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 September 30, 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	**94-3267295**
(State or other jurisdiction of incorporation or organization)	**(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	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
Emerging growth company	☐		

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

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 October 23, 2020 was 78,850,392.

ALIGN TECHNOLOGY, INC.

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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 September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Net revenues	$ 734,144	$ 607,341	$ 1,637,421	$ 1,757,009
Cost of net revenues	200,056	169,787	484,649	485,070
Gross profit	534,088	437,554	1,152,772	1,271,939
Operating expenses:				
Selling, general and administrative	312,492	277,514	852,365	792,572
Research and development	44,527	39,680	126,420	116,034
Impairments and other (gains) charges	—	(6,792)	—	22,990
Litigation settlement gain	—	—	—	(51,000)
Total operating expenses	357,019	310,402	978,785	880,596
Income from operations	177,069	127,152	173,987	391,343
Interest income and other income (expense), net:				
Interest income	329	3,478	2,788	9,576
Other income (expense), net	7,147	(2,211)	(12,368)	5,935
Total interest income and other income (expense), net	7,476	1,267	(9,580)	15,511
Net income before provision for (benefit from) income taxes and equity in losses of investee	184,545	128,419	164,407	406,854
Provision for (benefit from) income taxes	45,174	25,895	(1,452,493)	77,812
Equity in losses of investee, net of tax	—	—	—	7,528
Net income	$ 139,371	$ 102,524	$ 1,616,900	$ 321,514
Net income per share:				
Basic	$ 1.77	$ 1.29	$ 20.54	$ 4.03
Diluted	$ 1.76	$ 1.28	$ 20.45	$ 4.00
Shares used in computing net income per share:				
Basic	78,824	79,332	78,729	79,709
Diluted	79,163	79,825	79,078	80,397

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 September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Net income	$ 139,371	$ 102,524	$ 1,616,900	$ 321,514
Change in foreign currency translation adjustment, net of tax	15,810	(92)	25,793	530
Change in unrealized gains (losses) on investments, net of tax	—	41	(194)	317
Other comprehensive income (loss)	15,810	(51)	25,599	847
Comprehensive income	$ 155,181	$ 102,473	$ 1,642,499	$ 322,361

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)

	September 30, 2020	December 31, 2019
ASSETS		
Current assets:		
Cash and cash equivalents	$ 615,532	$ 550,425
Marketable securities, short-term	—	318,202
Accounts receivable, net of allowance for doubtful accounts of $13,716 and $6,756, respectively	626,046	550,291
Inventories	123,093	112,051
Prepaid expenses and other current assets	108,576	102,450
Total current assets	1,473,247	1,633,419
Property, plant and equipment, net	703,657	631,730
Operating lease right-of-use assets, net	83,386	56,244
Goodwill and intangible assets, net	555,946	75,692
Deferred tax assets	1,566,227	64,007
Other assets	32,628	39,610
Total assets	$ 4,415,091	$ 2,500,702
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 119,184	$ 87,250
Accrued liabilities	318,471	319,958
Deferred revenues	684,139	563,762
Total current liabilities	1,121,794	970,970
Income tax payable	108,669	102,794
Operating lease liabilities	65,518	43,463
Other long-term liabilities	85,639	37,306
Total liabilities	1,381,620	1,154,533
Commitments and contingencies (Notes 9 and 10)		
Stockholders' equity:		
Preferred stock, $0.0001 par value (5,000 shares authorized; none issued)	—	—
Common stock, $0.0001 par value (200,000 shares authorized; 78,849 and 78,433 issued and outstanding, respectively)	8	8
Additional paid-in capital	951,740	906,937
Accumulated other comprehensive income (loss), net	24,911	(688)
Retained earnings	2,056,812	439,912
Total stockholders' equity	3,033,471	1,346,169
Total liabilities and stockholders' equity	$ 4,415,091	$ 2,500,702

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)

Three Months Ended September 30, 2020	Common Stock Shares	Common Stock Amount	Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss), Net	Retained Earnings	Total
Balance as of June 30, 2020	78,781	$ 8	$ 918,495	$ 9,101	$ 1,917,441	$ 2,845,045
Net income	—	—	—	—	139,371	139,371
Net change in foreign currency translation adjustment	—	—	—	15,810	—	15,810
Issuance of common stock relating to employee equity compensation plans	68	—	9,652	—	—	9,652
Tax withholdings related to net share settlements of equity awards	—	—	(1,636)	—	—	(1,636)
Stock-based compensation	—	—	25,229	—	—	25,229
Balance as of September 30, 2020	78,849	$ 8	$ 951,740	$ 24,911	$ 2,056,812	$ 3,033,471

Nine Months Ended September 30, 2020	Common Stock Shares	Common Stock Amount	Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss), Net	Retained Earnings	Total
Balance as of December 31, 2019	78,433	$ 8	$ 906,937	$ (688)	$ 439,912	$ 1,346,169
Net income	—	—	—	—	1,616,900	1,616,900
Net change in unrealized gains (losses) from investments	—	—	—	(194)	—	(194)
Net change in foreign currency translation adjustment	—	—	—	25,793	—	25,793
Issuance of common stock relating to employee equity compensation plans	416	—	20,314	—	—	20,314
Tax withholdings related to net share settlements of equity awards	—	—	(48,674)	—	—	(48,674)
Stock-based compensation	—	—	73,163	—	—	73,163
Balance as of September 30, 2020	78,849	$ 8	$ 951,740	$ 24,911	$ 2,056,812	$ 3,033,471

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

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

Three Months Ended September 30, 2019	Common Stock Shares	Common Stock Amount	Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss), Net	Retained Earnings	Total
Balance as of June 30, 2019	79,865	$ 8	$ 874,275	$ (1,876)	$ 501,275	$ 1,373,682
Net income	—	—	—	—	102,524	102,524
Net change in unrealized gains (losses) from investments	—	—	—	41	—	41
Net change in foreign currency translation adjustment	—	—	—	(92)	—	(92)
Issuance of common stock relating to employee equity compensation plans	76	—	8,293	—	—	8,293
Tax withholdings related to net share settlements of equity awards	—	—	(3,075)	—	—	(3,075)
Common stock repurchased and retired	(1,132)	—	(11,360)	—	(188,640)	(200,000)
Stock-based compensation	—	—	24,176	—	—	24,176
Balance as of September 30, 2019	78,809	$ 8	$ 892,309	$ (1,927)	$ 415,159	$ 1,305,549

Nine Months Ended September 30, 2019	Common Stock Shares	Common Stock Amount	Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss), Net	Retained Earnings	Total
Balance as of December 31, 2018	79,778	$ 8	$ 877,514	$ (2,774)	$ 378,143	$ 1,252,891
Net income	—	—	—	—	321,514	321,514
Net change in unrealized gains (losses) from investments	—	—	—	317	—	317
Net change in foreign currency translation adjustment	—	—	—	530	—	530
Issuance of common stock relating to employee equity compensation plans	529	—	17,907	—	—	17,907
Tax withholdings related to net share settlements of equity awards	—	—	(55,793)	—	—	(55,793)
Common stock repurchased and retired	(1,498)	—	(15,006)	—	(284,498)	(299,504)
Stock-based compensation	—	—	67,687	—	—	67,687
Balance as of September 30, 2019	78,809	$ 8	$ 892,309	$ (1,927)	$ 415,159	$ 1,305,549

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)

	Nine Months Ended September 30,	
	2020	**2019**
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	$ 1,616,900	$ 321,514
Adjustments to reconcile net income to net cash provided by operating activities:		
Deferred taxes	(1,502,459)	1,470
Depreciation and amortization	68,769	57,194
Stock-based compensation	73,163	67,687
Non-cash operating lease cost	16,819	13,600
Allowance for doubtful accounts provisions	13,090	4,084
Impairments on equity investments	3,787	3,975
Impairments on long-lived assets	—	28,498
Gain on lease terminations	—	(6,792)
Gain from sale of equity method investment	—	(15,769)
Equity in losses of investee	—	7,528
Other non-cash operating activities	10,402	13,342
Changes in assets and liabilities, net of effects of acquisition:		
Accounts receivable	(101,888)	(95,566)
Inventories	(11,774)	(40,775)
Prepaid expenses and other assets	(28,251)	(14,826)
Accounts payable	21,837	1,343
Accrued and other long-term liabilities	(28,343)	31,089
Long-term income tax payable	119	13,425
Deferred revenues	128,585	138,072
Net cash provided by operating activities	280,756	529,093
CASH FLOWS FROM INVESTING ACTIVITIES:		
Acquisition, net of cash acquired	(420,788)	—
Purchase of property, plant and equipment	(101,757)	(107,157)
Purchase of marketable securities	(5,341)	(588,805)
Proceeds from maturities of marketable securities	42,641	211,829
Proceeds from sales of marketable securities	278,817	194,677
Repayment on unsecured promissory note	17,828	13,185
Other investing activities	1,760	(14,062)
Net cash used in investing activities	(186,840)	(290,333)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of common stock	20,314	17,907
Common stock repurchases	—	(299,504)
Payroll taxes paid upon the vesting of equity awards	(48,674)	(55,793)
Purchase of finance lease	—	(45,773)
Net cash used in financing activities	(28,360)	(383,163)
Effect of foreign exchange rate changes on cash, cash equivalents, and restricted cash	(568)	(2,098)
Net increase (decrease) in cash, cash equivalents, and restricted cash	64,988	(146,501)
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	$ 616,122	$ 491,065

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 and nine months ended September 30, 2020 and 2019, our comprehensive income for the three and nine months ended September 30, 2020 and 2019, our financial position as of September 30, 2020, our stockholders' equity for the three and nine months ended September 30, 2020 and 2019, and our cash flows for the nine months ended September 30, 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 and nine months ended September 30, 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.

Significant Accounting Policies

Our significant accounting policies are described in *Note 1 "Summary of Significant Accounting Policies" of the Notes to Consolidated Financial Statements* included in our Annual Report on Form 10-K. As a result of our exocad Global Holdings GmbH ("exocad") acquisition, we have added or amended relevant significant accounting policies as described below. Refer to *Note 4 "Business Combination" of the Notes to Condensed Consolidated Financial Statements* for additional details on the exocad acquisition which is included in our Imaging Systems and CAD/CAM Services ("Systems and Services") reportable segment.

Business Combinations

We allocate the fair value of the purchase consideration to the assets acquired and liabilities assumed based on their estimated fair values at the acquisition date. When determining the fair value of assets acquired and liabilities assumed, management is required to make certain estimates and assumptions, especially with respect to intangible assets. The estimates and assumptions used in valuing intangible assets include, but are not limited to, the amount and timing of projected future cash flows, the discount rate used to determine the present value of these cash flows, and the determination of the assets' life cycle. Amounts recorded in a business combination may change during the measurement period, which is a period not to exceed one year from the date of acquisition, as additional information about conditions existing at the acquisition date becomes available.

Revenue Recognition - Systems and Services

We sell intraoral scanners and computer-aided design/computer-aided manufacturing ("CAD/CAM") services through both our direct sales force and distribution partners. The intraoral scanner sales price includes one year of warranty and unlimited scanning services. The customer may also select, for additional fees, extended warranty and unlimited scanning services for periods beyond the initial year. When intraoral scanners are sold with an unlimited scanning service agreement and/

or extended warranty, we allocate revenues based on the respective standalone selling price ("SSP") of the scanner and the subscription service. We estimate the SSP of each element, taking into consideration historical prices as well as our discounting strategies. Revenues are then recognized over time as the monthly services are rendered and upon shipment of the scanner, as that is when we deem the customer to have obtained control. CAD/CAM services, where sold separately, include the initial software license and maintenance and support. We allocate revenues based upon the respective SSPs of the software license and the maintenance and support. We estimate the SSP of each element using historical prices. Revenues related to the software license are recognized upfront and revenues related to the maintenance and support are recognized over time. For both scanner and service sales, most consideration is collected upfront and in cases where there are payment plans, consideration is collected within one year and, therefore, there are no significant financing components.

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 the COVID-19 pandemic continues to be a global issue, 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 and the response to the pandemic is rapidly evolving. 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 or limitations, changes in manufacturing efficiency and capacity constraints caused by uneven or rapid changes in demand, and the impact of any initiatives or programs that we may undertake to address financial and operations challenges faced by us or 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. The extent to which the COVID-19 pandemic may continue to materially impact our financial condition, liquidity, or results of operations is uncertain for all of the foregoing reasons stated above and many others directly and indirectly related to the virus and efforts to contain its spread.

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 September 30, 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	$ 318,008	$ 224	$ (30)	$ 318,202

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

Cash equivalents are not included in the table above as the gross unrealized gains and losses are not material. We had 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 and nine months ended September 30, 2020 and 2019. For the three and nine months ended September 30, 2020 and 2019, realized gains or losses were not material.

Our fixed-income securities investment portfolio allows for investments with 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 September 30, 2020 and December 31, 2019 (in thousands):

Description	Balance as of September 30, 2020	Level 1	Level 2	Level 3
Cash equivalents:				
Money market funds	$ 285,228	$ 285,228	$ —	$ —
Prepaid expenses and other current assets:				
Israeli funds	3,399	—	3,399	—
Current unsecured promissory note	14,505	—	—	14,505
	$ 303,132	$ 285,228	$ 3,399	$ 14,505

Description	Balance as of December 31, 2019	Level 1	Level 2	Level 3
Cash equivalents:				
Money market funds	$ 236,923	$ 236,923	$ —	$ —
Short-term investments:				
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	—
Prepaid expenses and other current assets:				
Israeli funds	3,226	—	3,226	—
Current unsecured promissory note	25,005	—	—	25,005
Other assets:				
Long-term unsecured promissory note	7,328	—	—	7,328
	$ 590,684	$ 307,573	$ 250,778	$ 32,333

The unsecured promissory note that was entered into in 2019 with SmileDirectClub, LLC (“SDC”) 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 6 “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 $2.1 million and $5.9 million as of September 30, 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 nine months ended September 30, 2020 and September 30, 2019, we recorded impairment losses of $3.8 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. As a result of the settlement of foreign currency forward contracts, during the three months ended September 30, 2020 and 2019, we recognized net losses of $12.1 million and net gains of $10.1 million, respectively, and during the nine months ended September 30, 2020 and 2019, we recognized net gains of $0.6 million and $10.5 million,

respectively. As of September 30, 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 September 30, 2020 and December 31, 2019 (in thousands):

	September 30, 2020	
	Local Currency Amount	Notional Contract Amount (USD)
Chinese Yuan	¥1,075,000	$ 158,198
Euro	€127,000	148,852
Canadian Dollar	C$77,000	57,570
British Pound	£29,200	37,524
Japanese Yen	¥3,385,000	32,042
Brazilian Real	R$112,500	19,899
Israeli Shekel	ILS53,000	15,441
Mexican Peso	M$140,000	6,266
Australian Dollar	A$6,900	4,925
Swiss Franc	CHF4,000	4,343
		$ 485,060

	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
		$ 333,871

Other foreign currency forward contract

Prior to 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 nine months ended September 30, 2020, we recognized a $10.2 million loss within other income (expense), net in our Condensed Consolidated Statement of Operations.

Note 3. Balance Sheet Components

Inventories consist of the following (in thousands):

	September 30, 2020	December 31, 2019
Raw materials	$ 70,659	$ 54,947
Work in process	26,167	30,974
Finished goods	26,267	26,130
Total inventories	$ 123,093	$ 112,051

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

	September 30, 2020	December 31, 2019
Tax related receivables	$ 55,162	$ 41,252
Current promissory note and related interest receivable [1]	14,552	25,005
Prepaid software and maintenance	13,598	7,128
Others	25,264	29,065
Total prepaid expenses and other current assets	$ 108,576	$ 102,450

[1]Refer to *Note 6"Equity Method Investments" of the Notes to Condensed Consolidated Financial Statements* for more information.

Accrued liabilities consist of the following (in thousands):

	September 30, 2020	December 31, 2019
Accrued payroll and benefits	$ 126,112	$ 162,486
Accrued expenses	63,117	55,529
Accrued property, plant and equipment	25,597	9,167
Current operating lease liabilities	20,674	15,737
Accrued professional fees	19,112	10,410
Accrued income taxes	15,539	14,130
Others	48,320	52,499
Total accrued liabilities	$ 318,471	$ 319,958

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. We also warrant our CAD/CAM software for a one year period to perform in accordance with agreed product specifications. As we have not historically incurred any material warranty costs, we do not accrue for these software warranties. Warranty accrual consists of the following activity (in thousands):

	Nine Months Ended September 30,	
	2020	2019
Balance at beginning of period	$ 11,205	$ 8,551
Charged to cost of net revenues	8,047	9,429
Actual warranty expenditures	(8,229)	(7,178)
Balance at end of period	$ 11,023	$ 10,802

Deferred revenues consist of the following (in thousands):

	September 30, 2020	December 31, 2019
Deferred revenues - current	$ 684,139	$ 563,762
Deferred revenues - long-term [1]	$ 46,986	$ 35,503

[1] Included in Other long-term liabilities within our Condensed Consolidated Balance Sheet

During the three months ended September 30, 2020 and 2019, we recognized $734.1 million and $607.3 million of revenue, respectively, of which $99.6 million and $70.1 million was included in the deferred revenues balance at December 31, 2019 and 2018, respectively.

During the nine months ended September 30, 2020 and 2019, we recognized $1.6 billion and $1.8 billion of revenue, respectively, of which $263.3 million and $207.0 million was included in the deferred revenues balance at December 31, 2019 and 2018, respectively.

Our unfulfilled performance obligations, including deferred revenues and backlog, as of September 30, 2020 were $744.7 million. These performance obligations are expected to be recognized over the next one to five years.

Note 4. Business Combination

On April 1, 2020 (the "acquisition date"), we completed the acquisition of privately-held exocad for a total purchase consideration of $430.0 million and exocad became a wholly-owned subsidiary. exocad is a German dental CAD/CAM software company that offers fully integrated workflows to dental labs and dental practices. We believe the synergies from the acquisition 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 pave the way for new, seamless cross-discipline dentistry in the lab and at chairside.

The total purchase consideration consisted of the following (in thousands):

Cash paid to exocad stockholders	$	412,287
Cash paid to settle exocad's bank debt		17,691
Total purchase consideration paid	$	429,978

The preliminary allocation of purchase price to assets acquired and liabilities assumed which is subject to change within the measurement period is as follows (in thousands):

Goodwill	$	340,181
Identified intangible assets		118,700
Cash and cash equivalents		9,190
Deferred tax liabilities		(35,419)
Other assets (liabilities), net		(2,674)
Total	$	429,978

Goodwill represents the excess of the purchase price over the fair value of the underlying net tangible and identifiable intangible assets, and represents the expected synergies of the transaction and the knowledge and experience of the workforce in place. None of this goodwill is deductible for tax purposes. Under the applicable accounting guidance, goodwill will not be amortized but will be tested for impairment on an annual basis or more frequently if certain indicators are present. We allocated approximately $296.7 million of goodwill to our Systems and Services reporting unit (formerly the "Scanner and Services" reporting unit prior to its renaming during the second quarter of 2020) and approximately $43.5 million of the goodwill to our Clear Aligner reporting unit (Refer to *Note 5 "Goodwill and Intangible Assets" of the Notes to Condensed Consolidated Financial Statements* for additional details). Our reporting units are the same as our operating segments. Acquisition related costs are recognized separately from the business combination and expensed as incurred.

The following table presents details of the identified intangible assets acquired (in thousands, except years):

	Weighted Average Amortization Period (in years)	Fair Value
Intangible assets subject to amortization:		
Existing technology	10	$ 87,000
Customer relationships	10	21,500
Tradenames	7	9,800
Intangible assets not subject to amortization:		
In-process Research and Development ("IPR&D")	N/A	400
Total intangible assets		$ 118,700

We believe the amount of purchased intangible assets recorded above represent the fair values and approximate the amount a market participant would pay for these intangible assets as of the acquisition date.

Existing technology represents the estimated fair value of exocad's core technology that has reached technological feasibility. We valued the existing technology using the multi-period excess earnings method under the income approach. The economic useful life of existing technology was determined by considering the life cycle of the technology and related cash flows.

Customer relationships represent the fair value of future projected revenue that will be derived from sales of products to existing customers. Customer relationships were valued using the with-and-without method under the income approach. The economic useful life for customer relationships was based on historical customer attrition rates.

Tradenames relates to the exocad tradenames that are recognized within the industry. The fair value was determined using the relief-from-royalty method under the income approach. The economic useful life of tradenames was determined by benchmarking against similar transactions entered into by peer companies.

IPR&D refers to the fair value of projects that are not yet completed but have potential value to the company.

Deferred tax liabilities were recorded for significant basis differences primarily to reflect the tax effect of fair value adjustments made to the beginning balance of the intangible assets and deferred revenue as of the acquisition date (Refer to *Note 13 "Accounting for Income Taxes" of the Notes to Condensed Consolidated Financial Statements* for additional details).

Our condensed consolidated financial statements include the operating results of exocad from the acquisition date. Separate post-acquisition operating results and pro forma results of operations for this acquisition have not been presented as the effect is not material to our financial results.

Note 5. Goodwill and Intangible Assets

Goodwill

The change in the carrying value of goodwill for the nine months ended September 30, 2020, categorized by reportable segments, is as follows (in thousands):

	Clear Aligner	Systems and Services	Total
Balance as of December 31, 2019	$ 63,924	$ —	$ 63,924
Additions from exocad acquisition[1]	43,500	296,681	340,181
Adjustments[2]	2,695	20,542	23,237
Balance as of September 30, 2020	$ 110,119	$ 317,223	$ 427,342

[1] Includes goodwill adjustments within the measurement period (up to one year from acquisition date). Refer to *Note 4 "Business Combination" of the Notes to Condensed Consolidated Financial Statements* for additional details.
[2] Adjustments related to foreign currency translation within the measurement period

During the fourth quarter of fiscal 2019, we performed our 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 September 30, 2020	Accumulated Amortization	Accumulated Impairment Loss	Net Carrying Value as of September 30, 2020
Trademarks and tradenames	10	$ 16,900	$ (2,849)	$ (4,179)	$ 9,872
Existing technology	10	99,600	(10,603)	(4,328)	84,669
Customer relationships	11	55,000	(20,876)	(10,751)	23,373
Other [1]	5	14,913	(11,885)	—	3,028
		$ 186,413	$ (46,213)	$ (19,258)	120,942
Foreign currency translation					7,662
Total intangible assets [2]					$ 128,604

[1] Includes reacquired rights, patents and other intangible assets
[2] Refer to *Note 4 "Business Combination" of the Notes to Condensed Consolidated Financial Statements* for additional details on intangible assets from our exocad acquisition.

	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 September 30, 2020 is as follows (in thousands):

Fiscal Year Ending December 31,	Amortization
Remainder of 2020	$ 3,907
2021	15,622
2022	14,366
2023	13,745
2024	12,805
Thereafter	60,497
Total	$ 120,942

Amortization expense for the three months ended September 30, 2020 and 2019 was $4.1 million and $1.5 million, respectively, and amortization expense for the nine months ended September 30, 2020 and 2019 was $9.5 million and $4.5 million, respectively.

Note 6. Equity Method Investments

On July 25, 2016, we acquired a 17% equity interest, on a fully diluted basis, in 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 9 "Legal Proceedings" of the Notes to Condensed Consolidated Financial Statements* for SDC legal proceedings discussion). As of September 30, 2020, the unsecured promissory note had a remaining current balance of $14.5 million.

Note 7. Credit Facility

On July 21, 2020 we entered into a new credit facility for a $300.0 million unsecured revolving line of credit, with a $50.0 million letter of credit sublimit, and a maturity date of July 21, 2023 ("2020 Credit Facility"), replacing our previous credit facility which provided for a $200.0 million revolving line of credit with a $50.0 million letter of credit. The 2020 Credit Facility requires us to comply with specific financial conditions and performance requirements. Loans under the 2020 Credit Facility 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 1.50% to 2.25% for LIBOR loans and 0.50% to 1.25% 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. The outstanding principal, together with accrued and unpaid interest, is due on the maturity date. As of September 30, 2020, we had no outstanding borrowings under the 2020 Credit Facility and were in compliance with the conditions and performance requirements.

Note 8. Impairments and Other (Gains) Charges

On March 5, 2019, we announced the outcome of the arbitration regarding SDC (Refer to *Note 9 "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. During the third quarter of 2019, we negotiated early termination of our Invisalign store leases and recorded lease termination gains of $6.8 million.

Note 9. 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 alleged claims under the federal securities laws and sought 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. 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. On September 9, 2020, Defendants' motion to dismiss the amended consolidated complaint was granted in part and denied in part. On September 24, 2020, the Court stayed the case until otherwise ordered to allow the parties time to pursue private mediation. Align believes these remaining 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.

2019 Shareholder Derivative Lawsuit

In January 2019, three derivative lawsuits were filed in the U.S. District Court for the Northern District of California which were later consolidated, 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 asserted in the 2018 Securities Class Action Lawsuit, but the complaints assert various state law causes of action, including for breaches of fiduciary duty, insider trading, and unjust enrichment. 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. The consolidated action has been stayed pending final disposition of the 2018 Securities Class Action Lawsuit.

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 the complaint are similar to those in the derivative suits described above. The matter has been similarly stayed pending final disposition of the 2018 Securities Class Action Lawsuit.

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.

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 (later transferred to the U.S. District Court for the Northern District of California) on behalf of a purported class of purchasers of our common stock between April 24, 2019 and July 24, 2019. The complaint alleged claims under the federal securities laws and sought monetary damages in an unspecified amount and costs and expenses incurred in the litigation. The lead plaintiff filed an amended complaint on August 4, 2020 against Align and three of our executive officers alleging similar claims as in the initial complaint on behalf of a purported class of purchasers of our common stock from April 25, 2019 to July 24, 2019. A motion to dismiss the amended complaint was filed on September 18, 2020. 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. This action has been stayed pending final disposition of the 2020 Securities Class Action Lawsuit. 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 several patent infringement lawsuits asserting 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.

These lawsuits included 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. Three of the cases are active, and one was voluntarily dismissed by Align. Certain of Align's asserted patents in the Delaware actions were found invalid by the District Court judge.

On May 9, 2018, and June 14, 2018, 3Shape filed separate complaints in the U.S. District Court for the District of Delaware alleging patent infringement by Align's iTero Element scanner of two 3Shape patents. On August 19, 2019, the Court consolidated the two actions, and on August 30, 2019, 3Shape filed an amended complaint alleging infringement of a third patent.

In December 2018, Align filed three additional patent infringement lawsuits asserting 10 additional patents against 3Shape. 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. On April 30, 2020, an Administrative Law Judge ("ALJ") issued an initial determination that 3Shape 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. The current deadline for completing the investigation is November 2, 2020.

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.

On October 19, 2020, Align filed a complaint in the U.S. District Court for the Western District of Texas alleging patent infringement by 3Shape's intraoral scanners and associated software products. 3Shape has not yet responded to the complaint.

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/or injunctive relief against further infringement. Trial dates in the District Court cases are uncertain given the ongoing pandemic.

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. After the Court dismissed 3Shape's complaint with leave, 3Shape filed an amended complaint on October 28, 2019. On May 20, 2020, the Magistrate Judge recommended that Align's motion to dismiss the amended complaint be denied. Align's objection to the Magistrate Judge's Report and Recommendation has been fully briefed to the District Court, and the parties are waiting for a ruling.

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 June 5, 2020, 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 Northern District of California 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. Prior to filing in the Northern District of California, on May 4, 2020, Plaintiff voluntarily dismissed a similar action in the U.S. District Court for the District of Delaware after the Magistrate Judge recommended that its complaint be dismissed. Plaintiff filed an amended complaint and added VIP Dental Spas as a plaintiff on August 14, 2020. On September 9, 2020, Align moved to dismiss Plaintiffs' amended complaint. 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 April 2018, the SDC Financial LLC, SmileDirectClub LLC, and the Members of SDC Financial LLC other than the Company (collectively, the "SDC Entities") initiated confidential arbitration proceedings against Align. During December 2018, the parties participated in binding arbitration proceedings and presented closing arguments on January 23, 2019. In an award dated March 4, 2019, ("Award") an arbitrator found that Align breached a restrictive covenant and that Align misused the SDC Entities' confidential information and violated fiduciary duties to SDC Financial LLC. As part of the Award, Align was enjoined 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 from using the SDC Entities' confidential information. The arbitrator extended the expiration date of specified aspects of the restrictive covenant 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 Circuit Court for Cook County, Illinois confirmed the Award on April 29, 2019.

As required by the Award, Align tendered its membership interests for a purchase price that SDC claims to be Align's "capital account" balance. 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. That arbitration proceeding remains pending and a hearing is currently expected to occur in December 2020. 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 a restrictive covenant 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 April 27, 2020, the SDC Entities filed an amended arbitration demand, which additionally asserts that Align's alleged dealings with a third-party constitute contempt of the Award. Align denies and intends to vigorously defend itself against all asserted allegations. On September 30, 2020, SDC announced that it was withdrawing its claim for damages in this arbitration proceeding, and that it would instead seek injunctive and equitable relief. That arbitration proceeding remains pending and a hearing is currently expected to occur in March 2021.

On August 27, 2020, Align initiated a confidential arbitration proceeding against the SDC entities before the American Arbitration Association in San Jose, California. This arbitration relates to the Strategic Supply Agreement ("Supply Agreement") entered into between the parties in 2016. The complaint states that the SDC Entities breached the Supply Agreement's terms, causing damages to Align in an amount to be determined.

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

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 10. Commitments and Contingencies

Other Commitments

On October 3, 2019, we entered into a Promotional Rights Agreement (the "Agreement") with NFL Properties LLC for $36.0 million which includes certain advertising and media coverage. As of September 30, 2020, we had a remaining commitment of $32.5 million which is expected to be paid through 2023.

Off-Balance Sheet Arrangements

As of September 30, 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 September 30, 2020, we did not have any material indemnification claims that were probable or reasonably possible.

Note 11. Stockholders' Equity

Summary of Stock-Based Compensation Expense

As of September 30, 2020, the 2005 Incentive Plan (as amended) has a total reserve of 27,783,379 shares of which 4,617,148 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 our stock-based awards and employee stock purchase plans for the three and nine months ended September 30, 2020 and 2019 is as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Cost of net revenues	$ 1,247	$ 1,354	$ 3,485	$ 3,744
Selling, general and administrative	19,951	19,394	58,284	54,321
Research and development	4,031	3,428	11,394	9,622
Total stock-based compensation	$ 25,229	$ 24,176	$ 73,163	$ 67,687

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 nine months ended September 30, 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	298	266.07		
Vested and released	(308)	150.22		
Forfeited	(34)	233.59		
Unvested as of September 30, 2020	652	$ 241.90	1.4	$ 213,410

As of September 30, 2020, we expect to recognize $113.4 million of total unamortized compensation cost, net of estimated forfeitures, related to RSUs over a weighted average period of 2.4 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 nine months ended September 30, 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 September 30, 2020	227	$ 430.50	1.4	$ 74,391

As of September 30, 2020, we expect to recognize $39.0 million of total unamortized compensation cost, net of estimated forfeitures, related to MSUs over a weighted average period of 1.4 years.

Employee Stock Purchase Plan ("ESPP")

In May 2010, our stockholders 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 September 30, 2020, we have 325,665 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 September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Expected term (in years)	1.0	1.5	1.0	1.4
Expected volatility	71.7 %	52.0 %	55.0 %	50.1 %
Risk-free interest rate	0.1 %	1.8 %	0.9 %	2.2 %
Expected dividends	—	—	—	—
Weighted average fair value at grant date	$ 117.32	$ 80.42	$ 96.94	$ 86.02

As of September 30, 2020, there was $4.9 million of total unamortized compensation costs related to employee stock purchases which we expect to be recognized over a weighted average period of 0.5 year.

