
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, 2023

or

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

For the transition period from _____ to _____

Commission file number: 000-32259

ALIGN TECHNOLOGY, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

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

410 North Scottsdale Road, Suite 1300
Tempe, Arizona 85288
(Address of principal executive offices, including zip code)
(602) 742-2000
(Registrant's telephone number, including area code)

Title of each class	Securities registered pursuant to Section 12(b) of the Act:	Name of each exchange on which registered
Common Stock, \$0.0001 par value	Trading Symbol(s) ALGN	The NASDAQ Stock Market LLC (NASDAQ Global Select 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.

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

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

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

The number of shares outstanding of the registrant's Common Stock, \$0.0001 par value, as of October 27, 2023 was 76,589,114.

ALIGN TECHNOLOGY, INC.

TABLE OF CONTENTS

PART I	FINANCIAL INFORMATION	3
Item 1.	Financial Statements (Unaudited):	3
	Condensed Consolidated Statements of Operations	3
	Condensed Consolidated Statements of Comprehensive Income	4
	Condensed Consolidated Balance Sheets	5
	Condensed Consolidated Statements of Stockholders' Equity	6
	Condensed Consolidated Statements of Cash Flows	8
	Notes to Condensed Consolidated Financial Statements	9
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	25
Item 3.	Quantitative and Qualitative Disclosures About Market Risk	36
Item 4.	Controls and Procedures	37
PART II	OTHER INFORMATION	37
Item 1.	Legal Proceedings	37
Item 1A.	Risk Factors	37
Item 2.	Unregistered Sales of Equity Securities and Use of Proceeds	55
Item 3.	Defaults Upon Senior Securities	55
Item 4.	Mine Safety Disclosures	55
Item 5.	Other Information	55
Item 6.	Exhibits	56
	Signatures	57

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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,	
	2023	2022	2023	2022
Net revenues	\$ 960,214	\$ 890,348	\$ 2,905,534	\$ 2,833,120
Cost of net revenues	297,138	271,179	868,195	817,046
Gross profit	663,076	619,169	2,037,339	2,016,074
Operating expenses:				
Selling, general and administrative	407,992	398,547	1,300,876	1,264,402
Research and development	88,738	76,966	264,670	221,738
Total operating expenses	496,730	475,513	1,565,546	1,486,140
Income from operations	166,346	143,656	471,793	529,934
Interest income and other income (expense), net:				
Interest income	5,522	1,685	12,280	2,607
Other income (expense), net	(9,757)	(22,700)	(15,749)	(48,805)
Total interest income and other income (expense), net	(4,235)	(21,015)	(3,469)	(46,198)
Net income before provision for income taxes	162,111	122,641	468,324	483,736
Provision for income taxes	40,684	49,941	147,285	163,938
Net income	\$ 121,427	\$ 72,700	\$ 321,039	\$ 319,798
Net income per share:				
Basic	\$ 1.59	\$ 0.93	\$ 4.19	\$ 4.08
Diluted	\$ 1.58	\$ 0.93	\$ 4.18	\$ 4.07
Shares used in computing net income per share:				
Basic	76,569	78,093	76,670	78,408
Diluted	76,826	78,237	76,849	78,652

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,	
	2023	2022	2023	2022
Net income	\$ 121,427	\$ 72,700	\$ 321,039	\$ 319,798
Other comprehensive income (loss):				
Change in foreign currency translation adjustment, net of tax	(9,822)	(20,246)	9,810	(41,313)
Change in unrealized gains (losses) on investments, net of tax	526	(729)	2,521	(3,758)
Other comprehensive income (loss)	(9,296)	(20,975)	12,331	(45,071)
Comprehensive income	<u>\$ 112,131</u>	<u>\$ 51,725</u>	<u>\$ 333,370</u>	<u>\$ 274,727</u>

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

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

	September 30, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 1,239,013	\$ 942,050
Marketable securities, short-term	44,792	57,534
Accounts receivable, net of allowance for doubtful accounts of \$13,155 and \$10,343, respectively	904,178	859,685
Inventories	296,189	338,752
Prepaid expenses and other current assets	217,632	226,370
Total current assets	2,701,804	2,424,391
Marketable securities, long-term	18,137	41,978
Property, plant and equipment, net	1,268,388	1,231,855
Operating lease right-of-use assets, net	118,966	118,880
Goodwill	404,295	407,551
Intangible assets, net	82,741	95,720
Deferred tax assets	1,591,791	1,571,746
Other assets	132,429	55,826
Total assets	<u>\$ 6,318,551</u>	<u>\$ 5,947,947</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 99,693	\$ 127,870
Accrued liabilities	614,462	454,374
Deferred revenues	1,408,831	1,343,643
Total current liabilities	2,122,986	1,925,887
Income tax payable	116,443	124,393
Operating lease liabilities	98,523	100,334
Other long-term liabilities	178,733	195,975
Total liabilities	2,516,685	2,346,589
Commitments and contingencies (Notes 6 and 7)		
Stockholders' equity:		
Preferred stock, \$0.0001 par value (5,000 shares authorized; none issued)	—	—
Common stock, \$0.0001 par value (200,000 shares authorized; 76,588 and 77,267 issued and outstanding, respectively)	8	8
Additional paid-in capital	1,193,057	1,044,946
Accumulated other comprehensive income (loss), net	2,047	(10,284)
Retained earnings	2,606,754	2,566,688
Total stockholders' equity	3,801,866	3,601,358
Total liabilities and stockholders' equity	<u>\$ 6,318,551</u>	<u>\$ 5,947,947</u>

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

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

Three Months Ended September 30, 2023	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss), Net	Retained Earnings	Total
	Shares	Amount				
Balance as of June 30, 2023	76,532	\$ 8	\$ 1,141,623	\$ 11,343	\$ 2,485,327	\$ 3,638,301
Net income	—	—	—	—	121,427	121,427
Net change in unrealized gains (losses) from investments	—	—	—	526	—	526
Net change in foreign currency translation adjustment	—	—	—	(9,822)	—	(9,822)
Issuance of common stock relating to employee equity compensation plans	56	—	12,339	—	—	12,339
Tax withholdings related to net share settlements of equity awards	—	—	(507)	—	—	(507)
Stock-based compensation	—	—	39,602	—	—	39,602
Balance as of September 30, 2023	76,588	\$ 8	\$ 1,193,057	\$ 2,047	\$ 2,606,754	\$ 3,801,866

Nine Months Ended September 30, 2023	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss), Net	Retained Earnings	Total
	Shares	Amount				
Balance as of December 31, 2022	77,267	\$ 8	\$ 1,044,946	\$ (10,284)	\$ 2,566,688	\$ 3,601,358
Net income	—	—	—	—	321,039	321,039
Net change in unrealized gains (losses) from investments	—	—	—	2,521	—	2,521
Net change in foreign currency translation adjustment	—	—	—	9,810	—	9,810
Issuance of common stock relating to employee equity compensation plans	263	—	26,595	—	—	26,595
Tax withholdings related to net share settlements of equity awards	—	—	(22,294)	—	—	(22,294)
Common stock repurchased and retired	(942)	—	(11,387)	—	(280,973)	(292,360)
Equity forward contract related to accelerated stock repurchase	—	—	40,000	—	—	40,000
Stock-based compensation	—	—	115,197	—	—	115,197
Balance as of September 30, 2023	76,588	\$ 8	\$ 1,193,057	\$ 2,047	\$ 2,606,754	\$ 3,801,866

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, 2022	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss), Net	Retained Earnings	Total
	Shares	Amount				
Balance as of June 30, 2022	78,059	\$ 8	\$ 1,016,882	\$ (19,770)	\$ 2,601,961	\$ 3,599,081
Net income	—	—	—	—	72,700	72,700
Net change in unrealized gains (losses) from investments	—	—	—	(729)	—	(729)
Net change in foreign currency translation adjustment	—	—	—	(20,246)	—	(20,246)
Issuance of common stock relating to employee equity compensation plans	52	—	11,322	—	—	11,322
Tax withholdings related to net share settlements of equity awards	—	—	(424)	—	—	(424)
Stock-based compensation	—	—	32,918	—	—	32,918
Balance as of September 30, 2022	78,111	\$ 8	\$ 1,060,698	\$ (40,745)	\$ 2,674,661	\$ 3,694,622

Nine Months Ended September 30, 2022	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss), Net	Retained Earnings	Total
	Shares	Amount				
Balance as of December 31, 2021	78,710	\$ 8	\$ 999,006	\$ 4,326	\$ 2,619,374	\$ 3,622,714
Net income	—	—	—	—	319,798	319,798
Net change in unrealized gains (losses) from investments	—	—	—	(3,758)	—	(3,758)
Net change in foreign currency translation adjustment	—	—	—	(41,313)	—	(41,313)
Issuance of common stock relating to employee equity compensation plans	302	—	26,149	—	—	26,149
Tax withholdings related to net share settlements of equity awards	—	—	(52,611)	—	—	(52,611)
Common stock repurchased and retired	(901)	—	(10,525)	—	(264,511)	(275,036)
Stock-based compensation	—	—	98,679	—	—	98,679
Balance as of September 30, 2022	78,111	\$ 8	\$ 1,060,698	\$ (40,745)	\$ 2,674,661	\$ 3,694,622

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,	
	2023	2022
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	\$ 321,039	\$ 319,798
Adjustments to reconcile net income to net cash provided by operating activities:		
Deferred taxes	(22,749)	6,765
Depreciation and amortization	108,669	92,096
Stock-based compensation	115,197	98,679
Non-cash operating lease cost	24,034	22,756
Impairment of equity investment	3,329	—
Other non-cash operating activities	28,435	26,216
Changes in assets and liabilities, net of effects of acquisitions:		
Accounts receivable	(80,297)	32,284
Inventories	31,639	(108,524)
Prepaid expenses and other assets	1,773	(32,440)
Accounts payable	(23,130)	(27,100)
Accrued and other long-term liabilities	156,024	(213,378)
Long-term income tax payable	(7,979)	9,019
Deferred revenues	82,894	197,854
Net cash provided by operating activities	<u>738,878</u>	<u>424,025</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Acquisitions, net of cash acquired	—	(12,304)
Purchase of property, plant and equipment	(144,302)	(238,696)
Purchase of marketable securities	(2,373)	(20,466)
Proceeds from maturities of marketable securities	35,754	22,456
Proceeds from sales of marketable securities	5,173	93,647
Purchase of equity investments	(76,999)	—
Other investing activities	128	(2,143)
Net cash used in investing activities	<u>(182,619)</u>	<u>(157,506)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of common stock	26,595	26,149
Common stock repurchases	(292,360)	(275,036)
Payments for equity forward contracts related to accelerated share repurchase agreements	40,000	—
Payroll taxes paid upon the vesting of equity awards	(22,294)	(52,611)
Net cash used in financing activities	<u>(248,059)</u>	<u>(301,498)</u>
Effect of foreign exchange rate changes on cash, cash equivalents, and restricted cash	<u>(11,205)</u>	<u>(20,422)</u>
Net increase (decrease) in cash, cash equivalents, and restricted cash	296,995	(55,401)
Cash, cash equivalents, and restricted cash at beginning of the period	942,355	1,100,139
Cash, cash equivalents, and restricted cash at end of the period	<u>\$ 1,239,350</u>	<u>\$ 1,044,738</u>

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

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

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

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared by Align Technology, Inc. (“we”, “our”, “Company”, or “Align”) on a consistent basis with the audited Consolidated Financial Statements for the year ended December 31, 2022, and contain all adjustments, including normal recurring adjustments, necessary to fairly state the information set forth herein. The unaudited Condensed Consolidated Financial Statements have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission (“SEC”), and, therefore, omit certain information and footnote disclosures necessary to present the unaudited Condensed Consolidated Financial Statements in accordance with accounting principles generally accepted in the United States of America (“U.S.”).

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, 2022. The results of operations for the three and nine months ended September 30, 2023 are not necessarily indicative of the results that may be expected for the year ending December 31, 2023 or any other future period, and we make no representations related thereto.

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, contingent liabilities, the fair values of financial instruments, stock-based compensation and the 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.

During the third quarter of 2023, we completed an assessment of the useful lives of certain manufacturing equipment used in cutting, forming, assembling and scanning. We adjusted the estimated useful life from ten (10) years to thirteen (13) years. This change in accounting estimate was effective and applied to assets in service beginning in the third quarter of 2023. The updated useful life will be applied prospectively on the assets scheduled to be placed in service in the future. The effect of this change in estimate was a reduction in depreciation expense of approximately \$4.0 million and an increase in net income of \$3.0 million, or \$0.04 per share basic and diluted, for both the three and nine months ended September 30, 2023.

Certain Risks and Uncertainties

Our business has been materially impacted by fluctuations in macroeconomic conditions, which have been exacerbated by ongoing geopolitical issues. While the situation is highly uncertain and evolving, we have been and continue to be impacted by factors such as inflation, supply chain challenges, rising interest rates, volatilities in the financial markets, foreign currency exchange rate fluctuations, impacts on consumer confidence and purchasing power, and global recession concerns which could further subject our business to materially adverse consequences should any portion of its impacts become prolonged or escalate beyond its current scope. Additionally, we could also be materially adversely affected by uncertain or reduced demand, labor shortages, delays in collection of outstanding receivables and the impact of any initiatives or programs that we may undertake to address financial and operational challenges faced by our customers.

While the overall impact of the COVID-19 pandemic is gradually declining, we continue to be exposed to risks and uncertainties posed by it which varies by geographic region at different levels. The extent to which our business could be impacted in the future by the pandemic is highly uncertain and difficult to predict.

Military Conflict in Middle East

The recent conflict in the Middle East may further exacerbate general and regional macroeconomic instability, particularly if fighting is prolonged or spreads to other locations. Our iTero business is headquartered in Petach Tikva, Israel. We continue

to monitor the potential for violence and military actions that may directly or indirectly impact our personnel, manufacturing, supply chain, and sales in unpredictable ways.

Recent Accounting Pronouncements

(i) Recent Accounting Pronouncements Not Yet Effective

We continue to monitor new accounting pronouncements issued by the Financial Accounting Standards Board (“FASB”) and do not believe any of the recently issued accounting pronouncements will have a material impact on our consolidated financial statements or related disclosures.

Note 2. Financial Instruments

Cash, Cash Equivalents and Marketable Securities

The following tables summarize our cash and cash equivalents, and marketable securities on our Consolidated Balance Sheets as of September 30, 2023 and December 31, 2022 (in thousands):

September 30, 2023	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Reported as:		
					Cash and Cash Equivalents	Marketable securities, short-term	Marketable securities, long-term
Cash	\$ 988,029	\$ —	\$ —	\$ 988,029	\$ 988,029	\$ —	\$ —
Money market funds	250,984	—	—	250,984	250,984	—	—
Corporate bonds	44,572	—	(1,160)	43,412	—	31,828	11,584
U.S. government treasury bonds	11,394	—	(235)	11,159	—	6,503	4,656
Asset-backed securities	2,477	—	(7)	2,470	—	1,582	888
Municipal bonds	701	—	(10)	691	—	691	—
U.S. government agency bonds	5,263	—	(66)	5,197	—	4,188	1,009
Total	<u>\$ 1,303,420</u>	<u>\$ —</u>	<u>\$ (1,478)</u>	<u>\$ 1,301,942</u>	<u>\$ 1,239,013</u>	<u>\$ 44,792</u>	<u>\$ 18,137</u>

December 31, 2022	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Reported as:		
					Cash and Cash Equivalents	Marketable securities, short-term	Marketable securities, long-term
Cash	\$ 712,921	\$ —	\$ —	\$ 712,921	\$ 712,921	\$ —	\$ —
Money market funds	229,129	—	—	229,129	229,129	—	—
Corporate bonds	69,390	—	(2,915)	66,475	—	36,510	29,965
U.S. government treasury bonds	20,559	—	(549)	20,010	—	15,404	4,606
Asset-backed securities	4,514	1	(37)	4,478	—	2,909	1,569
Municipal bonds	3,447	—	(61)	3,386	—	2,711	675
U.S. government agency bonds	5,231	1	(69)	5,163	—	—	5,163
Total	<u>\$ 1,045,191</u>	<u>\$ 2</u>	<u>\$ (3,631)</u>	<u>\$ 1,041,562</u>	<u>\$ 942,050</u>	<u>\$ 57,534</u>	<u>\$ 41,978</u>

The following table summarizes the fair value of our available-for-sale marketable securities classified by contractual maturity as of September 30, 2023 and December 31, 2022 (in thousands):

	September 30, 2023	December 31, 2022
Due in 1 year or less	\$ 42,847	\$ 51,037
Due in 1 year through 5 years	20,082	48,475
Total	<u>\$ 62,929</u>	<u>\$ 99,512</u>

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. Our unrealized losses as of September 30, 2023 and December 31, 2022 are primarily due to changes in interest rates and credit spreads.

The following tables summarize the gross unrealized losses as of September 30, 2023 and December 31, 2022, aggregated by investment category and length of time that individual securities have been in a continuous loss position (in thousands):

September 30, 2023	As of September 30, 2023					
	Less than 12 months		12 Months of Greater		Total	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
Corporate bonds	\$ 2,509	\$ (11)	\$ 40,608	\$ (1,149)	\$ 43,117	\$ (1,160)
U.S. government treasury bonds	1,995	(43)	9,163	(192)	11,158	(235)
Asset-backed securities	1,975	(4)	495	(3)	2,470	(7)
Municipal bonds	—	—	691	(10)	691	(10)
U.S. government agency bonds	4,030	(28)	1,166	(38)	5,196	(66)
Total	\$ 10,509	\$ (86)	\$ 52,123	\$ (1,392)	\$ 62,632	\$ (1,478)

December 31, 2022	As of December 31, 2022					
	Less than 12 months		12 Months of Greater		Total	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
Corporate bonds	\$ 10,639	\$ (440)	\$ 54,634	\$ (2,475)	\$ 65,273	\$ (2,915)
U.S. government treasury bonds	5,262	(177)	14,748	(372)	20,010	(549)
Asset-backed securities	2,636	(17)	1,275	(20)	3,911	(37)
Municipal bonds	—	—	2,412	(61)	2,412	(61)
U.S. government agency bonds	3,017	(5)	1,136	(64)	4,153	(69)
Total	\$ 21,554	\$ (639)	\$ 74,205	\$ (2,992)	\$ 95,759	\$ (3,691)

Accounts Receivable Factoring

We enter into factoring transactions on a non-recourse basis with financial institutions to sell certain of our non-U.S. accounts receivable. We account for these transactions as sales of accounts receivables and include the cash proceeds as a part of our cash flows from operations in the Condensed Consolidated Statements of Cash Flows. Total accounts receivable sold under the factoring arrangements was \$24.2 million during the three months and \$40.4 million for the nine months ended September 30, 2023. Factoring fees on the sales of receivables were recorded in other income (expense), net in our Condensed Consolidated Statement of Operations and were not material.

Fair Value Measurements

Fair value is an exit price, representing the amount that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. We use the GAAP fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. This hierarchy requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The three levels of inputs that may be used to measure fair value:

Level 1 — Quoted (unadjusted) prices in active markets for identical assets or liabilities.

