply *mutatis mutandis*.
- xxvi. In the event of any breach or non-fulfilment of any of the Tax Warranties, the Seller shall reimburse any penalties for late filing or late payment as well as costs and expenses that are triggered by such a breach or non-fulfilment including for the avoidance of doubt any reasonable legal costs incurred by the Purchaser or any of the Group Companies in curing a breach of the Tax Warranties, but no Taxes (to which Section 15.3 shall apply), to the Purchaser or, at the election of the Purchaser, the respective Group Company.
- xxvii. The Purchaser shall allow, and cause the Company and the respective Group Companies to allow, the Seller and its accountants and other professional advisors to investigate the matter or circumstance alleged to give rise to such breach and will provide all information reasonably requested by the Seller to assess the factual or potential breach.
- xxviii. Any payment obligation of the Seller shall be due ten (10) Business Days after the Seller has received a written notice from the Purchaser containing reasonable details of the respective breach or non-fulfilment and the respective damage.

### c. Tax Indemnity

- 34. The Seller shall pay at the Purchaser's discretion either (i) to the Group Company or (ii) to the Purchaser, the amount of any Indemnified Taxes ("**Tax Indemnification Claim**"), but in any case only if and to the extent that:
  - xxix. the Indemnified Taxes have not been paid to the competent Tax Authority before the Effective Date;

- xxx. none of the relevant Group Companies has a valid, legally enforceable and fully creditworthy claim for repayment, reimbursement or indemnification against a third party other than under the W&I Insurance and against current or past employees and managers of the Group Companies;
- xxxi. the Indemnified Taxes are not the result of any change in law, rule or regulation (including subordinate legislation) on or after the Effective Date;
- xxxii. the Indemnified Taxes have not been caused or increased by a failure of the Purchaser to comply with any of its covenants, obligations or any other kind of commitment under this Section 15 if the Seller demonstrates that the non-compliance caused or increased, and affected the defence against, the respective Indemnifiable Tax;
- xxxiii. the Indemnified Taxes are not directly or indirectly caused or triggered by any change in the accounting and taxation principles or practices of the respective Group Company or any transaction, action, omission or other measure (including any change in the exercise of any Tax election right, termination of any Tax consolidation scheme, approval or implementation of any reorganisation measure) initiated or executed by the Purchaser or – after the Closing Date – by any of the Group Companies except that this exclusion shall not apply where such change, transaction, action, omission or other measure was (i) required by mandatory law or (ii) carried out with the prior written consent of the Seller;
- xxxiv. the Purchaser and/or any relevant Group Company is not entitled to any benefit by refund, set-off or reduction of Taxes as a result of the circumstances giving rise to a Tax Indemnification Claim in which context the amount of any such benefits shall be calculated on the basis of the applicable statutory tax rates as of the Effective Date and under the assumption that the relevant entity is and will remain in a Tax paying position (an “**Indemnification Tax Benefit**”); in such case the Indemnification Tax Benefit shall, by applying a discount rate of [\*\*\*] and an equal allocation of the reverse effect over five (5) years as from the relevant date in the case of fixed assets, and one (1) year as from the relevant date in the case of current assets and liabilities and any other accruals and, be discounted to the Effective Date and shall reduce the Tax Indemnification Claim. In particular, without limitation, this shall apply to any Indemnification Tax Benefit resulting from a lengthening of any amortization or depreciation period, higher depreciation allowances or loss carry forwards or deductions;
- xxxv. the Indemnified Tax cannot or could not be avoided by offsetting taxable profits against any Tax loss carry backs or Tax loss carry forwards (or any other Tax credit, allowance, deduction or similar Tax item) that are or were available (including as a result of subsequent Tax Audits) in the Pre-Effective Date Period (excluding for the avoidance of doubt any Tax loss carry backs that stem from periods after the Effective Date); and
- xxxvi. the aggregate amount of the Indemnified Taxes is reflected neither as a liability (*Verbindlichkeit*) nor as an accrual (*Rückstellung*) in the Financial Statements (for the avoidance of doubt, irrespective of the facts and circumstances underlying such liabilities or accruals), but only to the extent that the respective liabilities, accruals and provisions have actually reduced

the Purchase Price, in particular with respect to Exhibit 4.1(b)-2, lit. (c) and/or Exhibit 4.1(b)-3, lit. (h). For purposes of this Section 15.3(a)(viii), only those Indemnified Taxes shall be taken into account where the respective Tax Indemnity Claim is not otherwise excluded or reduced by any of the exemptions pursuant to Sections 15.3(a)(i) through 15.3(a)(vii).

35. Any payment on the Tax Indemnification Claim shall be due and payable by the Seller on the tenth (10<sup>th</sup>) Business Day after the Seller has been notified in writing by the Purchaser about the payment obligation and the corresponding payment date and all material circumstances giving rise to the payment obligation pursuant and in accordance with this Agreement and has received a copy of the relevant Tax assessment notice (*Steuerbescheid*) of the competent Tax Authority, but in no case earlier than on the fifth (5<sup>th</sup>) Business Day before the Tax to be indemnified is due and payable to the Tax Authority. Upon request of the Seller, the Purchaser shall provide to the Seller any document which may enable the Seller to review the validity of the indemnification request. Upon request of the Seller the Purchaser shall, and shall procure that the relevant Group Company does, apply for a deferred payment date. It is understood that any kind of security to be granted in order to receive a deferral of payment is provided by the Seller, who will bear any interest been charged in case of an unsuccessful objection against a respective tax. If an Indemnified Tax case is not finally assessed but Taxes are due and payable any indemnification payment shall be considered as an advanced payment to the Purchaser. If subsequently the Tax for which the advanced payment has been made is reduced again by way of Tax assessment or otherwise lowered the difference between the higher advanced payment and the lower Tax liability shall be without undue delay reimbursed by the Purchaser to the Seller, including all interest related thereto.

d.□ Tax Refunds, Purchaser's Obligations, Tax Benefits etc.