Note 12. 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 September 30, 2020, we have $100.0 million available for repurchase under the May 2018 Repurchase Program.

Note 13. Accounting for Income Taxes

During the nine months ended September 30, 2020, we completed an intra-entity transfer of certain intellectual property rights and fixed assets to our Swiss subsidiary, where our Europe, Middle East and Africa ("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 nine months ended September 30, 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 provision for income taxes was $45.2 million and $25.9 million for the three months ended September 30, 2020 and 2019, representing effective tax rates of 24.5% and 20.2%, respectively. Our benefit from income taxes was $1,452.5 million for the nine months ended September 30, 2020 and our provision for income taxes was $77.8 million for the nine months ended September 30, 2019, representing effective tax rates of (883.5)% and 19.1%, respectively. Our effective tax rate differs from the statutory federal income tax rate of 21% for the three months ended September 30, 2020 primarily due to the recognition of additional tax expense resulting from state tax and non-deductible expenses in the U.S., partially offset by the recognition of a tax benefit for the release of certain unrecognized tax benefits following the settlement of an Internal Revenue Service ("IRS") income tax audit for years 2015 and 2016. Our effective tax rate differs from the statutory federal income tax rate of 21% for the nine months ended September 30, 2020 mainly as a result of the recognition of tax benefits related to the intra-entity transfer of certain intellectual property rights and fixed assets mentioned above. Our effective tax rate differs from the statutory federal income tax rate of 21% for the three and nine months ended September 30, 2019 mainly as a result of certain foreign earnings, primarily from the Netherlands and Costa Rica, being taxed at lower tax rates and the recognition of excess tax benefits related to stock-based compensation, partially offset by non-deductible officers' compensation.

The increase in our effective tax rate for the three months ended September 30, 2020 compared to the same period in 2019 is primarily attributable to reduced tax benefit of certain foreign earnings being taxed at lower tax rates and tax benefits recorded last year related to certain statute of limitations expirations and adjustments for prior years that did not recur in 2020, offset in part by a tax benefit recorded this quarter for the release of certain unrecognized tax benefits following the settlement of an IRS income tax audit for years 2015 and 2016. The decrease in our effective tax rate for the nine months ended

September 30, 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 nine months ended September 30, 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. We are no longer subject to U.S. federal tax examination for years before 2017 and U.S. state tax examination for years before 2015. 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, were $47.0 million and $46.7 million as of September 30, 2020 and December 31, 2019, respectively, a material amount of which would impact our effective tax rate if recognized. Total interest and penalties accrued as of September 30, 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. During the three months ended September 30, 2020, we recognized $8.7 million of previously unrecognized tax benefits through our effective tax rate due to the settlement of the IRS audit for tax years 2015 and 2016. We do not anticipate the total unrecognized tax benefits will change significantly within the next 12 months due to settlement of audits nor expiration of statutes of limitations.

Our total deferred tax liabilities were $36.8 million as of September 30, 2020, which were primarily related to the intangible assets from our exocad acquisition. Our deferred tax liabilities as of December 31, 2019 were not material.

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 14. 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 September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Numerator:				
Net income	$ 139,371	$ 102,524	$ 1,616,900	$ 321,514
Denominator:				
Weighted average common shares outstanding, basic	78,824	79,332	78,729	79,709
Dilutive effect of potential common stock	339	493	349	688
Total shares, diluted	79,163	79,825	79,078	80,397
Net income per share, basic	$ 1.77	$ 1.29	$ 20.54	$ 4.03
Net income per share, diluted	$ 1.76	$ 1.28	$ 20.45	$ 4.00
Anti-dilutive potential common shares [1]	65	398	66	25

[1] Represents RSUs and MSUs not included in the calculation of diluted net income per share as the effect would have been anti-dilutive.

Note 15. Supplemental Cash Flow Information

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

	Nine Months Ended September 30,	
	2020	2019
Non-cash investing and financing activities:		
Fixed assets acquired with accounts payable or accrued liabilities	$ 43,147	$ 14,331
Issuance of promissory note in exchange for sale of equity method investment	$ —	$ 54,154
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	$ 19,384	$ 21,186
Investing cash flows from finance leases [1]	$ —	$ 10,896
Financing cash flows from finance leases	$ —	$ 45,773
Right-of-use assets obtained in exchange for lease obligations:		
Operating leases	$ 44,915	$ 26,395
Finance leases	$ —	$ 51,064

[1] A portion of finance lease purchase payment relates to leasing a part of the building to a third party as a lessor. This amount is included in Other Investing Activities in our Condensed Consolidated Statements of Cash Flows.

Note 16. 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 Imaging Systems and CAD/CAM services ("Systems and Services") segment. The Systems and Services segment was formerly known as the Scanner and Services segment prior to our acquisition of exocad on April 1, 2020 (Refer to *Note 4 "Business Combination" of the Notes to Condensed Consolidated Financial Statements* for additional details on the exocad acquisition).

- 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 Systems and Services segment consists of our iTero intraoral scanning systems, which includes a single hardware platform and restorative or orthodontic software options, OrthoCAD services and ancillary products, as well as exocad’s CAD/CAM software solution that integrates workflows to dental labs and dental practices.

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 September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Net revenues				
Clear Aligner	$ 620,764	$ 516,265	$ 1,400,716	$ 1,482,172
Systems and Services	113,380	91,076	236,705	274,837
Total net revenues	$ 734,144	$ 607,341	$ 1,637,421	$ 1,757,009
Gross profit				
Clear Aligner	$ 463,747	$ 379,202	$ 1,007,605	$ 1,096,702
Systems and Services	70,341	58,352	145,167	175,237
Total gross profit	$ 534,088	$ 437,554	$ 1,152,772	$ 1,271,939
Income from operations				
Clear Aligner	$ 261,774	$ 211,952	$ 467,078	$ 614,622
Systems and Services	34,912	32,760	52,194	100,286
Unallocated corporate expenses	(119,617)	(117,560)	(345,285)	(323,565)
Total income from operations	$ 177,069	$ 127,152	$ 173,987	$ 391,343
Depreciation and amortization				
Clear Aligner	$ 10,413	$ 9,306	$ 30,231	$ 27,851
Systems and Services	5,092	1,987	11,882	5,349
Unallocated corporate expenses	8,981	8,413	26,656	23,994
Total depreciation and amortization	$ 24,486	$ 19,706	$ 68,769	$ 57,194
Impairments and other (gains) charges				
Clear Aligner	$ —	$ (6,792)	$ —	$ 22,990
Total impairments and other (gains) charges	$ —	$ (6,792)	$ —	$ 22,990
Litigation settlement gain				
Clear Aligner	$ —	$ —	$ —	$ (51,000)
Total litigation settlement gain	$ —	$ —	$ —	$ (51,000)

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 September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Total segment income from operations	$ 296,686	$ 244,712	$ 519,272	$ 714,908
Unallocated corporate expenses	(119,617)	(117,560)	(345,285)	(323,565)
Total income from operations	177,069	127,152	173,987	391,343
Interest income	329	3,478	2,788	9,576
Other income (expense), net	7,147	(2,211)	(12,368)	5,935
Net income before provision for (benefit from) income taxes and equity in losses of investee	$ 184,545	$ 128,419	$ 164,407	$ 406,854

Geographical Information

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Net revenues [1]:				
United States	$ 332,414	$ 286,050	$ 744,978	$ 861,710
Switzerland [2]	219,910	—	512,681	—
The Netherlands [2]	—	173,926	—	540,858
China	76,825	63,636	142,927	151,075
Other International	104,995	83,729	236,835	203,366
Total net revenues	$ 734,144	$ 607,341	$ 1,637,421	$ 1,757,009

[1] Net revenues are attributed to countries based on the location of where revenues are recognized by our legal entities.
[2] 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):

	September 30, 2020	December 31, 2019
Long-lived assets [1]:		
Switzerland [2]	$ 241,782	$ 7,755
United States	178,767	164,451
China	107,042	73,174
Costa Rica	99,000	82,083
The Netherlands [2]	855	226,286
Other International	159,597	134,225
Total long-lived assets	$ 787,043	$ 687,974

[1] Long-lived assets are attributed to countries based on the location of our entity that owns or leases the assets.
[2] 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.

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 in general, and in our solutions and products in particular, 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 for our products, including the impact of marketing on those rates and causes for periodic fluctuations of the rates, our expectations regarding the existence and impact of seasonality, our expectations regarding the sales growth of our intraoral scanner sales in international markets, our expectations regarding the productivity impact additional sales representatives will have on our sales and the impact of specialization of those representatives in sales channels, 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 and the health, safety and economic recovery from it, on the global economy, the businesses of our customers, and us, including our preparedness to react to changing circumstances and overall on our revenues, results of operations and financial condition, our expectations for our expenses and capital expenditures in particular, the actions we will take to control spending and for investments, our intentions regarding the investment of our international earnings from operations, our belief regarding the sufficiency of our cash balances and borrowing capacity, 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, iTero® intraoral scanners and services for orthodontics, and restorative and aesthetic dentistry, and exocad® computer-aided design and computer-aided manufacturing ("CAD/CAM") software for dental laboratories and dental practitioners. 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 9.0 million people worldwide have been treated with our Invisalign System.

To encourage consumers to treat malocclusions with clear aligners under the direction and supervision of licensed dental professionals, we bring to market solutions that we believe will strengthen our digital dental platform for doctors, labs and partners, including establishing the iTero intraoral scanner and related services as the preferred 3D digital scanning solution 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 may be affected by a number of factors including:

- *New Technology, Products, and Feature Enhancements.* We believe technological innovations allowing dental professionals to more quickly and accurately diagnose, plan and treat a wide range of cases from simple to complex combined with new and improved products drives greater treatment predictability, clinical applicability and ease of use for the dental professionals we serve; thereby supporting 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 and therefore comprising an important component of our digital approach.

    - *Invisalign clear aligners:* Since 2018, we have expanded our product portfolio and launched or announced various new offerings including our Invisalign treatment with Mandibular Advancement, Invisalign Go, Invisalign First and Invisalign Moderate. We also continue to increase the clinical efficacy and applicability of our products as exemplified most recently in the announcement of Invisalign G8 with SmartForce Aligner Activation. In each instance, we have broadened and strengthened our reach into key markets and demographics central to our strategic plans.

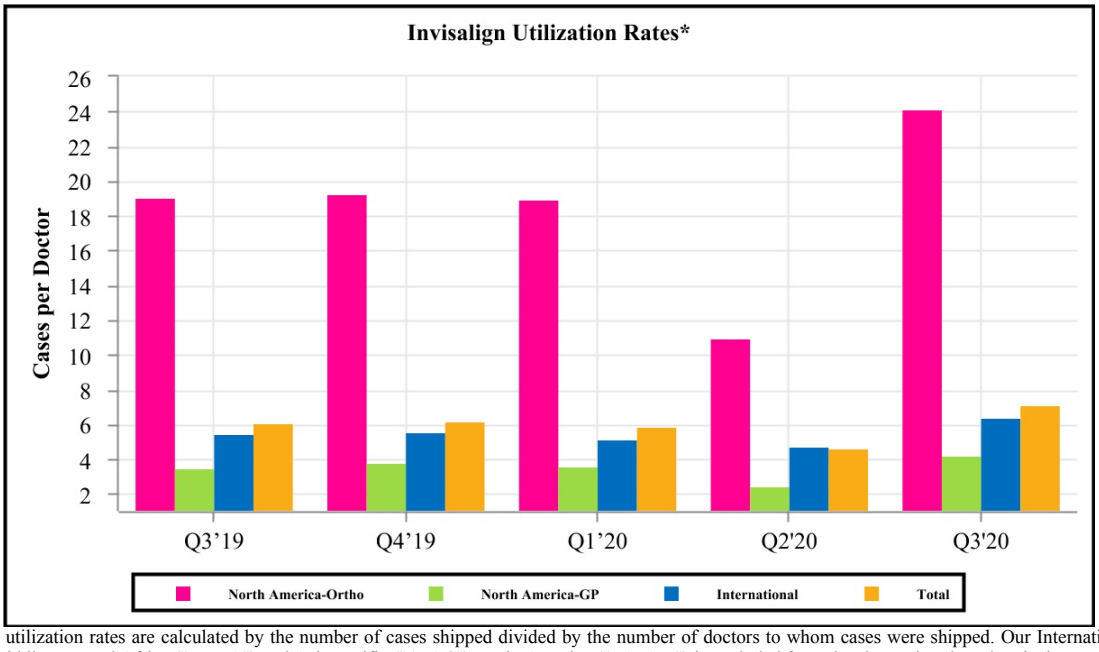
    - *iTero Scanner:* Over the last two years, we have expanded our intraoral digital scanning solutions and launched or announced several new offerings including the iTero Element, iTero Element Foundation and the iTero Element 5D Imaging system, for which we announced in March 2020 that we had obtained U.S. FDA 501(K) clearance and which we continue to release in additional countries, most recently Mexico. The clearance of the iTero Element 5D Imaging system in the U.S. markets and its release in other countries allows us to sell this unique solution that combines 3D data, intraoral color photos and NIRI images into a single, integrated scan improving doctor experiences and improving engagement opportunities and communications with their patients. The iTero Element 5D aids in the detection and monitoring of interproximal caries lesions above the gingiva without using harmful radiation.

    - *exocad:* On April 1, 2020, we completed the acquisition of privately-held exocad Global Holdings GmbH (“exocad”), a German dental CAD/CAM software company that offers fully integrated workflows to dental labs and dental practices. We believe the acquisition strengthens our digital platform by adding exocad’s expertise in restorative dentistry, implantology, guided surgery, and smile design to extend our digital dental solutions and broadens the Align digital platform towards fully interdisciplinary end-to-end workflows 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.

  To further the transformation of dental and orthodontic practices from outdated manual and analog practices to end-to-end digital workflows, we recently introduced virtual solutions such as Invisalign® Virtual Appointment and Invisalign® Virtual Care; solutions that facilitate the safe, effective and successful treatment of patients by conveniently connecting doctors and their patients throughout their treatment plans.

- *Invisalign Adoption.* Our goal is to establish Invisalign clear aligners 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.”

- For the third quarter of 2020, total Invisalign cases submitted with a digital scanner in the Americas increased to 83.2%, up from 78.8% in the third quarter of 2019 and international scans increased to 72.1%, up from 62.6% in the third quarter of 2019. For the third quarter of 2020, 94.9% of Invisalign cases submitted by North American orthodontists were submitted digitally. Our quarterly utilization rates for the last five quarters are as follows:



* Invisalign utilization rates are calculated by the number of cases shipped divided by the number of doctors to whom cases were shipped. Our International region includes Europe, Middle East and Africa ("EMEA") and Asia Pacific ("APAC"). Latin America ("LATAM") is excluded from the above chart based on its immateriality to the quarter.

- Total utilization rate in the third quarter of 2020 increased to 7.1 cases per doctor compared to 6.1 cases per doctor in the third quarter of 2019.
    - *North America:* Utilization rate among our North American orthodontist customers increased to 24.1 cases per doctor in the third quarter of 2020 compared to 19.1 cases per doctor in the third quarter of 2019 and the utilization rate among our North American GP customers increased to 4.2 cases per doctor in the third quarter of 2020 compared to 3.5 cases per doctor in the third quarter of 2019.
    - *International:* International doctor utilization rate was 6.4 cases per doctor in the third quarter of 2020 compared to 5.5 cases in the third quarter of 2019.

We expect global utilization rates to steadily improve as doctors' clinical confidence in the use of Invisalign clear aligners increases with advancements in products and technology and as patient and doctor demands for treatments that emphasize convenience and safety through fewer in office visits and less invasive and quicker treatments rise. In addition, 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 utilization rates to improve. However, our utilization rates will fluctuate from period to period due to a variety of factors, which may include seasonal trends in our business, COVID-19-related preventative measures and adoption rates for 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 nine months ended September 30, 2020, we trained 14,650 new Invisalign doctors of which 6,525 were trained in the Americas region and 8,125 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.* Our future growth is dependent upon the continued penetration and expansion of Invisalign product usage in international markets. Accordingly, we continue to focus our efforts towards increasing Invisalign clear aligner adoption by dental professionals internationally. Starting with the outbreak and spread of COVID-19 in the first quarter of 2020, we experienced significant disruption and uncertainty to our business, employees, doctors' practices, and the patterns and habits of their patients and consumers. While the most significant disruptions continued into the second quarter of 2020, their severity began to diminish in more recent months although significant uncertainties continue. *For a further discussion of COVID-19 and its impact on our business, see the section entitled "COVID-19 Update" below.* Prior to the impact of COVID-19, we experienced slower growth rates than prior periods in China which we believe were primarily due to the U.S.-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 clear aligner suppliers. Notwithstanding these issues in China, we continue to see growth opportunities with international orthodontists and GP customers, particularly with adopters of digital dentistry platforms and as we continue to segment our sales and marketing resources and programs specifically around each customer channel. We continue 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. For instance, we increased our sales presence in APAC in the first half of 2020 and will continue to strategically invest in regions as we deem appropriate for long-term success. We expect International revenues to grow at a faster rate than the Americas for the foreseeable future due to our continued investment in international market expansion, the size of the market opportunities and our relatively low market penetration of these regions.

- *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. Additionally, increased awareness of direct to consumer clear aligners and heavy advertising spend by those companies may have shifted business away from traditional dental practices. We also believe that doctors may choose to sample alternative products and/or take 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 began increasing our investments with the goal of generating greater consumer demand starting with a new advertising campaign for North America. During the third quarter of 2020, our marketing and consumer engagement included social media campaigns targeting teens and mothers through social media influencers, becoming the Official Clear Aligner Sponsor of the National Football League and introducing Invisalign Stickables which patients can apply to their aligners as a fun and simple way to distinguish themselves and our products from the competition. We expect to make further investments to create additional demand for Invisalign treatment; driving more consumers to dental professionals for those treatments.

  We also believe that investing in our sales teams is important to our success. The addition of sales representatives in APAC in 2020 follows other additions in the U.S. in 2019. We believe the realignment of our sales teams to focus on the channels they serve allows us to partner with doctors in more meaningful ways; allowing us to assess their specific needs and tailor plans for post-pandemic success that encourage increased adoption and engagement of a variety of products and services.

  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

Since the first quarter of fiscal year 2020, our sales and results of operations have been markedly impacted first by the preventative measures implemented to slow the spread of COVID-19, including the complete closure or significantly reduced operations of dental practices and, more recently, the inconsistent pace and scale of recovery in various markets. By the end of the second quarter of 2020, dental practices across every region had largely reopened and were seeing patients, although at varying capacities as compared to pre-pandemic, with recovery in the Orthodontic channel leading the GP channel. As of the end of the third quarter of 2020, dental practices continued to recover although at capacities less than pre-pandemic levels. Additionally, in virtually all practices the effects of COVID-19 persist, typically in the form of additional preventative safety measures such as added sterilization requirements, increased costs for personal protective equipment and staggered patient visits intended to reduce the risks of cross contamination, each of which contribute to fewer patient visits per day.

To help doctors through the pandemic and to stimulate demand for our products and services during the recovery, we modified existing programs and implemented new promotions starting in the second quarter of 2020, some of which continued into all or part of the third quarter of 2020 and may currently remain in effect. For instance, to aid doctors during closures and to accelerate recovery as they began to reopen, we temporarily suspended certain subscription usage fees related to our iTero scanners, did not implement annual price increases on our various clear aligner products, encouraged doctors with patients in wires and brackets to switch to our Invisalign clear aligners, delayed accounts receivable collection efforts, allowed doctors to maintain their promotional status levels notwithstanding declining sales, increased advertising and launched new media campaigns, implemented new promotions and modified others, all in an effort to help our customers and accelerate our mutual return to normal operations. As a result of these efforts, for the nine months ended September 30, 2020, we recorded net revenues of $1.6 billion, a decrease of 6.8% compared to the same period in 2019. For the three months ended September 30, 2020, clear aligner case volume was 496.1 thousand, an increase of 28.7% compared to the same period in 2019 and for the three months ended September 30, 2020, Systems and Services net revenues increased by 24.5% compared to the same period in 2019.

In the short term, our business remains susceptible to the impact of the COVID-19 pandemic. On the one hand, our products may be viewed as discretionary purchases and therefore more susceptible to any global or regional recessions that may occur if unemployment or decreased consumer demand impacts specific industries or economies in general. Moreover, concerns about additional outbreaks of the virus and any efforts to slow or prevent a recurrence of its spread are likely to continue causing disruption and uncertainties in the markets, adversely impacting our customers and their patients for an indeterminate period of time. This in turn could impact our operations as purchasing decisions are delayed or lost, logistics complexities related to uneven or rapid changes in demand, sales and marketing efforts are postponed or prove ineffective, and inefficiencies in manufacturing operations as a consequence of fluctuating or unpredictable sales. On the other hand, we believe the pandemic emphasizes the benefits of digital dentistry and virtual appointments over traditional practice methods that require more frequent in office patient visits like manual adjustments of wires and brackets. We further believe that this will in turn motivate doctors to use more digital solutions such as Align's products and services including the iTero scanner and Invisalign system.

As we assess the possible future short- and long-term impacts to our revenues, 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 continue to monitor are governmental and societal reactions to the virus, global and regional economic activity, unemployment and its potential impact on discretionary spending and health insurance coverage, patient reluctance or fear of exposure as a result of orthodontic or dental office visits, travel restrictions on employees, suppliers, customers and their patients and other external factors related to COVID-19 that are beyond our control. Furthermore, if the threat of further spread of COVID-19 occurs or the pace of recovery by dental practices is haphazard or inconsistent, there may be a substantial impact on our employees or suppliers, our operations, including our ability to timely obtain the materials needed to manufacture our products and manufacture and deliver those products to customers; any of which may cause our results of operations, financial condition and overall financial performance to be harmed. Furthermore, if our employees or their families are sickened by COVID-19, our ability to respond or mitigate the impact of COVID-19 may be adversely impacted.

Moreover, many of the measures we implemented to protect our employees from the spread of the virus remain in effect. For instance, many of our offices across the globe (including our corporate headquarters) remain underutilized as employees continue to work from home. We are also screening our employees, providing them with personal protective equipment, and altering work environments to facilitate social distancing, which has in the past and may in the future harm productivity.

Furthermore, our efforts to mitigate the impact of social distancing on our customers and their patients continue. These include moving most of our clinical education program critical to doctor engagement online, launching our Invisalign Virtual Appointment tool and launching the Invisalign Virtual Care Program.

The COVID-19 pandemic continues to impact our employees, customers and the global economy in unprecedented ways. We believe the markets we serve will continue to recover from the COVID-19 preventative measures at differing rates and times corresponding with regional outbreaks and recoveries. However, the strategic re-implementation of preventative COVID-19 measures in one or more of our principal markets, unemployment, the threat to domestic and international economies and other events beyond our control remains. Should any one or more events or circumstances previously mentioned or others occur or materially adversely increase or other unknown circumstances arise, they could materially impact our business and results of operations in the fourth quarter of 2020 and beyond.

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 increase over 2019 levels; however, as a result of the financial impacts of COVID-19, we expect to control our discretionary spending, 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 Imaging Systems and CAD/CAM Services ("Systems and Services") 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, Vivera retainers along with our training and ancillary products for treating malocclusion.
- Our Systems and Services segment consists of our iTero intraoral scanning systems, which includes a single hardware platform and restorative or orthodontic software options, OrthoCAD services and ancillary products, as well as exocad's CAD/CAM software solution that integrates workflows to dental labs and dental practices.

Net revenues for our Clear Aligner and Systems and Services segments by region for the three and nine months ended September 30, 2020 and 2019 are as follows (in millions):

	Three Months Ended September 30,				Nine Months Ended September 30,			
Net Revenues	**2020**	**2019**	**Net Change**	**% Change**	**2020**	**2019**	**Net Change**	**% Change**
Clear Aligner revenues:								
Americas	$ 304.1	$ 259.8	$ 44.4	17.1 %	$ 683.0	$ 753.6	$ (70.6)	(9.4)%
International	281.2	226.0	55.2	24.4 %	632.3	637.4	(5.1)	(0.8)%
Non-case	35.4	30.5	4.9	16.2 %	85.4	91.2	(5.8)	(6.3)%
Total Clear Aligner net revenues	$ 620.8	$ 516.3	$ 104.5	20.2 %	$ 1,400.7	$ 1,482.2	$ (81.5)	(5.5)%
Systems and Services net revenues	113.4	91.1	22.3	24.5 %	236.7	274.8	(38.1)	(13.9)%
Total net revenues	$ 734.1	$ 607.3	$ 126.8	20.9 %	$ 1,637.4	$ 1,757.0	$ (119.6)	(6.8)%

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 and nine months ended September 30, 2020 and 2019 is as follows (in thousands):

	Three Months Ended September 30,				Nine Months Ended September 30,			
Region	**2020**	**2019**	**Net Change**	**% Change**	**2020**	**2019**	**Net Change**	**% Change**
Americas	269.0	215.4	53.5	24.8 %	583.5	641.3	(57.8)	(9.0)%
International	227.1	170.0	57.1	33.6 %	493.9	482.0	11.9	2.5 %
Total case volume	496.1	385.4	110.6	28.7 %	1,077.4	1,123.3	(46.0)	(4.1)%

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

For the three months ended September 30, 2020, total net revenues increased by $126.8 million compared to the same period in 2019 primarily as a result of higher Clear Aligner and Systems and Services volumes across all regions. For the nine months ended September 30, 2020, total net revenues decreased by $119.6 million as compared to the same periods in 2019 primarily as a result of lower Clear Aligner volumes in the Americas region and lower Systems and Services net revenues in most regions.

Clear Aligner - Americas

For the three months ended September 30, 2020, Americas net revenues increased by $44.4 million as compared to the same period in 2019 primarily due to higher Clear Aligner volume which increased net revenues by $64.6 million. The volume increase was partially offset by lower ASP which decreased net revenues by $20.2 million. Lower ASP was primarily a result of higher promotional discounts which decreased net revenues by $9.0 million and unfavorable foreign exchange rates which lowered net revenues by $5.4 million in addition to higher net deferrals and unfavorable product mix shift to lower priced products.

For the nine months ended September 30, 2020, Americas net revenues decreased by $70.6 million as compared to the same period in 2019 primarily due to lower Clear Aligner volume that decreased net revenues by $68.0 million in addition to slightly lower ASP. The ASP was slightly lower as a result of higher promotional discounts which reduced net revenues by $28.8 million and unfavorable foreign exchange rates reduced net revenues by $9.4 million; however, these were mostly offset by the July 2019 price increases which contributed $18.7 million to net revenues in addition to lower net deferrals and a product mix shift towards products with higher ASP, primarily driven by decreased SDC revenues which carried a lower ASP.

Clear Aligner - International

For the three months ended September 30, 2020, International net revenues increased by $55.2 million as compared to the same period in 2019 primarily due to increased Clear Aligner volume which increased revenues by $75.9 million. The volume increase was partially offset by lower ASP, which decreased revenues by $20.7 million. Lower ASP was as a result of higher promotional discounts which reduced net revenues by $21.5 million, higher net deferrals which decreased net revenues by $7.2 million along with a product mix shift towards lower priced products. The reductions in net revenues were partially offset by favorable foreign exchange rates which increased net revenues by $6.7 million and the July 2019 price increases across most products which increased net revenues.

For the nine months ended September 30, 2020, International net revenues decreased by $5.1 million as compared to the same period in 2019 primarily due to lower ASP which reduced net revenues by $20.7 million. Lower ASP was the result of higher promotional discounts that reduced net revenues by $37.8 million along with a product mix shift towards lower priced products; however, these reductions were partially offset by 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 $18.3 million. The reduction in net revenues due to lower ASP was partially offset by higher Clear Aligner volume which increased net revenue by $15.7 million.

Clear Aligner - Non-Case

For the three months ended September 30, 2020, non-case net revenues increased by $4.9 million as compared to the same period in 2019 primarily due to increased Vivera volume across all regions. For the nine months ended September 30, 2020, non-case net revenues decreased by $5.8 million as compared to the same period in 2019 primarily due to decreased training revenues across all regions.

Systems and Services

For the three months ended September 30, 2020, Systems and Services net revenues increased by $22.3 million as compared to the same period in 2019 primarily due to a higher number of scanners recognized which increased net revenues by $16.6 million, partially offset by lower scanner ASP decreasing net revenues by $10.1 million. The ASP decrease was mostly due to higher promotional discounts and an increase in the number of scanner contracts that included multiple years of service. The ASP decreases were partially offset by a product mix shift to higher priced scanners. In addition, iTero service revenues and the addition of exocad’s CAD/CAM revenues from our acquisition increased net revenues by $15.8 million.

For the nine months ended September 30, 2020, Systems and Services net revenues decreased by $38.1 million as compared to the same period in 2019 primarily due to a lower number of scanners recognized which decreased net revenues by $45.3 million and a lower scanner ASP which decreased net revenues by $16.6 million. The ASP decrease was mostly due to higher promotional discounts partially offset by product mix shift to higher priced scanners. These decreases were partially offset by higher iTero service revenues mostly due to a larger scanner install base and the addition of exocad’s CAD/CAM revenues from our acquisition which combined, increased net revenues by $23.8 million.

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

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2020	2019	Change	2020	2019	Change
Clear Aligner						
Cost of net revenues	$ 157.0	$ 137.1	$ 20.0	$ 393.1	$ 385.5	$ 7.6
% of net segment revenues	*25.3 %*	*26.5 %*		*28.1 %*	*26.0 %*	
Gross profit	$ 463.7	$ 379.2	$ 84.5	$ 1,007.6	$ 1,096.7	$ (89.1)
Gross margin %	*74.7 %*	*73.5 %*		*71.9 %*	*74.0 %*	
Systems and Services						
Cost of net revenues	$ 43.0	$ 32.7	$ 10.3	$ 91.5	$ 99.6	$ (8.1)
% of net segment revenues	*38.0 %*	*35.9 %*		*38.7 %*	*36.2 %*	
Gross profit	$ 70.3	$ 58.4	$ 12.0	$ 145.2	$ 175.2	$ (30.1)
Gross margin %	*62.0 %*	*64.1 %*		*61.3 %*	*63.8 %*	
Total cost of net revenues	$ 200.1	$ 169.8	$ 30.3	$ 484.6	$ 485.1	$ (0.4)
% of net revenues	*27.3 %*	*28.0 %*		*29.6 %*	*27.6 %*	
Gross profit	$ 534.1	$ 437.6	$ 96.5	$ 1,152.8	$ 1,271.9	$ (119.2)
Gross margin %	*72.7 %*	*72.0 %*		*70.4 %*	*72.4 %*	

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 Systems and Services 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 September 30, 2020, our gross margin percentage increased as compared to the same period in 2019 primarily due to manufacturing efficiencies resulting in lower costs per case and higher training margins which was offset in part by lower ASP.

For the nine months ended September 30, 2020, our gross margin percentage decreased as compared to the same period in 2019 primarily due to an increase in aligners per case driven by additional aligners, higher manufacturing spend partially driven by operational expansion activities and lower ASP which was offset in part by manufacturing efficiencies.

Systems and Services

For the three months ended September 30, 2020, our gross margin percentage decreased compared to the same period in 2019 primarily driven by lower ASP and higher freight costs which was offset in part by product mix shift towards products with higher margins in addition to higher service revenues.

For the nine months ended September 30, 2020, our gross margin percentage decreased compared to the same period in 2019 primarily driven by lower ASP and a decrease in manufacturing volumes which was offset in part by higher service revenues.