Level 2 — Observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the asset or liability. We obtain fair values for our Level 2 investments. Our custody bank and asset managers independently use

professional pricing services to gather pricing data which may include quoted market prices for identical or comparable financial instruments, or inputs other than quoted prices that are observable either directly or indirectly, and we are ultimately responsible for these underlying estimates.

Level 3 — Unobservable inputs to the valuation methodology that are supported by little or no market activity and that are significant to the measurement of the fair value of the assets or liabilities. Level 3 assets and liabilities include those whose fair value measurements are determined using pricing models, discounted cash flow methodologies or similar valuation techniques, as well as significant management judgment or estimation.

The following tables summarize our financial assets measured at fair value as of September 30, 2023 and December 31, 2022 (in thousands):

Description	Balance as of September 30, 2023	Level 1	Level 2
Cash equivalents:			
Money market funds	\$ 250,984	\$ 250,984	\$ —
Short-term investments:			
U.S. government agency bonds	4,188	—	4,188
U.S. government treasury bonds	6,503	6,503	—
Corporate bonds	31,828	—	31,828
Municipal bonds	691	—	691
Asset-backed securities	1,582	—	1,582
Long-term investments:			
U.S. government treasury bonds	4,656	4,656	—
Corporate bonds	11,584	—	11,584
U.S. government agency bonds	1,009	—	1,009
Asset-backed securities	888	—	888
	<u>\$ 313,913</u>	<u>\$ 262,143</u>	<u>\$ 51,770</u>

Description	Balance as of December 31, 2022	Level 1	Level 2
Cash equivalents:			
Money market funds	\$ 229,129	\$ 229,129	\$ —
Short-term investments:			
U.S. government treasury bonds	15,404	15,404	—
Corporate bonds	36,510	—	36,510
Municipal bonds	2,711	—	2,711
Asset-backed securities	2,909	—	2,909
Long-term investments:			
U.S. government treasury bonds	4,606	4,606	—
Corporate bonds	29,965	—	29,965
Municipal bonds	675	—	675
U.S. government agency bonds	5,163	—	5,163
Asset-backed securities	1,569	—	1,569
	<u>\$ 328,641</u>	<u>\$ 249,139</u>	<u>\$ 79,502</u>

Investments in Privately Held Companies

Our investments in privately held companies in which we cannot exercise significant influence and do not own a majority equity interest or otherwise control are accounted for under the measurement alternative. Under the measurement alternative, the carrying value of our equity investment is adjusted to fair value for observable transactions for identical or similar investments of the same issuer. Investments in equity securities are reported on our Consolidated Balance Sheet as other assets, and we periodically evaluate them for impairment. We record any change in carrying value of our equity securities, in other income (expense), net in our Consolidated Statement of Operations. The carrying value of our equity investments in privately held companies without readily determinable fair values were not material, excluding Heartland, as of September 30, 2023 or 2022 and the associated adjustments to the carrying values of the investments were not material during the quarters ended September 30, 2023 and 2022.

On April 24, 2023, we entered into a Subscription Agreement (the "Subscription Agreement") with Heartland Dental Holding Corporation ("Heartland") who is an affiliate of KKR Core Holding Company LLC, which is an investment vehicle managed or advised by, or otherwise affiliated with, Kohlberg Kravis Roberts & Co. L.P. Heartland is a dental support organization ("DSO") that provides nonclinical administrative and support services to supported dental professional corporations ("PCs"). Pursuant to the Subscription Agreement we acquired less than a 5% equity interest and have no significant influence in Heartland through the purchase of Class A Common Stock for \$75 million. In connection with the Subscription Agreement, we entered into a Stockholders' Agreement, by and among us, Heartland Dental Topco, LLC ("Topco") and funds and accounts managed by affiliates of KKR & Co. Inc. ("KKR"), and a Side Letter, by and among us, Heartland, Topco and KKR (the "Side Letter"). Subject to certain restrictions set forth in the Side Letter, we agreed to provisions applicable to Heartland's stockholders, including certain drag-along and voting obligations.

Similar to our other private equity investments Heartland is accounted for under the measurement alternative. Based on review of our equity investment, we determined there were no adjustments to the carrying value and it is properly reflected on our Consolidated Balance Sheet in other assets at \$75 million as of September 30, 2023.

On September 6, 2023, we entered into a definitive agreement to acquire privately held Cubicure GmbH. The purchase price for the transaction will be approximately €79 million subject to customary closing adjustments and adjustments for Align's existing ownership of capital stock of Cubicure. The acquisition is expected to close in the fourth quarter of 2023 or early 2024.

Derivatives Not Designated as Hedging Instruments

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, 2023 and 2022, we recognized net gains of \$19.8 million and of \$34.6 million, respectively, and during the nine months ended September 30, 2023 and 2022, we recognized net gains of \$14.4 million and of \$43.8 million, respectively. As of September 30, 2023 and December 31, 2022, the fair value of foreign exchange forward contracts outstanding was not material.

The following tables present the gross notional value of all our foreign exchange forward contracts outstanding as of September 30, 2023 and December 31, 2022 (in thousands):

	September 30, 2023	
	Local Currency Amount	Notional Contract Amount (USD)
Euro	€271,600	\$ 287,705
Canadian Dollar	C\$103,200	76,384
Polish Zloty	PLN293,200	67,110
British Pound	£46,398	56,620
Chinese Yuan	¥399,000	54,764
Swiss Franc	CHF27,900	30,615
Japanese Yen	¥4,400,000	29,612
Brazilian Real	R\$90,000	17,861
Mexican Peso	M\$230,000	13,214
Israeli Shekel	ILS50,300	13,208
New Zealand Dollar	NZ\$8,700	5,227
Czech Koruna	Kč86,800	3,762
Australian Dollar	A\$3,970	2,567
New Taiwan Dollar	NT\$77,600	2,405
Korean Won	₩1,400,000	1,036
		<u>\$ 662,090</u>

	December 31, 2022	
	Local Currency Amount	Notional Contract Amount (USD)
Euro	€186,900	\$ 200,010
Polish Zloty	PLN365,988	83,307
Canadian Dollar	C\$109,000	80,514
Chinese Yuan	¥471,000	68,223
British Pound	£41,200	49,677
Japanese Yen	¥6,200,000	47,196
Israeli Shekel	ILS110,030	31,383
Swiss Franc	CHF25,000	27,165
Brazilian Real	R\$141,200	26,839
Mexican Peso	M\$230,000	11,746
New Zealand Dollar	NZ\$6,000	3,806
Australian Dollar	A\$4,000	2,721
Czech Koruna	Kč56,000	2,469
New Taiwan Dollar	NT\$60,000	1,959
		<u>\$ 637,015</u>

Note 3. Balance Sheet Components

Inventories consist of the following (in thousands):

	September 30, 2023	December 31, 2022
Raw materials	\$ 139,681	\$ 172,758
Work in process	98,633	96,558
Finished goods	57,875	69,436
Total inventories	<u>\$ 296,189</u>	<u>\$ 338,752</u>

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

	September 30, 2023	December 31, 2022
Value added tax receivables	\$ 123,980	\$ 140,484
Prepaid expenses	59,496	69,124
Other current assets	34,156	16,762
Total prepaid expenses and other current assets	<u>\$ 217,632</u>	<u>\$ 226,370</u>

Accrued liabilities consist of the following (in thousands):

	September 30, 2023	December 31, 2022
Accrued payroll and benefits	\$ 203,712	\$ 149,508
Accrued income taxes	157,175	74,323
Accrued expenses	73,087	64,341
Accrued sales and marketing expenses	35,405	36,407
Current operating lease liabilities	28,277	26,574
Accrued property, plant and equipment	14,437	19,922
Other accrued liabilities	102,369	83,299
Total accrued liabilities	<u>\$ 614,462</u>	<u>\$ 454,374</u>

Accrued warranty, which is included in the "Other accrued liabilities" category of the accrued liabilities table above, consists of the following activity (in thousands):

	Nine Months Ended September 30,	
	2023	2022
Balance at beginning of period	\$ 17,873	\$ 16,169
Charged to cost of net revenues	14,329	11,359
Actual warranty expenditures	(10,327)	(11,109)
Balance at end of period	<u>\$ 21,875</u>	<u>\$ 16,419</u>

Deferred revenues consist of the following (in thousands):

	September 30, 2023	December 31, 2022
Deferred revenues - current	\$ 1,408,831	\$ 1,343,643
Deferred revenues - long-term ¹	\$ 146,271	\$ 160,662

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

During the three months ended September 30, 2023 and 2022, we recognized \$960.2 million and \$890.3 million of net revenues, respectively, of which \$178.8 million and \$156.5 million was included in the deferred revenues balance at December 31, 2022 and 2021, respectively.

During the nine months ended September 30, 2023 and 2022, we recognized \$2,905.5 million and \$2,833.1 million of net revenues, respectively, of which \$583.5 million and \$519.8 million was included in the deferred revenues balance at December 31, 2022 and 2021, respectively.

Our unfulfilled performance obligations, including deferred revenues and backlog, as of September 30, 2023 were \$1,560.7 million. These performance obligations are expected to be fulfilled over the next six months to five years.

Note 4. Goodwill and Intangible Assets

Goodwill

The change in the carrying value of goodwill for the nine months ended September 30, 2023, categorized by reportable segments, is as follows (in thousands):

	Clear Aligner	Systems and Services	Total
Balance as of December 31, 2022	\$ 109,480	\$ 298,071	\$ 407,551
Foreign currency translation adjustments	(479)	(2,777)	(3,256)
Balance as of September 30, 2023	\$ 109,001	\$ 295,294	\$ 404,295

Intangible Long-Lived Assets

Acquired intangible long-lived assets were as follows, excluding intangibles that were fully amortized (in thousands):

	Weighted Average Amortization Period (in years)	Gross Carrying Amount as of September 30, 2023	Accumulated Amortization	Accumulated Impairment Loss	Net Carrying Value as of September 30, 2023
Existing technology	10	\$ 112,051	\$ (42,383)	\$ (4,328)	\$ 65,340
Customer relationships	10	21,500	(7,525)	—	13,975
Trademarks and tradenames	10	17,200	(7,820)	(4,122)	5,258
Patents	8	6,511	(5,884)	—	627
		\$ 157,262	\$ (63,612)	\$ (8,450)	85,200
Foreign currency translation adjustments					(2,459)
Total intangible assets, net ¹					\$ 82,741

¹ Also includes \$33.5 million of fully amortized intangible assets related to customer relationships.

	Weighted Average Amortization Period (in years)	Gross Carrying Amount as of December 31, 2022	Accumulated Amortization	Accumulated Impairment Loss	Net Carrying Value as of December 31, 2022
Existing technology	10	\$ 112,051	\$ (33,537)	\$ (4,328)	\$ 74,186
Customer relationships	10	21,500	(5,913)	—	15,587
Trademarks and tradenames	10	17,200	(6,442)	(4,122)	6,636
Patents	8	6,511	(5,288)	—	1,223
		\$ 157,262	\$ (51,180)	\$ (8,450)	97,632
Foreign currency translation adjustments					(1,912)
Total intangible assets, net ¹					\$ 95,720

¹ Also includes \$33.5 million of fully amortized intangible assets related to customer relationships.

The total estimated annual future amortization expense for these acquired intangible assets as of September 30, 2023 is as follows (in thousands):

Fiscal Year Ending December 31,	Amortization
Remainder of 2023	\$ 4,069
2024	15,335
2025	14,959
2026	14,353
2027	11,992
Thereafter	24,492
Total	\$ 85,200

Amortization expense for the three months ended September 30, 2023 and 2022 was \$4.2 million and \$3.9 million, respectively, and amortization expense for the nine months ended September 30, 2023 and 2022 was \$12.4 million and \$12.1 million, respectively.

Note 5. Credit Facility

We have a credit facility that provides for a \$300.0 million unsecured revolving line of credit, along with a \$50.0 million letter of credit. On December 23, 2022, we amended certain provisions in our credit facility which included extending the maturity date on the facility to December 23, 2027 and replacing the interest rate from the existing LIBOR with SOFR (“2022 Credit Facility”). The 2022 Credit Facility requires us to comply with specific financial conditions and performance requirements. Loans under the 2022 Credit Facility bear interest, at our option, at either a rate based on the SOFR for the applicable interest period or a base rate, in each case plus a margin. As of September 30, 2023, we had no outstanding borrowings under the 2022 Credit Facility and were in compliance with the conditions and performance requirements in all material respects.

Note 6. Legal Proceedings

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 our behalf, naming as defendants the then current members of our Board of Directors along with certain of our executive officers. 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 our behalf, 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 is currently stayed. Defendants have not yet responded to the complaints.

On April 12, 2019, a derivative lawsuit was also filed in California Superior Court for Santa Clara County, purportedly on our behalf, 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 is currently stayed. Defendants have not yet responded to the complaint.

We believe these claims are without merit. We are currently unable to predict the outcome of these lawsuits and therefore cannot determine the likelihood of loss nor estimate a range of possible loss.

Antitrust Class Actions

On June 5, 2020, a dental practice named Simon and Simon, PC doing business as City Smiles brought an antitrust action in the U.S. 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 our alleged market activities in alleged clear aligner and intraoral scanner markets. Plaintiff filed an amended complaint and added VIP Dental Spas as a plaintiff on August 14, 2020. A jury trial is scheduled to begin in this matter on May 13, 2024. We believe the plaintiffs’ claims are without merit and we intend to vigorously defend ourselves.

On May 3, 2021, an individual named Misty Snow brought an antitrust action in the U.S. District Court for the Northern District of California on behalf of herself and a putative class of similarly situated individuals seeking monetary damages and injunctive relief relating to our alleged market activities in alleged clear aligner and intraoral scanner markets based on Section

2 of the Sherman Act. Plaintiff filed an amended complaint on July 30, 2021 adding new plaintiffs and various state law claims. Plaintiffs filed a second amended complaint on October 21, 2021. On March 2, 2022, Plaintiffs filed a third amended complaint. On October 3, 2022, Plaintiffs filed a fourth amended complaint. On May 18, 2023, the court granted plaintiffs leave to file a fifth amended complaint. The amended complaints added allegations based on Section 1 of the Sherman Act. A jury trial is scheduled to begin in this matter on May 13, 2024 for issues related to Section 2 allegations. A jury trial is scheduled to begin in this matter on January 21, 2025 for issues related to Section 1 allegations. We believe the plaintiffs' claims are without merit and we intend to vigorously defend ourselves.

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

SDC Dispute

On August 27, 2020, we initiated a confidential arbitration proceeding against SmileDirectClub LLC ("SDC") 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 alleges that SDC breached the Supply Agreement's terms, causing damages to us in an amount to be determined. On January 19, 2021, SDC filed a counterclaim alleging that we breached the Supply Agreement. On May 3, 2022, SDC filed an additional counterclaim alleging that we breached the Supply Agreement. We deny SDC's allegations in the counterclaims.

On October 27, 2022, the arbitrator issued an interim award on our claims and SDC's first counterclaim finding that SDC breached the Supply Agreement, we did not breach the Supply Agreement, and SDC caused harm to us. Based on these findings, the arbitrator awarded us an interim award of \$63 million in damages.

On May 18, 2023, the arbitrator issued a final award on SDC's second counterclaim, finding that Align did not breach the Supply Agreement. The final award subsumed the interim award on our claims and SDC's first counterclaim and concluded the Supply Agreement arbitration proceedings.

On March 6, 2023, Align filed a petition to confirm the arbitrator's interim award in the Superior Court for Santa Clara County.

On May 30, 2023, Align filed a petition to confirm the final award in the Superior Court of Santa Clara County. On August 21, 2023, the Superior Court issued an order confirming the Interim and Final Awards. On September 8, 2023, the Superior Court entered judgment in Align's favor for \$63 million in damages.

On September 29, 2023, SDC and certain affiliates filed bankruptcy petitions under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas. The extent to which Align will be able to collect any or all of its \$63 million judgment through SDC's bankruptcy proceedings is unknown.

In addition to the above, in the ordinary course of our operations, we are 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 our view of these matters may change in the future as litigation and events related thereto unfold; we currently do not believe that these matters, individually or in the aggregate, will materially affect our financial position, results of operations or cash flows.

Note 7. Commitments and Contingencies

Tax Matter

During the three months ended September 30, 2023, the Company received a notice and initial assessment, in the amount of approximately \$27 million, from His Majesty's Revenue and Customs ("HMRC") for unpaid value added tax ("VAT") related to certain clear aligner sales made during the period of June 2022 through May 2023. We are required to pay this initial assessment prior to contesting or litigating the assessment in administrative and judicial proceedings. The Company has historically asserted and continues to assert that doctor prescribed clear aligners sold by dentists for the orthodontic treatment of patient malocclusions are exempt from VAT, that the Company has reasonably relied upon statements and guidance by HMRC and that the Company's interpretation of United Kingdom legislation is appropriate. However, it is not possible at this stage to accurately evaluate the likelihood of an unfavorable outcome of any legal challenges brought by the Company against HMRC disputing this initial assessment and any assessments for other past periods, if any. Accordingly, the Company has determined

that a potential loss related to unpaid VAT is not probable. As such, we have not recorded a contingent loss for the initial assessment in our Condensed Consolidated Statements of Operations for the three or nine months ended September 30, 2023. The Company acknowledges that this matter poses risks of litigation and the ultimate resolution of this matter could result in an unfavorable ruling, which consequently could lead to a significant loss to the Company. As of September 30, 2023, if an unfavorable ruling is issued, we estimate a potential exposure up to approximately \$100 million, excluding interest and penalties.

Off-Balance Sheet Arrangements

As of September 30, 2023, 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 8 "Commitments and Contingencies" of the Notes to Consolidated Financial Statements* included in our Annual Report on Form 10-K for the year ended December 31, 2022.

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, 2023, we did not have any material indemnification claims that were probable or reasonably possible.

Note 8. Stockholders' Equity

As of September 30, 2023, the 2005 Incentive Plan, as amended, has a total reserve of 32,168,895 shares of which 4,754,771 shares are available for issuance.

Summary of Stock-Based Compensation Expense

The stock-based compensation related to our stock-based awards and employee stock purchase plan for the three and nine months ended September 30, 2023 and 2022 is as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Cost of net revenues	\$ 1,974	\$ 1,651	\$ 5,682	\$ 4,779
Selling, general and administrative	29,739	25,293	87,432	76,509
Research and development	7,889	5,974	22,083	17,391
Total stock-based compensation	<u>\$ 39,602</u>	<u>\$ 32,918</u>	<u>\$ 115,197</u>	<u>\$ 98,679</u>

Restricted Stock Units (“RSUs”)

The fair value of RSUs is based on our closing stock price on the date of grant. RSUs granted generally vest over a period of four years. A summary for the nine months ended September 30, 2023 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, 2022	489	\$ 427.24		
Granted	508	316.52		
Vested and released	(196)	378.93		
Forfeited	(37)	388.56		
Unvested as of September 30, 2023	764	\$ 367.93	1.6	\$ 233,165

As of September 30, 2023, we expect to recognize \$202.1 million of total unamortized compensation costs, net of estimated forfeitures, related to RSUs over a weighted average period of 2.8 years.