36. The Purchaser shall – unless the amount has already reduced the indemnification pursuant to Section 15.3(a) – pay to the Seller the amount of any refund of Taxes (other than a refund which is a Indemnification Tax Benefit) including interest thereon received by any of the Group Companies by cash payment, set-off, deduction or otherwise, relating to the Pre-Effective Date Tax Period (“**Tax Refund**”), after the Effective Date if and to the extent that the respective Tax Refund exceeds the amount of the respective Tax Refunds shown in the Financial Statements, but only if the Tax Refund shown in the Financial Statements has actually increased the Purchase Price. Any payment under this Section 15.4(a) shall be due and payable within ten (10) Business Days after such Tax Refund has been received by the recipient. The Purchaser shall notify the Seller in writing and without undue delay of any relevant decision by the Tax Authority or expiration of any applicable statute of limitation, as the case may be, resulting in a Tax Refund.
37. The Purchaser shall pay to the Seller any surplus of provisions for Taxes (*Steuerrückstellungen*) or liabilities for Taxes (*sonstige Verbindlichkeiten aus Steuern*) as recorded in the 2019 Financial Statements, if and to the extent the amount of non-appealable liabilities for Indemnified Taxes falls short of the amount of the provisions for Taxes or the amount of the liabilities for Taxes as recorded in the 2019 Financial Statements, but only if the respective balance sheet item in the 2019 Financial Statements has actually reduced the Purchase Price. Any amount to be paid by the Purchaser under this Section 15.4(b) shall be due and payable on the tenth

(10<sup>th</sup>) Business Day after all Tax assessment notices for the Pre-Effective Date Tax Period have become non-appealable.

38. The Seller shall pay to the Purchaser an amount by which the surplus of receivables for Taxes (*Steuerforderungen*) as recorded in the 2019 Financial Statements, if and to the extent the amount of recovered receivables for Taxes falls short of the amount of the receivables for Taxes as recorded in the 2019 Financial Statements, if the respective balance sheet item in the 2019 Financial Statements has actually increased the Purchase Price. Section 15.4(b) shall apply *mutatis mutandis*.

e.□ Tax Covenants of the Purchaser

39. The Purchaser shall – without the Seller’s prior written approval – not take, and shall procure that after Closing no Group Company will take, any action, or omit to take any action, including the making of any Tax elections, the effect of which could give rise to any Tax liability (including any Tax Indemnification Claim pursuant to Section 15.3(a)) of the Seller or a Seller’s Affiliate, or result in any increase thereof, or in the reduction of any Indemnification Tax Benefit, Tax Refund or Tax Benefit, including any action or omission of action:

xxxvii. performed after Closing with retroactive effect to a period before the Effective Date; or

xxxviii. changing or issuance of any Tax Returns for a period prior to the Effective Date; or

xxxix. with respect to accounting and Tax accounting methods (including election rights) not consistent with past practice of the Group Companies; or,

- xl. provided, however, that the Seller acknowledges that the Purchaser may make – and is therefore permitted to make – an election under section 338(g) of the United States Internal Revenue Code and corresponding elections under state or local law with respect to Non-US Entities. The Purchaser shall provide the Seller with notice of any such election as required by the Treasury Regulations under section 338 of the United States Internal Revenue Code

unless such action or omission of action, as the case may be, is required by mandatory law or carried out or effected under a legally binding obligation entered into on or before Closing by any Group Company. The Seller shall be deemed to have given its consent if the Seller did not provide any comment to Purchaser or the relevant Group Company within fifteen (15) Business Days following the receipt (*Zugang*) of a respective request of the Purchaser or any Group Company.

40. If the Purchaser fails to comply with any of its obligations under this Section 15.5 or Section 15.6, the Purchaser shall indemnify the Seller from and against all and any Taxes of the Seller and the Seller’s Affiliates (including, but not limited to, the reduction of current losses or loss carry forwards of the Seller or a Seller’s Affiliate), if the Seller demonstrates that the non-compliance caused or increased the respective Tax. Any amount payable pursuant to this Section 15.5 shall be due and payable on the tenth (10th) Business Day after receipt by the Purchaser of a payment notice by the Seller setting out all material circumstances giving rise to the payment obligation pursuant and in accordance with this Section 15.5(b).