Selling, general and administrative (in millions):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2020	2019	Change	2020	2019	Change
Selling, general and administrative	$ 312.5	$ 277.5	$ 35.0	$ 852.4	$ 792.6	$ 59.8
% of net revenues	*42.6 %*	*45.7 %*		*52.1 %*	*45.1 %*	

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 September 30, 2020, selling, general and administrative expense increased compared to the same period in 2019 primarily due to higher compensation related costs of $34.2 million mainly from increased headcount resulting in higher salaries expense, fringe benefits and incentive compensation, in addition to higher equipment, software and maintenance expenses of $6.4 million and higher advertising and marketing costs of $5.9 million. These increases were partially offset by a decrease in travel related costs of $8.0 million due to the impact of COVID-19 and lower legal and outside service costs of $3.5 million.

For the nine months ended September 30, 2020, selling, general and administrative expense increased compared to the same period in 2019 primarily due to higher compensation related costs of $43.8 million mainly from increased headcount resulting in higher salaries expense, fringe benefits and stock-based compensation partially offset by lower incentive compensation. We also incurred higher equipment, software and maintenance costs of $19.7 million, higher advertising and marketing costs of $6.6 million and higher legal and outside service costs of $6.0 million which included transaction costs related to our acquisition of exocad. These increases were partially offset by a decrease in travel related costs of $17.5 million due to the impact of COVID-19.

Research and development (in millions):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2020	2019	Change	2020	2019	Change
Research and development	$ 44.5	$ 39.7	$ 4.8	$ 126.4	$ 116.0	$ 10.4
% of net revenues	*6.1 %*	*6.5 %*		*7.7 %*	*6.6 %*	

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 September 30, 2020, research and development expense increased compared to the same period in 2019 primarily due to higher compensation costs mainly from increased headcount resulting in higher salaries expense and fringe benefits in addition to higher equipment and material costs.

For the nine months ended September 30, 2020, research and development expense increased compared to the same period in 2019 primarily due to higher compensation costs mainly from increased headcount resulting in higher salaries expense and fringe benefits, which was partially offset by lower incentive compensation. We also incurred higher equipment and material costs.

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

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2020	2019	Change	2020	2019	Change
Impairments and other (gains) charges	$ —	$ (6.8)	$ 6.8	$ —	$ 23.0	$ (23.0)
% of net revenues	*— %*	*(1.1)%*		*— %*	*1.3 %*	

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

For the three months ended September 30, 2019, we negotiated early termination of our Invisalign store leases and recorded lease termination gains of $6.8 million.

For the nine months ended September 30, 2019, we recorded impairments and other (gains) charges of $23.0 million which 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, partially offset by the Invisalign store lease termination gains of $6.8 million (Refer to *Note 8 "Impairments and Other (Gains) Charges"* and *Note 9 "Legal Proceedings" of the Notes to Condensed Consolidated Financial Statements* for more information).

Litigation settlement gain (in millions):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2020	2019	Change	2020	2019	Change
Litigation settlement gain	$ —	$ —	$ —	$ —	$ (51.0)	$ 51.0
% of net revenues	*— %*	*— %*		*— %*	*(2.9)%*	

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

For the nine months ended September 30, 2019, we recorded a gain of $51.0 million due to the litigation settlement with Straumann.

Income from operations (in millions):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2020	2019	Change	2020	2019	Change
Clear Aligner						
Income from operations	$ 261.8	$ 212.0	$ 49.8	$ 467.1	$ 614.6	$ (147.5)
Operating margin %	*42.2 %*	*41.1 %*		*33.3 %*	*41.5 %*	
Systems and Services						
Income from operations	$ 34.9	$ 32.8	$ 2.2	$ 52.2	$ 100.3	$ (48.1)
Operating margin %	*30.8 %*	*36.0 %*		*22.1 %*	*36.5 %*	
Total income from operations [1]	$ 177.1	$ 127.2	$ 49.9	$ 174.0	$ 391.3	$ (217.4)
Operating margin %	*24.1 %*	*20.9 %*		*10.6 %*	*22.3 %*	

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

[1] Refer to *Note 16 "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 September 30, 2020, our operating margin percentage increased compared to the same period in 2019 primarily due to a higher Clear Aligner gross margin.

For the nine months ended September 30, 2020, our operating margin percentage decreased compared to the same period in 2019 primarily due to a lower Clear Aligner gross margin and a $51.0 million gain recognized from the litigation settlement with Straumann during the prior year period. These decreases were offset in part by a net impairment charge of $23.0 million recognized during the nine months ended September 30, 2019 related to the Invisalign store closures.

Systems and Services

For the three and nine months ended September 30, 2020, our operating margin percentage decreased compared to the same periods in 2019 primarily driven by a lower gross margin.

Interest income (in millions):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2020	2019	Change	2020	2019	Change
Interest income	$ 0.3	$ 3.5	$ (3.1)	$ 2.8	$ 9.6	$ (6.8)
% of net revenues	*— %*	*0.6 %*		*0.2 %*	*0.5 %*	

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

Interest income includes interest earned on cash, cash equivalents, investment balances and our unsecured promissory note.

For the three and nine months ended September 30, 2020, interest income decreased compared to the same periods in 2019 mainly due to the divestiture of our marketable securities portfolio during the first quarter of 2020 and lower interest rates.

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

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2020	2019	Change	2020	2019	Change
Other income (expense), net	$ 7.1	$ (2.2)	$ 9.4	$ (12.4)	$ 5.9	$ (18.3)
% of net revenues	*1.0 %*	*(0.4)%*		*(0.8)%*	*0.3 %*	

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 September 30, 2020, other income (expense), net increased compared to the same period in 2019 primarily due to net foreign exchange gains in the three months ended September 30, 2020 as compared to net foreign exchange losses in the same period in 2019.

For the nine months ended September 30, 2020, other income (expense), net decreased compared to the same period in 2019 primarily due to the $15.8 million gain from the sale of our investment in SDC that was recorded during the nine months ended September 30, 2019 and a $10.2 million loss on a foreign currency forward contract related to the exocad acquisition that was recorded during the current period. These decreases were partially offset by net foreign exchange gains in the nine months ended September 30, 2020 as compared to net foreign exchange losses in the same period in 2019.

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

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2020	2019	Change	2020	2019	Change
Equity in losses of investee, net of tax	$ —	$ —	$ —	$ —	$ 7.5	$ (7.5)
% of net revenues	*— %*	*— %*		*— %*	*0.4 %*	

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

For the three and nine months ended September 30, 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 6 "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 September 30,			Nine Months Ended September 30,		
	2020	2019	Change	2020	2019	Change
Provision for (benefit from) income taxes	$ 45.2	$ 25.9	$ 19.3	$ (1,452.5)	$ 77.8	$ (1,530.3)
Effective tax rates	*24.5 %*	*20.2 %*		*(883.5)%*	*19.1 %*	

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

During the nine months ended September 30, 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 nine months ended September 30, 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 provision for income taxes was $45.2 million and $25.9 million for the three months ended September 30, 2020 and 2019, representing effective tax rates of 24.5% and 20.2%, respectively. Our benefit from income taxes was $1,452.5 million for the nine months ended September 30, 2020 and our provision for income taxes was $77.8 million for the nine months ended September 30, 2019, representing effective tax rates of (883.5)% and 19.1%, respectively. Our effective tax rate differs from the

statutory federal income tax rate of 21% for the three months ended September 30, 2020 primarily due to the recognition of additional tax expense resulting from state tax and non-deductible expenses in the U.S, partially offset by the recognition of a tax benefit for the release of certain unrecognized tax benefits following the settlement of an Internal Revenue Service ("IRS") income tax audit for years 2015 and 2016. Our effective tax rate differs from the statutory federal income tax rate of 21% for the nine months ended September 30, 2020 mainly as a result of the recognition of tax benefits related to the intra-entity transfer of certain intellectual property rights and fixed assets mentioned above. Our effective tax rate differs from the statutory federal income tax rate of 21% for the three and nine months ended September 30, 2019 mainly as a result of certain foreign earnings, primarily from the Netherlands and Costa Rica, being taxed at lower tax rates and the recognition of excess tax benefits related to stock-based compensation, partially offset by non-deductible officers' compensation.

The increase in our effective tax rate for the three months ended September 30, 2020 compared to the same period in 2019 is primarily attributable to reduced tax benefit of certain foreign earnings being taxed at lower tax rates and tax benefits recorded last year related to certain statute of limitations expirations and adjustments for prior years that did not recur in 2020, offset in part by a tax benefit recorded this quarter for the release of certain unrecognized tax benefits following the settlement of an IRS income tax audit for years 2015 and 2016. The decrease in our effective tax rate for the nine months ended September 30, 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 nine months ended September 30, 2020.

Liquidity and Capital Resources

We fund our operations from product sales. As of September 30, 2020 and December 31, 2019, we had the following cash and cash equivalents and short-term marketable securities (in thousands):

	September 30, 2020	December 31, 2019
Cash and cash equivalents	$ 615,532	$ 550,425
Marketable securities, short-term	—	318,202
Total	$ 615,532	$ 868,627

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 September 30, 2020, approximately $316.7 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 revolving line of credit.

On April 1, 2020, we paid $420.8 million, net of $9.2 million cash acquired, from our cash on hand to complete our acquisition of exocad.

Beginning in the first quarter of 2020, our business has been materially adversely affected by the COVID-19 pandemic and the global and regional efforts by governments to mitigate its spread. While these impacts lessened in the third quarter of 2020, we could continue to experience further adverse impacts to our business. We believe that our current cash balances and the borrowing capacity under our credit facility, if necessary, will be sufficient to fund our business for at least the next 12 months. In addition, as a result of the COVID-19 pandemic, we could 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):

	Nine Months Ended September 30,	
	2020	2019
Net cash flow provided by (used in):		
Operating activities	$ 280,756	$ 529,093
Investing activities	(186,840)	(290,333)
Financing activities	(28,360)	(383,163)
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	(568)	(2,098)
Net increase (decrease) in cash, cash equivalents, and restricted cash	$ 64,988	$ (146,501)

Operating Activities

For the nine months ended September 30, 2020, cash flows from operations of $280.8 million resulted primarily from our net income of approximately $1.6 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 $73.2 million related to equity awards granted to employees and directors;
- Depreciation and amortization of $68.8 million related to our investments in property, plant and equipment and intangible assets;
- Non-cash operating lease cost of $16.8 million; and
- Allowance for doubtful accounts provisions of $13.1 million related to slower collections from the impacts of COVID-19.

Significant changes in working capital

- Increase of $128.6 million in deferred revenues primarily related to increased cases eligible under our additional aligner policy and timing of revenue recognition;
- Increase of $101.9 million in accounts receivable which is primarily a result of the increase in net revenues; and
- Decrease of $28.3 million in accrued and other long-term liabilities and an increase of $28.3 million in prepaid expenses and other assets due to the timing of payment and activities.

Investing Activities

Net cash used in investing activities was $186.8 million for the nine months ended September 30, 2020 which primarily consisted of cash paid for the acquisition of exocad of $420.8 million, net of cash acquired, purchases of property and plant and equipment purchases of $101.8 million and purchases of marketable securities of $5.3 million. These outflows were partially offset by maturities and sales of marketable securities of $321.5 million and $17.8 million received from payments on an unsecured promissory note issued by SDC in exchange for tendering our shares to them.

For the remainder of 2020 we expect to invest an additional $70.0 million to $80.0 million in capital expenditures related to building improvements as well as additional manufacturing capacity to support our international expansion.

Financing Activities

Net cash used in financing activities was $28.4 million for the nine months ended September 30, 2020 which consisted of payroll taxes paid for equity awards through share withholdings of $48.7 million which was partially offset by $20.3 million of proceeds from the issuance of common stock.

Common Stock Repurchases

As of September 30, 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 12 "Common Stock Repurchase Program" 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 10 "Commitments and Contingencies" of the Notes to Condensed Consolidated Financial Statements*. We believe that our current cash balances and the borrowing capacity under our credit facility, if necessary, will be sufficient to fund our business for at least the next 12 months. In addition, as a result of the COVID-19 pandemic, we could 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 September 30, 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 10 "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.

Other than the addition of the Business Combinations policy and the amendment of the Systems and Services (formerly named "Scanner") Revenue Recognition policy, 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. The addition of the Business Combinations policy and the amendment of the Systems and Services Revenue Recognition policy are discussed in *Note 1 "Summary of Significant Accounting Policies" of the Notes to Condensed Consolidated Financial Statements*.

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 September 30, 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 September 30, 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. Prior to 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 nine months ended September 30, 2020, we recognized a loss of $10.2 million within other income (expense), net in our Condensed Consolidated Statement of Operation. 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 September 30, 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 September 30, 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 9 "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 "General Risk Factors," discusses some of the risks that apply generally to companies and to owning our common stock, in particular. 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 our business will continue to be impacted in as yet unknown ways and to varying degrees in the future.

The initial spread of COVID-19 created significant, widespread and unprecedented volatility, uncertainty, and economic instability, disrupting the global economy, our operations and the businesses of our customers and suppliers, and recent renewed outbreaks in Europe and the Americas are threatening to harm recovering consumer confidence and renew demands for harsh preventative measures aimed at stopping or minimizing its spread. As a result of these preventative measures starting in the first quarter of 2020, many commercial activities, businesses and schools were suspended. Because COVID-19 spreads readily through airways in nasal passages and the mouth, our principal customers, dentists and orthodontists, and their patients, were the focus of many preventative efforts that led to complete or substantial closures of their operations. With a significant portion of our customers' operations limited to only essential dental procedures our sales and sales efforts were materially adversely harmed. By the end of the third quarter of 2020, dental practices across every region had largely reopened and were seeing patients, although at varying degrees of previous capacities.

In response to COVID-19, we 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 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. Many of these actions remain in effect. The actions and any further health and safety measures we may be required or choose to implement are and may be highly disruptive to our business, and may ultimately prove insufficiently effective; harming employees, their relatives, and potentially our operations. Even if these measures are completely or partially effective, if employees perceive them to be inadequate, or alternatively, overly burdensome, or they prove 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 maintain or implement protective measures or deliver our products may increase, and we may be subject to increased litigation, including product liability and worker safety and working conditions claims.

As the economic impact of the implementation of the various protective and preventative measures continues to unfold, we are continually evaluating macroeconomic as well as industry-specific factors, including 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 speed and time frames in which dental practices reopen, demand for our products increases and our ability to timely and effectively respond to changes in demand;
- the impact on worldwide economic activity, 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 and how and to what extent we accommodate our customers;
- 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 doctors 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 us or our competitors such as price reductions, aggressive product promotions, changes in or the launch or termination of products or product lines, and mergers, consolidations and liquidations;
- 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 remote working and/or teledentistry by our suppliers, customers, and us, including new or expanded use of online service platforms, products and solutions such as video conferencing applications, inadequately secured computing networks or servers, overheard telephone conversations, viewable computer screens, stolen passwords or access information, increased phishing and other online cyber threats.

Any economic downturn may also result in the carrying value of our goodwill or other intangible assets, including those as a result of our exocad Global Holdings GmbH (“exocad”) acquisition 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.

The impact of the pandemic continues to rapidly evolve 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 as well as 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 will similarly complement 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 declines 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, whether our technologies will achieve market acceptance and, if adopted, whether and when they may become obsolete as new offerings become available remains unclear.

Currently, our clear aligners compete directly against traditional metal brackets and wires and increasingly against clear aligners manufactured and distributed by new market entrants and 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. Due in part to the expiration of certain of our key patents beginning domestically in 2017 and internationally thereafter, competition in the clear aligner market continues to increase. Although the number and types of competitors varies by segment, geography and customers, our competitors are diverse, including new and well-established regional competitors, as well as larger companies or divisions of larger companies with substantial sales, marketing, research and financial capabilities, including the ability to leverage existing dental market channels to compete directly with us. Our competitors also include 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 doctors and doctors themselves who can manufacture custom aligners in their offices using modern 3D printing technology. 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 competitive promotions and sale opportunities. In addition, we may face competition from companies that introduce new technologies and 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, profitability and average selling prices, 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.

An increasingly larger portion of our total revenues are derived from international sales and we are dependent on our international operations, which exposes us to foreign operational, political and other risks that may harm our business.

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. Moreover, many of our key production steps are performed in operations located outside of the U.S. For instance, 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 our aligners. Our digital treatment planning and aligner fabrication are performed in multiple international locations, including Mexico, Costa Rica and China and we are continuing to establish these functions closer to our international customers to improve doctor and patient experiences and our operational efficiency. Also, we maintain significant research and development efforts globally, including in the U.S., Russia, Israel, and Germany. Our reliance on international operations exposes us to risks and uncertainties that may affect our business or results of operation, including:

- 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;
- difficulties hiring and retaining employees, particularly those with the necessary skills to perform the more technical aspects of our operations;
- 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;
- increased expense of developing, testing and making localized versions of our products;
- 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 or other countries;
- 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 primarily operations are not domestic;
- unexpected issues and expenses related to our corporate structure reorganization;
- reduced intellectual property rights protections as compared to the protections afforded under the laws of 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," and the potential real or perceived lack of a trade agreement between the U.K. and the EU by the end of 2020 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.

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 have or 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, any 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 accounts for the vast majority of our net revenues, represents a significant change from traditional metal brackets and wires orthodontic treatment, and customers and consumers may not find it cost-effective or preferable to traditional treatment. For instance, a number of dental professionals continue to believe the Invisalign treatment is appropriate for only a limited percentage of patients. Increased market acceptance of our products depends 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 and quickly 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 doing so and our profitability may suffer. 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 may 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 implement new or expand existing 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 in practices; 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 CAD/CAM 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 doctors, 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 technological 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 establishing facilities, 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 adapting production capacity and related cost structures to changing market conditions takes time, 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. Thereafter, as dental practices reopened we experienced a rapid increase in demand, all or a portion of which may have been related to pent-up demand, an increase in utilization, or other factors which may or may not be sustainable. If product demand decreases or increases more than expected, we fail to forecast demand accurately or if we are required to implement additional protective measures to safeguard our employees, we could be required to write off inventory or record excess capacity charges, productivity could decline, we may be required to purchase or lease additional or larger facilities and additional equipment, or we may be unable to fulfill customer demand in the time frames and with the quantities they require, any of which may take time to accomplish, lower our gross margin, inhibit sales or harm our reputation. 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 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 revenues recognition, 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;
- 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 such things as the establishment of treatment planning and fabrication facilities, the hiring and deployment of personnel, and litigation;
- 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 patient 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 of goodwill, long-lived assets, or notes receivable; and
- timing of industry tradeshows.

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 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 are 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 infringed 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 clearances or approvals of 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 successful, the time and effort required may be significant and costly. 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.

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. Moreover, we rely on a third-party manufacturer to supply key sub-assemblies for our iTero Element scanner. If these or other suppliers encounter financial, operating or other difficulties, are unable to hire or maintain personnel, cannot timely obtain supplies, are unable to maintain manufacturing standards or controls, fail to timely deliver materials, parts or components, if our relationship or the terms by which we contract with any of them changes, we may be unable to quickly establish or qualify replacement sources of supply and could face production interruptions, delays and inefficiencies. Finding substitute manufacturers may be expensive, time-consuming or impossible and could result in a significant interruption in the supply of one or more products, including our intraoral scanners, causing us to lose revenues and suffer damage to our customer relationships. 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 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.

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 achieve financial and operational efficiencies. 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.

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 these companies generate net losses and the market for their products, services or technologies may be slow to develop. Furthermore, 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 we believe such things like our unsecured promissory note with SmileDirectClub has become uncollectible as a result of events and circumstances such as weakness in the global and domestic economies, we may be required to record impairments which could be material and could have an adverse impact on our financial results.

General Risk Factors

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 also depends 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.

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 and subsequent recovery has materially impacted 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.

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 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.

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 global economic environment, 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. Our effective tax rate is also dependent in part on forecasts of full year results and could vary materially with the impact of the COVID-19 outbreak to the global economic environment. Furthermore, 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 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.

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 September 30, 2020. As of September 30, 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 12 "Common Stock Repurchase Program" of the Notes to Condensed Consolidated Financial Statements* for details on our stock repurchase program).

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:

Exhibit Number	Description	Filing	Date	Exhibit Number	Filed herewith
10.1	Credit Agreement between Align Technology, Inc. and the lenders party thereto from time to time and Citibank, N.A., as administrative agent, dated July 21, 2020				*
31.1	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.				*
31.2	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.				*
32.1†	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				*
101.INS	Inline 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	Inline XBRL Taxonomy Extension Schema Document				*
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document				*
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document				*
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document				*
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document				*
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)				*

† Furnished herewith

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

ALIGN TECHNOLOGY, INC.

October 30, 2020

By: /s/ JOSEPH M. HOGAN
Joseph M. Hogan
President and Chief Executive Officer

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

CREDIT Agreement

dated as of

July 21, 2020

among

ALIGN TECHNOLOGY, INC.,

The other Loan Parties Party Hereto,

The Lenders Party Hereto,

and

CITIBANK, N.A.,
as Administrative Agent

_____

CITIBANK, N.A.,
as Sole Lead Arranger and Sole Bookrunner

BANK OF AMERICA, N.A.
and
HSBC BANK USA, N.A.,
as Co-Syndication Agents

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Exhibit F — Form of Borrowing Request
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Exhibit I — Form of Promissory Note

THIS CREDIT AGREEMENT, dated as of July 21, 2020 (as it may be amended, restated, amended and restated, supplemented, and/or otherwise modified from time to time, this "Agreement"), among ALIGN TECHNOLOGY, INC., as the Borrower, the other Loan Parties party hereto from time to time, the Lenders party hereto from time to time, the Issuing Banks party hereto from time to time, and CITIBANK, N.A., as the Administrative Agent.

The parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABR", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"Accounting Firm" means PricewaterhouseCoopers LLP, or any other independent registered public accounting firm of nationally recognized standing.

"Acquisition" means any transaction or series of related transactions by which the Borrower or any of its Subsidiaries, directly or indirectly, (a) acquires all or substantially all of the assets of a Person, or of any line of business or division of a Person, (b) acquires in excess of 50% of the Equity Interests of any Person, or otherwise causes any Person to become a Subsidiary, or (c) effects a merger, amalgamation or consolidation or any other combination with another Person (other than a Person that is a Subsidiary); provided, that the Borrower or the applicable Subsidiary of the Borrower, or a Person that becomes a Subsidiary, is the surviving entity.

"Additional Lender" has the meaning assigned to such term in Section 2.22(a)(ii).

"Adjusted LIBO Rate" means, with respect to any Eurodollar Borrowing for any Interest Period or for any ABR Borrowing, an interest rate *per annum* (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the greater of (a)(i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate and (b) 1% *per annum*.

"Administrative Agent" means Citibank, N.A., in its capacity as administrative agent for the Lenders hereunder.

"Administrative Questionnaire" means an administrative questionnaire in a form supplied by the Administrative Agent.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the specified Person.

"Agent Parties" has the meaning assigned to such term in Section 9.01(d)(ii).

"Aggregate Credit Exposure" means, at any time, the aggregate Credit Exposure of all the Lenders at such time.

"Agreement" has the meaning assigned to such term in the introductory paragraph.

"Alternate Base Rate" means, for any day, a rate *per annum* equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; provided, that, for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the rate appearing on the Reuters Screen LIBOR01 Page (or on any successor or substitute page) at approximately 11:00 a.m. London time on such day (without any rounding). Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14 hereof, then the Alternate Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. In the event that that the Alternate Base Rate is less than zero, it shall be deemed to be zero for purposes of this Agreement.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to (a) bribery and/or corruption and (b) terrorism financing and/or money laundering.

"Applicable Percentage" means, with respect to any Lender, (a) with respect to Loans and LC Exposure, a percentage equal to a fraction the numerator of which is such Lender's Commitment and the denominator of which is the aggregate Commitment of all Lenders (if the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon such Lender's share of the Aggregate Credit Exposure at that time); provided, that in the case of Section 2.20 when a Defaulting Lender shall exist, any such Defaulting Lender's Commitment shall be disregarded in the calculation, and (b) with respect to the Aggregate Credit Exposure, a percentage based upon its share of the Aggregate Credit Exposure and the unused Commitments; provided, that in the case of Section 2.20 when a Defaulting Lender shall exist, any such Defaulting Lender's Commitment shall be disregarded in the calculation.

"Applicable Rate" means, for any day, with respect to any ABR Loan or Eurodollar Loan, or with respect to the commitment fees or letter of credit fees payable hereunder, as the case may be, the applicable rate *per annum* set forth below under the caption "Applicable Rate for Eurodollar Loans", "Applicable Rate for ABR Loans" or "Commitment Fee Rate", as the case may be, based upon the Borrower's Total Leverage Ratio as of the most recent determination date; provided, that until the delivery to the Administrative Agent, pursuant to Section 5.01, of the Borrower's consolidated financial information for the Borrower's fiscal quarter ended on December 31, 2020, the "Applicable Rate" shall be the applicable rate *per annum* set forth below in Level I:

Level	Total Leverage Ratio	Applicable Rate for Eurodollar Loans	Applicable Rate for ABR Loans	Commitment Fee Rate
Level I	< 1.00 to 1.00	1.50%	0.50%	0.25%
Level II	≥ 1.00 to 1.00 but < 2.00 to 1.00	1.75%	0.75%	0.30%
Level III	≥ 2.00 to 1.00 but < 3.00 to 1.00	2.00%	1.00%	0.35%
Level IV	≥ 3.00 to 1.00	2.25%	1.25%	0.40%

For purposes of the foregoing, (a) the Applicable Rate shall be determined as of the end of each fiscal quarter of the Borrower based upon the Borrower's annual or quarterly consolidated financial statements delivered pursuant to Section 5.01 and (b) each change in the Applicable Rate resulting from a change in the Total Leverage Ratio shall be effective three (3) Business Days after the date of delivery to the Administrative Agent of such consolidated financial statements indicating such change and ending on the date immediately preceding the effective date of the next such change; provided, that the Total Leverage Ratio shall be deemed to be in Level IV for the period commencing three (3) Business Days after the Borrower fails to deliver the annual or quarterly consolidated financial statements required to be delivered by it pursuant to Section 5.01, and ending on the date which is three (3) Business Days after such statements or certificates are actually delivered.

In the event that any financial statement delivered pursuant to Section 5.01(a) or (b) or any compliance certificate delivered pursuant to Section 5.01(c), as applicable, is inaccurate, and such inaccuracy, if corrected, would have led to the imposition of a higher Applicable Rate for any period than the Applicable Rate applied for that period, then (i) Borrower shall immediately deliver to Administrative Agent a corrected financial statement and a corrected compliance certificate for that period (the "Corrected Financials Date"), (ii) the Applicable Rate shall be determined based on the corrected Compliance Certificate for that period, and (iii) Borrower shall immediately pay to Administrative Agent (for the account of the Lenders that hold the Commitments and Loans at the time such payment is received, regardless of whether those Lenders held the Commitments and Loans during the relevant period) the accrued additional interest owing as a result of such increased Applicable Rate for that period; provided, for the avoidance of doubt, such deficiency shall be due and payable as at such Corrected Financials Date and no Default or Event of Default under clause (b) of Article VII shall be deemed to have occurred with respect to such deficiency prior to such date (but if not so paid on such date, shall constitute an Event of Default immediately thereafter). This paragraph shall not limit the rights of Administrative Agent or the Lenders with respect to Section 2.13(c) and Article VII hereof, and shall survive the termination of this Agreement until the payment in full in cash of the aggregate outstanding principal balance of the Loans and the termination of all of the Commitments.

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Approved Investment Policy" means a written investment policy of the Borrower that has been approved by the Borrower's board of directors (or applicable empowered committee thereof) as in effect from time to time, a copy of which will be provided to the Administrative Agent upon request.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

"Available Commitment" means, at any time, the aggregate Commitments of all Lenders then in effect *minus* the Aggregate Credit Exposure at such time.

"Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"Bail-In Legislation" means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings.

"Bank of America" means BANK OF AMERICA, N.A.

"Bankruptcy Event" means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment; provided, that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof; provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Benchmark Replacement" means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the LIBO Rate for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

"Benchmark Replacement Adjustment" means, with respect to any replacement of LIBO Rate with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the LIBO Rate with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the LIBO Rate with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "ABR," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).

"Benchmark Replacement Date" means the earlier to occur of the following events with respect to the LIBO Rate:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the LIBO Screen Rate permanently or indefinitely ceases to provide the LIBO Screen Rate; or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the LIBO Rate:

(a) a public statement or publication of information by or on behalf of the administrator of the LIBO Screen Rate announcing that such administrator has ceased or will cease to provide the LIBO Screen Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Screen Rate;

(b) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBO Screen Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the LIBO Screen Rate, a resolution authority with jurisdiction over the administrator for the LIBO Screen Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBO Screen Rate, which states that the administrator of the LIBO Screen Rate has ceased or will cease to provide the LIBO Screen Rate permanently or indefinitely,

provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Screen Rate; or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBO Screen Rate announcing that LIBO Screen Rate is no longer representative.

"Benchmark Transition Start Date" means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent or the Required Lenders, as applicable, by notice to the Borrower, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.

"Benchmark Unavailability Period" means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the LIBO Rate and solely to the extent that the LIBO Rate has not been replaced with a Benchmark Replacement, the period (a) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the LIBO Rate for all purposes hereunder in accordance with Section 2.25 and (b) ending at the time that a Benchmark Replacement has replaced the LIBO Rate for all purposes hereunder pursuant to Section 2.25.

"Beneficial Owner" means, with respect to any U.S. Federal withholding Tax, the beneficial owner, for U.S. Federal income tax purposes, to whom such Tax relates.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"BHC Act Affiliate" means an "affiliate" (as such term is defined under, and interpreted in accordance with 12 U.S.C. 1841(k)) of a party.

"Billing Statements" has the meaning assigned to such term in Section 2.18(g).

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Borrower" means Align Technology, Inc., a Delaware corporation.

"Borrowing" means (a) Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect or (b) a Swingline Loan.

"Borrowing Request" means a request by the Borrower for a Borrowing in accordance with Section 2.03.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided, that, when used in

connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Equivalents" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within one (1) year from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(c) investments in certificates of deposit, bankers' acceptances and time deposits maturing within one (1) year from the date of acquisition thereof issued or guaranteed by or placed with, and demand deposit accounts and money market deposit accounts issued or offered by any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than $500.0 million;

(d) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above (any such repurchase agreement, a "Repurchase Agreement");

(e) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $5.0 billion;

(f) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one (1) year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody's; and

(g) investments made in accordance with the Approved Investment Policy as in effect at the time such investment is made.

"CFC" means a "controlled foreign corporation" as defined in Section 957 of the Code.

"CHAMPVA" means, collectively, the Civilian Health and Medical Program of the Department of Veterans Affairs, and all laws, rules, regulations, manuals, orders, guidelines or requirements (whether or not having the force of law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"Change in Control" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) of Equity Interests representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower, (b) the occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated or approved (either by a specific vote or by approval of a proxy statement issued by the Borrower on behalf of its board of directors (as constituted at the time of such proxy statement) in which such individual is named as a nominee for director) by the board of directors of the Borrower nor (ii) appointed by directors so nominated or (c) the occurrence of any "change of control" or similar event with respect to any Material Indebtedness.

"Change in Law" means the occurrence after the date of this Agreement (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement) of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (c) compliance by any Lender or any Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender's or such Issuing Bank's holding company, if any) with any request, guideline, requirement or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided, that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued or implemented.

"Charges" has the meaning assigned to such term in Section 9.17.

"Citi" means Citibank, N.A., a national banking association, in its individual capacity, and its successors.

"CMS" means The Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, and any Governmental Authority successor thereto.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Commitment" means, with respect to each Lender, the commitment, if any, of such Lender to make Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum possible aggregate amount of such Lender's Credit Exposure hereunder, as such commitment may be reduced or increased from time to time pursuant to (a) Section 2.09 or 2.22 and (b) assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The initial aggregate amount of the Lenders' Commitments as of the Effective Date is $300.0 million.

"Commitment Date" has the meaning assigned to such term in Section 2.22(a)(i).