Market-Performance Based Restricted Stock Units (“MSUs”)

We grant MSUs to members of senior management. Each MSU represents the right to one share of our 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. MSUs vest over a period of three years and the maximum number eligible to vest in the future is 250% of the MSUs initially granted.

The following table summarizes the MSU performance activity for the nine months ended September 30, 2023:

	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, 2022	144	\$ 725.73		
Granted	82	629.53		
Vested and released ¹	(25)	392.67		
Forfeited	(43)	423.87		
Unvested as of September 30, 2023	158	\$ 811.06	1.7	\$ 48,135

¹ Includes MSUs vested during the period below 100% of the original grant as actual shares released is based on Align’s stock performance over the vesting period.

As of September 30, 2023, we expect to recognize \$56.8 million of total unamortized compensation costs, net of estimated forfeitures, related to MSUs over a weighted average period of 1.7 years.

Restricted Stock Units with Performance Conditions (“PSUs”)

During the nine months ended September 30, 2023, we did not grant any PSUs to any employees. As of September 30, 2023, we expect to recognize \$0.5 million of total unamortized compensation costs, net of estimated forfeitures, related to PSUs over a weighted average term of 1.3 years. Total PSUs granted were 4,728 and the weighted average grant date fair value for the PSUs was \$201.63.

Employee Stock Purchase Plan

As of September 30, 2023, we have 1,995,520 shares available for future issuance under our Amended and Restated 2010 Employee Stock Purchase Plan (the “2010 Purchase Plan”).

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:

	Nine Months Ended September 30,	
	2023	2022
Expected term (in years)	1.2	1.5
Expected volatility	56.2 %	50.2 %
Risk-free interest rate	4.9 %	1.8 %
Expected dividends	—	—
Weighted average fair value at grant date	\$ 133.53	\$ 159.44

As of September 30, 2023, we expect to recognize \$11.6 million of total unamortized compensation costs related to future employee stock purchases over a weighted average period of 0.7 years.

Note 9. Common Stock Repurchase Programs

In May 2021, our Board of Directors authorized a plan to repurchase up to \$1.0 billion of our common stock (“May 2021 Repurchase Program”), which was completed in March 2023. In January 2023, our Board of Directors authorized a new plan to repurchase up to \$1.0 billion of our common stock (“January 2023 Repurchase Program”), none of which had been utilized as of September 30, 2023. The January 2023 Repurchase Program does not have an expiration date.

Accelerated Share Repurchase Agreements (“ASRs”)

During the three months ended March 31, 2023, we entered into or completed ASRs providing for the repurchase of our common stock based on the volume-weighted average price during the term of the agreement, less an agreed upon discount. We did not enter into any ASRs during the three months ended September 30, 2023. The following table summarizes the information regarding repurchases of our common stock under the ASRs:

Agreement Date	Repurchase Program	Amount Paid (in millions)	Completion Date	Total Shares Received	Average Price per Share
Q4 2022	May 2021	N/A ¹	Q1 2023	136,448	\$ 293.15
Q1 2023	May 2021	\$ 250.0	Q1 2023	805,905	\$ 310.21

¹ During the fourth quarter of 2022, we entered into a \$200.0 million ASR which was not completed as of December 31, 2022. During the first quarter of 2023, we paid a final \$40.0 million related to the \$200.0 million ASR, closing this ASR with the final delivery of shares.

As of September 30, 2023, \$1.0 billion remains available for repurchases under the January 2023 Stock Repurchase Program.

Subsequent to the third quarter, on October 26, 2023, we entered into an ASR to repurchase \$250.0 million of our common stock. We made an initial payment of \$250.0 million and received an initial delivery of approximately one million shares. The exact number of shares to be repurchased will be based on our volume-weighted average stock price under the terms of the ASR, less an agreed upon discount.

Note 10. Accounting for Income Taxes

Our provision for income taxes was \$40.7 million and \$49.9 million for the three months ended September 30, 2023 and 2022, respectively, representing effective tax rates of 25.1% and 40.7%, respectively. Our provision for income taxes was \$147.3 million and \$163.9 million for the nine months ended September 30, 2023 and 2022, respectively, representing effective tax rates of 31.4% and 33.9%, respectively. Our effective tax rate differs from the statutory federal income tax rate of 21% for both the three and nine months ended September 30, 2023 and 2022 primarily due to the recognition of additional tax expense resulting from U.S. taxes on foreign earnings, foreign income taxed at different rates, application of newly issued tax guidance, state income taxes, and non-deductible expenses in the U.S.

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.

Our total gross unrecognized tax benefits, excluding interest and penalties, were \$150.0 million and \$141.6 million as of September 30, 2023 and December 31, 2022, respectively, a material amount of which would impact our effective tax rate if recognized. The increase in our unrecognized tax benefits relates primarily to positions taken on income tax return calculations finalized during the three and nine months ended September 30, 2023.

Note 11. Net Income per Share

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,	
	2023	2022	2023	2022
Numerator:				
Net income	\$ 121,427	\$ 72,700	\$ 321,039	\$ 319,798
Denominator:				
Weighted average common shares outstanding, basic	76,569	78,093	76,670	78,408
Dilutive effect of potential common stock	257	144	179	244
Total shares, diluted	76,826	78,237	76,849	78,652
Net income per share, basic	\$ 1.59	\$ 0.93	\$ 4.19	\$ 4.08
Net income per share, diluted	\$ 1.58	\$ 0.93	\$ 4.18	\$ 4.07
Anti-dilutive potential common shares ¹	245	345	263	317

¹ Represents RSU and MSU shares excluded from the calculation of diluted net income per share as the effect would have been anti-dilutive.

Note 12. Supplemental Cash Flow Information

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

	Nine Months Ended September 30,	
	2023	2022
Non-cash investing and financing activities:		
Acquisition of property, plant and equipment in accounts payable and accrued liabilities	\$ 25,979	\$ 41,255
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 25,559	\$ 23,310
Right-of-use assets obtained in exchange for lease obligations:		
Operating leases	\$ 25,048	\$ 26,532

Note 13. Segments and Geographical Information

Segment Information

We report segment information based on the management approach. The management approach designates the internal reporting used by our Chief Operating Decision Maker 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 and restructuring costs. We group our operations into two reportable segments (i) Clear Aligner segment and (ii) Imaging Systems and CAD/CAM services (“Systems and Services”) segment.

Summarized financial information by segment is as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net revenues				
Clear Aligner	\$ 794,939	\$ 732,837	\$ 2,417,417	\$ 2,340,931
Systems and Services	165,275	157,511	488,117	492,189
Total net revenues	\$ 960,214	\$ 890,348	\$ 2,905,534	\$ 2,833,120
Gross profit				
Clear Aligner	\$ 562,331	\$ 519,387	\$ 1,731,721	\$ 1,710,328
Systems and Services	100,745	99,782	305,618	305,746
Total gross profit	\$ 663,076	\$ 619,169	\$ 2,037,339	\$ 2,016,074
Income from operations				
Clear Aligner	\$ 296,319	\$ 259,434	\$ 879,933	\$ 879,362
Systems and Services	44,975	44,436	132,600	140,834
Unallocated corporate expenses	(174,948)	(160,214)	(540,740)	(490,262)
Total income from operations	\$ 166,346	\$ 143,656	\$ 471,793	\$ 529,934
Stock-based compensation				
Clear Aligner	\$ 5,772	\$ 4,377	\$ 14,917	\$ 10,232
Systems and Services	366	240	950	690
Unallocated corporate expenses	33,464	28,301	99,330	87,757
Total stock-based compensation	\$ 39,602	\$ 32,918	\$ 115,197	\$ 98,679
Depreciation and amortization				
Clear Aligner	\$ 17,737	\$ 14,678	\$ 50,725	\$ 42,474
Systems and Services	7,827	7,181	23,716	20,879
Unallocated corporate expenses	11,466	10,330	34,228	28,743
Total depreciation and amortization	\$ 37,030	\$ 32,189	\$ 108,669	\$ 92,096

The following table reconciles total segment income from operations in the table above to net income before provision for income taxes (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Total segment income from operations	\$ 341,294	\$ 303,870	\$ 1,012,533	\$ 1,020,196
Unallocated corporate expenses	(174,948)	(160,214)	(540,740)	(490,262)
Total income from operations	166,346	143,656	471,793	529,934
Interest income	5,522	1,685	12,280	2,607
Other income (expense), net	(9,757)	(22,700)	(15,749)	(48,805)
Net income before provision for income taxes	\$ 162,111	\$ 122,641	\$ 468,324	\$ 483,736

Geographical Information

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net revenues ¹ :				
U.S.	\$ 421,272	\$ 400,045	\$ 1,262,008	\$ 1,251,018
Switzerland	259,587	257,845	913,724	919,935
Other International	279,355	232,458	729,802	662,167
Total net revenues	<u>\$ 960,214</u>	<u>\$ 890,348</u>	<u>\$ 2,905,534</u>	<u>\$ 2,833,120</u>

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

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, 2023	December 31, 2022
Long-lived assets ¹ :		
Switzerland	\$ 567,230	\$ 532,921
U.S.	206,348	214,804
Other International ²	613,776	603,010
Total long-lived assets	<u>\$ 1,387,354</u>	<u>\$ 1,350,735</u>

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

² Certain prior period immaterial amounts have been reclassified to conform to current presentation.

Note 14. Restructuring and Other Charges

During the fourth quarter of 2022, we initiated a restructuring plan to increase efficiencies across the organization which was completed during the first half of 2023. During fiscal 2022, we incurred approximately \$10.2 million in restructuring expenses, of which \$3.9 million remained unpaid and was included in Accrued liabilities as of December 31, 2022. During the first quarter of 2023, we paid \$3.7 million, and recorded incremental restructuring expenses of approximately \$0.1 million. The remaining \$0.3 million balance as of March 31, 2023 was paid during the three months ended June 30, 2023. During the three months ended September 30, 2023 there was no additional restructuring activity.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

Forward-Looking Statements

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, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). These statements include, among other things, our expectations and intentions regarding our strategic objectives and the means to achieve them, our beliefs and expectations regarding macroeconomic conditions, including inflation, fluctuations in currency exchange rates, rising interest rates, market volatility, weakness in general economic conditions and recessions and the impact of efforts by central banks and federal, state and local governments to combat inflation and recession, our expectations and beliefs regarding customer and consumer purchasing behavior and changes in consumer spending habits, our expectations regarding product mix and product adoption, our expectations regarding competition and our ability to compete in our target markets, our expectations regarding the sales growth of our intraoral scanner sales, our marketing and efforts to build our brand awareness, our estimates regarding the size and opportunities of the markets we are targeting along with our expectations for growth in those markets, our beliefs regarding the impact of technological innovation in general, and in our solutions and products in particular, on target markets and patient care, our beliefs regarding digital dentistry and its potential to impact our business, our intentions regarding expanding our business, including its impact on our operational flexibility and responsiveness to customer demand, our beliefs regarding the importance of our manufacturing operations on our success, our beliefs regarding the need for and benefits of our technological development on Invisalign treatment, the areas of development in which we focus our efforts, and the advantages of our intellectual property portfolio, our beliefs regarding our business strategy and growth drivers, 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 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 and their growth, our expectations regarding staying in compliance with laws and regulations currently applicable to, or which may become applicable to, our business both in the United States and internationally, our expectations regarding the impact of the military conflicts in the Middle East and Ukraine and our operations and assets in Israel and Russia, our expectations regarding the near and long-term implications of the COVID-19 pandemic on the global and regional economies, our beliefs regarding our culture and commitment and its impact on our financial and operational performance and its importance to our future success, our expectations for future investments in and benefits from consumer demand sales and marketing activities, our preparedness and our customers’ preparedness to react to changing circumstances and demand, our expectations for our expenses and capital obligations and expenditures in particular, our intentions 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 and investment balances and borrowing capacity, our judgments regarding the estimates used in our revenue recognition and assessment of goodwill and intangible assets, our expectations regarding our tax positions and the judgements we make related to our tax obligations, our predicted level of 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 Part I, Item 2 “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and in particular, the risks discussed below in Part II, 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, 2022 as filed with the Securities and Exchange Commission (the “SEC”).

Executive Overview of Results

Trends and Uncertainties

Our strategic priorities remain focused on four principal pillars for growth: (i) international expansion; (ii) general practitioner dentists (“GPs”) adoption; (iii) patient demand and conversion; and (iv) orthodontic utilization. Our growth strategy depends on our ability to facilitate the digital transformation of dentistry happening around the world, our continuous focus on

innovation, and expansion to meet and exceed evolving customer expectations as the array of products and services available to them increases. Below is a discussion of the significant trends and uncertainties that could impact our operations:

Macroeconomic Challenges and Military Conflicts in Ukraine and the Middle East

Our revenues are susceptible to fluctuations in macroeconomic conditions, inflation, fluctuations in currency exchange rates, rising interest rates, actual and threatened wars and military actions, threats of or actual recessions, supply chain challenges, market volatility, and other factors, each of which impact customer confidence, consumer sentiment and demand. Many of these same factors also impact our costs and those of our suppliers through higher raw material prices, transportation costs, labor costs, supply and distribution operations. In 2023, we have experienced negative impacts on the demand for our products which we believe are primarily due to the macroeconomic conditions that ultimately adversely impact disposable income and consumer demand. In particular, dental practices and industry research firms reported deteriorating orthodontic trends for the third quarter of 2023, including decreased patient visits and increased patient appointment cancellations, along with fewer case starts overall, especially among adult patients. The impacts of these trends vary by time and region, making operational results uncertain and difficult to predict.

Additionally, many of our international operations are denominated in currencies other than the U.S. dollar which were impacted in 2022 by macroeconomic slowing or contraction causing weakening against the U.S. dollar, which negatively impacted our financial condition and results of operations. In the third quarter of 2023, the U.S. dollar has strengthened against a number of other currencies, negatively impacting our financial condition and results of operations as compared to the second quarter of 2022. The strengthening or weakening of the U.S. dollar remains uncertain and unpredictable.

Moreover, the military conflict between Russia and Ukraine increased the unpredictability of the volatile macroeconomic conditions in 2022 and has continued doing so in 2023. While we do not anticipate the military conflict between Russia and Ukraine to materially impact our 2023 financial condition and results of operations, we expect the conflict will continue to create market uncertainties and dampen consumer sentiment and demand, particularly in Europe.

Similarly, the recent conflict in the Middle East may further exacerbate general and regional macroeconomic instability, particularly if fighting is prolonged or spreads to other locations. Our iTero business is headquartered near Tel Aviv, Israel in Petach Tikv, which is close to areas affected by ongoing violence and military action. Additionally, we have employees and consultants in Israel that have been called for service in the current conflict in the Middle East and such persons may be absent for an unknown period of time. We continue to monitor the potential for violence and military actions that may directly or indirectly impact our personnel, manufacturing, supply chain, and sales in unpredictable ways.

Evolving Product Offerings

As the markets for clear aligners, intraoral scanners and digital processes and workflows used to transform the practice of dentistry continue to mature, we anticipate customer and patient expectations and demands will evolve. We further expect competition with other clear aligner suppliers that supplant traditional bracket and wires and with other intraoral scanner manufacturers to continue to increase. To succeed in these evolving markets, we believe we need to continue meeting customer demands with innovative treatment options that include more choices to address a wider scope of treatment goals and budgets based on our existing and new products. Our efforts to succeed with these innovative treatment options may result in larger and unpredictable variations in geographic and product mix, selling prices, and sales volumes, causing uncertainty, including variations in products sold, changes in the amount and timing of deferred revenues and other potential impacts on our financial statements and business operations.

COVID-19 Pandemic Update

Although there remains significant uncertainty surrounding the COVID-19 pandemic for regional economies, its global impact continues to decline. During 2022, we experienced the impacts of the COVID-19 pandemic primarily in the Asia Pacific region, particularly in China, where lockdowns decreased economic activity throughout most of the year. With the easing of the COVID-19 restrictions in China in late 2022 and 2023, rates of infection in China initially increased early in the first quarter of 2023 and has then decreased as 2023 has progressed. The impacts of the COVID-19 pandemic have decreased compared to 2022. Accordingly, comparing our financial results for the reporting periods of 2023 to the same reporting periods of 2022 or earlier may not be a useful means by which to evaluate our business and results of operations due to volatility in regional business environments caused by the pandemic.

We strive to manage the challenges from the macroeconomic conditions, the conflicts in Ukraine and the Middle East, the evolution of our product offerings and target markets and COVID-19 by focusing on improving our operations, building flexibility and efficiencies in our processes, adjusting our business models to changing circumstances and offering products that meet market demand. Specifically, we are managing cost impacts through pricing actions, cost saving measures that drive value

and maintaining control of our employee headcount. We also continue to innovate, introducing new and enhanced products that augment our doctor customer and patient experiences.

Further discussion of the impact of these challenges on our business may be found in Part II, Item 1A of this Quarterly Report on Form 10-Q under the heading “Risk Factors.”

Key Financial and Operating Metrics

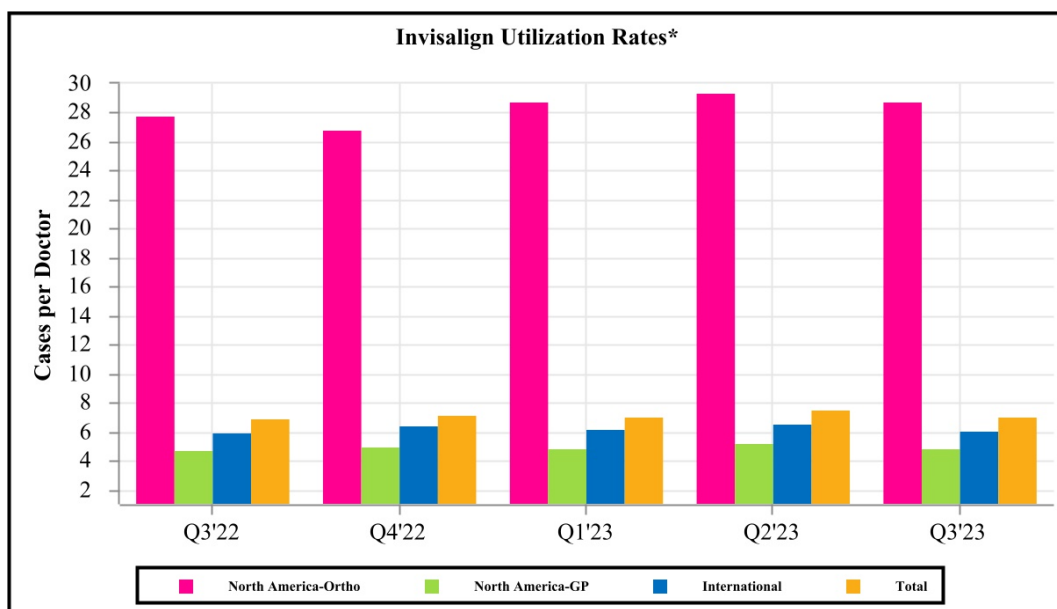
We measure our performance against these strategic priorities by the achievement of key financial and operating metrics.