f. □ Cooperation of Tax Matters

41. The Purchaser shall (and shall procure that the Group Companies do) cooperate with the Seller and its advisors in connection with any Tax Proceeding relating to a Pre-Effective Date Tax Period. The Purchaser shall (and shall procure that the Group Companies do) keep and make available to the Seller all books, records and information relating (wholly or partly) to or which may be relevant for any such period upon the Seller's reasonable request.
42. The Purchaser shall timely (*rechtzeitig*) notify the Seller of any Tax Proceeding of a Group Company relating to a Pre-Effective Date Tax Period, in particular, but not limited to, the issuance of any Tax assessment notice by a Tax Authority and written requests or statements made by any competent Tax Authority with potential impact on a Pre-Effective Date Tax Period; any such notice shall be deemed to have been made timely if it is made within ten (10) Business Days after the receipt of such communication by either the Purchaser or any of the Group Companies unless an immediate response is required (e.g., in the event of tax investigations (*Steuerfahndungsprüfungen*)). Such notice shall be reasonably detailed and shall include copies of the respective notices.
43. For all Tax Proceedings relating to a Pre-Effective Date Tax Period, the Purchaser shall reasonably involve the Seller or its counsel in such Tax Proceeding. In particular, but without limiting the generality of the foregoing, the Seller shall have the opportunity to (i) participate from the beginning until the end in a Tax Audit in relation to a Pre-Effective Date Tax Period at the cost and expense of the Seller, (ii) ask the Purchaser to procure that the Group Companies challenge and litigate any Tax assessment or other decision of any Taxing Authority or Tax court if and to the extent it is related to a Tax to be indemnified by the Seller, and (iii) comply with any instructions given by the Seller in relation to the conduct of the Tax Proceedings referred to in (i) and (ii) above, provided that these actions are legally permitted.

g. □ Limitations, Miscellaneous

44. Any claims of the Purchaser against the Seller under this Section 15 shall become time-barred [\*\*\*]. Any claims of the Seller against the Purchaser under this Section 15 shall become time-barred [\*\*\*].
45. Claims of the Purchaser set forth in this Section 15 shall not be subject to any limitations set forth in this Agreement, except for Sections 14.1(c), 14.2, 14.5 through 14.9 of this Agreement.
46. Any payments under this Section 15 shall be treated as an adjustment to the Purchase Price.

**16. PURCHASER'S AND GUARANTOR'S REPRESENTATIONS AND WARRANTIES**

The Purchaser and the Guarantor hereby each guarantee to the Seller by way of an independent promise of guarantee (*selbstständiges Garantieverprechen*) that the statements set forth in this Section 16 are true and correct as at the Signing Date and the Closing Date (unless otherwise set forth below). The representations and warranties in Sections 16(a) to 16(j) below shall constitute separate, independent obligations of the Purchaser and the Guarantor, and the scope and content of each representation and warranty and any liability

arising hereunder shall be exclusively defined by the provisions of this Section 16, which provisions form an integral part of such representations and warranties.

47. The Purchaser is a limited liability company duly organized and validly existing under the laws of the Federal Republic of Germany and the Guarantor is a stock corporation duly organized and validly existing under the laws of Delaware, USA.
48. The Purchaser and the Guarantor have the full corporate power and authority to deliver this Agreement and to carry out the Transaction, and the Transaction has been duly authorised by all necessary corporate actions on the part of the Purchaser and the Guarantor. This Agreement has been duly executed by or on behalf of the Purchaser and the Guarantor and constitutes their binding obligations.
49. There is – solely as of the Signing Date – no action, suit, investigation or proceeding pending against, or threatened against or affecting the Purchaser or its respective Affiliates or the Guarantor before any Governmental Authority or other third party which in any manner challenges or seeks to prevent or materially delay the consummation of the Transaction.
50. The execution and performance by the Purchaser or the Guarantor of this Agreement and the Transaction require no prior approval by or filing with any governmental body, public agency or official or other third party.
51. No insolvency or similar proceedings have been, or have been threatened to be, opened over the assets of the Purchaser or the Guarantor. Neither the Purchaser nor the Guarantor is illiquid (*zahlungsunfähig*) or over-indebted (*überschuldet*) within the meaning of sections 16 *et seq.* InsO or any other comparable applicable insolvency laws of other applicable jurisdictions.
52. As at the Signing Date, neither the Purchaser, the Guarantor nor any of Purchaser's Representatives have knowledge of any facts or circumstances which could result in any Purchaser Claim, provided that this statement does not apply to Leakage Claims.
53. The information provided by or on behalf of the Purchaser and/or the Purchaser's Representatives or the Guarantor to the Seller and/or its advisors prior to the Signing Date concerning the Purchaser, the Guarantor and/or their respective Affiliates with respect to the merger control filing analysis is to the best of the Purchaser's and Guarantor's knowledge complete, correct and not misleading. Any assessments provided by or on behalf of the Purchaser, the Guarantor or the Purchaser's Representatives to the Seller and/or its advisors with respect to potential filing requirements have been prepared in good faith and with due care, *inter alia* based on the information provided by the Seller or Seller's advisors upon request by the Purchaser or the Purchaser's Representatives.
54. The Guarantor has ready access to and has cash sufficient to enable the Guarantor to fulfil all its obligation under and in connection with this Agreement if and when it is due and allow for the Purchaser to comply with its payment obligations under this Agreement if and when they are due.
55. The Purchaser is acquiring the Sold Shares at the Purchaser's own account.

56. The Purchaser does not have any obligation or liability to pay any fees or commissions to any broker, finder, agent (*Erfüllungsgehilfe*) or other third party with respect to the Transaction for which the Seller could become wholly or partly liable.