"Commitment Increase" has the meaning assigned to such term in Section 2.22(a).

"Commitment Schedule" means the Schedule attached hereto identified as such.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Communications" has the meaning assigned to such term in Section 9.01(d).

"Consolidated Total Assets" means the consolidated total assets of the Borrower and its Subsidiaries, determined in accordance with GAAP, as of the date of the financial statements most recently delivered pursuant to Section 5.01(a) or Section 5.01(b), as applicable.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Convertible Debt Security" means any debt security or note the terms of which provide for the conversion thereof into Equity Interests (or other securities (to the extent not secured by a Lien) or property following a merger event, reclassification or other change of the Equity Interests), cash or a combination of Equity Interests and cash.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b), (ii) a "covered bank" as that term is defined in, and interpreted in accordance with 12 C.F.R. § 47.3(b), or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Liabilities" has the meaning assigned to such term in Section 9.19.

"Credit Exposure" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Loans (including any Swingline Loans) and its LC Exposure at such time.

"Credit Party" means the Administrative Agent, any Issuing Bank, any Swingline Lender or any Lender.

"Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Defaulting Lender" means any Lender that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied, (b) has notified the Borrower or any Credit Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular Default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing

from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement; provided, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party's receipt of such certification in form and substance satisfactory to it and the Administrative Agent, (d) has become the subject of a Bankruptcy Event, or (e) has become (or whose direct or indirect parent company has become) subject to a Bail-In Action.

"Deferred Acquisition Consideration" means any purchase price adjustments, earn-out, milestone payments, contingent or other deferred payments of a similar nature (including any non-compete payments and consulting payments) made in connection with any Permitted Acquisition or other Acquisition permitted under this Agreement.

"Disclosure Letter" has the meaning assigned to such term in Section 4.01(a)(iii).

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith. For the avoidance of doubt, the performance by the Borrower of and/or any Subsidiary thereof of the Borrower's or such Subsidiary's obligations under any unsecured Convertible Debt Securities or any Permitted Call Spread Agreement (that was entered into in connection with the issuance of an unsecured Convertible Debt Security) shall not constitute a "Disposition".

"Dollars" or "$" refers to lawful money of the United States of America.

"Domestic Subsidiary" means any Subsidiary of the Borrower organized under the laws of any state of the United States of America or the District of Columbia.

"Early Opt-in Election" means the occurrence of:

(a) (i) a determination by the Administrative Agent, or (ii) a notification by the Required Lenders to the Administrative Agent (with a copy to the Borrower) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 2.25, are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the LIBO Rate, and

(b) (i) the election by the Administrative Agent or (ii) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders or by the Required Lenders of written notice of such election to the Administrative Agent.

"EBITDA" means, for any period, the sum of:

(a) Net Income for such period; *plus*

(b) without duplication and to the extent deducted in determining Net Income for such period, the sum of:

(i) Interest Expense for such period;

(ii) Taxes based on income, profits or capital of the Borrower or its Subsidiaries, including without limitation, federal, state, franchise, excise and similar Taxes and foreign withholding Taxes paid or accrued during such period, including penalties and interest related to such Taxes or arising from any Tax examinations;

(iii) all amounts attributable to depreciation and amortization expense for such period;

(iv) amortization of intangibles (including, but not limited to, goodwill) for such period;

(v) stock based compensation expenses with respect to employees, officers, directors or contractors;

(vi) costs and expenses incurred with respect to the Transactions consummated on the Effective Date;

(vii) expenses, charges and losses incurred in such period and which are reimbursed in cash during such period by Persons (other than the Borrower and its Subsidiaries) so long as such payments were not added in determining Net Income for such period;

(viii) non-recurring fees, costs and expenses directly incurred during such period in connection with any of the following which are attempted, whether or not consummated: (A) any Permitted Acquisition and any related debt or equity offering undertaken in connection therewith (in respect of which all or substantially all of the proceeds are intended to be used to pay the cash consideration for such Permitted Acquisition), (B) the issuance of any Equity Interests, (C) the incurrence of any Indebtedness not prohibited under this Agreement, (D) any Disposition of assets not prohibited under this Agreement or (E) the extension, amendment or refinancing of any Indebtedness; provided, that the aggregate amount of advisory (or similar) fees that may be added back to EBITDA pursuant to this clause (viii) shall not exceed $40.0 million for such period;

(ix) non-cash purchase accounting adjustments made during such period;

(x) all proceeds of business interruption insurance received during such period;

(xi) unrealized losses on financial derivatives recognized in such period in accordance with SFAS No. 133;

(xii) any write-off or amortization made in such period of deferred financing costs or any write-down of assets or asset value carried on the balance sheet of the Borrower or any of its Subsidiaries;

(xiii) any extraordinary (as defined under GAAP prior to FASB Update No. 2015-01) non-cash charges or expenses for such period;

(xiv) any one-time restructuring charges incurred during such period (determined in accordance with GAAP); provided, that the aggregate amount of such charges that may be added back to EBITDA pursuant to this clause (xiv) shall not exceed $40.0 million for such period;

(xv) any other non-cash charges, expenses or losses (but excluding any non-cash charge in respect of an item that was included in Net Income in a prior period); and

(xvi) any other addback consented to in writing by the Required Lenders; ***minus***

(c) without duplication and to the extent included in Net Income, (i) any cash payments made during such period in respect of non-cash charges described in clause (b)(xv) taken in a prior period, (ii) unrealized gains on financial derivatives recognized in such period in accordance with SFAS No. 133 and (iii) any extraordinary gains and any non-cash items of income for such period;

all calculated for the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP. For the purposes of calculating EBITDA for any period of four consecutive fiscal quarters (each, a "Reference Period"), (i) if at any time during such Reference Period the Borrower or any Subsidiary shall have made any sale, transfer, or disposition of property having gross sale proceeds in excess of $50.0 million, EBITDA for such Reference Period shall be reduced by an amount equal to the EBITDA (if positive) attributable to the property that is the subject of such sale, transfer, or disposition, as applicable, for such Reference Period or increased by an amount equal to the EBITDA (if negative) attributable thereto for such Reference Period, in each case, as if such sale, transfer or disposition occurred on the first day of such Reference Period and (ii) if during such Reference Period the Borrower or any of its Subsidiaries shall have made a Permitted Acquisition with Permitted Acquisition Consideration in excess of $50.0 million, EBITDA for such Reference Period shall be calculated after giving effect thereto on a pro forma basis as if such Permitted Acquisition occurred on the first day of such Reference Period.

"ECP" means an "eligible contract participant" as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition and is subject to the supervision of an EEA Resolution Authority, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision of an EEA Resolution Authority with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Date" means July 21, 2020.

"Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

"Electronic System" means any electronic system, including e-mail, e-fax, Intralinks®, ClearPar®, Debt Domain, Syndtrak and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent and the Issuing Banks and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated, or entered into by any Governmental Authority, relating in any way to the environment, the preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or relating to employee health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) any exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing, but excluding any Convertible Debt Securities and any Permitted Call Spread Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to make any "minimum required contribution" (as defined in Section 430(a) of the Code) with respect to any Plan, at the time and in the amount provided for in Section 430 of the Code; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans in a distress termination described in Section 4041(c) of ERISA or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Eurodollar", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"Event of Default" has the meaning assigned to such term in Article VII.

"Excluded Subsidiary" means Domestic Subsidiaries that are (i) directly or indirectly owned by a Foreign Subsidiary that is a CFC, or (ii) Foreign Subsidiary Holding Companies.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being a resident of, being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Taxes (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Note, Letter of Credit, Commitment or other Loan Document pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Note, Letter of Credit, Commitment or other Loan Document (other than pursuant to an assignment request by the Borrower under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan, Note, Letter of Credit, Commitment or other Loan Document or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient's failure to comply with Section 2.17(f); and (d) any withholding Taxes imposed under FATCA.

"Existing Credit Agreement" means that certain Credit Agreement, dated as of February 27, 2018 (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time prior to the Effective Date), by and between the Borrower, as borrower, and Wells Fargo Bank, National Association, as the lender thereunder.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreements entered into in connection with the implementation of such sections of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to such intergovernmental agreement.

"FDA" means the United States Food and Drug Administration and any successor thereto.

"Federal Funds Effective Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Fee Letter" means that certain Fee Letter, dated as of June 30, 2020, by and between the Borrower and Citi as Lead Arranger and the Administrative Agent, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Financial Covenants" means the covenants set forth in Section 6.11.

"Financial Officer" means the chief financial officer, president, principal accounting officer, treasurer, controller or officer of equivalent duties of the Borrower.

"Foreign Lender" means any Lender that is not a "United States person" as defined in Section 7701(a)(30) of the Code.

"Foreign Pension Plan" means any plan, fund (including any superannuation fund) or other similar program established or maintained outside the United States by the Borrower or any one or more of its Subsidiaries primarily for the benefit of employees of the Borrower or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"Foreign Subsidiary" means any Subsidiary of the Borrower that is not a Domestic Subsidiary.

"Foreign Subsidiary Holding Company" means any Domestic Subsidiary substantially all of the assets of which (whether held directly through one or more entities disregarded for U.S. federal income tax purposes) consist of capital stock (or capital stock and debt) (including any debt instrument treated as equity for U.S. federal income tax purposes) of one or more Foreign Subsidiaries that are CFCs and that engages in no material activities other than the ownership of such capital stock and debt and maintenance of its corporate existence.

"Forward Agreement" means any agreement (including, but not limited to, any accelerated share repurchase agreement, forward agreement, derivative or other share repurchase agreement in the form of an equity option or forward or other derivative) pursuant to which, among other things, the counterparty is required to deliver to the Borrower shares of common stock of the Borrower, cash in lieu of delivering shares of common stock or cash representing the termination value of such forward or option or a combination thereof from time to time upon settlement, exercise or early termination of such forward or option or other derivative.

"Funded Indebtedness" means, with respect to any Person and without duplication, the principal amount of, and any overdue amount that does not constitute principal (including, interest, fees, penalties and premiums) in respect of, (i) all Indebtedness of such Person of the types referred to in clauses (a) (including any Convertible Debt Securities), (b), (d) (solely with respect to Deferred Acquisition Consideration) and (g) of the definition of "Indebtedness" in this Section 1.01, (ii) all Indebtedness of others of the type referred to in clause (i) of this definition secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on, or payable out of the proceeds of production from, any property or asset of such Person, whether or not the obligations secured thereby have been assumed by such Person and (iii) all Guarantees of such Person with respect to Indebtedness of others of the type referred to in clause (i) of this definition. The Funded Indebtedness of any Person shall include the Funded Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in such entity, except to the extent the terms of such Funded Indebtedness provide that such Person is not liable therefor.

"GAAP" means generally accepted accounting principles in the United States of America.

"Government Reimbursement Program" means (a) Medicare, (b) Medicaid, (c) the Federal Employees Health Benefit Program under 5 U.S.C. §§ 8902 et seq., (d) TRICARE, (e) CHAMPVA, or (f)

if applicable within the context of this Agreement, any agent, administrator, administrative contractor, intermediary or carrier for any of the foregoing.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision of any of the foregoing, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government. The Term "Governmental Authority" shall further include any institutional review board, ethics committee, data monitoring committee, or other committee or entity with defined authority to oversee Regulatory Matters, including CMS and any Medicare or Medicaid administrative contractors, intermediaries or carriers.

"Guarantee" of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business, warranty obligations in the ordinary course of business or customary indemnification obligations in connection with transactions not prohibited by any of the Loan Documents.

"Guaranteed Obligations" has the meaning assigned to such term in Section 10.01.

"Hazardous Materials" means: (a) any substance, material, or waste that is included within the definitions of "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," "toxic materials," "toxic waste," or words of similar import in any Environmental Law; (b) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and (c) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical.

"Health Care Laws" means, collectively, any and all applicable laws relating to any of the following: (a) fraud and abuse (including the following statutes, as amended, modified or supplemented from time to time and any successor statutes thereto and regulations promulgated from time to time thereunder: the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Stark Law (42 U.S.C. § 1395nn and § 1395(q)), the civil False Claims Act (31 U.S.C. § 3729 et seq.), the federal health care program exclusion provisions (42 U.S.C. § 1320a-7), the Civil Monetary Penalties Act (42 U.S.C. § 1320a-7a), and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173)); (b) any Government Reimbursement Program; (c) HIPAA and Other Privacy Laws; and (d) any other applicable law regulating the health care industry.

"Health Care Permits" means any and all permits, licenses, authorizations, certificates, certificates of need, accreditations and plans of third-party accreditation agencies (such as The Joint Commission) that are (a) necessary to enable any Loan Party to continue to conduct its business as it is conducted on the Effective Date, or (b) required under any Health Care Law.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, Title II Subtitle F, as the same may be amended, modified or supplemented from time to time, and any and all rules or regulations promulgated from time to time thereunder.

"HIPAA and Other Privacy Laws" means (a) HIPAA; (b) the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009), as the same may be amended, modified or supplemented from time to time; (c) any successor statute thereto; and (d) any applicable state and local laws regulating the privacy and/or security of patient protected health or personally identifiable information, in each case as the same may be amended, modified or supplemented from time to time, any successor statutes thereto, and any and all rules or regulations promulgated from time to time thereunder.

"Holdback" means any portion of the purchase price for a Permitted Acquisition not paid at the closing therefor but held by the Borrower or any Subsidiary for satisfaction of indemnification obligations or purchase price adjustments.

"HSBC" means HSBC BANK USA, N.A.

"Immaterial Subsidiary" means, as of any date of determination, any Subsidiary of the Borrower that does not have (a) assets with a value in excess of 5.00% of Consolidated Total Assets or (b) revenues (for the most recently completed Reference Period) representing in excess of 5.00% of total revenues, in each case, of the Borrower and its Subsidiaries on a consolidated basis (after eliminating intercompany obligations) as of the last day of the most recently completed Reference Period for which financial statements have been delivered pursuant to Sections 4.01(b), 5.01(a) or 5.01(b); provided, that, no Subsidiary shall constitute an "Immaterial Subsidiary" if its inclusion thereof would result in either (i) the aggregate value of the assets of all Immaterial Subsidiaries (other than Excluded Subsidiaries and Foreign Subsidiaries) that have not become Loan Guarantors exceeding 10.00% of Consolidated Total Assets or (ii) the aggregate revenues of all Immaterial Subsidiaries (other than Excluded Subsidiaries and Foreign Subsidiaries) that have not become Loan Guarantors exceeding 10.00% of the total revenues, in each case, of the Borrower and its Subsidiaries on a consolidated basis (after eliminating intercompany obligations) as of the last day of the most recently completed Reference Period for which financial statements have been delivered pursuant to Sections 4.01(b), 5.01(a) or 5.01(b).

"Increasing Lender" has the meaning assigned to such term in Section 2.22(a)(i).

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of Deferred Acquisition Consideration to the extent constituting a liability on a balance sheet prepared under GAAP and any other deferred purchase price of property or services (excluding (i) accounts payable incurred in the ordinary course of business and not more than one hundred eighty (180) days past due or that are being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of such Person, (ii) deferred compensation and (iii)

intercompany liabilities in respect of cost-plus or transfer pricing arrangements for the purchase of products or services or the licensing of intellectual property), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (j) any other Off-Balance Sheet Liability and (k) the net obligations of such Person with respect to any Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. In respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the amount of such Indebtedness as of any date of determination will be the lesser of (x) the fair market value of such assets as of such date and (y) the amount of such Indebtedness as of such date. The amount of any net obligation under any Swap Agreements on any date shall be deemed to be the Swap Termination Value thereof as of such date. For purposes hereof, the amount of any Convertible Debt Securities shall be the aggregate stated principal amount thereof without giving effect to any obligation to pay cash or deliver shares with value in excess of such principal amount, and without giving effect to any integration thereof with any Permitted Call Spread Agreement pursuant to U.S. Treasury Regulation § 1.1275-6.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a) above, Other Taxes.

"Indemnitee" has the meaning assigned to such term in Section 9.03(b).

"Ineligible Institution" means a (a) natural person, (b) a Defaulting Lender, (c) holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided, that, such holding company, investment vehicle or trust shall not constitute an Ineligible Institution if it (x) has not been established for the primary purpose of acquiring any Loans or Commitments, (y) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (z) has assets greater than $25.0 million and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business or (d) a Loan Party or a Subsidiary or other Affiliate of a Loan Party.

"Information" has the meaning assigned to such term in Section 9.12.

"Interest Coverage Ratio" means, at any date, the ratio of (a) EBITDA to (b) Interest Expense, all calculated for the Reference Period ended on such date (or, if such date is not the last day of a fiscal quarter, ended on the last day of the fiscal quarter most recently ended prior to such date).

"Interest Election Request" means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.08.

"Interest Expense" means, with reference to any period, total interest expense of the Borrower and its Subsidiaries for such period (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap

Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP), calculated on a consolidated basis for the Borrower and its Subsidiaries for such period in accordance with GAAP (and including for the avoidance of doubt, interest expense attributable to Capital Lease Obligations whether or not included in interest expense determined in accordance with GAAP).

"Interest Payment Date" means (a) with respect to any ABR Loan (including any Swingline Loan), the first Business Day of each January, April, July and October and the Maturity Date and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period and the Maturity Date.

"Interest Period" means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no Interest Period may extend beyond the Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Investment" has the meaning assigned to such term in Section 6.04.

"IRS" means the United States Internal Revenue Service.

"Issuing Banks" means, individually and collectively as the context may require, (a) Citi, in its capacity as an issuer of Letters of Credit hereunder, and any successors in such capacity, and (b) and any other Lender from time to time designated by the Borrower as an Issuing Bank, with the consent of such Lender and the Administrative Agent and such Lender's successors in such capacity. Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. At any time there is more than one Issuing Bank, all singular references to the Issuing Bank shall mean any Issuing Bank, either Issuing Bank, each Issuing Bank, the Issuing Bank that has issued the applicable Letter of Credit, or both (or all) Issuing Banks, as the context may require.

"Joinder Agreement" has the meaning assigned to such term in Section 5.09(a).

"LC Collateral Account" has the meaning assigned to such term in Section 2.06(j).

"LC Disbursement" means a payment made by any Issuing Bank pursuant to a Letter of Credit.

"LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements relating

to Letters of Credit that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

"Lead Arranger" means Citibank, N.A.

"Lenders" means the Persons listed on the Commitment Schedule and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term "Lenders" includes the Issuing Banks and the Swingline Lenders.

"Letter of Credit" means the letters of credit issued pursuant to this Agreement, and the term "Letter of Credit" means any one of them or each of them singularly, as the context may require.

"LIBO Rate" means, with respect to any Eurodollar Borrowing for any applicable Interest Period or for any ABR Borrowing,

(a) the rate *per annum* equal to the offered rate that appears on the Reuters Screen LIBOR01 (or any successor thereto) for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period (the "LIBO Screen Rate"), determined as of approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period;

(b) if the rate referenced in the preceding clause (a) does not appear on such page or service or such page or service shall not be available, the rate *per annum* equal to the rate reasonably determined by the Administrative Agent to be the offered rate on such other page or other service that displays an average ICE Benchmark Administration London Interbank Offered Rate for deposits in Dollars offered in the London interbank market (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period; or

(c) if the rates referenced in the preceding clauses (a) and (b) are not available, then the LIBO Rate for any Eurodollar Rate Loan denominated in Dollars for such Interest Period shall be (x) a comparable successor or alternative interbank rate for deposits in Dollars that is, at such time, broadly accepted by the syndicated loan market in lieu of the "LIBO Rate" and is reasonably acceptable to the Borrower and the Administrative Agent or (y) solely if no such broadly accepted comparable successor interbank rate exists at such time, a successor or alternative index rate as the Administrative Agent and the Borrower may determine with the consent of the Required Lenders.

Notwithstanding the above, to the extent that "LIBO Rate" or "Adjusted LIBO Rate" is used in connection with an ABR Borrowing, such rate shall be determined as modified by the definition of "Alternate Base Rate".

"LIBO Screen Rate" has the meaning assigned to such term in the definition of "LIBO Rate".

"LIBOR Successor Rate" has the meaning assigned to such term in Section 2.14(a).

"LIBOR Successor Rate Conforming Changes" means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Applicable Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines in consultation with the Borrower).

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

"Loan Documents" means, collectively, this Agreement, the Notes, any Letter of Credit applications, the Loan Guaranty, the Fee Letter and all other agreements, instruments, documents and certificates identified in Section 4.01 executed and delivered by a Loan Party to, or in favor of, the Administrative Agent or any Lenders and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to the Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"Loan Guarantor" means (a) each of the Borrower's wholly owned Material Domestic Subsidiaries other than any Excluded Subsidiary; and (b) with respect to Obligations owed by any other Loan Party or other Subsidiary, the Borrower; provided, that subject to any administrative requirements of the Administrative Agent, the Borrower may elect to add additional domestic Subsidiaries as Loan Guarantors so long as each such added Loan Guarantor complies with Section 5.09 of this Agreement as if it were a newly acquired wholly-owned Material Domestic Subsidiary at the time of such designation.

"Loan Guaranty" means Article X of this Agreement.

"Loan Parties" means, collectively, the Borrower, each Loan Guarantor and any other Person who becomes a party to this Agreement pursuant to a Joinder Agreement and each of their successors and assigns, and the term "Loan Party" means any one of them or all of them individually, as the context may require.

"Loans" means the loans and advances made by the Lenders pursuant to this Agreement, including Revolving Credit Loans and Swingline Loans.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations, or financial condition of the Borrower and its Subsidiaries taken as a whole, (b) the ability of the Loan Parties to perform any of their material obligations under the Loan Documents, or (c) the rights of or

benefits available to the Administrative Agent, the Issuing Banks or the Lenders under the Loan Documents.

"Material Contract" means and includes any contractual obligation of any Loan Party the failure to comply with which, or the termination (without contemporaneous replacement) of which, could reasonably be expected to have a Material Adverse Effect.

"Material Domestic Subsidiary" means any Domestic Subsidiary of the Borrower (other than a Domestic Subsidiary directly or indirectly owned by a Foreign Subsidiary that is a CFC) that is not (a) an Immaterial Subsidiary or (b) a Foreign Subsidiary Holding Company.

"Material Foreign Subsidiary" means any Foreign Subsidiary of the Borrower that is not an Immaterial Subsidiary.

"Material Indebtedness" means any Indebtedness (other than the Loans, Letters of Credit and Intercompany Loans among the Loan Parties and their Subsidiaries), or any obligations under Swap Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding $50 million. For purposes of determining Material Indebtedness, the aggregate principal amount of "obligations" of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the Swap Termination Value.

"Maturity Date" means the earliest to occur of (a) the Revolving Credit Termination Date, (b) any earlier date on which the Commitments are reduced to zero or otherwise terminated pursuant to the terms hereof and (c) the date that the Loans, if any, are declared due and payable pursuant to Article VII hereof.

"Medicaid" means, collectively, the healthcare assistance program established by Title XIX of the Social Security Act (42 U.S.C. §§ 1396 et seq.) and any statutes succeeding thereto, and all laws, rules and regulations having the force of law and pertaining to such program, including all state statutes and plans for medical assistance enacted in connection with such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"Medicare" means, collectively, the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. §§ 1395 seq.) and any statutes succeeding thereto, and all laws, rules and regulations having the force of law and pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Net Income" means, for any period, the consolidated net income (or loss) of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided, that there shall be excluded from such net income (to the extent otherwise included therein), without duplication: (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary) in which the Borrower or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Borrower or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time

permitted by the terms of any contractual obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary.

"Non-Consenting Lender" has the meaning assigned to such term in Section 9.02(d).

"Note" and "Notes" have the meanings assigned to such terms in Section 2.10(e).

"Notice of Increase" has the meaning assigned to such term in Section 2.22(a)(i).

"Obligated Party" has the meaning assigned to such term in Section 10.02.

"Obligations" means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations, indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Borrower and its Subsidiaries to any of the Lenders, the Administrative Agent, any Issuing Bank or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, in each case arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof. For the avoidance of doubt, the "Obligations" of any Guarantor shall include the Guaranteed Obligations.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Off-Balance Sheet Liability" of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person (other than any customary repurchase obligations resulting from a breach of representations and warranties, covenants, servicing obligations and indemnities under a securitization facility), or (b) any Indebtedness, liability or obligation under any so-called "synthetic lease" transaction entered into by such Person.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Taxes (other than a connection solely arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, or enforced, any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or any Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19(b)).

"Parent" means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

"Participant" has the meaning assigned to such term in Section 9.04(c).

"Participant Register" has the meaning assigned to such term in Section 9.04(c).

"Payment in Full" means as of any date of determination, that: (a) the entire amount of principal of and interest due on the Loans, and all other amounts of fees, payments and other obligations due under this Agreement, the other Loan Documents and the Notes are paid in full in cash (other than contingent indemnification obligations and reimbursement obligations in respect of which no claim for payment has yet been asserted by the Person entitled thereto); (b) the commitments to lend under this Agreement have been terminated; (c) there are no outstanding Letters of Credit (other than Letters of Credit that have been cash collateralized in accordance with the requirements of this Agreement or other arrangements acceptable to the Issuing Bank); and (d) all Obligations (other than contingent indemnification obligations and reimbursement obligations in respect of which no claim for payment has yet been asserted by the Person entitled thereto) have been paid in full in cash.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permits" means, with respect to any Person, any permit, approval, clearance, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or Products or to which such Person or any of its property or Products is subject, including all Registrations.

"Permitted Acquisition" means any Acquisition in which each of the following conditions is satisfied:

(a) the Person or business or assets which is the subject of such Acquisition is in a line of business permitted under Section 6.03(b);

(b) all governmental, corporate and material third-party approvals and consents necessary in connection with such Acquisition shall have been obtained and be in full force and effect;

(c) if acquiring a Person, unless such Person is contemporaneously merged with and into the Borrower or a Subsidiary of the Borrower, such Person becomes a wholly owned direct or indirect Subsidiary of the Borrower;

(d) such Acquisition shall be consummated in accordance in all material respects with the terms of the purchase or acquisition agreement executed in connection therewith and with all other material agreements, instruments and documents implementing such Acquisition and in compliance in all material respects with applicable law and regulatory approvals;

(e) such Acquisition shall, prior to the date of such Acquisition, have been approved by the board of directors (or similar governing body) of such Person to be acquired (and such approval shall not have been rescinded);

(f) no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(g) after giving effect to such Acquisition (including the incurrence, assumption or acquisition of any Indebtedness in connection therewith) the (x) Total Leverage Ratio for the most recently ended Reference Period for which financial statements have been (or were required to be)

delivered to the Administrative Agent is not more than 3.00 to 1.00 and (y) the Interest Coverage Ratio for the most recently ended Reference Period for which financial statements have been (or were required to be) delivered to the Administrative Agent is not less than 2.50 to 1.00;

(h) [Reserved];

(i) if the Permitted Acquisition Consideration for any such Acquisition exceeds $75.0 million, the Borrower shall have delivered to the Administrative Agent a certificate of a Financial Officer, on the date of the consummation of such Acquisition, certifying as to the accuracy and completeness of, and setting forth the calculations demonstrating compliance with, clause (g) of this definition; and

(j) no less than ten (10) Business Days prior to the proposed closing date of such Acquisition (or such shorter period as may be agreed to by the Administrative Agent), the Borrower shall have delivered written notice of such Acquisition to the Administrative Agent, which notice shall include the proposed closing date of such Acquisition; provided that no such notice shall be required for any Acquisition so long as the Permitted Acquisition Consideration for any such Acquisition does not exceed $50.0 million.

"Permitted Acquisition Consideration" means the aggregate amount of the purchase price, including, but not limited to, any assumed debt, earn-outs and Holdbacks (valued at the maximum amount payable thereunder), deferred payments, or Equity Interests of the Borrower, to be paid on a singular basis in connection with any applicable Permitted Acquisition as set forth in any applicable agreements for the Permitted Acquisition executed by the Borrower or any of its Subsidiaries in order to consummate the applicable Permitted Acquisition.

"Permitted Call Spread Agreement" means (a) an agreement (including, but not limited to, any convertible bond hedge or capped call transaction (or substantively equivalent derivative transaction)) pursuant to which the Borrower acquires an option requiring the counterparty thereto to deliver to the Borrower shares of common stock of the Borrower (or other securities (to the extent not secured by a Lien) or property following a merger event, reclassification or other change of the common stock of the Borrower), cash in lieu of delivering shares of common stock (or such other securities or property) or the cash value thereof or cash representing the termination value of such option or a combination thereof from time to time upon settlement, exercise or early termination of such option (each a "Bond Hedge Transaction") and (b) an agreement pursuant to which the Borrower issues to the counterparty thereto warrants to acquire shares of common stock (or other securities (to the extent not secured by a Lien) or property following a merger event, reclassification or other change of the common stock) of the Borrower, cash in lieu of delivering shares of common stock (or such other securities or property) or cash representing the termination value of such warrants or a combination thereof from time to time upon settlement, exercise or early termination of such warrants, in each case entered into by the Borrower in connection with the issuance of any Convertible Debt Securities (including the exercise of any over-allotment or underwriter's option) (each a "Warrant Transaction"); provided that such agreement shall only constitute a "Permitted Call Spread Agreement" if the purchase price for such Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Warrant Transaction, does not exceed the net proceeds received by the Borrower from the issuance of the related Convertible Debt Securities.

"Permitted Encumbrances" means:

(a) Liens imposed by law for taxes that are not yet due or as to which the period of grace (not to exceed thirty (30) days), if any, related thereto has not expired, or are being contested in compliance with Section 5.04;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than sixty (60) days or are being contested in compliance with Section 5.04;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII;

(f) easements, covenants, conditions, zoning restrictions, rights-of-way, minor defects or other irregularities in title and/or similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of the Borrower or any Subsidiary; and

(g) Liens representing any interest or title of a licensor, lessor or sublicensor or sublessor, or a licensee, lessee or sublicensee or sublessee, in the property subject to any lease, license or sublicense or concession agreement, in each case to the extent permitted by this Agreement;

provided, that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Permitted Liens" means all Liens permitted under Section 6.02.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Prime Rate" means the rate of interest *per annum* publicly announced from time to time by Citibank, N.A. as its prime rate in effect at its principal offices in New York City. Each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

"Products" means any item or any service that is designed, created, tested, manufactured, distributed, or otherwise offered by or on behalf of the Loan Parties or any of their Subsidiaries.

"Prohibited Transaction" means the occurrence of a "prohibited transaction" within the meaning of Section 4975(c) of the Code or Section 406 of ERISA for which there was no exemption under Section 4975(d).

"Projections" has the meaning assigned to such term in Section 5.01(d).

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Public Health Laws" means all applicable laws relating to the procurement, development, clinical and non-clinical testing, approval or clearance, manufacture, production, distribution, importation, exportation, handling, quality, sale, advertising or promotion of any medical device (including any component of the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. # 301 et seq.), its implementing regulations, and similar laws in each jurisdiction where the Products are tested, distributed or sold, and all applicable state laws or consumer product safety laws.

"Recipient" means, as applicable, (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, or any combination thereof (as the context requires).

"Reference Period" has the meaning assigned to such term in the definition of "EBITDA".

"Refinancing" has the meaning assigned to such term in Section 4.01(k).

"Register" has the meaning assigned to such term in Section 9.04(b)(iv).

"Registrations" means all applicable Permits and exemptions issued or allowed by any Governmental Authority (including but not limited to device pre-market approval applications, device pre-market notifications, investigational device exemptions, product recertifications, manufacturing approvals and authorizations, CE Marks, pricing and reimbursement approvals, labeling approvals or their foreign equivalent, and wholesale distributor permits) held by, or applied by contract to, any Loan Party or any of its Subsidiaries, that are required for the research, development, manufacture, distribution, marketing, storage, transportation, use and sale of the Products of any Loan Party or any of its Subsidiaries.