For the three months ended September 30, 2023, our business operations reflect the following:

- Revenues of \$960.2 million, an increase of 7.8% year-over-year;
- Clear Aligner revenues of \$794.9 million, an increase of 8.5% year-over-year;
 - Americas Clear Aligner revenues of \$366.6 million, an increase of 3.0% year-over-year;
 - International Clear Aligner revenues of \$355.3 million, an increase of 13.6% year-over-year;
 - Clear Aligner case volume increase of 2.3% year-over-year and Clear Aligner case volume increase for teenage patients of 8.4% year-over-year;
- Imaging Systems and CAD/CAM Services revenues of \$165.3 million, an increase of 4.9% year-over-year;
- Income from operations of \$166.3 million and operating margin of 17.3%;
- Effective tax rate of 25.1%;
- Net income of \$121.4 million with diluted net income per share of \$1.58;
- Cash, cash equivalents and marketable securities of \$1,301.9 million as of September 30, 2023;
- Operating cash flow of \$287.2 million;
- Capital expenditures of \$21.6 million, predominantly related to increases in our manufacturing capacity and facilities; and
- Number of employees was 22,680 as of September 30, 2023, a decrease of 4.7% year-over-year.

Other Statistical Data and Trends

- As of September 30, 2023, approximately 16.4 million people worldwide have been treated with our Invisalign system. Management measures these results by comparing to the millions of people who can benefit from straighter teeth and uses this data to target opportunities to expand the market for orthodontics by educating consumers about the benefits of straighter teeth using the Invisalign system.
- For the third quarter of 2023, total Invisalign cases submitted with a digital scanner in the Americas increased to 94.6%, up from 92.3% in the third quarter of 2022 and international scans increased to 87.6%, up from 84.3% in the third quarter of 2022. For the third quarter of 2023, 97.9% of Invisalign cases submitted by North American orthodontists were submitted digitally.
- The total utilization rate in the third quarter of 2023 increased to 7.1 cases per doctor compared to 7.0 cases per doctor in the third quarter of 2022. Utilization rates in North America and our International locations were as follows:
 - *North America:* The utilization rate among our North American orthodontist customers increased to 28.8 cases per doctor in the third quarter of 2023 compared to 27.6 cases per doctor in the third quarter of 2022 and the utilization rate among our North American GP customers increased to 4.9 cases per doctor in the third quarter of 2023 compared to 4.8 cases per doctor in the third quarter of 2022.
 - *International:* International doctor utilization rate was 6.1 cases per doctor in the third quarter of 2023 compared to 6.0 cases per doctor in the third quarter of 2022.



* 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 International region based on its immateriality to the quarter; however is included in the Total utilization.

During the third quarter of 2023, we began including Touch Up case revenues in Americas and/or International net revenues that were previously included in Non-Case revenues and have recast business metrics for the periods presented above accordingly.

Results of Operations

Net Revenues by Reportable Segment

We group our operations into two reportable segments: Clear Aligner segment and 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 and Invisalign Go Plus.
 - We also offer in the U.S., Canada, and EMEA, a Doctor Subscription Program which is a monthly subscription program based on the doctor’s monthly need for retention or limited treatment. The program allows doctors the flexibility to order both “touch-up” or retention aligners within their subscribed tier and is designed for a segment of experienced Invisalign trained doctors who are currently not regularly using our retainers or low-stage aligners. The low-stage aligners, the Touch up product, are included as a Non-Comprehensive Product.
 - Non-Case products include, but are not limited to, retention products including retention aligners ordered through the Doctor Subscription Program, Invisalign training, adjusting tools used by dental professionals during the course of treatment and Invisalign Accessory Products that are complementary to our doctor-prescribed principal products such as aligner cases (clamshells), teeth whitening products, cleaning solutions (crystals, foam and other material) and other oral health products available in certain commerce channels in select markets.
 - Our Systems and Services segment consists of our iTero intraoral scanning systems, which includes a single hardware platform and restorative or orthodontic software options. Our services include subscription software, disposables, rentals, leases, pay per scan services, as well as exocad’s CAD/CAM software solutions that integrate 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, 2023 and 2022 are as follows (in millions):

Net Revenues	Three Months Ended September 30,			Nine Months Ended September 30,				
	2023	2022	Change	2023	2022	Change		
Clear Aligner net revenues:								
Americas	\$ 366.6	\$ 355.8	\$ 10.8	3.0 %	\$ 1,114.3	\$ 1,122.5	\$ (8.3)	(0.7)%
International	355.3	312.7	42.6	13.6 %	1,087.9	1,030.0	57.9	5.6 %
Non-case	73.0	64.3	8.7	13.5 %	215.3	188.4	26.8	14.2 %
Total Clear Aligner net revenues	\$ 794.9	\$ 732.8	\$ 62.1	8.5 %	\$ 2,417.4	\$ 2,340.9	\$ 76.5	3.3 %
Systems and Services net revenues	165.3	157.5	7.8	4.9 %	488.1	492.2	(4.1)	(0.8)%
Total net revenues	\$ 960.2	\$ 890.3	\$ 69.9	7.8 %	\$ 2,905.5	\$ 2,833.1	\$ 72.4	2.6 %

During the third quarter of 2023, we began including Touch Up case revenues in Americas and/or International net revenues that was previously included in Non-Case revenues and recast the nine months ended September 30, 2023 and the three months and nine months ended revenues September 30, 2022, respectively. Changes and percentages are based on actual values. Certain tables may not sum or recalculate due to rounding.

Case volume data which represents Clear Aligner case shipments for the three and nine months ended September 30, 2023 and 2022 is as follows (in thousands):

	Three Months Ended September 30,			Nine Months Ended September 30,				
	2023	2022	Change	2023	2022	Change		
Total case volume	602.3	588.6	13.8	2.3 %	1,815.9	1,802.2	13.7	0.8 %

During the third quarter of 2023, we began including Touch Up case volumes in Total case volumes and recast the nine months ended September 30, 2023 and the three months and nine months ended revenues September 30, 2022, respectively. 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, 2023, total net revenues increased by \$69.9 million as compared to the same period in 2022, primarily due to increases in Clear Aligner ASP's and scanner and Clear Aligner case volumes, partially offset by unfavorable scanner ASP's.

For the nine months ended September 30, 2023, total net revenues increased by \$72.4 million as compared to the same period in 2022, primarily due to an increase in Clear Aligner ASP's, non-case revenue, and Clear Aligner case volumes partially offset by a decrease in both scanner volumes and ASP's.

Clear Aligner - Americas

For the three months ended September 30, 2023, Americas net revenues increased by \$10.8 million as compared to the same period in 2022 mostly due to higher ASP which increased net revenues \$12.0 million. Higher ASP reflects price increases driving increased net revenues by \$16.4 million along with higher additional aligners which increased net revenues by \$10.9 million. The increases in ASP were partially offset by unfavorable promotional discounts reducing net revenues by \$8.6 million and a product mix shift to lower priced products which reduced net revenues by \$7.9 million.

For the nine months ended September 30, 2023, Americas net revenues decreased by \$8.3 million as compared to the same period in 2022 due to a 1.4% decrease in case volumes, resulting in a reduction of net revenues of \$15.4 million, partially offset by a \$7.1 million increase due to higher ASP. Higher ASP includes price increases which increased net revenues by \$54.8 million along with higher additional aligners which increased net revenues by \$22.9 million. The increases in ASP were partially offset by unfavorable promotional discounts reducing net revenues by \$37.6 million and a product mix shift to lower priced products reducing net revenues by \$30.1 million.

Clear Aligner - International

For the three months ended September 30, 2023, International net revenues increased by \$42.6 million as compared to the same period in 2022, due to a 5.5% increase in case volumes which resulted in an increased net revenues of \$17.3 million, in addition to a \$25.3 million increase due to higher ASP. Higher ASP reflects higher additional aligners increasing net revenues by \$25.3 million and price changes on most products increased net revenues by \$23.1 million. The increases in ASP were

partially offset by a product mix shift to lower priced products reducing net revenues by \$19.8 million, and unfavorable promotional discounts which reduced net revenues by \$7.3 million.

For the nine months ended September 30, 2023, International net revenues increased by \$57.9 million as compared to the same period in 2022, due to a 3.3% increase in case volumes, resulting in an increase of net revenues by \$34.4 million, and higher ASP increasing net revenues by \$23.5 million. Higher ASP was largely due to higher additional aligners increasing net revenues by \$83.1 million, price increases on most products which increased net revenues by \$80.1 million, and processing fees which increased net revenues by \$8.5 million. The increases in ASP were partially offset by a product mix shift to lower priced products reducing net revenues by \$84.3 million, unfavorable foreign exchange rates which decreased net revenues by \$36.0 million, and unfavorable promotional discounts which reduced net revenues by \$25.1 million.

Clear Aligner - Non-Case

For the three and nine months ended September 30, 2023, non-case net revenues increased by \$8.7 million and \$26.8 million, respectively, as compared to the same periods in 2022 mainly due to increased volume of Viverra retainers across all regions.

Systems and Services

For the three months ended September 30, 2023, Systems and Services net revenue increased by \$7.8 million as compared to the same period in 2022 mostly due to higher services revenues of \$7.3 million. A higher number of scanners sold increased net revenues by \$17.1 million which was offset by lower scanner ASP which reduced net revenues by \$18.9 million. The increased scanner volumes reflect a larger number of trade-ins/upgrades from a DSO customer with a lower ASP.

For the nine months ended September 30, 2023, Systems and Services net revenues decreased by \$4.1 million as compared to the same period in 2022 primarily due to a lower number of scanners sold which lowered net revenues by \$25.1 million and lower scanner ASP which reduced net revenues by \$18.4 million. The decrease in scanner net revenues was mostly offset by higher service revenues of \$23.8 million and other revenues which increased \$15.7 million primarily due to revenue from sales of certified pre-owned scanners, CAD/CAM software, and scanner rentals.

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

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	Change	2023	2022	Change
Clear Aligner						
Cost of net revenues	\$ 232.6	\$ 213.5	\$ 19.2	\$ 685.7	\$ 630.6	\$ 55.1
% of net segment revenues	29.3 %	29.1 %		28.4 %	26.9 %	
Gross profit	\$ 562.3	\$ 519.4	\$ 42.9	\$ 1,731.7	\$ 1,710.3	\$ 21.4
Gross margin %	70.7 %	70.9 %		71.6 %	73.1 %	
Systems and Services						
Cost of net revenues	\$ 64.5	\$ 57.7	\$ 6.8	\$ 182.5	\$ 186.4	\$ (3.9)
% of net segment revenues	39.0 %	36.7 %		37.4 %	37.9 %	
Gross profit	\$ 100.7	\$ 99.8	\$ 1.0	\$ 305.6	\$ 305.7	\$ (0.1)
Gross margin %	61.0 %	63.3 %		62.6 %	62.1 %	
Total cost of net revenues	\$ 297.1	\$ 271.2	\$ 26.0	\$ 868.2	\$ 817.0	\$ 51.1
% of net revenues	30.9 %	30.5 %		29.9 %	28.8 %	
Gross profit	\$ 663.1	\$ 619.2	\$ 43.9	\$ 2,037.3	\$ 2,016.1	\$ 21.3
Gross margin %	69.1 %	69.5 %		70.1 %	71.2 %	

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

Cost of net revenues includes personnel-related costs including payroll and stock-based compensation for staff involved in the production process, the cost of materials, packaging, freight and shipping related 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 and nine months ended September 30, 2023, our gross margin percentage decreased as compared to the same periods in 2022 primarily due to increased manufacturing spend offset by higher ASP's.

Systems and Services

For the three months ended September 30, 2023, our gross margin percentage decreased as compared to the same periods in 2022 primarily due to lower ASP offset by lower service and freight costs and manufacturing efficiencies.

For the nine months ended September 30, 2023, our gross margin percentage increased as compared to the same periods in 2022 primarily due to lower purchase price variance, service and freight costs, higher service revenue mix and partially offset by lower ASP.

Selling, general and administrative (in millions):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	Change	2023	2022	Change
Selling, general and administrative	\$ 408.0	\$ 398.5	\$ 9.4	\$ 1,300.9	\$ 1,264.4	\$ 36.5
% of net revenues	42.5 %	44.8 %		44.8 %	44.6 %	

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

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

For the three and nine months ended September 30, 2023, selling, general and administrative expense increased compared to the same periods in 2022 primarily due to higher salaries expense, fringe benefits and stock-based and incentive compensation, offset by lower advertising and marketing costs.

Research and development (in millions):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	Change	2023	2022	Change
Research and development	\$ 88.7	\$ 77.0	\$ 11.8	\$ 264.7	\$ 221.7	\$ 42.9
% of net revenues	9.2 %	8.6 %		9.1 %	7.8 %	

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

Research and development expense generally includes personnel-related costs, including payroll and stock-based compensation, outside service costs associated with the research and development of new products and enhancements to existing products, software, equipment, material and maintenance costs, depreciation and amortization expense and allocations of corporate overhead expenses including facilities and IT.

For the three and nine months ended September 30, 2023, research and development expense increased compared to the same periods in 2022 primarily due to higher salaries expense, fringe benefits and stock-based and incentive compensation as we continue to focus on our investments in innovation and research.

Income from operations (in millions):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	Change	2023	2022	Change
Clear Aligner						
Income from operations	\$ 296.3	\$ 259.4	\$ 36.9	\$ 879.9	\$ 879.4	\$ 0.6
Operating margin %	37.3 %	35.4 %		36.4 %	37.6 %	
Systems and Services						
Income from operations	\$ 45.0	\$ 44.4	\$ 0.5	\$ 132.6	\$ 140.8	\$ (8.2)
Operating margin %	27.2 %	28.2 %		27.2 %	28.6 %	
Total income from operations ¹	\$ 166.3	\$ 143.7	\$ 22.7	\$ 471.8	\$ 529.9	\$ (58.1)
Operating margin %	17.3 %	16.1 %		16.2 %	18.7 %	

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

¹ Refer to Note 13 “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, 2023, our operating margin percentage increased compared to the same period in 2022 primarily due to improved operating leverage.

For the nine months ended September 30, 2023, our operating margin percentage decreased compared to the same period in 2022 primarily due to higher operating expenses and lower gross margin.

Systems and Services

For the three months ended September 30, 2023, our operating margin percentage decreased compared to the same period in 2022 primarily due to lower gross margin.

For the nine months ended September 30, 2023, our operating margin percentage decreased compared to the same period in 2022 primarily due to higher operating expenses partially offset by slightly higher gross margin.

Interest income (in millions):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	Change	2023	2022	Change
Interest income	\$ 5.5	\$ 1.7	\$ 3.8	\$ 12.3	\$ 2.6	\$ 9.7
% of net revenues	0.6 %	0.2 %		0.4 %	0.1 %	

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

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

For the three and nine months ended September 30, 2023, interest income increased compared to the same periods in 2022 primarily due to higher interest rates during the first three quarters of 2023.

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

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	Change	2023	2022	Change
Other income (expense), net	\$ (9.8)	\$ (22.7)	\$ 12.9	\$ (15.7)	\$ (48.8)	\$ 33.1
% of net revenues	(1.0)%	(2.5)%		(0.5)%	(1.7)%	

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

Other income (expense), net, generally 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 and nine months ended September 30, 2023, other income (expense), net increased compared to the same periods in 2022 primarily due to the favorable impact of foreign exchange rates.

Provision for income taxes (in millions):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	Change	2023	2022	Change
Provision for income taxes	\$ 40.7	\$ 49.9	\$ (9.3)	\$ 147.3	\$ 163.9	\$ (16.7)
Effective tax rates	25.1 %	40.7 %		31.4 %	33.9 %	

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

Our effective tax rate differs from the statutory federal income tax rate of 21% for both the three and nine month periods ended September 30, 2023 and 2022 primarily due to the recognition of additional tax expense resulting from U.S. taxes on foreign earnings, foreign income taxed at different rates, state income taxes, and non-deductible expenses in the U.S.

The decrease in our effective tax rate for the three months ended September 30, 2023 compared to the same period in 2022 is primarily attributable to the application of newly issued tax guidance, change in our jurisdictional mix of income, partially offset by higher U.S. taxes on foreign earnings and the remeasurement of Switzerland deferred tax asset due to Swiss tax rate change.

The decrease in our effective tax rate for the nine months ended September 30, 2023 compared to the same period in 2022 is primarily attributable to the application of newly issued tax guidance, change in our jurisdictional mix of income, partially offset by higher U.S. taxes on foreign earnings.

On July 21, 2023, the IRS issued Notice 2023-55 which specifically delayed the application of certain U.S. foreign tax credit regulations that had previously limited the Company's ability to claim credits on certain foreign taxes for the fiscal year ended December 31, 2022. As a result of this new guidance, the Company recognized a one-time tax benefit related to prior year tax positions in the three and nine months ended September 30, 2023.

Liquidity and Capital Resources
Liquidity and Trends

As of September 30, 2023 and December 31, 2022, we had the following cash and cash equivalents and short-term and long-term marketable securities (in thousands):

	September 30, 2023	December 31, 2022
Cash and cash equivalents	\$ 1,239,013	\$ 942,050
Marketable securities, short-term	44,792	57,534
Marketable securities, long-term	18,137	41,978
Total	\$ 1,301,942	\$ 1,041,562

As of September 30, 2023 and December 31, 2022, approximately \$920.6 million and \$653.7 million, respectively, of cash, cash equivalents and marketable securities were held by our foreign subsidiaries. We intend to continue reinvesting our foreign subsidiary earnings; however, we may repatriate cash from time to time and expect the repatriation costs not to be significant. We generate sufficient domestic operating cash flow and have access to external funding under our \$300.0 million revolving line of credit. 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.

The sanctions against Russian banks or international bank messaging systems due to the military conflict between Ukraine and Russia could impact our ability to access our cash in Russia but would not materially impact our liquidity position. As of September 30, 2023, cash and cash equivalents domiciled in Russia, which is required to fund their current operating requirements, represent approximately 0.9% of our total cash, cash equivalents and marketable securities.