## 17. Purchaser's Covenants

### a. Actions in connection with the Transaction; Insurance Coverage

The Parties agree to execute, or procure (*steht dafür ein*) to be executed, at the respective other Party's written request, all agreements and documents and to give and take, or cause to be given and taken, respectively, all other declarations and actions necessary under applicable laws and regulations to consummate the Transaction, unless the execution of such agreements and documents or the giving of such declarations or the taking of such actions would cause an unreasonable hardship (*Unzumutbarkeit*) to the Party, whose action is required. The Purchaser shall procure (*steht dafür ein*) that any directors & officers insurance which existed up and until Closing for the benefit of any Indemnified Person (as defined below), if any, will be maintained in a way to secure that potential claims against the Indemnified Person based on acts or omissions up to and until Closing are covered to the same extent they were until Closing.

### b. Preservation and Access to Books

The Purchaser hereby undertakes to procure (*steht dafür ein*) that as from the Closing Date the Group Companies will properly maintain and preserve, during the longer of the statutory keeping periods and a period of five (5) years as from the Closing Date, all relevant books and records (including but not limited to files, correspondence, documents, other papers and electronic data) of the Group Companies (the "**Company Books**"), to the extent they relate to the periods prior to and including the Closing Date. The Purchaser hereby undertakes to procure (*steht dafür ein*) that the Seller, its employees, professional advisors and other representatives shall be granted, upon reasonable written request, reasonable access to the Company Books (including the right to receive, at Seller's cost and expense, in reasonably due time, hard and/or electronic copies thereof) and to the personnel of the Group Companies during normal business hours, to the extent such access is reasonably requested in writing by the Seller, in each case, however, only for tax or other legitimate reasons based on the compliance with obligations pursuant to mandatory law (including but not limited to accounting or regulatory filing purposes, as well as in the context of any arbitral or judicial proceedings arising out of, or in connection with, this Agreement), and provided that such access does not unreasonably interfere with the business conduct of the Group Companies. The information made available to the Seller, its employees, professional advisors or other representatives shall be Confidential Information and as such subject to the terms of Section 22.

## 18. Purchaser's Indemnity

### a. No Claims by the Group Companies

The Purchaser undertakes not to bring, and shall procure (*steht dafür ein*) that the Guarantor, their respective Affiliates and their (managing) directors, employees or board members (including supervisory board and advisory board members) as well as, after the Closing Date, the Group Companies and their managing directors, employees or board members (including supervisory and advisory board members) (collectively the "**Purchaser's Related Parties**") will not bring any claims or initiate legal proceedings against the Seller or any of the Seller's Affiliates (other than the Group Companies) or their respective direct or indirect shareholders,

successors, officers, managing directors, board members (including supervisory and advisory board members), employees, advisors or agents or the Group Companies' officers, managing directors, board members (including supervisory and Advisory Board members), employees, advisors or agents (each an "**Indemnified Person**") on whatever legal grounds and in particular in connection with

57. the Indemnified Person's

- xli. former direct or indirect shareholding in or contractual or legal relationship with a Group Company;
- xlii. position as an officer, (managing) director, board member (including supervisory and advisory board member), employee, advisor or agent of a Group Company; or
- xliii. position as a joint debtor of a Group Company;

58. the Finance Documents;

59. other than in cases of Leakage, any shareholder loans granted to or any other debt instruments issued by any of the Group Companies;

in each case, however, except (i) for claims based on fraud (*Betrug*) or deceit (*Arglist*) or intentional behavior (*vorsätzliches Verhalten*), or (ii) if and to the extent the Purchaser is explicitly entitled to be compensated for such liability or obligation by the Seller under or pursuant to the terms of this Agreement or (iii) for any claims under any existing agreements between the Purchaser or any Purchaser's Related Party and an Indemnified Person that are unrelated to this Agreement (if any), the Group or the Transaction (collectively the "**Permitted Claims**").

b.  Indemnification of Indemnified Persons

60. If, after Closing, an Indemnified Person is held liable by any of the Purchaser's Related Parties for any existing or future liability or obligation on basis of any legal grounds then, unless such claim is a Permitted Claim, the Purchaser shall indemnify such Indemnified Person in respect of the relevant obligation and/or liability, together with all reasonable out-of-pocket costs and expenses relating thereto including reasonable legal fees, expenses and disbursements arising out of or in connection therewith (the "**Seller's Indemnification Claims**").

61. The Purchaser hereby waives, and shall, after Closing, procure at the written request of the Seller that all Group Companies waive, any claims they may have against any Indemnified Person unless such claim is a Permitted Claim, such waiver hereby being accepted by the Seller for the case that it so requests. The Purchaser acknowledges and agrees that, prior to the Scheduled Closing Date, a waiver by the Group Companies for any actual or contingent, known or unknown claim against the Indemnified Persons, except for Permitted Claims, shall be executed in form and substance as attached hereto as **Exhibit 18.2(b)** (a "**Waiver**"). Without undue delay following Closing, the Purchaser shall (i) pass a shareholder's resolution at the Company confirming and approving the execution of the Waiver by the Company and (ii) procure the passing of a shareholders' resolution at each other Group Company confirming and approving the execution of the Waiver by such Group Company.