"Regulatory Matters" means, collectively, activities and Products that are subject to Public Health Laws.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents, partners and advisors of such Person and such Person's Affiliates.

"Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping of any substance into the environment.

"Relevant Governmental Body" means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

"Requested Increase Date" has the meaning assigned to such term in Section 2.22(a)(i).

"Required Lenders" means, at any time, Lenders (other than Defaulting Lenders) having Credit Exposure and unused Commitments representing more than 50% of the sum of the total Credit Exposure and unused Commitments at such time; provided, that if at any time of determination there are two (but not more than two) Lenders party hereto that are not Affiliates or Approved Funds of one another, Required Lenders shall include such two Lenders who are not Affiliates or Approved Funds of one another.

"Requirement of Law" means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means any Financial Officer, the chief executive officer, any executive vice president, any senior vice president, any vice president or the chief operating officer of the Borrower and any other individual or similar official thereof responsible for the administration of the obligations of the Borrower in respect of this Agreement.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower or any option, warrant or other right to acquire any such Equity Interests in the Borrower. Notwithstanding the foregoing, and for the avoidance of doubt, the conversion of (including any cash payment upon conversion), or payment of any principal or premium on, or payment of any interest with respect to, or any purchase, redemption, retirement or other acquisition of, any unsecured Convertible Debt Securities shall not constitute a Restricted Payment; provided, that to the extent the aggregate amount of cash payable upon conversion or payment of any unsecured Convertible Debt Securities Indebtedness exceeds the aggregate principal amount thereof (plus accrued and unpaid interest thereon not charged in contemplation of the conversion), the payment of such excess cash shall constitute a Restricted Payment.

"Revolving Credit Loan" means a Loan made pursuant to Section 2.02.

"Revolving Credit Termination Date" means the third anniversary of the Effective Date.

"S&P" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"Sanctioned Country" means, at any time, a country or territory which is the subject or target of any comprehensive Sanctions (which, as of the date of this Agreement, includes Crimea and the Crimea Region, Cuba, Iran, North Korea, Sudan, Syria and Venezuela).

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the OFAC, the U.S. Department of State or by the United Nations

Security Council, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person majority-owned or controlled by any such Person or Persons described in the foregoing clause (a) or (b).

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom.

"SEC" means the Securities and Exchange Commission or any Governmental Authority succeeding to any or all of the functions of the Securities and Exchange Commission.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurodollar funding (currently referred to as "Eurodollar Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D of the Board. Eurodollar Loans shall be deemed to constitute eurodollar funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D of the Board or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subordinated Indebtedness" of a Person means any Indebtedness of such Person the payment of which by its terms is at all times subordinated to payment of the Obligations on terms reasonably satisfactory to the Administrative Agent.

"subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held by the parent.

"Subsidiary" means any direct or indirect subsidiary of the Borrower or a Loan Party, as applicable.

"Swap Agreement" means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided, that the term "Swap Agreement" shall not include (i) any phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries, (ii) any forward, option, warrant agreement or Forward Agreement for the purchase or sale of Equity Interests of the Borrower, (iii) contracts for the purchase of securities of the Borrower, (iv) any Permitted Call Spread Agreement and (iv) any items described in this definition to the extent that it constitutes a derivative security embedded in Convertible Debt Securities issued by the Borrower.

"Swap Termination Value" means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include the Lenders or any Affiliates of the Lenders).

"Swingline Commitment" with respect to Citi, $20.0 million or such lesser amount as agreed upon by the Borrower and Citi, and with respect to any other Lender that becomes a Swingline Lender, an amount to be agreed upon by the Borrower and such Lender, with the consent of the Administrative Agent; provided, that an aggregate amount of all such Swingline Commitments shall not exceed $20.0 million.

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Swingline Lender at any time shall be the sum of (a) its Applicable Percentage of the total Swingline Exposure at such time other than with respect to any Swingline Loans made by such Swingline Lender in its capacity as the Swingline Lender and (b) the principal amount of all Swingline Loans made by such Swingline Lender in its capacity as the Swingline Lender outstanding at such time (less the amount of participations funded by the other Lenders in such Swingline Loans).

"Swingline Lenders" individually and collectively as the context may require, (a) Citi in its capacity as a lender of Swingline Loans hereunder and (b) and any other Lender from time to time designated by the Borrower as a Swingline Lender, with the consent of such Lender and the Administrative Agent and such Lender's successors in such capacity.

"Swingline Loan" means a Loan made pursuant to Section 2.04.

"Swingline Request" has the meaning assigned to such term in Section 2.04(b).

"Syndication Agents" means Bank of America and HSBC.

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term SOFR" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"Total Funded Indebtedness" means, at any date, the aggregate principal amount of all Funded Indebtedness of the Borrower and its Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP.

"Total Leverage Ratio" means, as of any date, the ratio of (a) Total Funded Indebtedness on such date to (b) EBITDA for the Reference Period ended on such date (or, if such date is not the last day of a fiscal quarter, ended on the last day of the fiscal quarter most recently ended prior to such date).

"Transactions" means the execution, delivery and performance by the Borrower of this Agreement, the borrowing of Loans and other credit extensions, the use of the proceeds thereof, the issuance of Letters of Credit hereunder and the Refinancing.

"TRICARE" means, collectively, the program of medical benefits covering former and active members of the uniformed services and certain of their dependents, financed and administered by the United States Department of Defense, Health and Human Services and Transportation, and all laws, rules and regulations having the force of law and pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

"United States" means the United States of America.

"Unliquidated Obligations" means, at any time, any Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Obligation that is: (i) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it; (ii) any other obligation (including any guarantee) that is contingent in nature at such time; or (iii) an obligation to provide collateral to secure any of the foregoing types of obligations.

"U.S. Person" means a "United States person" as defined in section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

"USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Withholding Agent" means the Borrower, any Loan Party and the Administrative Agent.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

SECTION 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (*e.g.*, a "Eurodollar Loan").

SECTION 1.03 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "law" shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply) and all judgments, orders and decrees of all Governmental Authorities. The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented, refinanced, replaced, or otherwise modified (subject to any restrictions on such amendments, restatements, amendment and restatement, supplements, refinancings, replacements, or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (f) any reference in any definition to the phrase "at any time" or "for any period" shall refer to the same time or period for all calculations or determinations within such definition, and (g) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided, that, if after the Effective Date there occurs any change in GAAP or in the application thereof on the operation of any provision hereof and the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of such change in GAAP or in the application thereof (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose),

regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, other than for purposes of Sections 3.04, 5.01(a) and 5.01(b), all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made without giving effect to any change in accounting for leases resulting from the implementation of Financial Accounting Standards Board ASU No. 2016-02, Leases (Topic 842), to the extent any lease (or similar arrangement conveying the right to use) would be required to be treated as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2016.

SECTION 1.05 Status of Obligations. In the event that the Borrower or any other Loan Party shall at any time issue or have outstanding any Subordinated Indebtedness, the Borrower shall take or cause such other Loan Party to take all such actions as shall be necessary to cause the Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Obligations are hereby designated as "senior indebtedness" and as "designated senior indebtedness" and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as shall be required under the terms of any such Subordinated Indebtedness in order that the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

SECTION 1.06 Financial Ratios. Any financial ratios required to be maintained by any Loan Party pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.07 Limited Liability Companies. Any reference in any Loan Document to a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to include or apply to (as applicable) a division or plan of division of or by a limited liability company, limited partnership or trust, or an allocation of assets to a series of a limited liability company, limited partnership or trust (or the unwinding of such a division or allocation), as if it were a merger, amalgamation, consolidation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any Person that exists or that comes into existence after giving effect to a division of a limited liability company, limited partnership or trust shall constitute a separate Person for all purposes under the Loan Documents (including any Loan Party, Subsidiary, joint venture or any other like Person).

SECTION 1.08 Calculations.

(a) For purposes of determining the amount of any Investment outstanding for purposes of Section 6.04, such amount shall be deemed to be the amount of such Investment when made, purchased or acquired (without adjustment for subsequent increases or decreases in the value of such Investment) less any actual cash amount realized by the applicable Loan Party or Subsidiary in respect of such Investment upon the sale, collection or return of capital (not to exceed the original amount invested).

(b) Notwithstanding anything to the contrary herein, for purposes of determining whether the incurrence of any Indebtedness is in compliance with any applicable leverage ratio based test (including a Total Leverage Ratio), or other financial test, set forth in this Agreement, such test shall be calculated (i) on a pro forma basis for the incurrence of such Indebtedness and (ii) in the case of any such Indebtedness constituting revolving Indebtedness or delayed draw Indebtedness, assuming that such Indebtedness is fully drawn.

ARTICLE II

THE CREDITS

SECTION 2.01 Commitments. Subject to the terms and conditions set forth herein, each Lender severally agrees to make Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result in such Lender's Credit Exposure exceeding such Lender's Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans.

SECTION 2.02 Loans and Borrowings.

(a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided, that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. Any Swingline Loan shall be made in accordance with the procedures set forth in Section 2.04 below.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.14, 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); provided, that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of $500,000 and not less than $1.0 million. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of $100,000 and not less than $1.0 million; provided, that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Each Swingline Loan shall be in an amount that is an integral multiple of $100,000 and not less than $1.0 million. Borrowings of more than one Type may be outstanding at the same time; provided, that there shall not at any time be more than a total of eight (8) Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03 Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request either in writing (delivered by hand, e-mail or fax) in

substantially the form of Exhibit F and signed by the Borrower or by telephone (such request a "Borrowing Request") (a) in the case of a Eurodollar Borrowing, not later than 12:00 p.m. (noon), New York City time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 12:00 p.m. (noon), New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery, fax or e-mail to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.01:

(i) the aggregate amount of the requested Borrowing and a breakdown of the separate wires comprising such Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period."

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04 Swingline Loans.

(a) Subject to the terms and conditions set forth herein, from time to time during the Availability Period, each Swingline Lender may, but shall have no obligation to, make Swingline Loans to the Borrower in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans made by such Swingline Lender exceeding such Swingline Lender's Swingline Commitment or (ii) such Swingline Lender's Credit Exposure exceeding its Commitment; provided, that a Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.

(b) To request a Swingline Loan, the Borrower shall notify the Administrative Agent of such request either in writing (delivered by hand, e-mail or fax) in substantially the form of Exhibit H and signed by the Borrower or by telephone (such request a "Swingline Request"), not later than 12:00 p.m. (noon), New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise each Swingline Lender of any such notice received from the Borrower. Each Swingline Lender shall make its ratable portion of the requested Swingline Loan (such ratable portion to be calculated based upon such Swingline Lender's Commitment to the total Commitments of all of the Swingline Lenders) available to the Borrower by means of a credit to an account of the Borrower with the Administrative Agent designated for such purpose (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e), by remittance to the Issuing Bank) by 3:00 p.m., New York City time, on the requested date of such Swingline Loan.

(c) The failure of any Swingline Lender to make its ratable portion of a Swingline Loan shall not relieve any other Swingline Lender of its obligation hereunder to make its ratable portion of such Swingline Loan on the date of such Swingline Loan, but no Swingline Lender shall be responsible for the failure of any other Swingline Lender to make the ratable portion of a Swingline Loan to be made by such other Swingline Lender on the date of any Swingline Loan.

(d) Any Swingline Lender may by written notice given to the Administrative Agent require the Lenders to acquire participations in all or a portion of its Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Lender, specifying in such notice such Lender's applicable percentage of such Swingline Loans. Each Lender hereby absolutely and unconditionally agrees, promptly upon receipt of such notice from the Administrative Agent (and in any event, if such notice is received by 12:00 p.m. (noon), New York City time, on a Business Day no later than 4:00 p.m. New York City time on such Business Day and if received after 12:00 p.m. (noon), New York City time, on a Business Day shall mean no later than 12:00 p.m. (noon)New York City time on the immediately succeeding Business Day), to pay to the Administrative Agent, for the account of such Swingline Lenders, such Lender's applicable percentage of such Swingline Loans. Each Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to such Swingline Lenders the amounts so received by it from the Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to such Swingline Lenders. Any amounts received by a Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by such Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Lenders that shall have made their payments pursuant to this paragraph and to such Swingline Lenders, as their interests may appear; provided, that any such payment so remitted shall be repaid to such Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

(e) Any Swingline Lender may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Swingline Lender and the successor Swingline Lender. The Administrative Agent shall notify the Lenders of any such replacement of a Swingline Lender. At the time any such replacement shall become effective, the Borrower shall pay all unpaid interest accrued for the account of the replaced Swingline Lender pursuant to Section 2.13(a). From and after the effective date of any such replacement, (x) the successor Swingline Lender shall have all the rights and obligations of the replaced Swingline Lender under this Agreement with respect to Swingline Loans made thereafter and (y) references herein to the term "Swingline Lender" shall be deemed to refer to such successor or to any previous Swingline Lender, or to such successor and all previous Swingline Lenders, as the context shall require. After the replacement of a Swingline Lender hereunder, the replaced

Swingline Lender shall remain a party hereto and shall continue to have all the rights and obligations of a Swingline Lender under this Agreement with respect to Swingline Loans made by it prior to its replacement, but shall not be required to make additional Swingline Loans.

(f) Subject to the appointment and acceptance of a successor Swingline Lender, any Swingline Lender may resign as a Swingline Lender at any time upon thirty (30) days' prior written notice to the Administrative Agent, the Borrower and the Lenders, in which case, such Swingline Lender shall be replaced in accordance with Section 2.04(e) above.

SECTION 2.05 [Reserved].

SECTION 2.06 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of (and the Issuing Bank shall issue) Letters of Credit denominated in Dollars as the applicant thereof for the support of its or its Subsidiaries' obligations in a form reasonably acceptable to the applicable Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, any Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. The Borrower unconditionally and irrevocably agrees that, in connection with any Letter of Credit issued for the support of any Subsidiary's obligations as provided in the first sentence of this clause (a), the Borrower will be fully responsible for the reimbursement of LC Disbursements in accordance with the terms hereof, the payment of interest thereon and the payment of fees due under Section 2.12(b) to the same extent as if it were the sole account party in respect of such Letter of Credit (the Borrower hereby irrevocably waiving any defenses that might otherwise be available to it as a guarantor or surety of the obligations of such Subsidiary that is an account party in respect of any such Letter of Credit). Notwithstanding anything herein to the contrary, the Issuing Bank shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit (i) the proceeds of which would be made available to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions, in either such case, in violation of any such Sanctions or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) if any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Requirement of Law relating to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Issuing Bank in good faith deems material to it, or (iii) if the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally; provided, that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities,

in each case pursuant to Basel III, shall in each case be deemed not to be in effect on the Effective Date for purposes of clause (ii) above, regardless of the date enacted, adopted, issued or implemented

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or fax (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent (reasonably in advance of, but in any event no less than three (3) Business Days prior to the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with clause (c) of this Section 2.06) and whether such Letter of Credit shall contain automatic extension or renewal provisions, the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the applicable Issuing Bank, the Borrower also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed $50.0 million and (ii) the Aggregate Credit Exposure shall not exceed the aggregate Commitments of all Lenders.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination or non-renewal by notice from the applicable Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any one-time renewal or extension thereof, including any automatic renewal provision, one year after such renewal or extension) and (ii) the date that is five (5) Business Days prior to the Maturity Date; provided, that, upon the Borrower's request, any such Letter of Credit which is issued in the final year prior the Maturity Date may have an expiry date which is up to one year after the Maturity Date if, at least five (5) Business Days prior to the Maturity Date, the Borrower (A) deposits with the Administrative Agent cash collateral in an amount equal to 105% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon or (B) provides a backup standby letter of credit, in each case, reasonably satisfactory to the relevant Issuing Bank. Each Letter of Credit with automatic extension or renewal provisions shall, subject to the right of the respective Issuing Bank to terminate such automatic renewal in accordance with the terms of such Letter of Credit upon the occurrence of an Event of Default, be automatically renewed for a successive one-year period on each anniversary of the date of the issuance of such Letter of Credit, until cancelled by the Borrower by notice to the applicable Issuing Bank in accordance with the terms of such Letter of Credit agreed upon at the time such Letter of Credit is issued; provided, that such Letter of Credit shall expire at or prior to the close of business on the date that is five (5) Business Days prior to the Maturity Date if not earlier cancelled, unless otherwise agreed with the relevant Issuing Bank and subject to satisfactory arrangements with respect thereto as contemplated above.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Lenders, such Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to

the Administrative Agent, for the account of such Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in clause (e) of this Section 2.06, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If an Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 12:00 p.m. (noon), New York City time, on the Business Day immediately following the day that the Borrower receives such notice; provided, that, if such LC Disbursement is not less than $500,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.04 that such payment be financed with an ABR Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Borrowing or Swingline Loan. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse any Issuing Bank for any LC Disbursement (other than the funding of ABR Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in clause (e) of this Section 2.06 shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by an Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.06, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor any Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other

communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of any Issuing Bank; provided, that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, an Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The applicable Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank shall promptly notify the Administrative Agent and the Borrower in writing of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; provided, that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If an Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate *per annum* then applicable to ABR Loans and such interest shall be payable on the date when such reimbursement is due; provided, that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to clause (e) of this Section 2.06, then Section 2.13(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to clause (e) of this Section 2.06 to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement of an Issuing Bank. An Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit then outstanding and issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing greater than 50% of the aggregate LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders (the "LC Collateral Account"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon; provided, that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (h) or (i) of Article VII. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Obligations. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrower hereby grants the Administrative Agent a security interest in the LC Collateral Account to secure the Obligations. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the LC Collateral Account. Moneys in the LC Collateral Account shall be applied by the Administrative Agent to reimburse the Issuing Banks for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 50% of the aggregate LC Exposure), be applied to satisfy other Obligations. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all such Defaults have been cured or waived.

(k) Issuing Bank Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each Issuing Bank shall, in addition to its notification obligations set forth elsewhere in this Section 2.06, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as shall be requested by the Administrative Agent) in respect of Letters of Credit issued by such Issuing Bank, including all issuances, extensions, amendments and renewals, all expirations and cancelations and all disbursements and reimbursements, (ii) reasonably prior to the time that such Issuing Bank issues, amends, renews or extends any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the stated amount of the Letters of Credit issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed), (iii) on each Business Day on which such Issuing Bank makes any LC Disbursement, the date and amount of such LC Disbursement, (iv) on any Business Day on which the Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and the amount of such LC Disbursement, and (v) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such Issuing Bank.

(l) LC Exposure Determination. For all purposes of this Agreement, the amount of a Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at the time of determination.

SECTION 2.07 Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 p.m. (noon), New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Applicable Percentage; provided, that Swingline Loans shall be made as provided in Section 2.04. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower maintained with the Administrative Agent and designated by the Borrower in the applicable Borrowing Request; provided, that ABR Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Banks.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with clause (a) of this Section 2.07 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.08 Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.08. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This section shall not apply to Swingline Borrowings, which may not be converted or continued.

(b) To make an election pursuant to this Section 2.08, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery, fax or e-mail to the Administrative Agent of a written Interest Election Request in substantially the form of Exhibit G and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.09 Termination and Reduction of Commitments.

(a) Unless previously terminated or extended pursuant to the terms and conditions hereof, all Commitments shall terminate on the Maturity Date.

(b) The Borrower may at any time, without (subject to Section 2.16) premium or penalty, terminate the Commitments upon (i) the payment in full of all outstanding Loans (including any Swingline Loans), together with accrued and unpaid interest thereon and on any Letters of Credit, (ii) the cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit (together with a security interest therein) (or at the discretion of the Administrative Agent a backup standby letter of credit satisfactory to the Administrative Agent and the applicable Issuing Bank) in an amount equal to 105% of the LC Exposure as of such date), (iii) the payment in full of the accrued and unpaid fees, and (iv) the payment in full of all reimbursable expenses and other Obligations together with accrued and unpaid interest thereon (other than Unliquidated Obligations).

(c) The Borrower may from time to time, without (subject to Section 2.16) premium or penalty, reduce the Commitments; provided, that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of $1.0 million and not less than $5.0 million (or if less, the aggregate

amount of the outstanding Commitments), and (ii) the Borrower shall not reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, the Aggregate Credit Exposure would exceed the aggregate Commitments of all Lenders.

(d) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under clause (b) or (c) of this Section 2.09 at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.09 shall be irrevocable; provided, that a notice of termination of the Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or events, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

SECTION 2.10 Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the Maturity Date and (ii) to the Administrative Agent for the account of the Swingline Lenders the then unpaid principal amount of each Swingline Loan on the earlier of the Maturity Date and the date that is five (5) Business Days after such Swingline Loan is made; provided, that on each date that a Borrowing is made, the Borrower shall repay all Swingline Loans then outstanding and the proceeds of any such Borrowing shall be applied by the Administrative Agent to repay any Swingline Loans than outstanding.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period applicable thereto, if any, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to clause (b) or (c) of this Section 2.10 shall be prima facie evidence of the existence and amounts of the obligations recorded therein absent manifest error; provided, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement; provided, further, that in the event of a conflict between the entries made in the accounts maintained pursuant to clause (b) or (c) of this Section 2.10 and the Register, the Register shall govern.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note in substantially the form of Exhibit I completed as appropriate (each a "Note" and, collectively, the "Notes"). In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to such Lender and its registered assigns and in a form approved by the Administrative Agent.

Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more Notes in such form payable to such payee and its registered assigns.

SECTION 2.11 Prepayment of Loans.

(a) The Borrower shall have the right at any time and from time to time, without (subject to Section 2.16) premium or penalty, to prepay any Borrowing in whole or in part, subject to prior notice in accordance with clause (c) of this Section 2.11.

(b) In the event and on such occasion that the Aggregate Credit Exposure exceeds the aggregate Commitments of all Lenders, the Borrower shall prepay the Loans (including any Swingline Loans) and/or cash collateralize the LC Exposure (in accordance with Section 2.06(j)) in an aggregate amount equal to such excess.

(c) The Borrower shall notify the Administrative Agent (and, in the case of prepayment of Swingline Loans, the Swingline Lenders) in writing of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 12:00 p.m. (noon), New York City time, three (3) Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Borrowing, not later than 12:00 p.m. (noon), New York City time, one (1) Business Day before the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 12:00 p.m. (noon), New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided, that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13.

SECTION 2.12 Fees.

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender (other than a Defaulting Lender, subject to Section 2.20) a commitment fee, which shall accrue at the Commitment Fee Rate set forth in the definition of Applicable Rate on the average daily amount of the Available Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which the Commitments terminate; provided, however, that for purposes of this clause (a) any Swingline Loan shall not be considered when calculating the amount of the Available Commitment. Accrued commitment fees shall be payable in arrears on the first Business Day of each January, April, July and October and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed.

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender (other than a Defaulting Lender, subject to Section 2.20) a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurodollar Loans on the average daily amount of such Lender's LC Exposure

(excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the applicable Issuing Bank a fronting fee, which shall accrue at the rate of 0.25% *per annum* on the average daily amount of each applicable Letter of Credit (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as the applicable Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of each calendar quarter shall be payable on the first Business Day of each of each January, April, July and October following such last day, commencing on the first such date to occur after the Effective Date; provided, that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to any Issuing Bank pursuant to this paragraph shall be payable within ten (10) days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed.

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, and to any Lender, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent or such Lender.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to an Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.13 Interest.

(a) The Loans comprising each ABR Borrowing (including each Swingline Loan) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall automatically bear interest, after, as well as before, judgment, at a rate *per annum* equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.13 or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in clause (a) of this Section 2.13.

(d) Accrued interest on each Loan (for ABR Loans, accrued through the last day of the prior calendar quarter) shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided, that (i) interest accrued pursuant to clause (c) of this Section 2.13 shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii)

in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14 Alternate Rate of Interest; Illegality.

(a) If prior to the commencement of any Interest Period for a Eurodollar Borrowing the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Required Lenders notify the Administrative Agent (with a copy to the Borrower) that the Required Lenders have determined that:

(i) adequate and reasonable means do not exist for ascertaining the LIBO Rate or Adjusted LIBO Rate, as applicable, for any requested Interest Period, including because the LIBO Rate is not available or published on a current basis and such circumstances are unlikely to be temporary;

(ii) the supervisor for the administrator of the LIBO Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate shall no longer be made available, or used for determining the interest rate of loans; or

(iii) a rate other than the LIBO Rate has been broadly accepted by the syndicated loan market in the United States in lieu of the LIBO Rate,

then, after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace the LIBO Rate with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein) that has been broadly accepted by the syndicated loan market in the United States in lieu of the LIBO Rate (any such proposed rate, a "LIBOR Successor Rate"), together with any proposed LIBOR Successor Rate Conforming Changes and adjustments to account for (x) the effects of the transition from the LIBOR Rate to the replacement index and (y) yield- or risk-based differences between the LIBOR Rate and the replacement index and, notwithstanding anything to the contrary in Section 9.02, any such amendment shall become effective at 5:00 p.m. (New York time) on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent notice that such Required Lenders do not accept such amendment. Notwithstanding anything to the contrary in the foregoing, without the consent from each Lender (other than Defaulting Lenders), no such amendment shall be effective to the extent such amendment would have the effect of reducing the Applicable Rate applicable to any Loan.

If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist, the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended, (to the extent of the affected Eurodollar Loans or Interest Periods). Upon receipt of such notice, the Borrower may revoke any pending request for a Eurodollar Borrowing of, conversion to or continuation of Eurodollar Loans (to

the extent of the affected Eurodollar Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for an ABR Borrowing in the amount specified therein.

(b) If after the date hereof, the adoption of any applicable law, or any change in any applicable law (whether adopted before or after the Effective Date), or any change in interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender with any directive (whether or not having the force of law) of any such authority, central bank or comparable agency, shall make it unlawful or impossible for any Lender to make, maintain or fund its portion of Eurodollar Loans, such Lender shall so notify the Administrative Agent, and the Administrative Agent shall forthwith give notice thereof to the other Lenders and the Borrower. Before giving any notice to the Administrative Agent pursuant to this Section 2.14(b), such Lender shall designate a different lending office if such designation will avoid the need for giving such notice and will not, in the sole reasonable judgment of such Lender, be otherwise materially disadvantageous to such Lender. Upon receipt of such notice, notwithstanding anything contained in Article II, the Borrower shall repay in full the then outstanding principal amount of such Lender's portion of each affected Eurodollar Loan, together with accrued interest thereon, on either (i) the last day of the then current Interest Period applicable to such affected Eurodollar Loans if such Lender may lawfully continue to maintain and fund its portion of such Eurodollar Loan to such day or (ii) immediately if such Lender may not lawfully continue to fund and maintain its portion of such affected Eurodollar Loans to such day. Concurrently with repaying such portion of each affected Eurodollar Loan, the Borrower may borrow an ABR Loan from such Lender, whether or not it would have been entitled to effect such borrowing and such Lender shall make such Loan, if so requested, in an amount such that the outstanding principal amount of the affected Loan made by such Lender shall equal the outstanding principal amount of such Loan immediately prior to such repayment. The obligation of such Lender to make Eurodollar Loans is suspended only until such time as it is once more possible and legal for such Lender to fund and maintain Eurodollar Loans.

SECTION 2.15 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or any Issuing Bank;

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes and (B) Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting into or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or such Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received

or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or any Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Bank's capital or on the capital of such Lender's or such Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the applicable Issuing Bank setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in clause (a) or (b) of this Section 2.15 shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to clauses (a), (b) and (c) of this Section 2.15 shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation; provided, that the Borrower shall not be required to compensate a Lender or an Issuing Bank pursuant to this Section 2.15 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.16 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.09(d) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event (which shall not include any loss of margin or Applicable Rate). In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the

amount of interest (as reasonably determined by such Lender) which accrued on such principal amount for such period at the interest rate which such Lender bid, at the commencement of such period, for Dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth, in reasonable detail, any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.16 shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.17 Withholding of Taxes; Gross-Up.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by such Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

(c) Evidence of Payment. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any

Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this clause (e).

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by applicable law and at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law or as reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any

Loan Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the Beneficial Owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each Beneficial Owner, as applicable; provided, that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made;

(D) if a payment made to a Recipient under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Recipient shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA

and to determine that such Recipient has complied with such Recipient's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement; and

(E) to the extent legally permissible, at the time or times reasonably requested by Borrower, any replacement Administrative Agent (but not the Administrative Agent, as of the date hereof) shall (1) if the Administrative Agent is a U.S. Person, deliver an IRS Form W-9 to Borrower, or (2) if the Administrative Agent is not a U.S. Person, deliver the applicable IRS Form W-8 certifying Administrative Agent's exemption from, or reduction of, U.S. withholding Taxes with respect to amounts payable hereunder.

Each Recipient agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such Tax had never been paid. This clause (g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) Defined Terms. For purposes of this Section 2.17, the term "Lender" includes any Issuing Bank and the term "applicable law" includes FATCA.

SECTION 2.18 Payments Generally; Allocation of Proceeds; Sharing of Setoffs.

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 1:00 p.m., New York City time, on the date when due, in

immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to one or more accounts as it may designate to the Borrower in writing from time to time, except payments to be made directly to an Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) Any payments, proceeds or recoveries with respect to the Obligations (including the Guaranteed Obligations) received by the Administrative Agent (i) not constituting a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrower), or (ii) after an Event of Default has occurred and is continuing, shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements including amounts then due to the Administrative Agent and the Issuing Banks from the Borrower, second, to pay any fees, indemnities or expense reimbursements then due to the Lenders from the Borrower, third, to pay interest then due and payable on the Loans ratably, fourth, to prepay principal on the Loans and unreimbursed LC Disbursements, fifth, to pay an amount to the Administrative Agent equal to one hundred five percent (105%) of the aggregate undrawn face amount of all outstanding Letters of Credit, to be held as cash collateral for such Obligations, and sixth, to the payment of any other Obligation due to the Administrative Agent or any Lender by the Borrower. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower, or unless a Default is in existence, neither the Administrative Agent nor any Lender shall apply any payment which it receives to any Eurodollar Loan, except (a) on the expiration date of the Interest Period applicable to any such Eurodollar Loan or (b) in the event, and only to the extent, that there are no outstanding ABR Loans and, in any such event, the Borrower shall pay the break funding payment required in accordance with Section 2.16. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Obligations.

(c) At the election of the Borrower but subject to the conditions set forth in Section 4.02, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including all reimbursement for fees, costs and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder whether made following a request by the Borrower pursuant to Section 2.03 or a deemed request as provided in this Section 2.18 or may be deducted from any deposit account of the Borrower maintained with the Administrative Agent.

(d) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and

Swingline Loans; provided, that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(e) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or any Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Banks, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Banks, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) If any Lender shall fail to make any payment required to be made by it hereunder, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations hereunder until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and apply any such amounts to, any future funding obligations of such Lender hereunder; application of amounts pursuant to (i) and (ii) above shall be made in such order as may be determined by the Administrative Agent in its discretion.

(g) The Administrative Agent may from time to time provide the Borrower with billing statements or invoices with respect to any of the Obligations (the "Billing Statements"). The Administrative Agent is under no duty or obligation to provide Billing Statements, which, if provided, will be solely for the Borrower's convenience. The Billing Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees or other Obligations. If the Borrower pays the full amount indicated on a Billing Statement on or before the due date indicated on such Billing Statement, the Borrower shall not be in default; provided, that acceptance by the Administrative Agent, on behalf of the Lenders, of any payment that is less than the payment due at that time shall not constitute a waiver of the Administrative Agent's or the Lenders' right to receive payment in full at another time.

SECTION 2.19 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15, or if the Borrower or the Loan Guarantors are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall

use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.15, (ii) any Lender fails to consent to a requested amendment, waiver or modification to any Loan Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender (or each Lender directly affected thereby, as applicable) is required with respect thereto, (iii) the Borrower or the Loan Guarantors are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or (iv) any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or 2.17) and obligations under this Agreement and other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided, that (A) the Borrower shall have received the prior written consent of the Administrative Agent (and if a Commitment is being assigned, the Issuing Banks and Swingline Lenders), which consent shall not unreasonably be withheld, conditioned or delayed, (B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (C) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Sections 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Notwithstanding anything herein to the contrary, each party hereto agrees that any assignment pursuant to the terms of this Section 2.19 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and that the Lender making such assignment need not be a party thereto.