Our material cash requirements are as follows:

- For 2023, we expect our investments in capital expenditures to exceed \$200.0 million. Capital expenditures primarily relate to building purchases, construction and improvements as well as additional manufacturing capacity to support our international expansion. This includes our investment in an aligner fabrication facility in Wroclaw, Poland which began serving doctors during the second quarter of 2022 as a part of our strategy to bring operational facilities closer to customers. As we continue growing, we intend to expand our investments in research and development, manufacturing, treatment planning, sales and marketing operations to meet actual and anticipated local and regional demands.
- During the nine months ended September 30, 2023, we entered into or completed ASR's providing for the repurchase of our common stock based on the volume-weighted average price during the term of the agreement, less an agreed upon discount. The May 2021 Repurchase Program was completed as of March 31, 2023. In January 2023, our Board of Directors authorized a plan to repurchase up to \$1.0 billion of our common stock ("January 2023 Repurchase Program"), none of which had been utilized as of September 30, 2023. Refer to *Note 9 "Common Stock Repurchase Program" of the Notes to Condensed Consolidated Financial Statements* for details on our stock repurchase programs. Subsequent to the third quarter, on October 26, 2023 we entered into an accelerated stock repurchase agreement to repurchase \$250.0 million of our common stock under the January 2023 Repurchase Program.
- There have been no material changes to our purchase commitments for goods and services and future operating lease payments during the periods covered by this 10-Q outside the normal course of business compared to the disclosures in Part II, Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2022.
- On September 6, 2023, we entered into a definitive agreement to acquire privately held Cubicure GmbH. The purchase price for the transaction will be approximately €79 million subject to customary closing adjustments and adjustments for Align's existing ownership of capital stock of Cubicure. The acquisition is expected to close in the fourth quarter of 2023 or early 2024.

Sources and Uses of Cash

The following table summarizes our condensed consolidated cash flows for the nine months ended September 30, 2023 and 2022 (in thousands):

	Nine Months Ended September 30,	
	2023	2022
Net cash flow provided by (used in):		
Operating activities	\$ 738,878	\$ 424,025
Investing activities	(182,619)	(157,506)
Financing activities	(248,059)	(301,498)
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	(11,205)	(20,422)
Net increase (decrease) in cash, cash equivalents, and restricted cash	<u>\$ 296,995</u>	<u>\$ (55,401)</u>

Operating Activities

For the nine months ended September 30, 2023, cash flows from operations of \$738.9 million resulted primarily from our net income of approximately \$321.0 million as well as the following:

Significant adjustments to net income

- Stock-based compensation of \$115.2 million related to equity awards granted to employees and directors;
- Depreciation and amortization of \$108.7 million related to our investments in property, plant and equipment and intangible assets;
- Other non-cash operating of \$28.4 million majority related to amortization of deferred commissions;
- Non-cash operating lease costs of \$24.0 million related to lease amortization; and
- Deferred taxes of \$(22.7) million related to increase in long term deferred tax position.

Significant changes in working capital

- Increase of \$156.0 million in accrued and other long-term liabilities primarily due to higher incentive accruals for 2023, as well as timing of payment of other activities;
- Decrease of \$80.3 million in accounts receivable due to timing of collections and partially offset by increased revenues;
- Increase of \$82.9 million in deferred revenues due to the deferral of revenue on shipments; and
- Increase of \$31.6 million in inventories primarily due to our purchase of long lead components to meet expected demand.

Investing Activities

Net cash used in investing activities was \$182.6 million for the nine months ended September 30, 2023 and primarily consisted of purchases of property, plant and equipment of \$144.3 million which included a building acquisition for \$24.5 million, an equity method investments of \$77.0 million and purchases of marketable securities of \$2.4 million, partially offset by sales and maturities of our marketable securities of \$40.9 million.

Financing Activities

Net cash used in financing activities was \$248.1 million for the nine months ended September 30, 2023 and consisted of common stock repurchases net of \$252.4 million and payroll taxes paid for equity awards through share withholdings of \$22.3 million which were partially offset by \$26.6 million of proceeds from the issuance of common stock under our employee stock purchase plan.

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 United States of America. The preparation of 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, goodwill and finite-lived acquired intangible assets, income taxes, legal proceedings and litigations. We use authoritative pronouncements, historical experience and other assumptions as the basis for making the estimates. Actual results could differ from those estimates.

Revenue Recognition

Our revenues are derived primarily from the sale of aligners, scanners, and services from our Clear Aligner and Systems and Services segments. We enter into sales contracts that may consist of multiple distinct performance obligations where certain performance obligations of the sales contract are not delivered in one reporting period. We measure and allocate revenues according to ASC 606-10, "Revenues from Contracts with Customers."

Determining the standalone selling price ("SSP") in order to allocate consideration from the contract to the individual performance obligations is the result of various factors, such as changing trends and market conditions, historical prices, costs, and gross margins. While changes in the allocation of the SSP between performance obligations will not affect the amount of total revenues recognized for a particular contract, any material changes could impact the timing of revenue recognition, which

would have a material effect on our financial position and result of operations. This is because the contract consideration is allocated to each performance obligation, delivered or undelivered, at the inception of the contract based on the SSP of each distinct performance obligation.

We allocate revenues for each clear aligner treatment plan based on each unit's SSP. Management considers a variety of factors such as same or similar product historical sales, costs, and gross margin, which may vary over time depending upon the unique facts and circumstances related to each performance obligation in making these estimates. In addition to historical data, we take into consideration changing trends and market conditions. For treatment plans with multiple options, we also consider usage rates, which is the number of times a customer is expected to order more aligners after the initial shipment. Our process for estimating usage rates requires significant judgment and evaluation of inputs, including historical usage data by region, country and channel.

We estimate the SSP of each element in a scanner system and services sale taking into consideration same or similar product historical prices as well as our discounting strategies.

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 interest rate, foreign currency exchange and inflation 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 macroeconomic challenges, the military conflict between Russia and Ukraine and the COVID-19 pandemic. Further discussion on these risks may be found in *Item 1A* of this Quarterly Report on Form 10-Q under the heading "Risk Factors."

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. Fair market value of fixed-rate securities may be adversely impacted due to a rise in interest rates. 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, 2023, we had approximately \$62.9 million invested 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. As of September 30, 2023, we are not subject to risks from immediate interest rate increases on our unsecured revolving line of credit facility.

Currency Rate Risk

As a result of our international business activities, our financial results have been affected by factors such as changes in foreign currency exchange rates as well as 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 enter into foreign currency forward contracts for currencies where we have exposures, primarily the Euro, Japanese Yen, Chinese Yuan, Polish Zloty, Brazilian Real and Canadian Dollar, 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 generally one month in original maturity and are marked to market through earnings every period. 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.

Military Conflicts in Ukraine and Middle East

After beginning in 2022, the military conflict between Russia and Ukraine has continued to escalate and create challenges to already uncertain macroeconomic conditions. As of September 30, 2023, we do not expect these events to have any material impact on our operations. Our Russia net revenues as a percentage of our consolidated net revenues and our assets domiciled in Russia, including cash and cash equivalents, as a percentage of our total assets, are immaterial.

Similarly, the recent conflict in the Middle East may further exacerbate general and regional macroeconomic instability, particularly if fighting is prolonged or spreads to other locations. Our iTero business is headquartered in Petach Tikva, Israel and we have employees and consultants in Israel that have been called for service in the current conflict in the Middle East and such persons may be absent for an extended period of time. We continue to monitor the potential for violence and military actions that may directly or indirectly impact our personnel, manufacturing, supply chain, and sales in unpredictable ways.

Inflation Risk

The economy has been impacted by certain macroeconomic challenges which have contributed to a rising inflationary trend that have impacted both our revenues and costs globally, and which we expect will continue into the foreseeable future. If our costs become subject to significant inflationary pressures, we may not be able to fully offset such higher costs through price increases. There can be no assurance that our results of operations and financial condition will not be materially impacted by inflation in the future.

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, 2023, 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 SEC 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, 2023 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 6 “*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 discusses some of the risks that may affect our business, results of operations, financial condition and the price of our stock. You should carefully review this section, as well as our condensed 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 order we have chosen to list the risks below or the sections in which we have identified them should not be interpreted to mean we deem any risks to be more or less important or likely to occur 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.

Summary of Risk Factors

Our business is subject to a number of risks, including risks that may prevent us from achieving our business objectives or may adversely affect our business, financial condition, results of operations, cash flows, and prospects. These risks are discussed more fully below and include, but are not limited to:

Macroeconomic and External Risks

- Global and regional economic conditions
- Major health crises
- Political events, international disputes, war and terrorism
- Natural disasters

Business and Industry Risks

- Changes in demand for our products
- Increased competition
- Failure of our new products, or changes to our existing products, to attract or retain consumers or generate revenue
- Successful integration of our acquisitions

Operational Risks

- Business disruptions
- Predicting demand
- Availability of supplies
- Shipping delays
- Personnel development and retention
- Effectiveness of marketing and our ability to attract consumers

Legal, Regulatory and Compliance Risks

- Government investigations, enforcement actions, and settlements
- Compliance with laws and regulatory and legislative mandates or guidance
- Privacy, cybersecurity and data protection
- Litigation, including class action lawsuits

Intellectual Property Risks

- Obtain, maintain, protect, and enforcement of our intellectual property rights

Financial, Tax and Accounting Risks

- Impairment of our goodwill, intangible or long-lived assets
- Compliance with accounting, financial reporting, and tax laws
- Management of our stock plans
- Volatility of our stock

Macroeconomic and External Risks

Our operations and financial performance depend on global and regional economic conditions. Inflation, fluctuations in currency exchange rates, changes in consumer confidence and demand, and general economic weakness and threats, or actual recessions, have and could in the future materially affect our business, results of operations, and financial condition.

Macroeconomic conditions impact consumer confidence and discretionary spending, which can adversely affect demand for our products. Consumer spending habits are affected by, among other things, inflation, fluctuations in currency exchange rates, general economic weakness, threats or actual recessions, pandemics, wars and military actions, employment levels, wages, debt obligations, discretionary income, interest rates, volatility in capital, and consumer confidence and perceptions of current and future economic conditions. Changes and uncertainty can, among other things, reduce or shift spending away from elective procedures, drive patients to pursue less costly orthodontic treatments, decrease the number of orthodontic case starts, reduce patient traffic in dentists' offices or reduce demand for dental services generally. Further, decreased demand for dental services can cause dentists and labs to postpone investments in capital equipment, such as intraoral scanners and CAD/CAM

equipment and software. The recent declines in, or uncertain economic outlooks for, the U.S., Chinese, European and certain other international economies have and may continue to adversely affect consumer and dental practice spending. Increases in the cost of fuel and energy, food and other essential items along with higher interest rates have reduced consumers' disposable income, decreasing discretionary spending for products like ours. Further, we cannot predict the impact of efforts by central banks and federal, state and local governments to combat higher inflation. If their efforts are too aggressive, they may lead to a recession. Alternatively, if they are insufficient or not sustained long enough to lower inflation acceptably, consumer spending may be adversely impacted for a prolonged period of time.

Inflation continues to adversely impact spending and trade activities, causing unpredictable impacts on global and regional economies. Higher inflation has also increased domestic and international shipping costs, raw material prices, and labor rates, which has adversely impacted the costs of producing, procuring and shipping our products. Our ability to recover these cost increases through price increases may continue to lag, resulting in downward pressure on our operating results. Attempts to offset cost increases with price increases may reduce sales, increase customer dissatisfaction or otherwise harm our reputation. Any of these events could materially affect our business and operating results.

We have international operations and sales. We earn a large portion of our total revenues from international sales generated through our foreign direct and indirect operations and we expect to increase our sales and presence outside the U.S., particularly in markets we believe have high-growth potential. Moreover, most of our key production steps occur in locations outside of the U.S. For instance, we perform our digital treatment planning and aligner fabrication in multiple international locations, including large-scale operations in Mexico, Costa Rica, Poland, Japan and China. Additionally, we maintain significant global sales and marketing operations in Switzerland, Singapore and China, along with research and development operations globally, including in the U.S., Spain, Israel, Armenia and Germany. Our reliance on international operations and sales exposes us to fluctuations in foreign currencies that may adversely impact our business or results of operations. Although the U.S. dollar is our reporting currency, a large portion of our net revenues and net income are generated in foreign currencies. While we utilize forward contracts to reduce the adverse earnings impact from the effect of exchange rate fluctuations on certain assets and liabilities, our hedging strategies may not be successful, and currency exchange rate fluctuations have and may continue to materially adversely effect our operating results and cash flows. In addition, our foreign currency exposure on assets, liabilities and cash flows that we do not hedge have and could continue to have a material impact on our financial results in periods when the U.S. dollar significantly fluctuates in relation to foreign currencies.

Our business could be impacted by political events, trade and other international disputes, war, and terrorism, including the military conflicts between Russia and Ukraine and in the Middle East.

Political events, trade and other international disputes, war, and terrorism could harm or disrupt international commerce and the global economy and could materially effect our business as well as our customers, suppliers, contract manufacturers, distributors, and other business partners. Such risks include inflation, supply chain and trade disruptions, trade sanctions, reduced consumer spending, disruptions to our IT systems, including through network failures, malicious or disruptive software, or cyberattacks, energy shortages or rationing that adversely impacts our manufacturing facilities, rising fuel or rising costs of producing, procuring and shipping our products, fluctuations to foreign currency exchange rates, and constraints, volatility or disruption in the financial markets.

Political events, trade and other international disputes, wars, and terrorism can lead to unexpected tariffs or trade restrictions, that adversely impact our business. Tariffs, such as those on Chinese goods, and responses to the tariffs may increase the cost of our products and the components and raw materials used to make them. Increased costs could adversely impact our gross margin and reduce demand for our products. Countries may also adopt other measures, such as controls on the import or export of goods, technology or data, that adversely impact our operations and supply chains, limit our ability to offer products and services or inhibit our ability to comply due to contradictions with other laws. These measures could require us to take various actions, including changing suppliers or restructuring business relationships. Complying with new or changed trade restrictions is expensive, time-consuming and disruptive to our operations. Such restrictions can be announced with little or no advance notice and we may be unable to effectively mitigate any adverse impacts. If disputes and conflicts escalate in the future, the responses by governments may be significantly more restrictive and could materially affect our business.

Political unrest, threats, tensions, actions and responses to any social, economic, business, geopolitical, military, terrorism, or acts of war involving key commercial, development or manufacturing markets such as China, Mexico, Israel, Europe, or other countries could materially impact our international operations. The impact to us, our employees and customers would be uncertain, particularly if emergency circumstances, armed conflicts or an escalation in political instability or violence disrupts our product development, data or information exchange, payroll or banking operations, product or materials shipping by us or our suppliers and other unanticipated business disruptions, interruptions and limitations in telecommunication services or critical systems or applications reliant on a stable and uninterrupted communications infrastructure.

Military conflicts have materially adversely impacted global economies. Our commercial operations in Russia have been impacted by the conflict in Ukraine and if we fail to support existing customers, we may harm our reputation, and be subject to legal and regulatory actions in Russia. Additionally, the majority of our research and development personnel formerly headquartered in Russia have relocated. Whether those still in Russia or those relocated remain with us over the long-term is unknown. Additionally, our iTero operations are headquartered near Tel Aviv, Israel in Petach Tikv, which is close to areas affected by ongoing violence and military action. If the latest conflict in the region continues, it may impact our employees and their families. For instance, we have employees and consultants in Israel that have been called for service in the current conflict in the Middle East and such persons may be absent for an unknown period of time. Furthermore, our facility may be damaged or supply chains impaired as a result of hostilities which could disrupt ongoing operations and impact our financial results. We cannot predict the progress or outcome of these conflicts or the reactions by governments, businesses or consumers but they could materially adversely effect our business and operating results.

Our business could be impacted by major public health issues, including pandemics, and our business has been materially affected by the global and regional spread of COVID-19.

Major public health issues, including pandemics such as COVID-19, have adversely affected, and could in the future materially affect, our business due to their impact on the global and regional economies, demand for consumer products, and the imposition or removal of public safety measures. Public health concerns may also limit the movement of goods between regions, disrupt or delay supply chains and sales and distribution channels, resulting in interruptions to the supply of products. Insurance coverage, if available, may be insufficient to cover all losses that arise.

COVID-19 created significant, widespread and unprecedented volatility, uncertainty, and economic instability, disrupting broad aspects of global and regional economies, our operations and the businesses of our customers and suppliers. Therefore, comparing our financial results for the reporting periods of 2023 to the same reporting periods of 2022 or earlier may not be a useful means by which to evaluate the health of our business and our results of operations. We cannot predict future direct and ancillary impacts on our business or results of operations from the COVID-19 pandemic, although they may be material to our business as well as the businesses of our customers, suppliers and economic activity generally.

Our operations may be impacted by natural disasters, which may become more frequent or severe as a result of climate change, and may adversely impact our business and operating results as well as those of our customers and suppliers.

Natural disasters can impact our operations as well as those of our customers and critical suppliers. Natural disasters include earthquakes, tsunamis, floods, droughts, hurricanes, wildfires, and extreme weather conditions that cause deaths, injuries, and critical health crises, power outages, restrictions and shortages of food, water, shelter, and medical supplies, telecommunications failures, materials scarcity, price volatility and other ramifications. Climate change is likely to increase the frequency and severity of natural disasters and, consequently, risks to our operations and financial results. Our digital dental modeling and certain of our customer facing operations are primarily processed in our facilities located in Costa Rica, our iTero scanners are primarily manufactured in China and Israel, and our aligner molds and finished aligners are fabricated in China, Mexico and Poland. These locations are in zones susceptible to natural disasters and their indirect effects. If a natural disaster occurs in a region where one of these facilities is located, our employees could be impacted, our research lost, and our ability to create treatment plans, respond to customer inquiries or manufacture and ship our aligners or intraoral scanners could be compromised, causing our customers to experience significant product and services delays.

The effects of climate change on regional and global economies could change the supply, demand or availability of sources of energy or other resources material to our products and operations and affect the availability or cost of natural resources and goods and services on which we and our suppliers rely.

Business and Industry Risks

Demand for our products may not increase or may decrease due to resistance to non-traditional treatment methods, which could have a material impact on our business and operating results.

Our products require our customers to change from traditional treatment methods. For example, Invisalign treatment is a significant change from traditional orthodontic metal wires and brackets, and customers and consumers may not find it cost-effective or preferable. A number of dental professionals continue to believe Invisalign treatment is only appropriate for a limited percentage of patients. Additionally, our clear aligners and iTero products provide a digital alternative and some dental professionals have been and may continue to be resistant to move to a digital platform. Increased market acceptance of our products depends in part on the recommendations of dental professionals, as well as other factors including efficacy, safety, ease of use, reliability, aesthetics, and price compared to competing products and treatment methods. If demand for our products fails to increase, our business, including our financial and operating results, may be harmed.

Our net revenues depend primarily on our Invisalign system and iTero scanners and any decline in sales or average selling price of these products may adversely affect net revenues, gross margin and net income.

Our net revenues remain largely dependent on 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 will continue to account for the majority of our net revenues, making the continued and widespread acceptance of the Invisalign system by orthodontists, GPs and consumers critical to our success. Our operating results could be harmed if:

- orthodontists and GPs experience a reduction in consumer demand for orthodontic services;
- orthodontists, GPs or consumers are unwilling to adopt Invisalign system treatment as rapidly or in the volumes we anticipate and at the prices offered;
- orthodontists or GPs choose to continue using wires and brackets or competitive products rather than the Invisalign system or the rates at which they utilize the Invisalign system fail to increase;
- sales of our iTero scanners decline or fail to grow sufficiently or as anticipated;
- the growth of CAD/CAM solutions does not produce the results anticipated; or
- the average selling price of our products declines.