62. The agreements on the obligations of the Purchaser pursuant to Sections 18.1, 18.2 and 18.3 are a true agreement for the benefit of third parties (*echter Vertrag zugunsten Dritter*) within the meaning of section 328 para. 1 BGB for the benefit of each Indemnified Person.

c.  No repayment of the Shareholder Loan Receivable

63. The Purchaser undertakes to ensure that, during a period of twelve (12) months and one day following the Closing Date, the Shareholder Loan Receivable is not satisfied (*rückgewährt*), in whole or in part, by any means, in particular is neither partially nor fully repaid to the Purchaser or to any other person or entity that acquired (whether by contractual transfer or otherwise) the Shareholder Loan Receivable; and

64. agrees to indemnify and hold harmless Seller and each Indemnified Person from and against any claims whatsoever against Seller or any Indemnified Person in respect of any portion of the Shareholder Loan Receivable (or of any receivable, if any, replacing, in whole or in part, the Shareholder Loan Receivable) resulting from a breach of the obligation under Section 18.3(a), including from any related costs and expenses reasonably incurred by the Seller and/or any Indemnified Person in connection therewith.

**19. Seller's Remedies**

If and to the extent that any of the Purchaser's and Guarantor's guarantees or the Purchaser's or Guarantor's covenants or indemnities, in particular those under Sections 15.4, 16, 17 and 18, is breached or the Purchaser or the Guarantor is in breach of any other obligations or otherwise liable to the Seller, as the case may be, under or in connection with this Agreement, the Seller's respective claims and remedies, and the Purchaser's and/or the Guarantor's liability *vis-à-vis* the Seller shall be determined in accordance with statutory law, with any specific claim or remedy provided for under this Agreement (*e.g.* the Seller's Indemnification Claims pursuant to Section 18.2) remaining unaffected, provided, however, that any damages resulting from a breach of the Purchaser's and Guarantor's guarantees under Section 16 shall be limited to Losses.

**20. GUARANTOR'S UNDERTAKING**

The Guarantor hereby accedes to any obligation and liability of the Purchaser under or in connection with this Agreement, including the obligation to pay the Purchase Price, if and when due, as if it were the Guarantor's own principal obligation or liability (*Schuldbeitritt*). For the avoidance of doubt, the Guarantor hereby waives, and the Seller hereby accepts such waiver, any rights which the Guarantor may have to require the Seller to proceed first against, or claim payment from, the Purchaser such that as between the Seller and the Guarantor the latter shall be liable as principal debtor as if it had entered into the undertaking to perform such obligations under or in connection with this Agreement jointly and severally with the Purchaser.

**21. Exit Bonuses**

With respect to the payment of any exit bonuses payable by the Seller or any of the Seller's Affiliates (other than the Group Companies) to employees/managing directors/directors/officers of the Group Companies ("**Bonus Recipients**") in connection with the transaction contemplated under this Agreement ("**Seller Exit Bonuses**"), the Seller and the Purchaser agree on the following procedure:

65. The Seller shall pay or procure the payment by any of the Seller's Affiliates (other than the Group Companies) of the Seller Exit Bonuses to the Bonus Recipient net of any wage tax, solidarity surcharge thereon, any and all social security contributions, church tax and any similar type of tax, withholding, contribution falling due on such payment ("**Bonus Withholding Taxes**") to the extent permissible under the respective bonus agreements.
66. The amount of the Bonus Withholding Taxes withheld by the Seller or the respective Seller's Affiliate (other than the Group Companies) from the Seller Exit Bonuses shall be paid by the Seller, or, as the case may be, the Seller shall procure that the respective Seller's Affiliate (other than the Group Companies) pays, to the respective Group Company being the employer of the Bonus Recipients ("**Employer**").
67. The Purchaser shall ensure that the Employers (i) co-operate with the Seller or the respective Seller's Affiliate (other than the Group Companies) with respect to the calculation of the Bonus Withholding Taxes and (ii) timely pay the amount of the Bonus Withholding Taxes to the competent Tax Authorities (after receipt of the respective amounts from the Seller or the Bonus Recipients).
68. In case the Bonus Recipient object to the deduction of the Bonus Withholding Taxes or the withholding of the Bonus Withholding Taxes is otherwise not permissible, the Seller shall in the necessary timely manner for the necessary filing inform the Purchaser on the amount of the Seller Exit Bonuses in order to enable the Purchaser and the respective Employer to file a notification to the Tax Authorities pursuant to section 38 para. 4 German Income Tax Act (*Einkommensteuergesetz*).

## 22. CONFIDENTIALITY

- a.  Subject to Section 22.2 each Party shall treat strictly confidential all information received or obtained as a result of entering into or performing this Agreement which relates to:
  - xliv. the existence, subject matter and provisions of this Agreement or any document referred to in or entered into pursuant to this Agreement;
  - xlv. the negotiations relating to this Agreement and all documents referred to in this Agreement or entered into pursuant to this Agreement; or
  - xlvi. the other Parties (or their Affiliates)

((i) through (iii) collectively the "**Confidential Information**").
- b.  If any disclosure or announcement of Confidential Information is required by law or by any regulation, rule or any court, stock exchange or Governmental Authority requirement, such disclosure may be made by the Party which has been addressed but only upon advice of its legal counsel and to the extent legally permissible and reasonably possible after:
  69. having informed the other Parties without undue delay (*unverzüglich*) about the existence and scope of such obligation and the circumstances under which the obligation has been imposed upon it;
  70. ensuring the confidential treatment of such Confidential Information disclosed to the relevant court, stock exchange or Governmental Authority;
  71. consulting with the other Parties on possible steps to avoid or limit the disclosure; and