SECTION 2.20 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the unfunded portion of the Commitment of such Defaulting Lender pursuant to Section 2.12(a);

(b) such Defaulting Lender shall not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 9.02(b)) and the Commitment and Credit Exposure of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02) or under any other Loan Document; provided, that, except as otherwise provided in Section 9.02, this clause (b) shall not apply to the vote of a Defaulting

Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender directly affected thereby;

(c) if any Swingline Exposure or LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of such Swingline Exposure and/or such LC Exposure of such Defaulting Lender (other than the portion of such Swingline Exposure referred to in clause (b) of the definition of such term) shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent that the sum of all non-Defaulting Lenders' Credit Exposures plus such Defaulting Lender's Swingline Exposure and/or LC Exposure does not exceed the total of all non-Defaulting Lenders' Commitments; and

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one (1) Business Day following notice by the Administrative Agent (x) first, prepay such Swingline Exposure and (y) second, cash collateralize for the benefit of the Issuing Banks only the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to this Section 2.20(c), the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to Section 2.20(c), then the fees payable to the Lenders pursuant to Section 2.12(a) and Section 2.12(b) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; or

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither cash collateralized nor reallocated pursuant to Section 2.20(c), then, without prejudice to any rights or remedies of any Issuing Bank or any other Lender hereunder, all facility fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Commitment that was utilized by such LC Exposure) and letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Banks until such LC Exposure is cash collateralized and/or reallocated;

(d) so long as such Lender is a Defaulting Lender, no Swingline Lender shall be required to fund any Swingline Loan and no Issuing Bank shall be required to issue or increase any Letter of Credit, unless it is reasonably satisfied that the related exposure and the Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.20(c), and Swingline Exposure related to any such newly made Swingline Loan or LC Exposure related to any such newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(c)(i) (and such Defaulting Lender shall not participate therein);

(e) if (i) a Bankruptcy Event with respect to a Parent of any Lender shall occur following the date hereof and for so long as such event shall continue or (ii) any Swingline Lender or Issuing Bank has

a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, no Swingline Lender shall be required to fund any Swingline Loan and no such Issuing Bank shall be required to issue or increase any Letter of Credit unless such Swingline Lender or Issuing Bank shall have entered into arrangements with the Borrower or such Lender, reasonably satisfactory to such Swingline Lender or Issuing Bank, as the case may be, to defease any risk to it in respect of such Lender hereunder; and

(f) in the event and on the date that each of the Administrative Agent, the Borrower, each Swingline Lender and each Issuing Bank agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the LC Exposure of the other Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

Nothing contained herein shall be deemed to be a release of any claims of the Administrative Agent or the Borrower against any Defaulting Lender for its breach of any of its obligations under this Agreement.

SECTION 2.21 Returned Payments. If after receipt of any payment which is applied to the payment of all or any part of the Obligations (including a payment effected through exercise of a right of setoff), the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion), then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 shall survive the termination of this Agreement.

SECTION 2.22 Increase of Commitments.

(a) The Borrower shall have the right at any time after the Effective Date to request that the aggregate Commitments hereunder be increased (a "Commitment Increase") in accordance with the following provisions and subject to the following conditions:

(i) The Borrower shall give the Administrative Agent, which shall promptly deliver a copy thereof to each of the Lenders, at least ten Business Days' prior written notice (a "Notice of Increase") of any such requested increase specifying the aggregate amount by which the Commitments are to be increased, which shall be at least $5.0 million, the requested date of increase (the "Requested Increase Date") and the date by which the Lenders wishing to participate in the Commitment Increase must commit to an increase in the amount of their respective Credit Commitments (the "Commitment Date"). Each Lender that is willing in its sole discretion to participate in such requested Commitment Increase (each an "Increasing Lender") shall give written notice to the Administrative Agent on or prior to the Commitment Date of the amount by which it is willing to increase its Commitment.

(ii) Promptly following each Commitment Date, the Administrative Agent shall notify the Borrower as to the amount, if any, by which the Lenders are willing to participate in the requested Commitment Increase. In addition, the Borrower may extend offers to one or more Eligible Assignees, each of which must be reasonably satisfactory to the Administrative Agent, (such consent not to be unreasonably withheld, delayed or conditioned) to participate in any portion of the requested Commitment Increase; provided, however, that the Commitment of each such Eligible Assignee shall be in an amount of not less than $1.0 million or an integral multiple of $1.0 million in excess thereof. Any such Eligible Assignee that agrees to acquire a Commitment pursuant hereto is herein called an "Additional Lender".

(iii) Effective on the Requested Increase Date, subject to the terms and conditions hereof, (x) the Commitment Schedule shall be deemed to be amended to reflect the increases contemplated hereby, (y) the Commitment of each Increasing Lender shall be increased by an amount determined by the Administrative Agent and the Borrower (but in no event greater than the amount by which such Lender is willing to increase its Commitment), and (z) each Additional Lender shall enter into an agreement in form and substance reasonably satisfactory to the Borrower and the Administrative Agent pursuant to which it shall undertake, as of such Requested Increase Date, a new Commitment in an amount determined by the Administrative Agent and the Borrower (but in no event greater than the amount by which such Lender is willing to participate in the requested Commitment Increase), and such Additional Lender shall thereupon be deemed to be a Lender for all purposes of this Agreement.

(iv) If on the Requested Increase Date there are any Loans outstanding hereunder, the Borrower shall borrow from all or certain of the Lenders and/or prepay Loans of all or certain of the Lenders such that, after giving effect thereto, the Loans (including the Types and Interest Periods thereof) and such participations shall be held by the Lenders (including for such purposes the Increasing Lenders and the Additional Lenders) ratably in accordance with their respective Commitments. On and after each Increase Date, the ratable share of each Lender's participation in Letters of Credit and Loans from draws under Letters of Credit shall be calculated after giving effect to each such Commitment Increase.

(b) Anything in this Section 2.22 to the contrary notwithstanding, no increase in the aggregate Commitments hereunder pursuant to this Section 2.22 shall be effective unless:

(i) as of the date of the relevant Notice of Increase and on the relevant Requested Increase Date and after giving effect to such increase, (x) no Default or Event of Default shall have occurred and be continuing and (y) the condition set forth in Section 4.02(a) shall be satisfied;

(ii) to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (A) customary legal opinions, board resolutions and officers' certificates consistent with the documentation delivered on the Effective Date (conformed as appropriate) other than changes to such legal opinions resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Administrative Agent and (B) any reaffirmation or similar documentation as reasonably requested by the Administrative Agent in order to ensure that such Increasing Lender or Additional Lender is provided with the benefit of the applicable Loan Documents;

(iii) after giving effect to such Commitment Increases, the aggregate principal amount of all such Commitment Increases incurred since the Effective Date shall not exceed $150.0 million; and

(iv) after giving effect to any such Commitment Increase, the Borrower shall be in pro forma compliance with the Financial Covenants for the most recently ended Reference Period for which financial statements have been (or were required to be) delivered to the Administrative Agent and the Borrower shall have delivered to the Administrative Agent reasonably detailed calculations demonstrating such compliance.

SECTION 2.23 [Reserved].

SECTION 2.24 [Reserved].

SECTION 2.25 Effect of a Benchmark Transition Event.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace the LIBO Rate with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders accept such amendment. No replacement of the LIBO Rate with a Benchmark Replacement pursuant to this Section 2.25 will occur prior to the applicable Benchmark Transition Start Date.

(b) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(c) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.25, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.25.

(d) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a

Eurodollar Borrowing of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans. During any Benchmark Unavailability Period, the component of ABR based upon the LIBO Rate will not be used in any determination of ABR.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Lenders that:

SECTION 3.01 Organization; Powers. Each of the Loan Parties and each of its Subsidiaries is duly organized, validly existing and (to the extent applicable in its jurisdiction of organization) in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

SECTION 3.02 Authorization; Enforceability. The Transactions are within each Loan Party's corporate or limited liability company powers, as the case may be, and have been duly authorized by all necessary corporate or limited liability company and, if required, stockholder or member action. Each Loan Document to which each Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03 Governmental Approvals; No Conflicts. The Transactions (a) do not, on the part of any Loan Party or any of its Subsidiaries, require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party or any of its Subsidiaries or any order of any Governmental Authority applicable to any Loan Party, (c) will not violate or result in a default under, or give rise to a right to require any payment to be made by any Loan Party or any of its Subsidiaries under, (i) any indenture or loan agreement, in each case, evidencing Indebtedness in excess of $50 million, (ii) any Swap Agreement with a Swap Termination Value in excess of $50.0 million or (iii) any other material agreement, in each case which is binding upon any Loan Party or any of its Subsidiaries or its assets, and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party or any of its Subsidiaries, except Liens on cash collateral created pursuant to the Loan Documents, except, solely in the case of clauses (a), (b) or (c)(iii) hereof, as could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.04 Financial Condition; No Material Adverse Change.

(a) The Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of and for the fiscal year ended December 31, 2019, reported on by the Accounting Firm and (ii) as of and for the fiscal quarter and the portion of

the fiscal year ending March 31, 2020. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) No event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect, since December 31, 2019.

SECTION 3.05 Properties.

(a) Each of the Loan Parties and its Subsidiaries has good title to, or valid leasehold interests in, or rights to use, all its real and personal property, subject to Permitted Liens and except for defects in title, interests or rights that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Each of the Loan Parties and its Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Loan Parties and its Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.06 Litigation and Environmental Matters.

(a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened in writing against the Loan Parties or any of its Subsidiaries or any of their respective properties (i) that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve this Agreement or the Transactions.

(b) No Loan Party nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability that, in each case, individually in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.07 Compliance with Laws and Agreements; No Default.

(a) Each Loan Party and its Subsidiaries is in compliance with all Requirements of Law applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) No Default has occurred and is continuing.

SECTION 3.08 Investment Company Status. No Loan Party is an "investment company" as defined in, or subject to regulation under the Investment Company Act of 1940.

SECTION 3.09 Taxes. Each Loan Party and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes,

and claims that that were required to have been paid by it, except (a) Taxes and claims that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10 ERISA.

(a) No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. Except as could not reasonably be expected to result in a Material Adverse Effect, with respect to each Plan, the "funding target," as defined in Section 430(d)(1) of the Code, with respect to such Plan, does not exceed the fair market value of all such Plan's assets, as determined pursuant to Section 430(g) of the Code, all determined as of the then-most recent valuation date for such Plan using the actuarial assumptions used to determine the Plan's "funding target attainment" percentage as defined in Section 430(d) of the Code.

(b) The Borrower represents and warrants as of the Effective Date that the Borrower is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

(c) Each Foreign Pension Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities, in each case except where the failure to do so could not reasonably be expected to have a Material Adverse Effect. All material contributions required to be made with respect to a Foreign Pension Plan have been timely made. Neither the Borrower nor any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan that could reasonably be expected to have a Material Adverse Effect. The present value of the accrued benefit liabilities (whether or not vested) under each Foreign Pension Plan, determined as of the end of the Borrowers' most recently ended fiscal year on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the assets of such Foreign Pension Plan allocable to such benefit liabilities.

SECTION 3.11 Disclosure. The Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any Subsidiary is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other written information (when taken together with the Borrower's most recently (as of the date hereof) filed and publicly available 10-K and 10-Q, and 8-Ks filed at any time following such 10-K, in each case with the SEC) (other than any projected financial information or other forward-looking information or information of a general economic or general industry specific nature) furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein (taken as a whole), in the light of the circumstances under which they were made, not materially misleading; provided, that, with respect to projected financial information or other forward-looking information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projections and forward-looking

information are not to be viewed as facts and any such projections and forward-looking information may differ from actual results and such differences may be material).

SECTION 3.12 Capitalization and Subsidiaries. Schedule 3.12 to the Disclosure Letter sets forth, as of the date hereof, (a) a correct and complete list of the name, and identifies the direct equity holders (including the percentage ownership thereof) of, each and all of the Borrower's direct and indirect Subsidiaries, (b) the type of entity and jurisdiction of organization of the Borrower and each of its Subsidiaries, and (c) which of the Borrower's Subsidiaries are Material Domestic Subsidiaries and Material Foreign Subsidiaries. All of the issued and outstanding Equity Interests of any Subsidiary owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and is fully paid and non-assessable.

SECTION 3.13 [Reserved].

SECTION 3.14 Federal Reserve Regulations.

(a) No part of the proceeds of any Loan or Letter of Credit has been used or will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

(b) No Loan Party is engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U), or extending credit for the purpose of purchasing or carrying margin stock.

SECTION 3.15 Anti-Corruption Laws and Sanctions; USA Patriot Act.

(a) Each Loan Party has implemented and maintains in effect policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and such Loan Party, its Subsidiaries and their respective officers and employees and, to the knowledge of such Loan Party, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) any Loan Party, any Subsidiary or, to the knowledge of any such Loan Party or Subsidiary, any of their respective directors, officers or employees, or (b) to the knowledge of any such Loan Party or Subsidiary, any agent of such Loan Party or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds, Transaction or other transaction contemplated by this Agreement or the other Loan Documents will violate Anti-Corruption Laws or applicable Sanctions.

(b) Each Loan Party is in compliance, in all material respects, with the USA PATRIOT Act and any applicable anti-money laundering laws and regulations.

SECTION 3.16 Not an Affected Financial Institution. No Loan Party is an Affected Financial Institution.

SECTION 3.17 Solvency. (a) The fair value of the assets of the Loan Parties and their Subsidiaries, taken as a whole, at a fair valuation, exceeds their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of the Loan Parties and their Subsidiaries, taken as a whole, is greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) the Loan Parties will be able to pay their debts and liabilities,

subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) the Loan Parties and their Subsidiaries, taken as a whole, will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted after the Effective Date.

SECTION 3.18 FDA and Other Regulatory Matters.

(a) Each Loan Party and its Subsidiaries has, and it and its Products are in conformance with, all Registrations applicable to its respective business except where the failure to have such Registrations or be in conformance would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. No Loan Party nor any of its Subsidiaries has received written notice that the FDA or any other Governmental Authority intends to suspend or revoke such Registrations or changing the marketing classification affecting the Products of the Loan Parties or any of their respective Subsidiaries. To the knowledge of each Loan Party and its Subsidiaries, there is no material false or misleading information or material omission in any product application or other submission to the FDA or other Governmental Authority administering Public Health Laws. To the knowledge of each Loan Party and its Subsidiaries, no event has occurred or condition or state of facts exists which would cause revocation or termination of any such Registration. To the knowledge of each Loan Party and its Subsidiaries, any third party that is a manufacturer or contractor for the Loan Parties or any of their respective Subsidiaries is in compliance in all material respects with all Registrations required by the FDA or comparable Governmental Authority and all Public Health Laws insofar as they reasonably pertain to the Products of the Loan Parties and their respective Subsidiaries.

(b) Except as set forth on Schedule 3.18 to the Disclosure Letter: (i) each Loan Party and its Subsidiaries and, to their knowledge, their respective contract manufacturers are, and have been for the past five calendar years, in compliance in all material respects with, and each Product in current commercial distribution has been designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, marketed, installed, and serviced in compliance in all material respects with the Public Health Laws or any other applicable Requirement of Law, including those regarding clinical and non-clinical testing, product approval or clearance, Quality System requirements, labeling, advertising and promotion, record-keeping, establishment registration and listing, reporting of recalls and adverse event reporting; (ii) each Loan Party and its Subsidiaries is in compliance in all material respects with the record-keeping and reporting requirements required by the FDA or any other Governmental Authority pertaining to the reporting or adverse events and recalls involving the Products, including, as the case may be, Medical Device Reporting set forth in 21 C.F.R. Part 803 and Reports of Corrections and Removals set forth in 21 C.F.R. Part 806; (iii) all Products are and have been labeled, promoted, and advertised in material compliance with their regulatory clearance or approval or within the scope of an exemption from obtaining such clearance or approval; (iv) if applicable, all Products and accompanying labels have been marked with a Unique Device Identifier as applicable under 21 C.F.R. Parts 801 and 830; and (v) each Loan Party's and its Subsidiaries' establishments are registered with the FDA, as applicable, and each Product is listed with the FDA under the applicable FDA registration and listing regulations for medical devices set forth in 21 C.F.R. Part 807.

(c) No Loan Party nor its Subsidiaries is subject to any obligation arising under any regulatory action, proceeding, investigation or inspection by or on behalf of a Governmental Authority, warning letter, notice of violation letter, consent decree, or other enforcement action by a Governmental Authority with respect to Regulatory Matters, and, to the knowledge of each Loan Party and its Subsidiaries, no such obligation has been threatened, verbally or in writing in each case that would reasonably be expected to have a Material Adverse Effect. To the knowledge of each Loan Party and its

Subsidiaries, there is no act, omission or event that would reasonably be expected to give rise to or lead to, any civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, demand letter, warning letter or enforcement proceeding against any Loan Party or its Subsidiaries, and, to each Loan Party's and its Subsidiary's knowledge, no Loan Party nor its Subsidiaries has any liability (whether actual or contingent) for failure to comply with any Public Health Laws, in each case that would reasonably be expected to have a Material Adverse Effect. There has not been any violation of any Public Health Laws by any Loan Party or its Subsidiaries that could reasonably be expected to require or lead to investigation, enforcement, regulatory or administrative action by the FDA or any comparable Governmental Authority, in each case that would reasonably be expected, in the aggregate, to have a Material Adverse Effect. To the knowledge of each Loan Party and each of their respective Subsidiaries, there are no civil or criminal proceedings relating to any Loan Party or its Subsidiaries or any officer, director or employee of any Loan Party or Subsidiary of any Loan Party that involve a matter within or related to the FDA's or any comparable Governmental Authority's jurisdiction.

(d) No Loan Party nor its Subsidiaries is currently undergoing any inspection by FDA or any other Governmental Authority investigation that could reasonably be expected to have a Material Adverse Effect.

(e) No Loan Party nor any Subsidiary of any Loan Party has received any written or verbal notice from any Governmental Authority alleging material noncompliance with any Requirement of Law. No Product has been seized, recalled, detained, or subject to a suspension (other than in the ordinary course of business) of research, manufacturing, distribution, or commercialization activity, and, to the knowledge of Loan Party and each of its Subsidiaries, there are no facts or circumstances reasonably likely to cause (i) the seizure, denial, recall, detention, public health notification, safety alert or suspension of manufacturing or other activity relating to any Product except as would not reasonably be expected to have a Material Adverse Effect; or (ii) a termination, seizure or suspension of manufacturing, researching, distributing or marketing of any Product. No proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, revocation, suspension, import detention, or seizure of any Product are pending or threatened in writing or verbally against any Loan Party or any of its Subsidiaries.

(f) No Loan Party nor any Subsidiary of any Loan Party nor, to the knowledge of Loan Party or any Subsidiary, any of their respective officers, directors, employees, agents, or contractors (i) have been excluded or debarred from any Governmental Reimbursement Program (including Medicare or Medicaid) or any other federal program or (ii) have received written notice from the FDA or any other Governmental Authority with respect to debarment or disqualification of any Person that would reasonably be expected to have, in the aggregate, a Material Adverse Effect. No Loan Party nor any Subsidiary of any Loan Party nor, to the knowledge of Loan Party or any Subsidiary any of their respective officers, directors, employees, agents or contractors have been convicted of any crime or engaged in any conduct for which (a) debarment is mandated or permitted by 21 U.S.C. § 335a or (y) such Person could be excluded from participating in the federal health care programs under Section 1128 of the Social Security Act or any similar law. No officer and to the knowledge of each Loan Party and its Subsidiaries, no employee or agent of any Loan Party or its Subsidiaries, has (A) made any untrue statement of material fact or fraudulent statement to the FDA or any other Governmental Authority; (B) failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority; or (C) committed an act, made a statement, or failed to make a statement that would reasonably be expected to provide the basis for the FDA or any other Governmental Authority to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," as set forth in 56 Fed. Reg. 46191 (September 10, 1991).

SECTION 3.19 Health Care Matters.

(a) Compliance with Health Care Laws: Health Care Permits. Each Loan Party and each of their respective Subsidiaries is in compliance with all Health Care Laws applicable to it and its assets, business or operations, except to the extent that any noncompliance, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Each Loan Party and each of their Subsidiaries holds in full force and effect all Health Care Permits necessary for it to own, lease, sublease or operate its assets under applicable Health Care Laws or to conduct its business and operations as presently conducted except where the failure to hold such Health Care Permits would not reasonably be expected to have a Material Adverse Effect. There exist no restrictions, required plans of correction or other such remedial measures with respect to (i) any Health Care Permit of any Loan Party or its Subsidiaries that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No circumstance exists or event has occurred which could reasonably be expected to result in the suspension, revocation, termination or non-renewal of any material Health Care Permit held by any Loan Party or any of their Subsidiaries.

(b) Material Statements. No Loan Party nor any of their Subsidiaries, nor to the knowledge of any Loan Party of any Subsidiary, any officer, affiliate, employee or agent of any Loan Party or any Subsidiary of any Loan Party, has made an untrue statement of a material fact or fraudulent statement to any Governmental Authority, failed to disclose a material fact that must be disclosed to any Governmental Authority, or committed an act, made a statement or failed to make a statement that, at the time such statement, disclosure or failure to disclose occurred, would constitute a violation of any Health Care Law that could reasonably he expected to have a Material Adverse Effect.

(c) Prohibited Transactions. No Loan Party or any of its Subsidiaries nor, to the knowledge of the Loan Parties, any officer, affiliate or managing employee of any Loan Party or any Subsidiary of a Loan Party has (i) offered or paid or solicited or received any remuneration, in cash or in kind, or made any financial arrangements, in material violation of any applicable Health Care Law; (ii) given any gift or gratuitous payment of any kind, nature or description (whether in money, property or services) in material violation of any applicable Health Care Law; (iii) made any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift or the purpose of such contribution, payment or gift was illegal in any material respect under the applicable laws of any Governmental Authority having jurisdiction over such payment, contribution or gift; (iv) established or maintained any unrecorded fund or asset or made any misleading, false or artificial entries on any of its books or records in material violation of applicable Health Care Laws; or (v) made any payment to any person with the intention that any part of such payment would be in violation of any applicable Health Care Law. No Person has filed or has threatened in writing to file against any Loan Party or any of their Subsidiaries an action under any federal or state whistleblower statute related to alleged noncompliance with applicable Health Care Laws, including under the False Claims Act of 1863 (31 U.S.C. 6 3729 et seq.).

(d) Exclusion. No Loan Party nor any of their Subsidiaries, nor, to the knowledge of Loan Party or its Subsidiaries, any owner, officer, director, partner, agent or managing employee or Person with a "direct or indirect ownership interest" (as that phrase is defined in 42 C.F.R. § 420.201) in any Loan Party or any Subsidiary of any Loan Party or an Affiliate, has (i) had a civil monetary penalty assessed pursuant to 42 U.S.C. § 1320a-7; (ii) been convicted (as that term is defined in 42 C.F.R. 61001.2) of any of those offenses described in 42 U.S.C. §1320a-7b or 18 U.S.C. 11669, 1035. 1347 or 1518, including any of the following categories of offenses: (A) criminal offenses relating to the delivery of an item or service under any federal health care program (as that term is defined in 42 U.S.C. §1320a-7b) or

healthcare benefit program (as that term is defined in 18 U.S.C. 124b), (B) criminal offenses under federal or state law relating to patient neglect or abuse in connection with the delivery of a healthcare item or service, (C) criminal offenses under laws relating to fraud and abuse, theft, embezzlement, false statements to third parties, money laundering, kickbacks, breach of fiduciary responsibility or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in a program operated by or financed in whole or in part by any federal, state or local governmental agency, (D) laws relating to the interference with or obstruction of any investigations into any criminal offenses described in this clause (d), or (E) criminal offenses under laws relating to the unlawful manufacturing, distribution, prescription or dispensing of a controlled substance; or (iii) been involved or named in a U.S. Attorney complaint made or any other action taken pursuant to the False Claims Act under 31 U.S.C. §13729-3731 or qui tam action brought pursuant to 31 U.S.C. 63729 et seq.

(e) HIPAA Compliance. Each Loan Party and each of their respective Subsidiaries is, and for the past three (3) years has been, in compliance in all material respects with HIPAA and Other Privacy Laws. Except as otherwise disclosed in Schedule 3.19 to the Disclosure Letter, none of the Loan Parties nor any of their Subsidiaries has, to the knowledge of the Loan Parties, within the past three (3) years, suffered any breach of Regulated Information requiring any notification to any individual, entity, the media or any Governmental Authority, received any written notice from the Office for Civil Rights for the U.S. Department of Health and Human Services or any other Governmental Authority regarding any allegation regarding its failure to comply with HIPAA and Other Privacy Laws, nor made any notification of such a breach or failure to any individual or entity, the media, the Secretary of the U.S. Department of Health and Human Services or any other Governmental Authority pursuant to HIPAA and Other Privacy Laws. Each of the Loan Parties and each of their Subsidiaries has entered into business associate agreements and other contractual commitments with third parties when required to do so by HIPAA or Other Privacy Laws and is in material compliance with all such contractual commitments.

(f) Corporate Integrity Agreement. No Loan Party nor any of their Subsidiaries, nor, to the knowledge of Loan Party or its Subsidiaries, any owner, officer, director, partner, agent or managing employee of any Loan Party or any Subsidiary of any Loan Party, is a party to or bound by any individual integrity agreement, corporate integrity agreement, corporate compliance agreement, deferred prosecution agreement, or other formal agreement with any Governmental Authority concerning compliance with Health Care Laws, any Government Reimbursement Programs or the requirements of any Health Care Permit.

SECTION 3.20 Employee Relations. As of the Effective Date, no Loan Party nor any Subsidiary thereof is party to any collective bargaining agreement, nor has any labor union been recognized as the representative of its employees except as set forth on Schedule 3.20 to the Disclosure Letter. The Borrower knows of no pending or threatened in writing strikes, work stoppage or other collective labor disputes involving its employees or those of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

ARTICLE IV

CONDITIONS

SECTION 4.01 Conditions to Initial Loans. The obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder shall not become effective until each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Credit Agreement and Other Loan Documents. The Administrative Agent (or its counsel) shall have received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (which may include fax or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement, (ii) duly executed copies of any other Loan Documents to be entered into as of the date hereof and such other certificates, documents, instruments and agreements as the Administrative Agent shall reasonably request be delivered on the Effective Date in connection with the transactions contemplated by this Agreement and the other Loan Documents, including any Notes requested by a Lender pursuant to Section 2.10 payable to the order of each such requesting Lender and a written opinion of the Loan Parties' counsel, addressed to the Administrative Agent, the Issuing Banks and the Lenders and in form and substance reasonably satisfactory to the Administrative Agent and (iii) the disclosure letter to this Agreement, dated as of the Effective Date, executed and delivered by the Borrower to the Administrative Agent and the Lenders in connection with this Agreement and in form and substance satisfactory to the Administrative Agent (such disclosure letter, the "Disclosure Letter").

(b) Financial Statements and Projections. The Lenders shall have received (i) audited consolidated financial statements of the Borrower and its Subsidiaries for the three most recent fiscal years ended prior to the Effective Date, (ii) unaudited interim consolidated financial statements of the Borrower for each quarterly period ended subsequent to the date of the latest financial statements delivered pursuant to clause (i) of this paragraph and at least 60 days prior to the Effective Date and (iii) reasonably satisfactory financial statement projections (which shall include balance sheet, income and cash flow statement projections) through and including the Borrower's 2023 fiscal year.

(c) Closing Certificates. The Administrative Agent shall have received (i) a certificate (in form and substance satisfactory to the Administrative Agent) of each Loan Party, dated the Effective Date and executed by its Secretary or Assistant Secretary, which shall (A) certify the resolutions of its board of directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the Financial Officers and any other officers of such Loan Party authorized to sign the Loan Documents to which it is a party, and (C) contain appropriate attachments, including the certificate or articles of incorporation or organization of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its by-laws or operating, management or partnership agreement, and (ii) a good standing certificate dated as of the Effective Date for each Loan Party from its jurisdiction of organization.

(d) No Default Certificate. The Administrative Agent shall have received, a certificate (in form and substance satisfactory to the Administrative Agent), signed by the chief financial officer of the Borrower on the Effective Date (i) stating that no Default has occurred and is continuing and (ii) stating that the representations and warranties contained in Article III are true and correct in all material respects as of such date except that (a) to the extent that such representations and warranties specifically refer to an earlier date, such representations and warranties shall be true and correct in all material respects as of such earlier date and (b) any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects.

(e) Fees. The Lenders and the Administrative Agent shall have received all fees required to be paid on or before the Effective Date, and all expenses (including the reasonable fees and expenses of outside legal counsel) for which invoices have been presented no later than two (2) Business Days prior to the Effective Date (or a shorter period as reasonably agreed to by the Borrower).

(f) Lien Searches. The Administrative Agent shall have received the results of recent customary lien searches (including with respect to intellectual property), and such searches shall reveal no liens on any of the assets of the Loan Parties except for liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to a pay-off letter or other documentation reasonably satisfactory to the Administrative Agent.

(g) Insurance. The Administrative Agent shall have received evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Administrative Agent.

(h) Solvency. The Administrative Agent shall have received a solvency certificate from a Financial Officer of the Borrower substantially in the form attached hereto as Exhibit D.

(i) Tax Withholding Forms. The Administrative Agent shall have received a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party.

(j) USA PATRIOT Act, Etc. At least three (3) Business Days prior to the Effective Date, the Borrower and each of the other Loan Parties shall have provided to the Administrative Agent or the Lenders the documentation and other information theretofore requested in writing by the Administrative Agent or the Lenders at least five (5) Business Days prior to the Effective Date that is required by regulatory authorities under applicable "know your customer" and anti-money-laundering rules and regulations, including the USA PATRIOT Act.

(k) Existing Credit Agreement. Prior to or substantially contemporaneously with the Effective Date, all principal, premium, if any, interest, fees and other amounts due or outstanding under the Existing Credit Agreement, shall have been or shall be satisfied in full, the commitments thereunder shall have been or shall be terminated and all guarantees and Liens existing in connection therewith shall have been or shall be discharged and released (the "Refinancing"), and the Administrative Agent shall have received, in form and substance satisfactory to the Administrative Agent, payoff letters, lien release documentation (to the extent applicable) and other reasonably satisfactory evidence thereof.

The Administrative Agent shall notify the Borrower, the Lenders and the Issuing Banks of the Effective Date, and such notice shall be conclusive and binding.

SECTION 4.02 Each Credit Event. The obligation of each Lender to make any Loan, and of the Issuing Banks to issue or increase any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Borrower set forth in this Agreement shall be true and correct in all material respects on and as of the date of such Loan or the date of issuance or increase of such Letter of Credit, as applicable, except that (i) to the extent that such representations and warranties specifically refer to an earlier date, such representations and warranties shall be true and correct in all material respects as of such earlier date, (ii) any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects.

(b) At the time of and immediately after giving effect to such Loan or the issuance or increase of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

(c) The Borrower shall have delivered a completed Borrowing Request or application for a Letter of Credit, as applicable.

Each Loan and each issuance or increase of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in clauses (a) and (b) of this Section 4.02.