The average selling prices of our products, particularly our Invisalign system, are influenced by numerous factors, including the type and timing of products sold (particularly the timing of orders for additional clear aligners for certain Invisalign products) and foreign currency exchange rates. In addition, we sell a number of products at different list prices which may differ based on country. Our average selling prices for our Invisalign system and iTero scanners have been impacted in the past and may be adversely affected again in the future if:

- we introduce new or change existing promotions, general or volume-based discount programs, product or services bundles or consumer rebate programs;
- participation in any promotions or programs unexpectedly increases, decreases or drives demand in unexpected and material ways;
- our geographic, channel or product mix shifts to lower priced products or to products with a higher percentage of deferred revenue;
- we decrease prices on one or more products or services in response to increasing competitive pricing pressures;
- we introduce new or change existing products or services, or modify how we market or sell any of our new or existing products or services;
- governments impose pricing regulations such as volume-based procurement regulations in China; or
- estimates used in the calculation of deferred revenue differ from actual average selling prices.

If our average selling prices decline, our net revenues, gross margin and net income may be adversely affected.

Competition in the markets for our products is increasing and we expect aggressive competition from existing competitors, other companies that introduce new technologies or products in the future and customers who alone or with others create orthodontic appliances and solutions or other products or services that compete with us.

The dental industry is experiencing immense and rapid digital transformation, which is impacting products, technologies, distribution channels and business models. While solutions such as our Invisalign system, iTero scanners and CAD/CAM software facilitate this transition, whether our technologies will achieve market acceptance and, if adopted, when they may become obsolete, remains unclear. In addition, we face competition from companies that introduce new technologies and products. We may be unable to compete with these competitors or they may render our technology or products obsolete or economically unattractive. If we cannot compete effectively with existing products or respond effectively to any new technologies, our business could be harmed.

Currently, the Invisalign system competes primarily with traditional metal wires and brackets and increasingly against clear aligners which are manufactured and distributed by new and existing market entrants, including traditional medical device companies, laboratories, startups and, in some cases, doctors and Dental Support Organizations (“DSOs”) themselves. The number and types of competitors are diverse and growing rapidly. They vary by segment, geography, and size, and include new and well-established regional competitors in dental markets, as well as larger companies or divisions of larger companies with substantial sales, marketing, research and financial capabilities. Our competitors also include direct-to-consumer (“DTC”) companies that provide clear aligners using a remote business model requiring little or no in-office care from trained and licensed doctors, and doctors and DSOs who manufacture custom aligners in their offices using 3D printing technology. Large consumer product companies may also start supplying orthodontic products.

The manipulation and movement of teeth and bone is a complex and delicate process with potentially painful and debilitating results if improperly performed or monitored. Accordingly, we deliver our Invisalign system primarily through trained and skilled doctors and are reliant on their recommendations and support. The Invisalign system requires a doctor's prescription and an in-person patient dental examination before beginning treatment; however, with the advent of DTC providers, there has been a shift away from traditional dental practices that may impact our primary selling channels. Doctors and DSOs are sampling alternative products and taking advantage of competitive promotions and sale opportunities.

Our iTero scanners can be used to start clear aligner therapy, as well as other dental procedures, including restorative, implant planning and dentures, and also functions as a diagnostic tool. iTero scanners compete with polyvinyl siloxane ("PVS") impressions and numerous new intraoral scanners. It also competes with traditional bite wing 2D dental x-rays for detecting interproximal caries. If we are unable to compete effectively with these existing products, existing competitors, new market entrants, or respond effectively to new technologies, our Systems and Services segment could be harmed.

To stimulate product and services demand, we have a history of offering volume discounts, price reductions and other promotions to targeted customers and consumers and releasing lower priced products. These promotional campaigns and lower priced products have had, and may in the future have, unexpected and unintended consequences, including reduced gross margins, profitability and average selling prices, net revenues, volume growth, and net income.

We cannot be sure that we will be able to compete successfully against our current or future competitors or that competitive pressures will not have a material effect on our business, results of operations and financial condition.

Our success depends on our ability to successfully develop, introduce, achieve market acceptance of, and manage new products and services.

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

- successfully predict and timely innovate and develop new technologies, applications and products preferred by customers and consumers and that have features and functionality to meet the needs of patients;
- successfully and timely obtain regulatory approval or clearance of new and improved products or services from government agencies such as the FDA and analogous agencies in other countries;
- cost-effectively and efficiently develop, manufacture, quality test, market, dispose of, and sell new or improved products and services offerings, including localized versions for international markets;
- properly forecast the amount and timing of new or improved product and services demand;
- allocate our research and development funding to products and services with higher growth prospects;
- ensure the compatibility of our technology, services and systems with those of our customers;
- anticipate and rapidly innovate in response to new competitive products and services offerings and technologies;
- differentiate our products and product offerings from our competitors as well as other products in our own portfolio and successfully articulate the benefits to our customers;
- manage the impact of nationalism or initiatives encouraging consumer purchases from domestic vendors, or dissuade interoperability of products and technologies between companies;
- qualify for third-party reimbursement for procedures involving our products or services;
- offer attractive and competitive service and subscription plans;
- encourage customers to adopt new technologies and provide the needed technical, sales and marketing support to make new product and services launches successful; and
- source and receive quality raw materials or parts from our suppliers.

If we fail to accurately predict the needs and preferences of customers and their patients, or fail to offer viable products or services, we may invest heavily in research and development that does not lead to significant revenues. Even if we successfully innovate and develop new products and product improvements, we may incur substantial costs doing so and our profitability may suffer. It may be difficult to gain market share and acceptance for new or improved products. Introduction and acceptance of any products and services may take significant time and effort, particularly if they require doctor education and training to understand their benefits or doctors choose to withhold judgment on a product until patients complete their treatments.

In addition, we periodically introduce new business and sales initiatives to meet customers' needs and demands. In general, our internal resources support these initiatives without clear indications they will prove successful or be without short-

term execution challenges. Should these initiatives fail, our business, results of operations and financial condition could be materially impacted.

We may invest in or acquire other businesses, products or technologies which may require significant management attention, disrupt our business, dilute stockholder value and adversely affect our results of operations.

Periodically, we have and may in the future acquire, or make investments in, companies, products or technologies. Alternatively, we may be unable to find suitable investment or acquisition targets or be unable to complete investments or acquisitions on favorable terms, if at all. If we make investments or complete acquisitions, we may not ultimately strengthen our competitive position or achieve our goals or desired synergies, and investments or acquisitions we complete could be viewed negatively by our customers, securities analysts and investors. Opposition to acquisitions may lead to negative ratings by analysts or investors, give rise to stockholder objections or result in stockholder activism, any of which could disrupt our operations or harm our stock price. Moreover, to the extent we make strategic investments, the companies in which we invest may fail or we may ultimately own less than a majority of the outstanding shares of the company and be outvoted on critical issues that could harm us or the value of our investment.

Additionally, as an organization we do not have a history of significant acquisitions or integrating their operations and cultures with our own. As such, we are subject to various risks when making a strategic investment or acquisition which could materially impact our business or results of operations, including that we may:

- fail to perform proper due diligence and inherit unexpected material issues or assets, including intellectual property (“IP”) or other litigation or ongoing investigations, accounting irregularities or improprieties, bribery, corruption or other compliance liabilities;
- fail to comply with regulations, governmental orders or decrees;
- experience IT security and privacy compliance issues;
- invest in companies that generate net losses or the markets for their products, services or technologies may be slow or fail to develop;
- not realize a positive return on investment or determine that our investments have declined in value, such that it may be necessary to record impairments such as future impairments of intangible assets and goodwill;
- have to pay cash, incur debt or issue equity securities to pay for an acquisition, adversely affecting 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 stockholders. The occurrence of indebtedness would result in increased fixed obligations and could also include covenants or other restrictions that impede our ability to manage our operations;
- find it difficult to implement and harmonize company-wide financial reporting, forecasting and budgeting, accounting, billing, IT and other systems due to inconsistencies in standards, internal controls, procedures and policies;
- require significant time and resources to effectuate the integration;
- fail to retain key personnel or harm our existing culture or the culture of an acquired entity;
- not realize any or all or material portions of the expected synergies and benefits of the acquisition; or
- unsuccessfully evaluate or utilize the acquired technology or acquired company’s know-how or fail to successfully integrate the technologies acquired.

Operational Risks

Business disruptions could seriously harm our financial condition.

Our global operations have been disrupted in the past and will likely be disrupted and harmed again in the future. The occurrence of any material or prolonged business disruptions, whether internal or at key suppliers, could harm our business and results of operations, result in material losses, seriously harm our revenues, 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.

When business disruptions occur, they may, individually or in the aggregate, affect our ability to provide products, services and solutions to our customers, and could cause production delays or limitations, create adverse effects on distributors, disrupt supply chains, result in shipping and distribution disruptions and reduce the availability of or access to one or more facilities. We have policies and procedures which are intended to mitigate the impact of the business disruptions and crises that we believe could be most significant, and we train employees and work with suppliers to prepare for potential disruptions. However, the design or implementation of these policies and practices may fail to adequately address particular disruptions, which could materially and adversely affect our business, financial condition and results of operations.

Our operating results have and will continue to fluctuate in the future, which makes predicting the timing and amount of customer demand, our revenues, costs and expenditures difficult.

Our quarterly and annual operating results have and will continue to fluctuate for a variety of reasons, including as a result of changing doctor and consumer demand. In addition to the factors otherwise described herein, some of the other factors that have historically, and could in the future, cause our operating results to fluctuate include:

- higher manufacturing, delivery and inventory costs;
- the creditworthiness, liquidity and solvency of our customers and their ability to timely make payments when due;
- changes in the timing of revenue recognition and our average selling prices, including as a result of the timing of receipt of product orders and shipments, product and services mix, geographic mix, product and services deferrals, the introduction of new products and software releases, product pricing, bundling and promotions, pricing for fees or expenses, 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 estimates such as our predicted usage of additional aligners;
- seasonal fluctuations, including those related to patient demographics or seasonality as well as the availability of doctors to take appointments;
- longer customer payment cycles and greater difficulty in accounts receivable collection for our international sales;
- costs and expenditures, including in connection with new treatment planning and fabrication facilities, the hiring and deployment of personnel, and litigation; and
- timing and fluctuation of spending around marketing and brand awareness campaigns and industry trade shows.

If we underestimate product demand, it may exceed our manufacturing capacity or that of one or more of our suppliers, we may be understaffed and we may not have sufficient materials for production. Specifically, our manufacturing process relies on sophisticated computer software and requires new technicians to undergo a long training process, often 120 days or longer. As a result, if we fail to accurately predict demand, we may have an insufficient number of trained technicians to timely manufacture and deliver products to meet customers' expectations, which could damage our relationships with our existing customers or harm our ability to attract new customers. Specifically, production levels for our iTero scanners are generally set based on forecasts and historic product demand and we often place orders with suppliers for materials, components and sub-assemblies ("materials and components") as well as finished products weeks or more in advance of projected customer orders.

Conversely, if we overestimate customer demand, we may lose opportunities to increase revenues and profits, we may have excessive staffing, materials, components and finished products, or capacity. If we hire and train too many technicians in anticipation of demand that does not materialize or materializes slower than anticipated, our costs and expenditures may outpace our revenues or revenue growth, harming our gross margin and financial results. Additionally, to secure supplies for production of products, we periodically enter into non-cancelable minimum purchase commitments with vendors, which could impact our ability to adjust inventory for declining demand. If product demand decreases or increases more than forecast, we may be required to purchase or lease additional or larger facilities and additional equipment, or we may be unable to timely fulfill customer demand. Responding to unanticipated changes in demand may take time, lower our gross margin, inhibit sales or harm our reputation. Production of our Invisalign system and iTero scanners are also limited by capacity constraints due to a variety of factors, including labor shortages, shipping delays, our dependency on third-party vendors for key materials, parts, components and equipment, and limited production yields. We routinely review inventory for usage potential, including fulfillment of customer warranty obligations and spare part requirements, and write down to the lower of cost or net realized value the excess and obsolete inventory, which may materially affect our results of operations. 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 and those of our business partners.

Improvements to or changes in our products may affect the demand, making it less predictable. For instance, periodically we announce new products, capabilities, or technologies that replace or shorten the life cycles of legacy products or cause customers to defer or stop purchasing legacy products until new products become available. These risks increase the difficulty of accurately forecasting demand for discontinued and new products as well as the likelihood of inventory obsolescence, loss of revenue and associated gross profit.

We may make business decisions that adversely affect our operating results such as modifications to our pricing policies 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 for future revenues. As a result, if our net revenues for a particular period are below expectations, we may be unable to timely or effectively reduce spending to offset any net revenues shortfall.

We are subject to operating risks, including excess or constrained capacity and operational inefficiencies, which could adversely affect our results of operations.

We are subject to operating risks, including excess or constrained capacity and pressure on our internal systems, personnel and suppliers. To manage current and anticipated future operations effectively, we must continually implement and improve our operational, financial and management information systems, hire, train, motivate, manage and retain employees, and ensure our suppliers remain diverse and capable of meeting demand for the systems, raw materials, parts and components essential to product manufacturing and delivery. We may be unable to balance near-term efforts to meet existing demand with future demand, including adding personnel, creating scalable, secure and robust systems and operations, and automating processes for long term efficiencies. Any such failure could have a material impact on our business, operations and prospects.

Additionally, we have established treatment planning and manufacturing facilities closer to our international customers to provide better experiences, improve confidence treating patients with our products, create efficiencies, and provide redundancy should other facilities become unavailable. If a facility is temporarily, partially or fully, shut down or if demand for our products outpaces our ability to hire qualified personnel and effectively implement systems and infrastructure, we may be unable to timely fulfill orders, which may negatively impact our financial results, reputation and overall business.

Our products and IT systems are critical to our business. Issues with product development or enhancements, IT system and software integration, implementation, updates and upgrades have previously and could again in the future disrupt our operations and have a material impact on our business, our reputation and operating results.

We rely on the efficient, uninterrupted and secure operation of our own complex IT systems and are dependent on key third party software embedded in our products and IT systems as well as third-party hosted IT systems to support our operations. All software and IT systems are vulnerable to damage, cyber-attacks or interruption from a variety of sources. To effectively manage and improve our operations, our IT systems and applications require an ongoing commitment of significant expenditures and resources to maintain, protect, upgrade, enhance and restore existing systems and develop new systems to keep pace with continuing changes in information processing technology, evolving industry and regulatory standards, increasingly sophisticated cyber threats, and changing customer preferences. Increased usage of online and hosted technology platforms by us, our customers and suppliers, including remote working, teledentistry and new or expanded use of online service platforms, products and solutions such as video conferencing applications, doctor, consumer and patient apps have increased the demands on and risks to our IT systems and personnel. Moreover, we continue to transform certain business processes, extend established processes to new subsidiaries and/or implement additional functionality in our enterprise resource planning, product development, manufacturing, and other software and IT systems which entails certain risks, including disruption of our operations, such as our ability to develop and update products that are safe and secure, track orders and timely ship products, manage our supply chain and aggregate financial and operational data. Failure to adequately protect and maintain the integrity of our products and IT systems may materially impact our financial position, results of operations and cash flows.

We have a complex, global iTero scanner installed base of older and newer models. These models are continually updated to add, expand or improve features with new hardware, or to provide repair or replacement parts. We have experienced hardware issues in the past and may in the future, including issues relating to manufacturing, design, quality, or safety, of which we become aware only after products or changes have been introduced into the market. We also have not been and may be unable to ensure that third party components or changes to them will be compatible with, or not have a negative impact on the functionality of, our iTero scanners. As a result, there have been and may be widespread failures of our iTero scanners or we may experience epidemic failures of our iTero scanners to perform as anticipated. Previously, we have not been and in the future may not be prepared for, or have the infrastructure to, timely and adequately remediate or implement corrective measures for such failures, including due to our dependency on third party providers or suppliers. Consequently, remediation has been and may be in the future time-consuming and difficult to achieve, which may materially impact our customers and business partners, damage our reputation and result in lost business and revenue opportunities, and could be materially costly.

Additionally, we continuously upgrade and issue new releases of customer facing software applications upon which customer facing, manufacturing and treatment planning operations depend. Software applications and products containing software frequently contain errors or defects, especially when first introduced or when new versions are released. Additionally, the third-party software integrated into or interoperable with our products and services will routinely reach end of life, and as a consequence, certain models of our iTero scanners may be exposed to additional vulnerabilities, including increased security risks, errors and malfunctions that may be irreparable or difficult to repair. The discovery of a defect, error or security vulnerability in our products, 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 products or primary IT systems may cause adverse consequences, including delay or loss of revenues, significant remediation costs, delay in market acceptance, loss of data, disclosure of financial, health or other personal information of our customers or their patients, product recalls, damage

to our reputation, loss of market share or increased service costs, any of which could have a material effect on our business, financial condition or results of our operations and the operations of our customers or our business partners.

A significant portion of our clear aligner production is dependent on digital scans from our globally dispersed and decentralized installed base of iTero and third-party intraoral scanners. Failures of all or any portion of ours or third-party software or other components or systems to interoperate with iTero or third-party scanners, termination of interoperability with third-party scanners, malware or ransomware attacks, product or system vulnerabilities or defects, interference or disruptions for us, our customers, labs or other business partners in the use of our products or the transmission or processing of data needed for the use or ordering of our products, or a system outage for any reason have harmed our operations previously and in the future could materially and adversely affect our ability to accept scans, manufacture clear aligners or restorative procedures or treatments and services or otherwise service our customers which may, amongst other things, harm our sales, damage our reputation, adversely impact our strategic partners or result in litigation.

We are highly dependent on third-party suppliers, some of whom are sole source suppliers, for certain key machines, components and materials, and our business and operating results could be harmed if supply is restricted or ends, or if the price of raw materials used in our manufacturing process increases.

We are highly dependent on our supply chain, particularly 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 iTero scanners. We maintain single supply relationships for many of these machines and materials such as our CT scanning and stereolithography equipment and resin and polymer used in clear aligner manufacturing. By using single suppliers in limited locations for materials and manufacturing, we are exposed to multiple supply chain vulnerabilities. For example, damage to or destruction of a facility can disrupt the delivery of key parts, components and materials or products or a supplier could encounter financial, operating or other difficulties, be unable to hire or maintain personnel, fail to timely obtain supplies, or fail to maintain manufacturing standards or controls. The occurrence of any of these may adversely impact our supply chain.

Because of our dependence on our suppliers, changes in key relationships can materially disrupt our supply chain. For instance, we may be unable to quickly establish or qualify replacement suppliers creating production interruptions, delays and inefficiencies. Finding substitute manufacturers may be expensive, time-consuming or impossible and could result in significant interruption in the supply of one or more products, product retesting or additional product registration causing us to lose revenues and damage customer relationships. Technology changes by our service providers, vendors, and other third parties could disrupt access to required manufacturing capacity or require expensive, time-consuming development efforts to adapt and integrate new equipment or processes. In the event of technology changes, delivery delays, labor stoppages or shortages, or shortages of, or increases in price for these items, sales may decrease and our business and prospects may be harmed.

We use distributors for a portion of the importation, marketing and sales efforts related to our products and services, which exposes us to risks to our sales and operations and reputation, including the risk that these distributors do not comply with applicable laws or our internal procedures.