72. taking into account any reasonable steps another Party may request to prevent or limit the scope or impact of such disclosure.

c.□ Section 22.1 does not apply to the disclosure of Confidential Information:

73. to the extent that it is generally available to the public other than as a result of a breach of any duty of confidentiality by any Party;

74. to a (managing) director, officer or employee of the Purchaser, the Guarantor, the Seller or an Affiliate of the Seller (other than the Group Companies) or the Purchaser or the Guarantor whose function requires him or her to have the Confidential Information, subject to the condition that the Party making the disclosure procures that those persons treat the Confidential Information as confidential;

75. to the extent that it is required to be disclosed by applicable law, rule of listing authority or a stock exchange or Governmental Authority with relevant powers to which the Seller or any Affiliate of the Seller or the Purchaser or the Guarantor or any Affiliate of the Purchaser or the Guarantor is subject to or submits to, whether or not the requirement or request (as applicable) has the force of law, provided that the disclosure shall so far as is practicable and lawful be made after consultation with the Purchaser or the Seller (as the case may be) regarding the content, timing and manner of that disclosure unless the wording of any such disclosure is substantially the same as any previous disclosure made in consultation with the Purchaser or the Seller (as the case may be);

76. to professional advisors, providers of third party finance to the Purchaser, shareholders of the Guarantor, or W&I broker(s) or W&I insurer(s) providing for the W&I Insurance for the Purchaser or auditors of the Purchaser, the Guarantor, the Purchaser's or the Guarantor's Affiliates, the Seller or the Seller's Affiliates in connection with their engagement and subject to customary confidentiality obligations;

77. by the Seller to any person being an investors or potential investors in any current or future Carlyle Entity, in each case on a confidential basis; "**Carlyle Entity**" means (A) Carlyle European Technology Partners III L.P. (or its successor) ("**CETP III**"), (B) any person which is either an Affiliate of CETP III, other than portfolio companies, (C) any person which is advised or managed by (i) CETP III or (ii) an Affiliate or successor of CETP III, other than portfolio companies, in each case from time to time; or

78. the publication of the press release agreed between the Parties in writing (including fax or e-mail).

d.□ The Parties shall, to the extent legally permissible and to the extent able as shareholders, ensure that their Affiliates, from time to time, comply with the obligations in this Section 22.

e.□ The Purchaser shall cause the Group Companies and their respective legal successors to inform the Seller in a timely manner of any inquiries, requests, notices or similar correspondence received by the Purchaser or any of the Group Companies after the Closing Date from any Tax Authority and relating to the Seller.

## 23. MISCELLANEOUS

- a.  Interest payable under any provision of this Agreement shall be calculated on the basis of actual days elapsed divided by three hundred and sixty five (act/365).
- b.  The Purchaser shall bear all transfer taxes (including real estate transfer tax, if any, and provided that VAT is solely dealt with in Section 4.4), fees for the notarization of this Agreement, fees for a merger control and/or German foreign investment control clearance, in each case if any, registration tax and other charges and costs payable in connection with the execution and consummation of this Agreement and the consummation of the transactions provided for therein, unless otherwise explicitly agreed herein. Save as aforesaid, each Party shall bear its own costs, expenses and taxes, including the fees of its advisors and counsels, including, for the avoidance of doubt, on the Seller's side, in particular Latham & Watkins LLP and UBS.
- c.  This Agreement, including the Exhibits and Schedules, contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes any previous agreements, save only for the obligations and liabilities of the Confidentiality Agreement which shall continue in full force and effect until the Closing has occurred, and, should this Agreement be rescinded for any reason, for a period of two years after the date of the rescission of this Agreement (Section 10.5), but subject to the occurrence of the Closing, the Seller agrees to procure and also agrees to assign and transfer or procure the assignment and transfer of all rights under or pursuant to other confidentiality agreements entered into with parties interested in the Transaction. Any supplements or amendments to or a termination of this Agreement, as well as any declarations or waiver to be made hereunder, shall be valid only if made in writing, or, if required by law, in due notarial form. This shall also apply to any change to, or cancellation of this Section 23.2.
- d.  Neither the Purchaser nor the Guarantor may assign, delegate or otherwise transfer any right or claim they may have (individually or jointly) under or in connection with this Agreement without the prior written consent of the Seller. However, the Purchaser may assign or pledge for security purposes rights and claims under this Agreement in connection with the financing of the Transaction (including the refinancing of existing indebtedness of the Group Companies) with legal effect after the Closing Action pursuant to Section 10.2(a) having been performed. The Purchaser shall notify the Seller of any such assignment and the assignee.
- e.  Unless stated explicitly otherwise in this Agreement, this Agreement shall not grant any rights to, and is not intended to operate for, the benefit of any third parties, including the Group Companies (*kein echter Vertrag zugunsten Dritter*).
- f.  Unless provided otherwise in this Agreement, all notices, requests and other communications under or in connection with this Agreement shall be made in writing in the English language and delivered by hand, courier, mail, telecopy or pdf-copy by e-mail to the person at the addresses set forth below, or such other person or address as may be designated by the respective Party in writing from time to time, provided that (i) receipt of a copy of a notice, request or other communication by a Party's advisors shall not constitute or substitute receipt thereof by the respective Party itself, and (ii) any notice, request or other communication shall be deemed received by a Party regardless of whether a copy thereof was sent to or received by an advisor of such Party, regardless of whether the delivery of such copy was mandated by this Agreement:

To the Seller: CETP III Ivory S.à r.l.[\*\*\*]

With a copy to: Latham & Watkins LLP[\*\*\*]

To Purchaser: Align Technology, Inc.2820 Orchard ParkwaySan Jose, California 95134Attention: [\*\*\*]

With a copy to: Hogan Lovells International LLP Attn: [\*\*\*]

To Guarantor: Align Technology, Inc.2820 Orchard ParkwaySan Jose, California 95134Attention: [\*\*\*]

With a copy to: Hogan Lovells International LLP Attn: [\*\*\*]

Any notice, request or other communication given to the Purchaser under or in connection with this Agreement shall be considered a notice, request or other communication given to the Guarantor as well, and *vice versa*.

g.□ The Purchaser and the Guarantor each hereby appoint [\*\*\*], c/o Hogan Lovells International LLP, [\*\*\*] as agent for service of process (*Zustellungsbevollmächtigter*) for all legal proceedings and disputes involving the Purchaser or the Guarantor, respectively, under or in connection with this Agreement. Such appointment shall only terminate upon the appointment of another agent for service of process domiciled in Germany, provided that the agent for service of process is an attorney admitted to the German bar (*in Deutschland zugelassener Rechtsanwalt*) and his or her appointment has been notified to and approved in writing by the Seller, such approval not to be unreasonably withheld. The Purchaser and the Guarantor shall promptly after the Signing Date and upon the appointment of any new agent for service of process, as the case may be, issue to the agent for service of process a written power of attorney (*Vollmachtsurkunde*) and shall irrevocably instruct the agent for service of process to submit such written power of attorney (*Vollmachtsurkunde*) in connection with any service of process under this Agreement.

h.□ In this Agreement (including all Exhibits and Schedules):

79. a reference to a Recital, Section or Exhibit or Schedules means a Recital, Section or Exhibit or Schedule of or to this Agreement;
80. a reference to a company or other legal entity shall be construed so as to include any legal entity or entities into which such company may be merged by means of a statutory merger or into which it may be split-up or de-merged, by means of a statutory split-up or demerger;
81. a “director” is a reference to a member of the board of directors or equivalent body of a company, corporation or other body corporate, and includes (without limitation) a manager (*gérant*) or managing director (*Geschäftsführer*) of any such company, corporation or other body corporate, but no member of an advisory board (*Beirat*);
82. a reference to a “person” includes a reference to an individual, a corporate body, an association, a partnership, a government or a state body and any other legal entity and

includes in each case such person's successors to all or parts of its business and permitted assigns;

83. any German legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept shall, in respect of any jurisdiction other than Germany, be construed to include what most closely resembles in that jurisdiction to the German legal term and any reference to any German statute shall be construed so as to include equivalent or analogous laws of any other jurisdiction;
84. whenever the words "include", "includes" or "including" or "in particular" or similar expressions are used in this Agreement, they shall be deemed to be followed by the words "without limitation". Whenever the words "hereof", "herein", "hereunder", "hereto" or similar expressions are used in this Agreement, they refer to this Agreement as a whole and not to a specific Section of this Agreement;
85. the disclosure of any matter in an Exhibit or a Schedule shall be deemed to be a disclosure for all purposes of this Agreement. The fact that a matter has been disclosed in this Agreement (including in an Exhibit and a Schedule) shall not be used to construe the extent to which disclosure is required pursuant to the provisions of this Agreement; and
86. the headings in this Agreement are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.

## **24. GOVERNING LAW AND PLACE OF JURISDICTION**

### **a. Governing Law**

This Agreement shall be governed by and construed in accordance with German law, excluding the German conflict of law rules and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). Any possible current or future obligations between the Parties which fall under the EC Regulation No 864/2007 on the Law Applicable to Non-Contractual Obligations (Rome II) are also governed by and construed in accordance with German law.

### **b. Arbitration**

All disputes arising out of or in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. The arbitral tribunal shall be comprised of three members. The seat of the arbitration is Munich, Germany. The language of the arbitration shall be English, provided that written evidence may also be submitted in German.

## **25. SEVERABILITY**

If any court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect. The invalid or unenforceable provision shall be deemed to have been replaced by a valid, enforceable and fair provision which comes as close as possible to the intentions of the Parties at the time of the conclusion of this Agreement. It is the express intent of the Parties that the validity and enforceability of all other provisions of this Agreement shall be maintained and

that this Section 25 shall not result in a reversal of the burden of proof but that section 139 BGB is hereby excluded in its entirety.

## **EXHIBIT 1 DEFINITIONS**

Each of the following terms shall have the meaning as ascribed to it on the respective page of this Agreement (including its Recitals) containing the respective definition.