ARTICLE V

AFFIRMATIVE COVENANTS

Until Payment in Full has occurred, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the Loan Parties, with the Lenders that:

SECTION 5.01 Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practices):

(a) within ninety (90) days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by the Accounting Firm (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within forty five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, its consolidated balance sheet and related statements of operations, as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year and stockholders' equity and cash flows for the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the Borrower in substantially the form of Exhibit B (i) certifying as to whether a Default or Event of Default has occurred and, if a Default or Event of Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with the Financial Covenants and compliance with Sections 6.04(c) and (d), and (iii) stating whether any change in GAAP or in the application thereof has occurred since the later of December 31, 2019 and the end date of the financial statements most recently delivered pursuant to Section 5.01(a) and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(d) as soon as available, but in any event within ninety (90) days after the start of each fiscal year of the Borrower, a copy of the plan and forecast (including a projected consolidated balance sheet, income statement and funds flow statement) of the Borrower and its Subsidiaries for each quarter of such fiscal year (the "Projections") in form reasonably satisfactory to the Administrative Agent; and

(e) promptly following any request therefor, (i) such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent may reasonably request, on behalf of itself or any Lender hereunder; or (ii) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the USA PATRIOT Act or any applicable anti-money laundering laws;

(f) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any of its Subsidiaries with the SEC, or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, or distributed by the Borrower to its shareholders generally, as the case may be.

Notwithstanding anything to the contrary in this Section 5.01, any documents required to be delivered pursuant to Sections 5.01(a), (b), and (f) may be delivered electronically and if so delivered, subject to compliance with the proviso at the end of this paragraph, shall be deemed to have been delivered on the date on which such documents are filed for public availability on the SEC's Electronic Data Gathering and Retrieval System or on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet; provided, that, in each case, the Borrower shall concurrently notify (which may be by facsimile or electronic mail) the Administrative Agent of the filing of any such documents.

SECTION 5.02 Notices of Material Events. The Borrower will furnish to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practices) prompt written notice of the following (and in no event later than five (5) Business Days after any Responsible Officer's knowledge of the occurrence thereof):

(a) the occurrence of any Default;

(b) the filing or commencement of any litigation, investigation, action, suit or proceeding by or before any arbitrator or Governmental Authority against or involving the Borrower, any of its Subsidiaries or any Affiliate thereof or any of their respective properties, assets or business that could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding $20.0 million;

(d) the occurrence and nature of any Prohibited Transaction or any funding deficiency with respect to any Plan, or a transaction the IRS or Department of Labor or any other Governmental Authority is reviewing to determine whether a Prohibited Transaction might have occurred, in each case, that could reasonably be expected to result in a Material Adverse Effect;

(e) any Loan Party's intention to terminate or withdraw from any Plan;

(f) any notice provided to the holders of any Material Indebtedness, along with a copy of such notice;

(g) any notice of any violation received by any Loan Party or any Subsidiary thereof from any Governmental Authority including any notice of violation of Environmental Laws which in any such case could reasonably be expected to have a Material Adverse Effect;

(h) any labor controversy that has resulted in, or threatens to result in, a strike or other work action against any Loan Party or any Subsidiary thereof in each case that could reasonably be expected to result in a Material Adverse Effect;

(i) any written notice that the FDA or any other similar Governmental Authority is (i) suspending or revoking any Registration, changing the market classification, distribution pathway or parameters of the Products of the Loan Parties or their respective Subsidiaries; (ii) any Loan Party or any of its Subsidiaries becoming subject to any administrative or regulatory action, inspection, Form FDA 483 observation, warning letter, notice of violation letter, or other material notice, response or commitment made to or with the FDA or any comparable Governmental Authority, except as would not be reasonably expected to have a Material Adverse Effect; (iii) any Product of any Loan Party or any of its Subsidiaries being seized, recalled, detained, or subject to a suspension of manufacturing, or the commencement of any proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, suspension, import detention, or seizure of any Product are pending or threatened in writing or verbally against the Loan Parties or their respective Subsidiaries; (iv) any voluntary recall of any Product by any Loan Party or any of its Subsidiaries in an amount in excess of $50.0 million (based on the fair market value of such Product) in the aggregate for all such recalls, or in an amount which would, in the aggregate, have a Material Adverse Effect; or (v) proposing that any Loan Party be suspended, debarred or excluded under 21 U.S.C. § 335a, 42 U.S.C. § 1320a-7, or any similar state or foreign law, rule or regulation; and

(j) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section 5.02 shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03 Existence; Conduct of Business. Each Loan Party will, and will cause each Subsidiary to, (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and, except as could not reasonably be expected to result in a Material Adverse Effect, the rights, qualifications, licenses, permits, franchises, governmental authorizations, intellectual property rights, licenses and permits material to the conduct of its business; provided, that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03. and (b) carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted or in fields which are, in the good faith judgment of the Borrower, similar, complimentary, ancillary or substantially related thereto or are reasonable extensions thereof.

SECTION 5.04 Payment of Taxes. Each Loan Party will, and will cause each Subsidiary to pay or discharge all Taxes, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, and such Loan Party or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.05 Maintenance of Properties; Insurance; Casualty and Condemnation. Each Loan Party will, and will cause each Subsidiary to, (i) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and (ii) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 5.06 Books and Records; Inspection Rights. Each Loan Party will, and will cause each Subsidiary to, (i) keep proper books of record and account (x) in a manner that permits the preparation of financial statements in accordance with GAAP and (y) in compliance in all material respects with applicable regulations of any Governmental Authority having jurisdiction over it or any of its properties and (ii) permit any representatives designated by the Administrative Agent or during the occurrence and continuance of an Event of Default, any Lender (including employees of the Administrative Agent, such Lender or any consultants, accountants, lawyers, appraisers and field examiners retained by the Administrative Agent), upon reasonable prior notice to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times during normal business hours and as often as reasonably requested, all at the expense of the Loan Parties; provided, that the Borrower shall not be required to reimburse the Administrative Agent for the cost of more than one such visit during any single fiscal year, except during the occurrence and continuation of an Event of Default; provided, further that the Administrative Agent shall make no more than one such visit during any single fiscal year unless (i) an Event of Default has occurred during such fiscal year or (ii) there were any Loans or Letters of Credit outstanding during such fiscal year (it being understood and agreed that all but one such visit by the Administrative Agent during such fiscal year shall occur (or have been scheduled) either (x) during the continuance of such Event of Default or (y) while any such Loans or Letters of Credit were outstanding). The Loan Parties acknowledge that the Administrative Agent, after exercising its rights of inspection, may prepare and distribute to the Lenders certain reports pertaining to the Loan Parties' assets for internal use by the Administrative Agent and the Lenders. Notwithstanding anything to the contrary in this Section 5.06, neither the Borrower nor any other Loan Party will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by applicable law or any binding agreement (not entered into in contemplation of any request for disclosure or otherwise to evade the disclosure requirements contained in this Section 5.06), constitutes non-financial trade secrets or non-financial proprietary information, or is subject to attorney client privilege or that constitutes attorney work product (in each case, as determined in good faith by legal counsel to any Loan Party and not in contemplation of any request for disclosure or otherwise to evade the disclosure requirements contained in this Section 5.06); it being understood that the Borrower shall use its commercially reasonable efforts to communicate any requested information in a way that would not violate the applicable law or agreement or waive the applicable privilege.

SECTION 5.07 Compliance with Laws. Each Loan Party will, and will cause each Subsidiary to, comply with all Requirements of Law applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.08 Use of Proceeds.

(a) The proceeds of the Loans will be used for working capital and general corporate purposes including Permitted Acquisitions. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

(b) The Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall procure that its Subsidiaries shall not use, the proceeds of any Borrowing or Letter of Credit (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person (including any joint venture partner) in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto or (d) in any manner that would result in a violation of any anti-money laundering laws or regulations.

SECTION 5.09 Further Assurances.

(a) Subject to applicable law, the Borrower and each other Loan Party shall cause each of its wholly-owned Material Domestic Subsidiaries formed or acquired on or after the date of this Agreement in accordance with the terms of this Agreement and each Subsidiary which hereafter becomes a Material Domestic Subsidiary, in each case, to become a Loan Party, within thirty (30) days (or such later date as the Administrative Agent may agree) after the date of such formation or acquisition (or after the date on which such Subsidiary becomes a Material Domestic Subsidiary, as applicable), by executing the Joinder Agreement set forth as Exhibit C hereto (the "Joinder Agreement"). Upon execution and delivery thereof, each such Person shall automatically become a Loan Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents.

(b) Without limiting the foregoing, each Loan Party will, and will cause each Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements, certificates and instruments, and will take or cause to be taken such further actions (including delivery of organizational documents, incumbencies, resolutions, good standing certificates, legal opinions and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable), which may be required by law or which the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents, all at the expense of the Loan Parties

SECTION 5.10 Anti-Corruption Laws and Sanctions. Each Loan Party shall implement and maintain in effect policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.11 Compliance with Environmental Laws. Each Loan Party shall comply with all Environmental Laws applicable to its operations and properties; and obtain and renew all material authorizations and permits required pursuant to Environmental Laws for its operations and properties, in each case in accordance with Environmental Laws, except, in each case, to the extent failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.12 Intellectual Property. Each Loan Party shall maintain adequate licenses, patents, patent applications, copyrights, service marks, trademarks, trademark applications, tradestyles

and trade names to continue its business as heretofore conducted by it or as hereafter conducted by it unless the failure to maintain any of the foregoing could not reasonably be expected to have a Material Adverse Effect on such Loan Party.

SECTION 5.13 ERISA. Borrower shall, and shall cause each Subsidiary to, promptly pay and discharge all obligations and liabilities arising under ERISA of a character, which if unpaid or unperformed could reasonably be expected to result in the imposition of a lien against any of its property.

SECTION 5.14 Compliance with Health Care Laws.

(a) Each Loan Party and each of their respective Subsidiaries will comply with all applicable Health Care Laws ,except to the extent that any noncompliance, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) Each Loan Party and each of their respective Subsidiaries shall (I) obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all material Health Care Permits which are necessary or useful in the proper conduct of its business and (ii) keep and maintain all records required to be maintained by any Governmental Authority or otherwise under any Health Care Law.

(c) Where mandated by applicable law, each Loan Party and each of their respective Subsidiaries shall maintain, in all material respects, a corporate and health care regulatory compliance program ("RCP") which addresses the requirements of Health Care Laws, including HIPAA and Other Privacy Laws. Upon request, the Administrative Agent, the Lenders and/or any of their consultants shall be permitted to review such RCPs.

SECTION 5.15 Compliance with Public Health Laws. Each Loan Party and its Subsidiaries shall comply with all applicable Public Health Laws and their implementation by any applicable Governmental Authority applicable to its Products, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect. All Products developed, investigated, tested, manufactured, packaged, labeled, distributed or marketed by or on behalf of any Loan Party or any of its Subsidiaries that are subject to the jurisdiction of the FDA or other comparable Governmental Authority shall be developed, investigated, tested, manufactured, packaged, labeled, distributed and marketed in compliance with applicable Public Health Laws and any other Requirements of Law, including Public Health Laws or any other applicable Requirement of Laws regarding registration and listing, product approval or premarket notification, good manufacturing practices, labeling, advertising, promotion, record-keeping, and adverse event reporting, except, in each case, where the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

ARTICLE VI

NEGATIVE COVENANTS

Until Payment in Full has occurred, the Loan Parties covenant and agree, jointly and severally, with the Lenders that:

SECTION 6.01 Indebtedness. No Loan Party will, nor will it permit any Subsidiary to, create, incur or suffer to exist any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness existing or available for draw on the date hereof and set forth on Schedule 6.01 to the Disclosure Letter;

(c) Indebtedness of the Borrower to any Subsidiary and of any Subsidiary to the Borrower or any other Subsidiary; provided, that (i) Indebtedness of any Subsidiary that is not a Loan Party to the Borrower or to any Subsidiary that is a Loan Party shall be subject to Section 6.04 and (ii) Indebtedness of a Loan Party to any Subsidiary that is not a Loan Party shall be subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent;

(d) Guarantees by the Borrower of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of the Borrower or any other Subsidiary; provided, that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01, (ii) Guarantees by the Borrower or any Subsidiary that is a Loan Party of Indebtedness of any Subsidiary that is not a Loan Party shall be subject to Section 6.04, (iii) Guarantees permitted under this clause (d) shall be subordinated to the Obligations on the same terms as the Indebtedness so Guaranteed is subordinated to the Obligations and (iv) no Subsidiary of the Borrower that is not a Loan Party may rely on this clause (d) to Guarantee any Indebtedness of a Loan Party incurred pursuant to clause (u) of this Section 6.01;

(e) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets (including any accessions, additions, parts, fixtures, improvements and attachments thereto) (whether or not constituting purchase money Indebtedness), including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition (including by way of any Permitted Acquisition) of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness in accordance with clause (f) hereof; provided, that, (i) such Indebtedness is incurred prior to or within one hundred eighty days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) (including any refinancing thereof permitted by clause (f)) shall not exceed $50.0 million at any time outstanding;

(f) Indebtedness which represents an extension, refinancing, or renewal of any of the Indebtedness described in clauses (b), (e) or (s) hereof; provided, that, (i) the aggregate principal amount of such Indebtedness does not exceed the principal amount of such Indebtedness being refinanced plus the amount of any interest, premiums or penalties required to be paid plus fees and expenses associated therewith, (ii) any Liens securing such Indebtedness are not extended to any additional property of any Loan Party (or, if no Liens secure such Indebtedness being extended, refinanced or renewed, no Liens secure such Indebtedness), (iii) no Loan Party that is not originally obligated (or required to become obligated) with respect to repayment of such Indebtedness is required to become obligated with respect thereto, (iv) such extension, refinancing or renewal does not result in a shortening of the average weighted maturity of the Indebtedness so extended, refinanced or renewed, (v) the terms of any such extension, refinancing, or renewal are not materially less favorable to the obligor thereunder than the original terms of such Indebtedness, taken as a whole, and (vi) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension Indebtedness must include subordination terms and conditions, taken as a whole, that are at least as favorable to the Administrative Agent and the Lenders as those that were applicable to the refinanced, renewed, or extended Indebtedness;

(g) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such person, in each case, incurred in the ordinary course of business;

(h) Indebtedness of the Borrower or any Subsidiary in respect of performance bonds, bid bonds, appeal bonds, surety bonds and similar obligation, in each case provided in the ordinary course of business;

(i) Indebtedness or Guarantees of the Borrower or any Subsidiary in connection with any Swap Agreement permitted under Section 6.06;

(j) Indebtedness arising from customary agreements providing for indemnification, adjustment of purchase price, earnout, deferred purchase price or similar obligations in connection with acquisitions or dispositions of any business or assets by or of the Borrower or any Subsidiary permitted hereunder;

(k) Judgments entered against the Borrower or any Subsidiary to the extent not constituting an Event of Default;

(l) Indebtedness or Guarantees incurred in the ordinary course of business in connection with cash pooling, netting and cash management arrangements consisting of overdrafts or similar arrangements; provided that any such Indebtedness does not consist of Indebtedness for borrowed money and is owed to the financial institutions providing such arrangements;

(m) Indebtedness of Foreign Subsidiaries; provided, that the aggregate outstanding principal amount of such Indebtedness shall not exceed $50.0 million (or the equivalent thereof) at any time;

(n) Deferred Acquisition Consideration in connection with Permitted Acquisitions;

(o) Indebtedness of a Person or Indebtedness attaching to assets of a Person that, in either case, becomes a Subsidiary or Indebtedness attaching to assets that are acquired by Borrower or any of its Subsidiaries, in each case as the result of a Permitted Acquisition or other acquisition permitted under this Agreement; provided, that (i) such Indebtedness existed at the time such Person became a Subsidiary or at the time such assets were acquired and, in each case, was not created in anticipation thereof and (ii) (x) such Indebtedness incurred in connection with any single Permitted Acquisition shall not exceed $20.0 million and (y) the aggregate amount of such Indebtedness permitted to be incurred shall under this clause (o) not exceed $50.0 million;

(p) Indebtedness of the Borrower or any Subsidiary in connection with any Guarantees given by them, or any letters of credit or bank guarantees issued by any bank or financial institution, in favor of any Governmental Authority to secure the payment of Taxes owed by the Borrower or any Subsidiary to such Governmental Authorities;

(q) Indebtedness incurred with corporate credit cards in the ordinary course of business;

(r) Indebtedness with respect to letters of credit, bank guarantees, banker's acceptances and similar instruments, so long as the aggregate face amount of all such letters of credit, bank guarantees, banker's acceptances and similar instruments does not exceed $20.0 million at any time;

(s) Indebtedness consisting of promissory notes issued to current or former officers, directors and employees (or their respective family members, estates or trusts or other entities for the benefit of any of the foregoing) of the Borrower or its Subsidiaries to purchase or redeem Equity Interests or options of the Borrower permitted pursuant to Section 6.07(a)(vii); provided that the aggregate principal amount of all such Indebtedness shall not exceed $5.0 million at any time outstanding;

(t) Indebtedness consisting of obligations under Repurchase Agreements;

(u) unsecured Indebtedness of any Loan Party not otherwise permitted pursuant to this Section 6.01; provided that (i) the Total Leverage Ratio of the Borrower recomputed on a pro forma basis for the incurrence of such Indebtedness, and based on the most recently ended Reference Period for which financial statements have been (or were required to be), in each case in accordance with this Agreement, delivered to the Administrative Agent, shall not exceed 2.50 to 1.00, (ii) the final maturity of such Indebtedness shall not be prior to the date that is ninety (90) days after the Maturity Date, (iii) such Indebtedness will not have mandatory prepayment or mandatory amortization, redemption, sinking fund or similar prepayments (other than asset sale, casualty, condemnation or extraordinary receipts events, change of control, fundamental change, make-whole fundamental change or similar event risk provisions providing for mandatory offers to repurchase customary for debt securities, and, for the avoidance of doubt, any net share settlement provisions) prior to the date that is ninety (90) days after the Maturity Date at the time of issuance of such Indebtedness, (iv) such Indebtedness is not guaranteed by any Subsidiary that is not a Guarantor, (v) to the extent such Indebtedness is subordinated in right of payment to the Obligations, any guaranty thereof by the Loan Parties shall be expressly subordinated to the Obligations on terms materially not less favorable to the Lenders than the subordination terms of such Indebtedness, (vi) the terms of such Indebtedness, taken as a whole, are not materially more restrictive on the Borrower and its Subsidiaries than the terms of the Loan Documents, taken as a whole (as determined in good faith by the Borrower, it being understood that (1) customary repurchase obligations described in the parenthetical in clause (iii) above and (2) customary additional interest provisions for failure to file required reports or additional interest in lieu of customary events of default, in each case shall not be materially more restrictive), and (viii) no Default or Event of Default shall have occurred and be continuing or result from the incurrence of such Indebtedness; and

(v) other Indebtedness in an aggregate principal amount not exceeding $50.0 million at any time outstanding; provided, that no Subsidiary of the Borrower that is not a Loan Party may rely on this clause (v) to Guarantee any Indebtedness of a Loan Party incurred pursuant to clause (u) of this Section 6.01.

SECTION 6.02 Liens. No Loan Party will, nor will it permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens on cash collateral created pursuant to any Loan Document;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of the Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02 to the Disclosure Letter; provided, that (i) such Lien shall not apply to any other property or asset of the Borrower or such Subsidiary, except for proceeds of the foregoing and (ii) such Lien shall secure only those obligations which it secures on the date hereof and extensions,

renewals and replacements thereof that do not increase the outstanding principal amount thereof except by the amount of any interest, premiums or penalties required to be paid plus fees and expenses associated therewith;

(d) any Lien existing on any property or asset prior to the acquisition thereof (including by way of any Permitted Acquisition) by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the Effective Date prior to the time such Person becomes a Subsidiary; provided, that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof except by the amount of any interest, premiums or penalties required to be paid plus fees and expenses associated therewith;

(e) Liens on fixed or capital assets (including any accessions, additions, parts, fixtures, improvements and attachments thereto and the proceeds thereof) acquired, constructed or improved by the Borrower or any Subsidiary; provided, that (i) such security interests secure Indebtedness permitted by clause (e) of Section 6.01, (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within one hundred eighty (180) days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 110% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Borrower or Subsidiary;

(f) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon;

(g) Liens granted by a Subsidiary that is not a Loan Party in favor of the Borrower or another Loan Party in respect of Indebtedness owed by such Subsidiary;

(h) Liens arising by operation of law under Article 2 of the Uniform Commercial Code in favor of a reclaiming seller of goods or buyer of goods;

(i) broker's Liens, bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower or any Subsidiary, in each case, granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, including any such Liens or rights of setoff securing amounts owing in the ordinary course of business to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; provided, that the aggregate amount of cash collateral under this clause (i) shall not exceed $5.0 million in the aggregate at any one time;

(j) leases, licenses, sub-leases, sub-licenses and other similar encumbrances incurred in the ordinary course of business that do not materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower or any Subsidiary;

(k) Liens on assets of Foreign Subsidiaries to secure Indebtedness of such Foreign Subsidiaries permitted under Section 6.01(m);

(l) Liens in the nature of the right of setoff in favor of counterparties to contractual agreements not otherwise prohibited hereunder with the Borrower or any other Subsidiary in the ordinary course of business;

(m) Liens on cash collateral to secure obligations of Borrower or any Subsidiary under any Swap Agreement permitted under Section 6.06, so long as the aggregate amount of such cash collateral does not, as of any date of determination, exceed $20.0 million;

(n) Liens on cash collateral securing letters of credit, bank guarantees, banker's acceptances and similar instruments permitted under Section 6.01(r);

(o) Liens on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition;

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(q) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods by the Borrower or any of its Subsidiaries in the ordinary course of business;

(r) customary encumbrances or restrictions (including put and call arrangements) with respect to the Equity Interests of any joint venture or minority investment in favor of the other parties to such joint venture or other investors;

(s) Liens on cash collateral and/or Cash Equivalents securing Indebtedness permitted under Section 6.01(t); and

(t) other Liens securing Indebtedness or other obligations in an aggregate amount not exceeding $50.0 million at any time outstanding; provided, that this clause (t) may not be utilized to secure any Indebtedness permitted under Section 6.01(u).

SECTION 6.03 Fundamental Changes.

(a) No Loan Party will, nor will it permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing (i) any Subsidiary of the Borrower may merge into the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) any Subsidiary may merge into any Loan Party in a transaction in which the surviving entity is a Loan Party, (iii) any Person may merge into any Loan Party or any of its Subsidiaries in connection with a Permitted Acquisition or any Investment permitted under Section 6.04 so long as, in the case of a merger involving any Loan Party, such Loan Party is the surviving entity (or the surviving entity becomes a Loan Party in accordance with this Agreement), (iv) any Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the Borrower or to another Subsidiary, (v) any Subsidiary that is not a Loan Party may merge into any other Subsidiary that is not a Loan Party and (vi) any Subsidiary may liquidate or dissolve if the Borrower reasonably determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and its Subsidiaries, and is not materially disadvantageous to the Lenders; provided, that any such merger involving a Person that is not a wholly

owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04.

(b) No Loan Party will, nor will it permit any of its Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the date of execution of this Agreement and businesses which are, in the good faith judgment of the Borrower, similar, complementary or substantially related or ancillary thereto or are reasonable extensions thereof.

(c) The Borrower will not change its fiscal year which currently ends on December 31 of each year.

SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions. No Loan Party will, nor will it permit any Subsidiary to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a Loan Party and a wholly owned Subsidiary prior to such merger) any capital stock, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (each such action, an "Investment"), except:

(a) investments in cash and Cash Equivalents;

(b) investments in existence on the date of this Agreement and described in Schedule 6.04 to the Disclosure Letter;

(c) investments by the Borrower and its Subsidiaries in the capital stock of their respective Subsidiaries; provided, that the aggregate amount of investments (together with the aggregate amount of loans and advances described in Section 6.04(d)), as of any date of determination, made by the Borrower or the other Loan Parties after the date of this Agreement in the capital stock of their respective Subsidiaries who are not Loan Parties does not at any time exceed an amount equal to $100.0 million;

(d) loans or advances made by the Borrower or any of its Subsidiaries to the Borrower or any other Subsidiary; provided, that the aggregate amount of loans and advances (together with the aggregate amount of investments described in Section 6.04(c)) made by the Borrower or the other Loan Parties to Subsidiaries who are not Loan Parties that are at any time outstanding does not, as of any date of determination, exceed an amount equal to $100.0 million;

(e) (i) Guarantees constituting Indebtedness permitted by Section 6.01 (other than, in the case of any Subsidiary of the Borrower that is not a Loan Party, Indebtedness permitted pursuant to Section 6.01(u)) and (ii) Guarantees of obligations (owed by the Borrower or any of its Subsidiaries or any suppliers providing essential products to the Borrower or any of its Subsidiaries) not prohibited by this Agreement that do not constitute Indebtedness;

(f) Permitted Acquisitions, including the formation of a Subsidiary in connection therewith;

(g) loans and advances to officers, directors and employees of the Borrower or any Subsidiaries in the ordinary course of business in an aggregate amount for the Borrower and its Subsidiaries not to exceed $5.0 million at any time outstanding;

(h) investments received in connection with the bankruptcy, liquidation or reorganization of any Person or in settlement of obligations of, or disputes with, any Person arising in the ordinary course of business;

(i) Swap Agreements permitted by Section 6.06;

(j) investments consisting of extensions of trade credit in the ordinary course of business, intercompany receivables and intercompany charges of expenses arising in the ordinary course of business, and any prepayments and other credits to suppliers or vendors made in the ordinary course of business;

(k) to the extent constituting Investments, performance guarantees of obligations of the Borrower's Subsidiaries in the ordinary course of business;

(l) Investments in joint ventures; provided, that the aggregate amount of all such Investments shall not at any time exceed $50.0 million;

(m) deposits made in the ordinary course of business to secure the performance of leases or other obligations to the extent the Lien thereon is permitted by Section 6.02;

(n) Investments received in connection with the Disposition of any asset permitted by Section 6.05 (so long as the receipt of such Investment (in the form so received) does not result in the Disposition no longer being permitted under Section 6.05);

(o) endorsements of negotiable instruments deposited or to be deposited for collection in the ordinary course of business;

(p) Investments of any Person that becomes a Subsidiary after the Effective Date pursuant to a Permitted Acquisition, provided that (i) such Investments exist at the time that such Person becomes a Subsidiary and (ii) such Investments were not made in anticipation of such Person becoming a Subsidiary;

(q) Investments consisting of earnest money deposits required in connection with a Permitted Acquisition or consisting of earnest money deposits required in connection with an acquisition of property permitted hereunder;

(r) any Forward Agreement to the extent constituting an Investment that is permitted to be entered into by Borrower pursuant to Section 6.07;

(s) Permitted Call Spread Agreements; provided, that such Permitted Call Spread Agreement was entered into in connection with the issuance of an unsecured Convertible Debt Security; and

(t) Investments not otherwise permitted pursuant to this Section 6.04 not exceeding $75.0 million in the aggregate in any fiscal year of the Borrower and in an aggregate amount not to exceed $150.0 million at any time outstanding; provided that, immediately before and immediately after giving pro forma effect to any such Investments (and any Indebtedness incurred in connection therewith), no Default or Event of Default shall have occurred and be continuing.

SECTION 6.05 Asset Dispositions; Sale and Leaseback Transactions.

(a) No Loan Party will, nor will it permit any Subsidiary to, make any Disposition except:

(i) Dispositions of obsolete, surplus or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(ii) Dispositions of inventory in the ordinary course of business;

(iii) [Reserved];

(iv) Dispositions of equipment or real property to the extent that (A) such property is exchanged for credit against the purchase price of similar replacement property or (B) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(v) Dispositions of property by Borrower to any Subsidiary and by any Subsidiary to Borrower or any other Subsidiary;

(vi) Dispositions permitted by Sections 6.02 (to the extent the granting of a Lien constitutes a Disposition), 6.03, 6.04, 6.05(b), 6.07 and 6.08;

(vii) Dispositions of overdue accounts receivable solely in connection with the collection or compromise thereof;

(viii) Dispositions pursuant to operating leases (not in connection with any sale and leaseback transactions or other Capital Lease Obligations) entered into in the ordinary course of business;

(ix) Dispositions of property and assets subject to condemnation and casualty events;

(x) Dispositions of cash and Cash Equivalents;

(xi) Dispositions by Borrower and any Subsidiary not otherwise permitted under this Section 6.05(a); provided, that (A) at the time of such Disposition, no Default or Event of Default shall exist or would result from such Disposition and (B) such Disposition is made for fair market value and the consideration received shall be no less than 75% in cash and (C) the aggregate fair market value of all property Disposed of in reliance on this subclause (xi) in any fiscal year (or in the case of any Disposition for which the fair market value cannot reasonably be determined, the aggregate purchase price therefor) shall not exceed 10% of Consolidated Total Assets;

(xii) the Disposition or unwinding of any (x) Permitted Call Spread Agreement that was entered into in connection with the issuance of an unsecured Convertible Debt Security or (y) any Swap Agreement;

(xiii) the lapse or abandonment of registered intellectual property (or applications therefor) of the Borrower or its Subsidiaries to the extent not necessary or desirable in the conduct of their business; and

(xiv) other Dispositions not otherwise permitted pursuant to this Section 6.05(a), the aggregate fair market value of which (or in the case of any Disposition for which the fair market value cannot reasonably be determined, the aggregate purchase price therefor) shall not exceed $35.0 million in any fiscal year of the Borrower.

(b) No Loan Party will, nor will it permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any owned property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred, except for any such sale of any newly acquired fixed or capital assets by the Borrower or any Subsidiary that is made for cash consideration in an amount not less than the purchase price of such fixed or capital asset and is consummated within one hundred eighty (180) days after the completion of the acquisition or construction of such fixed or capital asset.

SECTION 6.06 Swap Agreements. No Loan Party will, nor will it permit any Subsidiary to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks (including foreign currency exchange risks) to which the Borrower or any Subsidiary has actual or reasonably anticipated exposure (other than those in respect of Equity Interests of the Borrower or any of its Subsidiaries), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary.

SECTION 6.07 Restricted Payments; Prepayments of Indebtedness.

(a) No Loan Party will, nor will it permit any Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except:

(i) (A) the Borrower may declare and pay dividends with respect to its common stock payable solely in additional shares of its common stock, and, with respect to its preferred stock, payable solely in additional shares of such preferred stock or in shares of its common stock, and (B) Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests;

(ii) Restricted Payments paid in cash, so long as (A) no Event of Default has occurred and is continuing or would result therefrom and (B) after giving effect thereto on a pro forma basis, (1) the Total Leverage Ratio for the most recently ended Reference Period for which financial statements have been (or were required to be) delivered to the Administrative Agent is not more than 3.00 to 1.00 and (2) the Interest Coverage Ratio for the most recently ended Reference Period for which financial statements have been (or were required to be) delivered to the Administrative Agent is not less than 2.50 to 1.00 (it being agreed that with respect to the payment of cash dividends by the Borrower, such determinations under clauses (A) and (B) shall be made at the time of the declaration of such dividend);

(iii) issuances of Equity Interests to sellers of Permitted Acquisitions in satisfaction of obligations of the type described in Section 6.01(j);

(iv) the Borrower may deliver shares of Borrower's common stock, in connection with the settlement at maturity or early termination of any Forward Agreement if, at the time of entering into such Forward Agreement, the Borrower would have been permitted under this Agreement to pay the initial premium or prepayment amount due under such Forward Agreement on the initial prepayment date under such Forward Agreement;

(v) (A) any Subsidiary of the Borrower may pay cash dividends or make distributions to the Borrower or any other Loan Party and (B) any non-Loan Party may pay cash dividends or make distributions to any other non-Loan Party;

(vi) cash payment, *in lieu* of issuance of fractional shares arising out of stock dividends, splits or combinations or business combinations, or in connection with the exercise of warrants, options or other securities convertible into or exchangeable for the Equity Interests of the Borrower or a Subsidiary;

(vii) the Borrower may make Restricted Payments pursuant to and in accordance with stock plans and other benefit plans for management, employees or other eligible service providers of the Borrower and its Subsidiaries, including in connection with the payment of withholding taxes in connection with such plans;

(viii) the Borrower may repurchase, redeem, retire or otherwise acquire for value Equity Interests (including any stock appreciation rights in respect thereof) of the Borrower from current or former employees, officers or directors; provided, that the aggregate annual cash payments in respect of such repurchases, redemptions, retirements and acquisitions shall not exceed $20.0 million in any fiscal year;

(ix) repurchases or other acquisitions of Equity Interests deemed to occur upon the exercise of warrants or other rights to purchase Equity Interests or convertible securities if such Equity Interests represent a portion of the exercise price thereof or conversion price thereof;

(x) the Borrower or any Subsidiary may receive or accept the return to the Borrower or any Subsidiary of the Equity Interests of the Borrower or any Subsidiary from the sellers constituting a portion of the purchase price consideration in settlement of indemnification claims or as a result of purchase price adjustments (including earn-outs and similar obligations) in connection with Permitted Acquisitions; and

(xi) to the extent constituting Restricted Payments, the Borrower may pay the premium in respect of, make any payments (of cash or deliveries in shares of the Borrower's Equity Interests (or other securities or property (to the extent not secured by a Lien) following a merger event, reclassification or other change of the Equity Interests and cash in lieu of fractional shares)) required by, and otherwise perform its obligations under, any Permitted Call Spread Agreement, including in connection with any settlement, unwind or termination thereof.