In addition to our direct sales force, we have and expect to continue to use distributors to import, market, sell, service and support our products. Our distribution agreements are generally non-exclusive and terminable by either party with little notice. If alternative distributors cannot be quickly found and trained in the use, marketing, sales and support of our products and services, our revenues and ability to sell or service our products in key markets could be adversely affected. These distributors may also choose to sell alternative or competing products or services. In addition, we may be held responsible for the actions of these distributors and their employees and agents for compliance with laws and regulations, including fair competition, bribery and corruption, trade compliance, safety, data privacy and marketing and sales activities. The conduct of these distributors also reflects on us and our brand. If our distributors fail to satisfy customers, our reputation and brand loyalty could be harmed. A distributor may also affect our ability to effectively market our products in certain foreign countries or regulatory jurisdictions if it holds the regulatory authorization in such countries or within such regions and causes, by action or inaction, the suspension of such marketing authorization or sanctions for non-compliance or prevents us from taking control of any such authorization. It may be difficult, expensive, and time-consuming for us to re-establish market access or regulatory compliance.

A disruption in the operations of a primary freight carrier, higher shipping costs or shipping delays could disrupt our supply chain and impact operating and financial results.

We are dependent on commercial freight carriers, primarily UPS, to deliver our products. If the operations of carriers are disrupted or if we fail to mitigate the impacts from freight carrier disruptions, we may be unable to timely deliver our products to our customers who may choose alternative products, causing our net revenues and gross margin to decline, possibly materially. Moreover, when fuel costs increase, our freight costs generally do so as well. In addition, we earn an increasingly larger portion of our total revenues from international sales, which carry higher shipping costs that negatively impact our gross

margin and results of operations. If freight costs materially increase and we are unable to successfully pass all or significant portions of the increases along to our customers, or we cannot otherwise offset such increases in our cost of net revenues, our gross margin and financial results could be materially affected.

Our success depends on our personnel. If we cannot attract, motivate, train or retain our personnel, it may be difficult to grow effectively and pursue our strategic priorities, materially affecting our results of operations.

We are highly dependent on the talent and efforts of our personnel, including highly-skilled orthodontists and production technicians in our treatment planning facilities, and employees on our clinical engineering, technology development and sales teams. We strive to retain our personnel by providing competitive compensation and benefits, development opportunities and training, flexible work options, and an inclusive corporate culture. However, there is substantial competition for highly-skilled personnel, in particular significantly higher demand for technical and digital talent, and our competitors have and will likely continue to recruit our personnel. Our compensation and benefit arrangements may not successfully attract new employees and retain and motivate existing employees. In addition, other internal and external factors can impact our ability to hire and retain talent, including insufficient advancement or career opportunities and restrictive immigration policies. The loss of any key personnel, particularly executive management, research and development personnel or sales personnel, could harm our business and prospects and could impede the achievement of our research and development, operational or strategic objectives.

We provide significant training to our personnel and our business will be harmed if our training fails to properly prepare them to perform the work required, we are unable to successfully instill technical expertise in new and existing personnel or if our techniques prove unsuccessful or are not cost-effective. Moreover, for certain roles, this training and experience can make key personnel, such as our sales personnel, highly desirable to competitors and lead to increased attrition. The loss of the services and knowledge of our highly-skilled employees may significantly delay or prevent the achievement of our development and business objectives that may harm our business. For example, 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.

Additionally, facilitating seamless leadership transitions for key positions is critical to sustaining the culture and maintaining our organizational success. If our succession planning efforts are ineffective, it could adversely impact our business. We continue to assess the key personnel we believe essential to our long-term success. Moreover, future organizational changes could cause our employee attrition rate to increase. If we fail to effectively manage any organizational or strategic changes, our financial condition, results of operations, and reputation, as well as our ability to successfully attract, motivate and retain key employees, could be harmed.

We have adopted a hybrid work schedule in many of our offices, allowing employees the opportunity to collaborate and connect with others for several days each week while providing the option to work remotely other days. This hybrid work approach may materially increase our costs or create unforeseen challenges or complications, including:

- difficulties maintaining our corporate culture, disruption of morale or decreased loyalty;
- difficulties with hiring and retention, particularly if we must compete against other companies that offer generous or broad remote working policies or employees who prefer to work in offices or geographies different from where they were hired or are expected to work;
- negative impacts to collaboration, performance and productivity;
- increased stress, fatigue or “burn out” by employees unable to disengage their work life from home life;
- increased operational, governance, compliance, and tax risks;
- problems managing office space requirements;
- concerns regarding favoritism or discrimination;
- strains to our business continuity plans and difficulties achieving our strategic objectives; and
- increased labor and employment claims and litigation.

Also, we believe a key to our success has been the culture we have created that emphasizes a shared vision and values focusing on agility, customer success and accountability. We believe this culture fosters integrity, innovation, creativity, and teamwork. We have experienced and may continue to experience in the future, difficulties attracting and retaining employees that meet the qualifications, experience, compliance mindset and values we expect. If we cannot attract and retain personnel that meet our selection criteria or relax our standards, our corporate culture, ability to achieve our strategic objectives, and our compliance with obligations under our internal controls and other requirements may be harmed. This could have a material adverse effect on our results of operations and our ability to maintain market share.

We depend on our marketing activities to deepen our market penetration and raise awareness of our brands and products, which may prove unsuccessful or may become less effective or more costly to maintain in the long term.

Our marketing efforts and costs are significant and include national and regional campaigns in multiple countries involving television, print and social media and alliances with professional sports teams, social media influencers and other strategic partners. We design our advertising campaigns to increase brand awareness, adoption and goodwill; however, there is no assurance they will achieve the returns on advertising spend desired, increase brand or product awareness sufficiently or generate goodwill and positive reputational goals. Moreover, should any entity or individual endorsing us or our products take actions, make or publish statements in support of, or lend support to events or causes which may be perceived by a portion of society negatively, our sponsorships or support of these entities or individuals may be questioned, our products boycotted, and our reputation harmed, any of which could have a material effect on our financial results and business overall.

In addition, various countries prohibit certain types of marketing activities. For example, some countries restrict direct to consumer advertising of medical devices. We have in the past and may again in the future be alleged to violate marketing restrictions and be ordered to stop certain marketing activities or prevented from selling our products. Moreover, competitors do not always follow these restrictions, creating an unfair advantage and making it more difficult and costly to compete.

Additionally, we rely heavily on data generated from our campaigns to target specific audiences and evaluate their effectiveness, particularly data generated from internet activities on mobile devices. To obtain this data, we are dependent on third parties and popular mobile operating systems, networks, technologies, products, and standards that we do not control, such as the Android and iOS operating systems and mobile browsers. Changes in such systems that degrade or eliminate our ability to target or measure the results of ads or increase costs to target audiences could adversely affect the effectiveness of our campaigns. For example, Apple's operating systems include significant data privacy settings that may limit our ability to interpret, target and measure ads effectively.

We have been incorporating and continue to work to further incorporate artificial intelligence (“AI”) into our products, services, and internal operations. Implementation of AI and machine learning technologies may result in legal and regulatory risks, reputational harm or have other adverse consequences to our business.

We have and are continuing to incorporate AI, including machine learning and independent algorithms, in certain of our products, services and internal operations, which is intended to enhance their operation and effectiveness internally and for our customers, suppliers and consumers. Our research and development of such technology remains ongoing. AI innovation presents risks and challenges that could impact our business. AI algorithms may be flawed. Datasets may be insufficient or contain biased information. Additionally, many countries and regions, including the European Union, have proposed new and evolving regulations related to the use of AI and machine learning technologies. The regulations may impose onerous obligations and may require us to unexpectedly rework or reevaluate improvements to be compliant. Use of AI technologies may expose us to an increased risk of regulatory enforcement and litigation. Moreover, some of the AI features involve the processing of personal data and may be subject to laws, policies, legal obligations, and codes of conduct related to privacy and data protection. AI development and deployment practices could subject us to competitive harm, regulatory enforcement, increased cyber risks, reputational harm and legal liability.

Legal, Regulatory and Compliance Risks

We are subject to antitrust and competition regulations, litigation and enforcement that may result in fines, penalties, restrictions on our business practices, and product or operational changes which could materially impact our business.

We are and may in the future be subject to antitrust or competition related investigations, enforcement actions by governmental agencies, competitors, consumers, customers, and others which could cause us to incur substantial costs, enter into settlements, consents or be subject to judgments. Resolving these matters may require us to change our business practices in ways materially adverse to our business. Governments and regulators are actively developing new competition laws and regulations aimed at the technology sector, AI and digital platforms and coordinating their activities globally, including in large markets such as the EU, U.S., and China. Government regulatory actions and court decisions may result in fines or hinder our ability to provide certain benefits to our consumers, reducing the attractiveness of our products and the revenue derived from them or our ability to pursue certain mergers, acquisitions, business combinations or other transactions. Other companies and government agencies have in the past and may in the future allege that our actions violate antitrust or competition laws or otherwise constitute unfair competition. Such claims and investigations, even if unfounded, may be expensive to defend, involve negative publicity, and divert management time and attention, any of which may materially impact our results of operations.

Obtaining approvals and complying with governmental regulations, particularly those related to personal healthcare and financial information, quality systems, anti-corruption and anti-bribery are expensive and time-consuming. Any failure to obtain or maintain approvals or comply with regulations regarding our products or services or those of our suppliers could materially harm our sales, result in substantial penalties and fines and cause harm to our reputation.

We and many of our healthcare provider customers, suppliers and distributors are subject to extensive and frequently changing regulations under numerous federal, state, local and foreign laws, including those regulating:

- the storage, transmission and disclosure of personal and medical information as well as 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 design, manufacture marketing and advertising of our products.

The healthcare and technology markets are also highly regulated and subject to changing political, economic and regulatory influences. Global regulators are expanding and changing regulations and guidance for products, which can limit the potential benefits of products and cause protracted review timelines for new products. Our critical vendors and service providers are similarly subject to various regulations. Our failure or the failure of our suppliers, customers, advertisers and influencers to strictly adhere to clearances or approvals in the labeling, marketing and sales of our products and services could subject us to claims or litigation, including allegations of false or misleading advertising or violations of laws or regulations, which may result in costly investigations, fines, penalties, as well as material judgments, settlements or decrees. We are also subject to complex and changing environmental and health and safety regulations. There can be no assurance we can adequately address the business risks associated with the implementation and compliance with such laws and our internal processes and procedures to comply with such laws or that we will be able to take advantage of any resulting business opportunities.

Furthermore, frequently before we can sell a new medical device or market a new use of or claim for an existing product, we must obtain clearance or approval to do so. For instance, in the U.S., FDA regulations are wide ranging and govern, among other things, product design, development, manufacturing and testing; product labeling and product storage. It takes significant time, effort and expense to obtain and maintain clearances and approvals of products and services, and there is no guarantee we will timely succeed, if at all, in the countries in which we do business. In other countries, the requirements, time, effort and expense to obtain and maintain clearances may differ materially from those of the FDA. Moreover, these laws may change, resulting in additional time and expense or loss of market access. If approvals to market our products or services are delayed, we may be unable to offer them in markets we deem important to our business. Additionally, failure to comply with applicable regulatory requirements could result in enforcement actions with sanctions including, among other things, fines, civil penalties and criminal prosecution. Delays or failures to obtain or maintain regulatory approvals or to comply with regulatory requirements may materially harm our domestic or international operations, and adversely impact our business.

We and certain of our vendors must also comply with and adhere to facility registration and product listing requirements for Quality System regulations. The FDA enforces its Quality System regulations through periodic unannounced inspections. Failure to satisfactorily correct an adverse inspection finding or to comply with applicable manufacturing regulations can result in enforcement actions, or we may be required to find alternative manufacturers, which could be a long and costly process and may cause reputational harm. Enforcement actions by regulators could have a material effect on our business.

We are also subject to anti-corruption and anti-bribery (“ABAC”) laws such as the Foreign Corrupt Practices Act (“FCPA”) and the U.K. Bribery Act of 2010, which generally prohibit corrupt payments to foreign officials for the purpose of obtaining or maintaining business, securing an advantage and directing business to another. To comply with ABAC laws, regulators require we maintain accurate books and records and a system of internal accounting controls. Under the FCPA, we may be held liable for corruption by directors, officers, employees, agents, or other strategic or local partners or representatives.

In addition, while we have policies requiring compliance with applicable laws and regulations and we provide significant training to foster compliance, our employees, third parties acting on our behalf and customers may not properly adhere to our policies or applicable laws or regulations, including the use of certain electronic communications and maintaining accurate books and records. If our personnel or those of our agents or suppliers fail to comply with any laws, regulations, policies or procedures, or we fail to audit and enforce compliance, our reputation may be harmed, we may lose customers, revenues, or face regulatory investigations, actions and fines.

Security breaches, data breaches, cyber attacks, other cybersecurity incidents or the failure to comply with privacy, security and data protection laws could materially impact our operations, patient care could suffer, we could be liable for damages, and our business, operations and reputation could be harmed.

We retain confidential customer personal and financial, patient health and our own proprietary information and data essential to our business operations. We rely on the effectiveness of our IT systems, our policies and contracts and policies of our vendors and the IT systems of our service providers and other third parties to safeguard the information and data. Additionally, our success is dependent on the success of healthcare providers, many of whom are individual or small operations with limited IT experience and inadequate or untested security protocols, to manage data privacy and security requirements. It

is critical that the facilities, infrastructure and IT systems on which we depend and the products we develop remain secure and be perceived by the marketplace and our customers as secure. Despite the implementation of security features in our products and security measures in our IT systems, we and our service providers, vendors, and other third parties are targeted by or subject to physical break-ins, computer viruses and other malicious code, unauthorized or fraudulent access, programming errors or other technical malfunctions, hacking or phishing attacks, malware, ransomware, employee error or malfeasance, cyber attacks, and other breaches of IT systems or similar disruptive actions, including by organized groups and nation-state actors. For example, we have experienced, and may again experience in the future, cybersecurity incidents and unauthorized internal employee exfiltration of company information.

Further, the frequency and sophistication of third-party cyber-attacks is increasing. Significant service disruptions, breaches in our infrastructure and IT systems or other cybersecurity incidents could expose us to litigation or regulatory investigations, impair our reputation and competitive position, be distracting to management, and require significant time and resources to address. Affected parties or regulatory agencies could initiate legal or regulatory action against us, which could prevent us from resolving issues quickly or force us to resolve them in unanticipated ways, cause us to incur significant expense and damages, or result in orders forcing us to cease operations or modify our business practices in ways that could materially limit or restrict the capabilities of our products and services. Concerns over our privacy practices could adversely affect others' perception of us and deter customers and patients from using our products. In addition, patient care could suffer, and we could be liable if our products or IT systems fail to timely deliver accurate and complete information. We have internal monitoring and detection systems as well as cybersecurity and other forms of insurance coverage related to a breach event. However, damages and claims arising from such incidents may not be covered or may exceed the amount of any coverage and do not cover the time and effort we incur investigating and responding to any incidents, which may be material. The costs to eliminate, mitigate or recover from security problems and cyber attacks and incidents could be material and depending on the nature and extent of the problem and the networks or products impacted, may result in network or systems interruptions, decreased product sales, or data loss that may have a material impact on our operations, net revenues and operating results.

Additionally, our globally-dispersed installed base of iTero scanners at customer, strategic business partner or other locations may be independently or collectively the target of cybersecurity incidents or attacks or subject to viruses, bugs, or other similar negative intruders. Due to the large and growing number of these decentralized devices, we may be unable to, or not have the capacity, knowledge, or infrastructure to, respond to or remedy a cybersecurity issue in a timely manner, which may cause loss or damage to us or our customers or strategic business partners or may cause further malfunctions in, or damage to, our servers, databases, systems or products and services, loss or damage of our data, interruption or temporary cessation of our operations, or an overall negative impact to our business or reputation.

We are also subject to federal, state and foreign laws and regulations respecting the security and privacy of patient healthcare information applicable to healthcare providers and their business associates, such as HIPAA, as well as those relating to privacy, data security, content regulation, and consumer protection. We are subject to various national and regional data localization or data residency laws such as the EU General Data Protection Regulation and analogous laws in China which generally require certain types of data collected within a country be stored and processed only within that country or approved countries. Other countries are considering similar data localization or data residency laws. We have and likely will again in the future be required to implement new or expand existing data storage protocols, build new storage facilities, and/or devote additional resources to comply with such laws, any of which could be costly. We are also subject to data export restrictions and international transfer laws which prohibit or impose conditions upon the transfer of such data. These laws and regulations are constantly evolving and may be created, interpreted, applied, or amended in ways that adversely affect our business.

Our business exposes us to potential liability for the quality and safety of our products and services, how we advertise and market those products and services and how and to whom we sell them, and we may incur substantial expenses or be found liable for substantial damages or penalties if we are subject to claims or litigation.

Our products and services involve an inherent risk of claims concerning their design, materials, manufacture, safety and performance, how they are marketed and advertised in a complex framework of highly regulated domestic and international laws and regulations, how we package, bundle or sell them to individual customers or companies, including hospitals and clinics, and how we train and support doctors, their staffs and patients who use our products. Moreover, consumer products and services are routinely subject to claims of false, deceptive or misleading advertising, consumer fraud and unfair business practices. Additionally, we may be held liable if products we market and sell or services we offer or perform cause injury or are otherwise found unhealthy. If our products are safe but they are promoted for use or used in unintended or unexpected ways or for which we have not obtained clearance ("off-label" usage), we may be investigated, fined or have our products or services enjoined or approvals rescinded or we may be required to defend ourselves in litigation. Although we maintain insurance for product liability, business practices and other types of activities we make or offer, coverage may not be available on acceptable terms, if at all, and may be insufficient for actual liabilities. Any claim for product liability, sales, advertising and business

practices, regardless of its merit or eventual outcome, could result in material legal defense costs and damage our reputation, increase our expenses and divert management's attention.

Increased focus on current and anticipated environmental, social and governance ("ESG") laws and scrutiny of our ESG policies and practices may materially increase our costs, expose us to liability, adversely impact our reputation, employee retention, willingness of customers and suppliers to do business with us and willingness of investors to invest in us.

Our operations are subject to a variety of existing local, regional and global ESG laws and regulations, and we will likely be required to comply with new, broader, more complex and more costly ESG laws and regulations. Our compliance obligations span all aspects of our business and operations, including product design and development, materials sourcing and other procurement activities, product packaging, product safety, energy and natural resources usage, facilities design and utilization, recycling and collection, transportation, disposal activities and workers' rights.

Environmental regulations related to greenhouse gases, hazardous materials, sustainability and reduction of waste are expected to have an increasingly larger impact on us or our suppliers. Many U.S. and foreign regulators have or are considering enacting new or additional disclosure requirements or limits on the emissions of greenhouse gases, including carbon dioxide and methane, from power generation units using fossil fuels. The effects of greenhouse gas emission limits on power generation are subject to significant uncertainties, including the timing of any new requirements, levels of emissions reductions and the scope and types of emissions regulated. Additionally, laws on sustainability and waste reduction are emerging and consumers may demand more sustainability in our products. Such regulations and consumer demands may affect how we manufacture and package our products, which may increase our costs and those of our suppliers and could result in manufacturing, transportation and supply chain disruptions if clean energy or sustainable alternatives are not readily available in adequate amounts when required. Moreover, alternative energy sources, coupled with reduced investments in traditional energy production and infrastructure, may not provide the predictable, reliable, and consistent energy that we, our suppliers and other businesses require.