Bonus Withholding Taxes	45
Distributed Main Products	6 of Exhibit 11.6
Employer	45
Finance Parties	14
Purchase Price	9
The Group Companies' Software	6 of Exhibit 11.6
2018 Financial Statements	1 of Exhibit 11.6
2018 Holding Financial Statements	1 of Exhibit 11.6
2019 Financial Statements	10
Adjusted Purchase Price Statement	10
Adjustment Amount	13
Administrative Orders	9 of Exhibit 11.6
Advisory Board	6
Advisory Board Resignation Letter	6
Affiliate	6
Agreement	4
Bank Repayment Amount	14
BGB	8
Bonus Recipients	45
Business	4
Business Day	16
Carlyle Entity	47
CETP III	47
Claim Notice	26
Closing	16
Closing Actions	16
Closing Condition	15
Closing Confirmation	17
Closing Date	16
Closing Disclosure Letter	22
Company	4
Company Books	43
Confidential Information	46
Control	7
Controlling	7
Cut-off Date	29
Data Room	29
De Minimis Amount	32
Deductible	32
Disputed Items	11
Due Diligence	22
Effective Date	8

Effective Date Cash 8  
Effective Date Debt 8  
Effective Date Working Capital 9  
Exempted Claims 32  
Facilities Agreement 5  
Fairly Disclosed 29  
Final Purchase Price Statement 13  
Finance Documents 5  
Finance Parties' Bank Account 14  
Financing Collateral 5  
Fraunhofer License 6 of Exhibit 11.6  
Fraunhofer-Gesellschaft 6 of Exhibit 11.6  
Fundamental Guarantees 18  
Governmental Authority 19  
Group 5  
Group Companies 5  
Group Managers 6  
Guarantor 4  
HGB 1  
Indemnification Tax Benefit 35, 38  
Indemnified Person 43  
Indemnified Taxes 35  
InsO 19  
Insurer 32  
International Managers 6  
Key Employees 5(a) of Exhibit 11.6  
Knowledge Bearer 21

Leakage 24  
Lease Agreement 4 of Exhibit 11.6  
Liability Cap 32  
Liability Exclusion 33  
Long Stop Date 17  
Losses 27  
Lump-Sum Compensation 18  
Managers 6  
Material Agreements 3 of Exhibit 11.6  
Material Default 3b of Exhibit 11.6  
Material IP 6 of Exhibit 11.6  
Neutral Expert 11  
Non-US Entities 35  
Notice of Objections 11  
Open Source Components 6 of Exhibit 11.6  
Ordinary Shares 5  
Parties 4  
Party 4  
Permit 9 of Exhibit 11.6  
Permitted Claims 44  
Permitted Leakage 25  
Pre-Effective Date Tax Period 35

Preferred Shares 5  
Preliminary Purchase Price 9  
Proprietary Software 6 of Exhibit 11.6  
Purchaser 4  
Purchaser Claim 26  
Purchaser's Bank Account 15  
Purchaser's Related Parties 43  
Purchaser's Representatives 22  
Related Party Agreements 6  
Release Letter 14  
Revised Adjusted Purchase Price Statement 11  
Sample Purchase Price Calculation 9  
Scheduled Closing Date 16  
Seller 4  
Seller's Affiliates 24  
Seller's Bank Account 14  
Seller's Covenants 26  
Seller's Guarantee 18  
Seller's Indemnification Claims 44, 45  
Seller's Knowledge 21  
Seller's Representatives 10  
SensAble Platform 6 of Exhibit 11.6  
Share Capital 5  
Share Purchase Price 8  
Shareholder Loan 5  
Shareholder Loan Agreement 5  
Shareholder Loan Notice 7  
Shareholder Loan Notice Amount 7  
Shareholder Loan Purchase Price 9  
Shareholder Loan Receivable 7  
Shareholder Loan Termination Agreement 7  
Shareholders' Resolution exocad Group GmbH 6  
Shareholders' Resolutions Company 6  
Shareholders' Resolutions Subsidiaries 6  
Sold Shares 5  
Subsidiary 5  
Target Working Capital 9  
Tax 35  
Tax Audit 35  
Tax Authority 35  
Tax Indemnification Claim 36, 37  
Tax Proceeding 36  
Tax Refund 36, 39  
Tax Return 36  
Tax Warranties 36  
Third Party Claim 29  
Time Limitations 31  
Transaction 4  
US Taxes 36  
USB StickDR 29  
W&I Insurance 32  
Waiver 44

## CERTIFICATION

I, Joseph M. Hogan, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Align Technology, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 5, 2020

/s/ JOSEPH M. HOGAN

---

Joseph M. Hogan  
President and Chief Executive Officer

## CERTIFICATION

I, John F. Morici, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Align Technology, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 5, 2020

/s/ JOHN F. MORICI

John F. Morici

Chief Financial Officer and Senior Vice President, Global Finance

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Align Technology, Inc. (the "Company") on Form 10-Q for the period ending March 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

By: \_\_\_\_\_ /s/ JOSEPH M. HOGAN  
Name: **Joseph M. Hogan**  
Title: **President and Chief Executive Officer**

Date: May 5, 2020

In connection with the Quarterly Report of Align Technology, Inc. (the "Company") on Form 10-Q for the period ending March 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

By: \_\_\_\_\_ /s/ JOHN F. MORICI  
Name: **John F. Morici**  
Title: **Chief Financial Officer and Senior Vice President, Global Finance**

Date: May 5, 2020