(b) No Loan Party will, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Subordinated Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Subordinated Indebtedness, except:

(i) payment of regularly scheduled interest and principal payments as and when due in respect of any Subordinated Indebtedness permitted under Section 6.01 and any other payments permitted by the subordination terms applicable thereto; and

(ii) purchases, redemptions and other payments of any Subordinated Indebtedness, so long as (A) no Event of Default has occurred and is continuing or would result therefrom and (B)

after giving effect thereto on a pro forma basis, (1) the Total Leverage Ratio for the most recently ended Reference Period for which financial statements have been (or were required to be) delivered to the Administrative Agent is not more than 3.00 to 1.00 and (2) the Interest Coverage Ratio for the most recently ended Reference Period for which financial statements have been (or were required to be) delivered to the Administrative Agent is not less than 2.50 to 1.00.

SECTION 6.08 Transactions with Affiliates. No Loan Party will, nor will it permit any Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that are at prices and on terms and conditions not less favorable to such Loan Party or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and any Subsidiary not involving any other Affiliate, (c) any Restricted Payment permitted by Section 6.07, (d) reasonable and customary director, officer and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans), indemnification arrangements and severance arrangements and (e) transactions described in Schedule 6.08 to the Disclosure Letter.

SECTION 6.09 Restrictive Agreements. No Loan Party will, nor will it permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Loan Party or any of its Subsidiaries to create, incur or permit to exist any Lien in favor of Administrative Agent upon any of its property or assets, (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary or (c) the ability of the Borrower or any other Subsidiary to make any Disposition to the Borrower or any Subsidiary; except for: (i) such encumbrances or restrictions existing under or by reason of applicable law or any Loan Document; (ii) restrictions and conditions existing on the date hereof identified on Schedule 6.09 to the Disclosure Letter (including any extension or renewal thereof, or any amendment or modification thereof, in each case so long as such extension, renewal, amendment or modification does not expand the scope of any such restriction or condition in any material respect); (iii) customary restrictions and conditions contained in asset sale agreements, purchase agreements, acquisition agreements (including by way of merger, acquisition or consolidation) entered into by the Borrower or any Subsidiary in accordance with this Agreement, provided such restrictions and conditions are only in effect pending consummation of such transaction and apply only to the entity or other property that is to be sold; (iv) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness; (v) customary provisions in leases and other contracts restricting the assignment thereof; (vi) customary restrictions contained in any software licenses; (vii) without affecting the Loan Parties' obligations under Section 5.09, customary provisions in the organizational documents of a Person or asset sale or stock sale agreements or similar agreements which restrict the transfer of ownership in such Person; (viii) in the case of any joint venture permitted hereunder with a Person that is not a Loan Party, restrictions in such Person's organizational documents or pursuant to any joint venture agreement or stockholders agreement solely to the extent of the Equity Interests of or property held in the subject joint venture; (ix) restrictions imposed by any holder of a Lien permitted by Section 6.02 restricting the transfer of the property subject thereto; (x) without affecting the Loan Parties' obligations under Section 5.09, any agreement in effect at the time a Person becomes a Subsidiary of the Borrower (including any amendments thereto that are otherwise permitted by the Loan Documents and that are no more materially restrictive with respect to such encumbrances and restrictions than those prior to such amendment or refinancing), so long as such agreement was not entered into in connection with or in contemplation of

such person becoming a Subsidiary of Borrower and imposes restrictions only on such Person and its assets; (xi) restrictions on cash or other deposits required by suppliers or landlords or paid by customers under contracts entered into in the ordinary course of business; (xii) without affecting the Loan Parties' obligations under Section 5.09, restrictions imposed solely on Foreign Subsidiaries pursuant to any Swap Agreement entered into by the Borrower or any Subsidiary and permitted pursuant to Section 6.06; and (xiii) customary net worth provisions contained in real property leases or licenses of intellectual property entered into by the Borrower or any of its Subsidiaries.

SECTION 6.10 Amendment of Material Documents. No Loan Party will, nor will it permit any Subsidiary:

(a) (i) to, amend, modify or waive any of its rights under its certificate of incorporation, by-laws, operating, management or partnership agreement or other organizational documents or (ii) to, amend, modify or waive any provisions of any Subordinated Indebtedness, in each case, to the extent any such amendment, modification or waiver would be materially adverse to the Administrative Agent or the Lenders; or

(b) to make any material change in its accounting treatment and reporting practices except as required or permitted by GAAP.

SECTION 6.11 Financial Covenants.

(a) Total Leverage Ratio. The Loan Parties will not permit the Total Leverage Ratio, determined for the Reference Period ending on the last day of each fiscal quarter, to be more than 3.00 to 1.00.

(b) Interest Coverage Ratio. The Loan Parties will not permit the Interest Coverage Ratio, determined for the Reference Period ending on the last day of each fiscal quarter, to be less than 2.50 to 1.00.

SECTION 6.12 ERISA.

(a) With respect to any Plan, the Borrower shall not (i) engage, or permit any ERISA Affiliate to engage, in any transaction described in Section 4069 of ERISA, (ii) engage, or permit any ERISA Affiliate to engage, in any prohibited transaction described in Section 406 of ERISA or 4975 of the Code for which a statutory or class exemption is not available or a private exemption has not previously been obtained from the U.S. Department of Labor, (iii) adopt or permit any ERISA Affiliate to adopt any employee welfare benefit plan within the meaning of Section 3(1) of ERISA which provides benefits to employees after termination of employment other than as required by Section 601 of ERISA or applicable law, (iv) fail to make any contribution or payment to any Multiemployer Plan which it or any ERISA Affiliate may be required to make under any agreement relating to such Multiemployer Plan, or any law pertaining thereto, or (v) fail, or permit any ERISA Affiliate to fail, to pay any required installment or any other payment required under Section 412 of the Code on or before the due date for such installment or other payment.

(b) The Borrower shall not establish, maintain, contribute to or become obligated to contribute to any Plan, except where such establishment, maintenance, contribution, or obligation could not reasonably be expected to have a Material Adverse Effect.

ARTICLE VII

EVENT OF DEFAULT

If any of the following events (each an "Event of Default") shall occur and be continuing:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article VII) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Loan Party or any Subsidiary in or in connection with this Agreement or any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been materially incorrect when made or deemed made;

(d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02(a), 5.03 (with respect to maintaining a Loan Party's existence), 5.08, 5.09(a) or 5.09(b) or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those which constitute a default under another Section of this Article VII) or any other Loan Document, and such failure shall continue unremedied for a period of thirty (30) days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender);

(f) any Loan Party or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable beyond any applicable grace period;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided, that this clause (g) shall not apply to (i) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (ii) any redemption, repurchase, conversion or settlement with respect to any unsecured Convertible Debt Security pursuant to its terms unless such redemption, repurchase, conversion or settlement results from a default thereunder or (iii) any early payment requirement or unwinding or termination with respect to any Permitted Call Spread Agreement (that was entered into in connection with the issuance of an unsecured Convertible Debt Security), any Swap Agreement or any Forward Agreement in each case, pursuant to its terms unless such early payment, unwinding or termination results from a default thereunder;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of a Loan Party or any Material Foreign Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or any Material Foreign Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) any Loan Party or any Material Foreign Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article VII, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Loan Party or Material Foreign Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) any Loan Party or any Subsidiary of any Loan Party shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments, orders or decrees for the payment of money in an aggregate amount in excess of $50.0 million (not paid or fully covered by insurance company as to which the relevant insurance company has acknowledged coverage) shall be rendered against any Loan Party, any Subsidiary of any Loan Party or any combination thereof and the same shall not have been paid, vacated or discharged or effectively stayed or bonded pending appeal within thirty (30) days after the entry thereof or enforcement proceedings shall have been commenced by any creditor upon such judgment, order or decree, and such enforcement proceedings have not been effectively stayed, vacated or bonded within thirty (30) days;

(l) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to, individually or in the aggregate, result in liability of the Borrower and its Subsidiaries in excess of $50.0 million;

(m) a Change in Control shall occur;

(n) other than in accordance with the express terms thereof, the Loan Guaranty shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty or any Loan Guarantor shall deny that it has any further liability under the Loan Guaranty to which it is a party, or shall give notice to such effect;

(o) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms) other than in accordance with the express terms hereof or thereof;

(p) any Loan Party is suspended, debarred or excluded in accordance with 21 U.S.C. § 335a, 42 U.S.C. § 1320a-7, or similar provision of Law; or

(q) other than in accordance with the express terms of the applicable subordination agreement, the Obligations shall cease or any Loan Party has asserted in writing that the Obligations cease to constitute senior indebtedness under the subordination provisions of any document or instrument evidencing Subordinated Indebtedness in excess of $5.0 million or any such subordination provision ceases, for any reason, to be a valid, binding and enforceable obligation of the parties hereto.

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article VII), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued and unpaid interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in clause (h) or (i) of this Article VII, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued and unpaid interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Upon the occurrence and the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

ARTICLE VIII

THE ADMINISTRATIVE AGENT

SECTION 8.01 Appointment. Each of the Lenders, on behalf of itself and any of its Affiliates that hold Obligations, and the Issuing Banks hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article VIII are solely for the benefit of the Administrative Agent and the Lenders (including the Issuing Bank), and the Loan Parties shall not have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" as used herein or in any other Loan Documents (or any similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

SECTION 8.02 Rights as a Lender. The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may

accept deposits from, lend money to and generally engage in any kind of business with the Loan Parties or any Subsidiary of a Loan Party or other Affiliate thereof as if it were not the Administrative Agent hereunder.

SECTION 8.03 Duties and Obligations. The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct as determined by a final nonappealable judgment of a court of competent jurisdiction. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent. None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a "syndication agent," "documentation agent," "lead arranger," "bookrunner" or other similar term shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

SECTION 8.04 Reliance. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05 Actions through Sub-Agents. The Administrative Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform

any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

SECTION 8.06 Resignation. Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, the Issuing Banks and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent which shall be a commercial bank or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor, unless otherwise agreed by the Borrower and such successor. Notwithstanding the foregoing, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Banks and the Borrower, whereupon, on the date of effectiveness of such resignation stated in such notice, (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (b) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided, that (i) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (ii) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall also directly be given or made to each Lender and each Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article VIII, Section 2.17(d) and Section 9.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring Administrative Agent, its subagents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) above.

SECTION 8.07 Non-Reliance. Each Lender acknowledges and agrees that the extensions of credit made hereunder are commercial loans and letters of credit and not investments in a business enterprise or securities. Each Lender further represents that it is engaged in making, acquiring or holding commercial loans in the ordinary course of its business and has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder. Each Lender shall, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this

Agreement, any other Loan Document, any related agreement or any document furnished hereunder or thereunder and in deciding whether or to the extent to which it will continue as a Lender or assign or otherwise transfer its rights, interests and obligations hereunder.

SECTION 8.08 Not Partners or Co-Venturers. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Administrative Agent) authorized to act for, any other Lender. The Administrative Agent shall have the exclusive right on behalf of the Lenders to enforce the payment of the principal of and interest on any Loan after the date such principal or interest has become due and payable pursuant to the terms of this Agreement.

SECTION 8.09 Lenders Not Subject to ERISA.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84□14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in

accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

SECTION 8.10 Syndication Agents. Each Lender and Loan Party party hereto hereby designates Bank of America and HSBC as Syndication Agents and agrees that the Syndication Agents, solely in such capacity, shall have no duties or obligations under any Loan Documents to any Lender or any Loan Party.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case to clause (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, as follows:

(i) if to any Loan Party, to the Borrower at:

Align Technology, Inc.
2820 Orchard Parkway
San Jose, California 95134
Attention: redacted
E-mail Address: redacted

with a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, CA 94304
Attention: redacted
E-mail Address: redacted
Fax Number: redacted

(ii) if to the Administrative Agent or to Citi, in its capacity as Issuing Bank or Swingline Lender, to Citibank, N.A. at:

Citibank, N.A.

388 Greenwich Street
New York, NY 10013
Attention: redacted
E-mail Address: redacted

with a copy to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10036
Attention: redacted
E-mail Address: redacted
Fax Number: redacted

(iii) if to any other Lender, to it at its address, e-mail address or fax number set forth in its Administrative Questionnaire.

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, (ii) sent by fax shall be deemed to have been given when sent; provided, that if not given during normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient or (iii) delivered through Electronic Systems to the extent provided in clause (b) below shall be effective as provided in such clause (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by Electronic Systems pursuant to procedures approved by the Administrative Agent; provided, that the foregoing shall not apply to notices pursuant to Article II or to compliance and no Event of Default certificates delivered pursuant to Section 5.01(d) unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems pursuant to procedures approved by it; provided, that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise proscribes, such notices and other communications (i) sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided, that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (b)(i) of notification that such notice or communication is available and identifying the website address therefor; provided, that, for both clauses (i) and (ii) above, if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day of the recipient.

(c) Any party hereto may change its address, fax number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(d) Electronic Systems.

(i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the Issuing Bank and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System.

(ii) Any Electronic System used by the Administrative Agent is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of such Electronic Systems and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or any Electronic System. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower or the other Loan Parties, any Lender, the Issuing Bank or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's, or the Administrative Agent's transmission of communications through an Electronic System. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or the Issuing Bank by means of electronic communications pursuant to this Section 9.01, including through an Electronic System.

SECTION 9.02 Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, any Swingline Lender, any Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, any Swingline Lender, the Issuing Banks and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by clause (b) of this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan (including any Swingline Loan) or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Except as provided in Section 2.14, 2.22 (with respect to any commitment increase) or 2.25, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or, (ii) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided, that no such agreement shall (i) increase the Commitment of any Lender

without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (ii) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby (other than as a result of any change in the definition, or in any components thereof, of the term "Total Leverage Ratio", the implementation of Section 2.14 or Section 2.25 or any waiver of any default interest applicable pursuant to Section 2.13(c)), (iii) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (iv) change Section 2.18(b) or (d) in a manner that would alter the manner in which payments are shared, without the written consent of each Lender (other than any Defaulting Lender), (v) change any of the provisions of this Section 9.02 or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (other than any Defaulting Lender), (vi) change Section 2.20, without the consent of each Lender (other than any Defaulting Lender) or (vii) release any Loan Guarantor from its obligation under its Loan Guaranty (except as otherwise expressly permitted herein or in the other Loan Documents), without the written consent of each Lender (other than any Defaulting Lender); provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, Swingline Lenders or the Issuing Banks hereunder without the prior written consent of the Administrative Agent, Swingline Lenders or the Issuing Banks, as the case may be (it being understood that any change to Section 2.20 shall require the consent of the Administrative Agent and the Issuing Banks). The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.04.

(c) Subject to Section 9.02(b)(vii), the Lenders hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Loan Guaranty provided by a Subsidiary of a Borrower to the extent 100% of the Equity Interests of such Subsidiary are sold or assigned, in accordance with Section 6.05, to a Person that is not a Loan Party or a Subsidiary of any Loan Party; provided, that to the extent requested by the Administrative Agent the Borrower shall deliver a certificate of a Financial Officer certifying, in form and substance reasonably satisfactory to the Administrative Agent, as to the details of such sale or assignment and that such sale or assignment was in accordance with Section 6.05 (it being agreed that the Administrative Agent may rely conclusively on such certificate). The Administrative Agent shall execute such customary documents as the Borrower may reasonably request in connection with any such release. Any execution and delivery by the Administrative Agent of documents in connection with any such release shall be without recourse to or warranty by the Administrative Agent.

(d) If, in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender affected thereby," the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but has not been obtained being referred to herein as a "Non-Consenting Lender"), then the Borrower may elect to replace a Non-Consenting Lender as a Lender party to this Agreement; provided, that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrower, the Administrative Agent and the Issuing Bank shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of

clause (b) of Section 9.04, and (ii) the Borrower shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder to and including the date of termination, including payments due to such Non-Consenting Lender under Sections 2.15 and 2.17, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender. Notwithstanding anything herein to the contrary, each party hereto agrees that any assignment pursuant to the terms of this Section 9.20(d) may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and that the Non-Consenting Lender making such assignment need not be a party thereto.

(e) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency. A copy of any such amendment, modification or supplement shall be promptly delivered by the Administrative Agent to each Lender.

SECTION 9.03 Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Lead Arranger and their respective Affiliates, including the reasonable and documented fees, charges and disbursements of one outside counsel and one local counsel in each relevant jurisdiction for the Administrative Agent and Lead Arranger (and, solely in the case of an actual or perceived conflict of interest, one additional counsel (and, if reasonably necessary, (x) one firm of local counsel in each relevant jurisdiction and (y) any special or regulatory counsel) and any other counsel retained with the Borrower's consent, such consent not to be unreasonably withheld or delayed), in connection with the syndication and distribution (including via the internet or through an Electronic System) of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all documented out-of-pocket expenses incurred by the Administrative Agent, Swingline Lenders, any Issuing Bank or any Lender, including the fees, charges and disbursements of any outside counsel for the Administrative Agent, Swingline Lenders, any Issuing Bank or any Lender, in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, including its rights under this Section 9.03, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. Expenses being reimbursed by the Borrower under this Section 9.03 include, without limiting the generality of the foregoing, costs and expenses incurred in connection with:

(i) taxes, fees and other charges for (A) lien searches and (B) filing financing statements and continuations, and other actions to perfect, protect, and continue the Administrative Agent's Liens;

(ii) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and

(iii) forwarding loan proceeds, collecting checks and other items of payment, and costs and expenses of preserving and protection the cash collateral.

All of the foregoing costs and expenses may be charged to the Borrower as Loans or to another deposit account, all as described in Section 2.18(c).

(b) The Borrower shall indemnify the Administrative Agent, Swingline Lenders, each Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, penalties, liabilities and related expenses (except for Taxes, which shall be covered by Section 2.17), including the reasonable fees, charges and disbursements of one counsel for all Indemnitees (and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant jurisdiction and, solely in the case of an actual or perceived conflict of interest, one additional counsel (and, if reasonably necessary, (x) one firm of local counsel in each relevant jurisdiction and (y) any special regulatory counsel) to each group of affected Indemnitees similarly situated taken as a whole and any other counsel retained with the Borrower's consent, such consent not to be unreasonably withheld or delayed), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan (including any Swingline Loan) or Letter of Credit or the use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from any dispute solely among Indemnitees and does not involve any act or omission by any Loan Party or any of their Subsidiaries (other than claims against the Administrative Agent, Swingline Lenders and Issuing Banks in their respective capacities as such).

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent or any Issuing Bank under clause (a) or (b) of this Section 9.03, each Lender severally agrees to pay to the Administrative Agent or such Issuing Bank, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided, that the unreimbursed expense or indemnified loss, claim, damage, penalty, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or such Issuing Bank in its capacity as such.

(d) To the extent permitted by applicable law, no Loan Party shall assert, and each hereby waives, any claim against any Indemnitee for any damages arising from the use by unintended recipients of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet), except as determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(e) No Indemnitee nor any Loan Party shall be liable on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan (including any Swingline Loan) or Letter of Credit or the use of the proceeds thereof; provided, that nothing in this clause (e) shall relieve any Loan Party of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(f) All amounts due under this Section 9.03 shall be payable promptly after written demand therefor.

SECTION 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04 or as may be required pursuant to Section 2.19 or Section 9.02(d). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in clause (c) of this Section 9.04) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, Swingline Lenders, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in clause (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of:

(A) the Borrower; provided, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof, and provided further that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee;

(B) the Administrative Agent; provided, that no consent of the Administrative Agent shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the Swingline Lenders; provided, that no consent of the Swingline Lenders shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund; and

(D) the Issuing Banks; provided, that no consent of the Issuing Banks shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans (including any Swingline Loans), the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5.0 million unless each of the Borrower and the Administrative Agent otherwise consent; provided, that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500 and the tax forms required by Section 2.17(f); and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

(iii) Subject to acceptance and recording thereof pursuant to clause (b)(iv) of this Section 9.04, from and after the effective date specified in each Assignment and Assumption (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (c) of this Section 9.04.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices located in the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amounts (and stated interest) of the Loans, LC Disbursements and other Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent

manifest error, and the Borrower, the Administrative Agent, the Issuing Banks and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Banks and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender (unless the execution thereof is not required pursuant to Section 2.19 or Section 9.02(d)) and an assignee or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to any applicable electronic platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee and tax forms referred to in clause (b) of this Section 9.04 and any written consent to such assignment required by clause (b) of this Section 9.04, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided, that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05, 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Any Lender may, without the consent of the Borrower, the Administrative Agent, any Issuing Bank of the Swingline Lenders, sell participations to one or more banks or other entities (a "Participant") other than an Ineligible Institution in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including any Swingline Loans) owing to it); provided, that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations (C) the Borrower, the Administrative Agent, the Swingline Lenders, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (D) such Lender shall have provided the Borrower with prior written notice of any such participation. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 9.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant (1) agrees to be subject to the provisions of Sections 2.18 and 2.19 as if it were an assignee under clause (b) of this Section 9.04; and (2) shall not be entitled to receive any greater payment under Section 2.15 or 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.19(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(d) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement or any other Loan Document (the "Participant Register"); provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person (other than the Borrower to the extent required in clause (D) of the proviso to clause (c) above) except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) or proposed Section 1.163-5(b) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest; provided, that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 9.05 Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 9.06 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among

the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby or thereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 9.07 Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower or such Loan Guarantor against any of and all the Obligations held by such Lender, irrespective of whether or not such Lender shall have made any demand under the Loan Documents and although such obligations may be unmatured. The applicable Lender shall notify the Borrower and the Administrative Agent of such setoff or application; provided, that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff or application under this Section 9.08. The rights of each Lender under this Section 9.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) The Loan Documents (other than those containing a contrary express choice of law provision) shall be governed by and construed in accordance with the laws of the State of New York.

(b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any U.S. Federal or New York State court sitting in New York, New York in any action or proceeding arising out of or relating to any Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may

be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in clause (b) of this Section 9.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10.

SECTION 9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12 Confidentiality. Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' respective officers, directors, employees, legal counsel, independent auditors and other experts or agents who need to know such information in connection with the transactions contemplated hereby and are informed of the confidential nature of such information and instructed to keep such information confidential on substantially similar terms as set forth in this Section 9.12, (b) upon the request or demand of any regulatory authority having jurisdiction over it or any of its Affiliates (in which case (except with respect to any audit or examination conducted by bank accountants or any bank or other regulatory authority exercising examination or regulatory authority) it, to the extent practicable and permitted by law, rule or regulation, agrees to inform the Borrower promptly thereof), (c) pursuant to the order of any court or administrative agency, in any pending legal, judicial or administrative proceeding or as otherwise required by applicable law or regulation or as requested by a governmental authority (in which case (except with respect to any audit or examination conducted by bank accountants or any bank or other regulatory authority exercising examination or regulatory authority) it, to the extent practicable and permitted by law, rule or regulation, agrees to inform the

Borrower promptly thereof), (d) to any other party to this Agreement, (e) to the extent necessary or advisable in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 9.12 or otherwise reasonably acceptable to the Borrower, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement (and any of their respective advisors) or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) with the consent of the Borrower, (h) to the extent that such information is independently developed by it or its Affiliates, in each case, so long as not based on information obtained in a manner that would otherwise violate this Section 9.12, (i) for purposes of establishing a "due diligence" defense, (j) deal terms and other customary information to ratings agencies or (k) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 9.12, or (ii) becomes available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis from a source other than the Borrower. For the purposes of this Section 9.12, "Information" means all information received from the Borrower relating to the Borrower or their business, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrower; provided, that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 9.12 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12 FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS AFFILIATES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

SECTION 9.13 Several Obligations; Nonreliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its

obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U of the Board) for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, no Issuing Bank nor any Lender shall be obligated to extend credit to the Borrower in violation of any Requirement of Law.

SECTION 9.14 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act.

SECTION 9.15 Disclosure. Each Loan Party, each Lender and the Issuing Bank hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

SECTION 9.16 [Reserved].

SECTION 9.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 9.17 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.18 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Lenders and their Affiliates, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Lenders and their Affiliates is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) no Lender or any of its Affiliates has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except, in the case of a Lender, those obligations expressly set forth herein and in the other Loan Documents; and (iii) each of the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and no Lender or any of its Affiliates has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against each of the Lenders and their

Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.19 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured (all such liabilities, the "Covered Liabilities"), may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such Covered Liability arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such Covered Liability, including, if applicable:

(i) A reduction in full or in part or cancellation of any such Covered Liability;

(ii) A conversion of all, or a portion of, such Covered Liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such Covered Liability under this Agreement or any other Loan Document; or

(iii) The variation of the terms of such Covered Liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

ARTICLE X

LOAN GUARANTY

SECTION 10.01 Guaranty. Each Loan Guarantor (other than those that have delivered a separate Guaranty) hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely, unconditionally and irrevocably guarantees to the Credit Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Obligations and all costs and expenses including all court costs and attorneys' and paralegals' fees and expenses paid or incurred by the Administrative Agent, the Issuing Banks and the Lenders in endeavoring to collect all or any part of the Obligations from, or in prosecuting any action against, the Borrower, any Loan Guarantor or any other guarantor of all or any part of the Obligations (such costs and expenses, together with the Obligations, collectively the "Guaranteed Obligations". Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations.

SECTION 10.02 Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Administrative Agent, any Issuing Bank or any Lender to sue the Borrower, any Loan Guarantor, any other guarantor, or any other Person obligated for all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

SECTION 10.03 No Discharge or Diminishment of Loan Guaranty.

(a) Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Guaranteed Obligations (other than Unliquidated Obligations), and the cash collateralization of all Unliquidated Obligations in a manner satisfactory to each affected Lender), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of the Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party, or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which any Loan Guarantor may have at any time against any Obligated Party, the Administrative Agent, any Issuing Bank, any Lender, or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) The obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, any Issuing Bank or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection, or invalidity of any indirect or direct security for the obligations of the Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent, any Issuing Bank or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of the Guaranteed Obligations).

SECTION 10.4 Defenses Waived. To the fullest extent permitted by applicable law, each Loan Guarantor hereby waives any defense based on or arising out of any defense of the Borrower or any Loan Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of the Borrower, any Loan Guarantor or any other Obligated Party, other than the payment in full in cash of the Guaranteed Obligations (other than Unliquidated Obligations). Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by

law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party, or any other Person. Each Loan Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Administrative Agent may compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations (other than Unliquidated Obligations) have been fully paid in cash. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party.

SECTION 10.5 Rights of Subrogation. No Loan Guarantor will assert any right, claim or cause of action, including a claim of subrogation, contribution or indemnification that it has against any Obligated Party, or any collateral, until the Commitments have terminated and the Loan Parties and the Loan Guarantors have fully performed all their Obligations (other than Unliquidated Obligations) to the Administrative Agent, the Issuing Banks and the Lenders.

SECTION 10.6 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of the Borrower or otherwise (including pursuant to any settlement entered into by any Credit Party in its discretion), each Loan Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent, the Issuing Banks and the Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Loan Guarantors forthwith on demand by the Administrative Agent.

SECTION 10.7 Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that neither the Administrative Agent nor any Issuing Bank nor any Lender shall have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

SECTION 10.8 [Reserved].

SECTION 10.9 [Reserved].

SECTION 10.10 Maximum Liability. Notwithstanding any other provision of this Loan Guaranty, the amount guaranteed by each Loan Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law. In determining the limitations, if any, on the amount of any Loan Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Loan

Guarantor may have under this Loan Guaranty, any other agreement or applicable law shall be taken into account.

SECTION 10.11 Contribution.

(a) To the extent that any Loan Guarantor shall make a payment under this Loan Guaranty (a "Guarantor Payment") which, taking into account all other Guarantor Payments then previously or concurrently made by any other Loan Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Loan Guarantor if each Loan Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Loan Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Loan Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following payment in full in cash of the Guarantor Payment and the Guaranteed Obligations (other than Unliquidated Obligations), and all Commitments and Letters of Credit have terminated or expired or, in the case of all Letters of Credit, are fully collateralized on terms reasonably acceptable to the Administrative Agent and the Issuing Bank, and this Agreement has terminated, such Loan Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Loan Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the "Allocable Amount" of any Loan Guarantor shall be equal to the excess of the fair saleable value of the property of such Loan Guarantor over the total liabilities of such Loan Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Loan Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Loan Guarantors as of such date in a manner to maximize the amount of such contributions.

(c) This Section 10.11 is intended only to define the relative rights of the Loan Guarantors, and nothing set forth in this Section 10.11 is intended to or shall impair the obligations of the Loan Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Loan Guaranty.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Loan Guarantor or Loan Guarantors to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Loan Guarantors against other Loan Guarantors under this Section 10.11 shall be exercisable upon the full payment of the Guaranteed Obligations in cash (other than Unliquidated Obligations) and the termination or expiry (or, in the case of all Letters of Credit, full cash collateralization), on terms reasonably acceptable to the Administrative Agent and the Issuing Bank, of the Commitments and all Letters of Credit issued hereunder and the termination of this Agreement.

SECTION 10.2 Liability Cumulative. The liability of each Loan Party as a Loan Guarantor under this Article X is in addition to and shall be cumulative with all liabilities of each Loan Party to the Administrative Agent, the Issuing Banks and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the

other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

[Signature Pages Follow.]

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

BORROWER:

ALIGN TECHNOLOGY, INC., a Delaware corporation

By: /s/ John Morici

Name: John Morici
Title: Chief Financial Officer and Senior Vice President, Global Finance

CITIBANK, N.A., individually as a Lender, as Administrative Agent, Swingline Lender and an Issuing Bank

By: /s/ Collene Greenlee

Name: Collene Greenlee
Title: Director

BANK OF AMERICA, N.A., individually as a Lender

By: /s/ Sebastian Lurie

Name: Sebastian Lurie
Title: SVP

HSBC BANK USA, N.A., individually as a Lender

By: /s/ Radmila Stolle

Name: Radmila Stolle
Title: Vice President

Exhibit 31.1

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: October 30, 2020

/s/ JOSEPH M. HOGAN

Joseph M. Hogan
President and Chief Executive Officer

Exhibit 31.2

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: October 30, 2020

/s/ JOHN F. MORICI

John F. Morici

Chief Financial Officer and Senior Vice President, Global Finance

Exhibit 32.1

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 September 30, 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: October 30, 2020

In connection with the Quarterly Report of Align Technology, Inc. (the "Company") on Form 10-Q for the period ending September 30, 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: October 30, 2020