Regulations related to the sourcing of certain metals may have an impact on our business. For instance, the sourcing and availability of metals used in the manufacture of, or contained in, our products may be affected by laws and regulations regarding the use of minerals obtained from certain regions of the world like the Democratic Republic of Congo and adjoining countries. Although we do not believe we source minerals from this region, our expanding geographic operations may increase the risk of purchasing conflict minerals and our efforts to identify whether any of our products contain minerals impacted by these laws and regulations may not be adequate or complete. Further, 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 at competitive prices, leading customers to potentially choose competitive goods and services.

Meeting our obligations under existing ESG laws and regulations is costly for us and our suppliers, and we expect those costs to increase materially. Additionally, we expect regulators to perform investigations, inspections and periodically audit our compliance with these laws and regulations, and we cannot be sure our efforts or operations will be compliant. If we fail to comply with any requirements, we could be subject to significant penalties or liabilities and we may be required to implement new and materially more costly processes and procedures to be compliant. Further these laws are subject to unpredictable changes. Even if we successfully comply with these laws and regulations, our suppliers may not. We may also suffer financial and reputational harm if customers require, and we are unable to deliver, certification that our products are compliant. In all of these situations, customers may stop purchasing products from us, and may take legal action against us, which could harm our reputation, revenues and results of operations.

Investor advocacy groups, institutional investors, investment funds, proxy advisory services, stockholders, and customers are also increasingly focused on corporate ESG practices. Additionally, public interest and legislative pressure related to companies' ESG practices continues to grow. If our ESG practices fail to meet investor or other industry stakeholders' frequently evolving expectations and standards, including environmental stewardship, support for local communities, board of director and employee diversity, human capital management, employee health and safety practices, product quality, supply chain management, corporate governance and transparency and employing ESG strategies in our operations, our brand, reputation and employee retention may be harmed, customers and suppliers may be unwilling to do business with us and investors may be unwilling to invest in us. If we fail to adopt ESG standards or practices as quickly as stakeholders desire, report on our ESG efforts or practices accurately, or satisfy the disclosure and other expectations of stakeholders, our reputation, business, financial performance, growth, and stock price may be adversely impacted.

Intellectual Property Risks

Our success depends in part on our proprietary technology, and if we fail to successfully obtain or enforce our IP rights, our competitive position may be harmed.

Our success depends in part on our ability to maintain existing IP rights and obtain, maintain and enforce further IP protection for our products. Our inability to do so could harm our competitive position.

We rely on our portfolio of issued and pending patent applications in the U.S. and other countries to protect a large part of our IP and our competitive position; however, these patents may not prevent third parties from producing competing products similar in design to ours if they are invalidated, held unenforceable, circumvented, or otherwise limited in scope. Furthermore, our foreign patent protections may be more limited in geographic scope than those under U.S. patent and IP laws.

Additionally, any of our patent applications may not result in an issued patent or the scope of the patent ultimately issued may be narrower than initially sought. We may not be afforded the protection of a patent if our currently pending or future patent filings do not result in the issuance of patents or we fail to timely apply for patent protection. We may fail to apply for a patent if our personnel fail to disclose or recognize new patentable ideas or innovations. Remote working can decrease the opportunities for our personnel to collaborate, thereby reducing invention disclosures and patent application filings. We may choose not to file a foreign patent application if the limited protections provided by a foreign patent do not outweigh the costs to obtain it. Further, third parties may file patents or develop IP strategies that prevent or limit the effectiveness of our patents.

We also protect our IP through copyrights, trademarks, trade secrets, and confidentiality obligations. We generally enter into confidentiality agreements with our employees, consultants and collaborative partners upon commencement of a relationship with us. However, despite the existence of these protections, we have experienced incidents in which our proprietary information has been misappropriated and believe it will be misappropriated again in the future. If these agreements do not provide meaningful protection against the unauthorized use or disclosure of our trade secrets or other confidential information, adequate remedies may not exist to prevent unauthorized uses or disclosures.

Enforcement of our IP rights is time-consuming and costly, and could ultimately prove to be unsuccessful. In certain jurisdictions, enforcement of IP rights is more difficult due to legislation and geopolitical circumstances. As we launch our products in different regions at different times, our products may be acquired and reverse engineered by potential competitors in regions where infringement is more difficult to pursue.

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 effect on our operating results, financial condition and future growth prospects. In particular, a failure to protect our IP rights might allow competitors to copy our technology or create counterfeit or pirated versions of our products, which could adversely affect our reputation, pricing and market share.

Litigation regarding our IP rights, rights claimed by third parties, or IP litigation by any vendors on whose products or services we rely for our products and services may impact our ability to grow our business, adversely impact our results of operations and adversely impact our reputation.

Extensive litigation over IP rights is common in medical device, optical scanner, 3D printing and other technologies and industries on which our products and services are based. Litigation, interferences, oppositions, re-exams, *inter partes* reviews, post grant reviews or other proceedings have been necessary and will likely be needed in the future to determine the validity and scope of certain of our IP rights and those claimed by third parties. These proceedings are used to determine the validity, scope or non-infringement of certain patent rights pertinent to the manufacture, use or sale of our products and the products of competitors. We have been sued for infringement of third parties' patents in the past and are currently defending patent infringement lawsuits and other legal claims. In addition, we periodically receive letters from third parties drawing our attention to their IP rights and there may be other third-party IP rights of which we are presently unaware. As dentistry becomes more digital, competitors may make defense of our IP more challenging. Asserting or defending these proceedings can be unpredictable, protracted, time-consuming, expensive and distracting to management and technical personnel. Their outcomes may adversely affect the validity and scope of our IP rights, hinder our ability to manufacture and market our products, require us to seek licenses for infringing products or technologies or result in the assessment of significant monetary damages. Unfavorable rulings could include monetary damages, injunctions prohibiting us from selling our products, or exclusion orders preventing us from importing our products in one or more countries. Moreover, independent actions by competitors, customers or others have alleged that our efforts to enforce our IP rights constitute unfair competition or violations of antitrust laws and investigations and additional litigation based on the same or similar claims may be brought in the future. 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 could materially affect our results of operations and reputation.

Financial, Tax and Accounting Risks

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

Under GAAP, we review our goodwill, intangible and long-lived asset group for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. Additionally, goodwill must 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, intangible or the asset group may be impaired and assessing these assumptions and predicting and forecasting future events can be difficult. Goodwill, intangible and purchased assets require periodic fair value assessments to determine if they have become impaired. Consequently, we may be required to record a material charge to earnings in the financial statements during the period in which any impairment of goodwill, intangible or long-lived asset group is determined.

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

We prepare our consolidated financial statements in conformity with 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 could materially effect our reported results and may even retroactively affect previously reported financial statements.

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 adversely affect our stock price.

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 that 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 it is effective. Our internal controls may become inadequate because of changes in personnel, updates and upgrades to or migration away from existing software, failure to maintain accurate books and records, 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 risks successfully, our operating results and financial statements could be materially impacted.

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 an investment exceeds the fair value, and the decline in fair value is deemed to be other-than-temporary, we are required to write down the value of the investment, 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, it is necessary to assess the value of our investments more frequently and we might incur material realized, unrealized or impairment losses associated with these investments. Additionally, bank failures could cause or continue to cause volatility in the credit or capital markets, market-wide liquidity issues, bank-runs and general concern across the global financial industry. These conditions could limit our access to capital or impair the value of assets we hold.

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

Align operates globally and is subject to taxes in the U.S. and foreign countries. Various internal and external factors may affect our future effective tax rate. These factors include changes in the global economic environment, changes in our legal entity structure or activities performed within our entities, changes in our business operations, changes in tax laws, regulations and/or rates, new or changes to existing accounting pronouncements, changing interpretations of existing tax laws or regulations, changes in 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.

Our effective tax rate is also dependent in part on forecasts of full year results which can vary materially. 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.

New tax laws and practices, changes to existing tax laws and practices, or disputes regarding the positions we take regarding tax laws, could negatively affect our provision for income taxes as well as our ongoing operations.

Compliance with tax laws requires significant judgment concerning our worldwide provision for income taxes. Changes in tax laws or changes to how those laws are applied to our business in practice, could affect the amount of tax to which we are subject and the manner in which we operate.

Moreover, the application of indirect taxes (such as sales and use tax (“SUT”), value-added tax (“VAT”), goods and services tax (“GST”), and other indirect taxes) to our operations is complex and evolving. U.S. states, local and foreign taxing jurisdictions have differing rules and regulations governing differing types of taxes, and these rules and regulations are subject to varying interpretations and exemptions that may change over time. We collect and remit SUT, VAT, GST and other taxes in many jurisdictions and we are routinely subject to audits. We are also routinely audited regarding our tax reporting and remissions by local and national governments, and may also be subject to audits in jurisdictions for which we have not accrued tax liabilities. The positions we take regarding taxes as well as the amounts we collect or remit may be challenged and we may be liable for failing to collect or remit all or any portion of taxes deemed owed or the taxes could exceed our estimates. One or more U.S. states or countries may seek to impose incremental or new sales, use, or other tax collection obligations on us or may determine that such taxes should have but have not been paid by us. If we dispute rulings or positions taken by tax authorities, we may incur expenses and expend significant time and effort to defend our positions, which may be costly.

The application of existing and new tax laws, and the results of audits could harm our business. Furthermore, there have been and will continue to be substantial ongoing costs associated with complying with the various tax requirements and defending our positions in the numerous markets in which we conduct or will conduct business.

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

The market price of our common stock is subject to rapid and large price fluctuations attributable to various factors, many of which are beyond our control. The factors include:

- quarterly variations in our results of operations and liquidity or changes in our forecasts and guidance;
- our ability to regain or sustain our historical growth rates;
- changes in recommendations by the investment community or speculation in the press or investment community regarding estimates of our net revenues, operating results or other performance indicators;
- announcements by us or our competitors or new market entrants, including strategic actions, management changes, and material transactions or acquisitions;
- technical factors in the public trading markets for our stock that may produce price movements inconsistent with macro, industry or company-specific fundamentals, including the sentiment of retail investors (as it may be expressed on financial trading and other social media sites), the amount and status of short interest in our securities, access to margin debt, trading in options and other derivatives on our common stock, fractional share trading, and other technical trading factors or strategies;
- announcements regarding stock repurchases, sales or purchases of our common stock by us, our officers or directors, credit agreements and debt issuances;
- announcements of technological innovations, new, additional or revised programs, business models, products or product offerings by us, our customers or competitors;
- key decisions in pending litigation, new litigation, settlements, judgments or decrees; and
- general economic market conditions, including rising interest rates, inflationary pressures, recessions, consumer sentiment and demand, global political conflict and industry factors unrelated to our actual performance.

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 often unrelated to or disproportionate to corporate operating performance. These broad market and industry factors may include market expectations of, or actual changes in, monetary policies that have the goal of easing or tightening interest rates such as the U.S. federal funds rate and austerity measures of governments intended to control budget deficits. Historically, securities litigation, including securities class action lawsuits and securities derivative lawsuits, is often brought against an issuer following periods of volatility in the market price of its securities and we have not been exempt from such litigation.

We cannot guarantee that we will continue to repurchase our common stock in the future, and any repurchases that we may make may not achieve our desired objectives.

We have a history of recurring stock repurchase programs intended to return capital to our investors. Future stock repurchase programs are contingent on a variety of factors, including our financial condition, market conditions, results of operations, business requirements, and our Board of Directors' continuing determination that stock 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 repurchasing our common stock in the future at historical levels or at all, or that our stock repurchase programs will beneficially impact our stock price. Additionally, effective January 1, 2023, the Inflation Reduction Act imposes a 1% excise tax on our stock repurchases, which will increase our tax liabilities and the cost to retire stock and may impact if and how much stock we choose to repurchase in the future.

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

A significant percentage of our outstanding common stock is currently owned by a small number of stockholders. These stockholders have sold in the past, and may sell in the future, large amounts of our stock over relatively short periods of time. Sales of substantial amounts of our stock by existing stockholders may adversely affect the market price of our stock by creating the perception of difficulties or problems with our business that 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, 2023. As of September 30, 2023, we have \$1.0 billion remaining available for repurchases under the January 2023 Repurchase Program authorized by our Board of Directors in January 2023 (Refer to *Note 9 "Common Stock Repurchase Programs"* of the *Notes to Consolidated Financial Statements* for details on the January 2023 Repurchase Program).

Item 3. Defaults Upon Senior Securities.

Not applicable.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

During the fiscal quarter ended September 30, 2023, no director or officer, as defined in Rule 16a-1(f) of the Exchange Act, adopted or terminated a "Rule 10b5-1 trading arrangement" or a "non-Rule 10b5-1 trading arrangement," each as defined in Regulation S-K Item 408.

Item 6. Exhibits.

(a) Exhibits:

<u>Exhibit Number</u>	<u>Description</u>	<u>Filing</u>	<u>Date</u>	<u>Exhibit Number</u>	<u>Filed herewith</u>
3.1	Amended Certificate of Incorporation of Align Technology, Inc.	S-1, as amended (File No. 333-49932)	12/28/2000	3.1	
3.1A	Certificate of Amendment to the Amended Certificate of Incorporation	8-K	5/20/2016	3.01	
3.1B	Certificate of Amendment to the Amended Certificate of Incorporation	10-Q	8/04/2023	3.1B	
3.2	Amended and Restated Bylaws of registrant	8-K	3/01/2023	3.1	
10.1 **	Share Purchase Agreement, dated September 1, 2023, between Align Holdings GMBH, Align Technology Switzerland GMBH and the Sellers provided therein				*
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)				*

** Portions of the exhibit, marked by brackets and asterisks [***], have been omitted because the omitted information is not material and (i) would likely cause competitive harm to the registrant if publicly disclosed or (ii) is information that the registrant treats as private or confidential.

† The certifications attached as Exhibit 32.1 that accompany this Quarterly Report on Form 10-Q are not deemed filed with the SEC and are not to be incorporated by reference into any filing of the Registrant under the Securities Act or the Exchange Act, whether made before or after the date of this Quarterly Report on Form 10-Q, irrespective of any general incorporation language contained in such filing.

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

Univ. Prof. Dr. Jürgen Stampfl

Dr. Robert Gmeiner

Dr. Johannes Benedikt

Dr. Johannes Homa

and

AM Ventures Additive Manufacturing Fonds I GmbH & Co. KG

as Sellers

and

Align Holding GmbH

and

Align Technology Switzerland GmbH

as Purchasers

**Share Purchase Agreement
for Shares in
Cubicure GmbH**

Table of Contents

1. Definitions and interpretation	7
1.1. Definitions	7
1.2. Interpretation	15
1.3. Sole Representatives of the Sellers and the Purchasers	16
1.4. Joint Liability	17
2. Sale and Purchase of the Acquisition Shares	17
2.1. Sale and Purchase	17
2.2. Consent to Transfer, Waiver of Transfer Restrictions	18
2.3. Transfer of Ownership	18
2.4. Dividends	18
3. Purchase Price	19
3.1. Final Purchase Price and Estimated Purchase Price	19
3.2. Payment of the Estimated Purchase Price and the Escrow Amount	20
3.3. Adjustment of the Estimated Purchase Price after Closing	21
3.4. Closing Accounts	21
3.5. No set off	24
3.6. Default Interest	24
3.7. Post-Closing Payments	24
4. Closing	25
4.1. Place and Date of Closing	25
4.2. Closing Conditions	25
4.3. Responsibility for Closing Conditions	26
4.4. Waiver of Closing Conditions	26
4.5. Deliveries and Actions at Closing	26
4.6. Simultaneous Action	27
4.7. Regulatory Proceedings	28
4.8. Closing Memorandum / Application to the Commercial Register	28
4.9. Non-occurrence of Closing	29
4.10. Surviving Provisions	29
5. Sellers' Covenants between Signing and Closing	29
6. representations and warranties of the SellerS	32
7. Liability, Remedies, Limitations, Exclusion of Claims	43
7.1. Notice of Claims	43
7.2. Remedies	43
7.3. No Other Representation or Warranty	44

7.4. Statute of Limitations	44
7.5. No Multiple Recovery	44
7.6. Mitigation of Losses and Damages	45
7.7. Thresholds and Cap	45
7.8. Reduction and Limitation of Claims	45
7.9. Third Party Claims	46
8. Representations and Warranties of the PurchaserS	46
9. Further covenants of THE PARTIES	47
9.1. Non-Compete and Non-Solicitation	47
9.2. Post Closing Actions	49
10. Tax Indemnity	50
11. Other Specific Indemnities	51
12. Confidentiality and Public Announcements	52
12.1. Confidentiality	52
12.2. Public Announcements	52
13. Costs and Transfer Taxes	53
13.1. Costs	53
13.2. Transfer Taxes and Fees	53
14. Applicable Law and Jurisdiction	53
15. General Provisions	53
15.1. Entire Agreement	53
15.2. Assignment	53
15.3. Amendments	54
15.4. No Rescission	54
15.5. Remedies and Waivers	54
15.6. Severability and Invalidity	54
15.7. Effects on Third Parties	54
15.8. Notices	54
15.9. Counterparts	56

Exhibits:

<u>Exhibit./1.1(a)</u>	Agreed Accounting Principles
<u>Exhibit./1.1(b)</u>	Data Room Index
<u>Exhibit./3.1(b)</u>	Specimen Estimated Closing Statement
<u>Exhibit./4.2(e)</u>	CoC Agreements
<u>Exhibit./4.5(e)</u>	Escrow Agreement
<u>Exhibit./4.5(f)</u>	Transfer Deed
<u>Exhibit./4.8(a)</u>	Closing memorandum
<u>Exhibit./6.3(a)</u>	Accounts
<u>Exhibit./6.3(b)</u>	Management accounts for the year-to-date period 2023
<u>Exhibit./6.4(b)</u>	Leased Real Properties
<u>Exhibit./6.5(a)</u>	Assets
<u>Exhibit./6.5(c)</u>	Leased assets
<u>Exhibit./6.7(a)</u>	Owned IP Rights
<u>Exhibit./6.7(b)</u>	Encumbered IP Rights
<u>Exhibit./6.7(d)</u>	Licensed IP Rights
<u>Exhibit./6.7(e)</u>	Know-How
<u>Exhibit./6.7(k)</u>	Employee Inventions
<u>Exhibit./6.10(a)</u>	Material Agreements
<u>Exhibit./6.10(c)</u>	Material Agreements (carve-outs)
<u>Exhibit./6.11(a)</u>	Affiliate Contracts
<u>Exhibit./6.13(a)</u>	Key Employees
<u>Exhibit./6.13(c)</u>	Incentive schemes, Severance pay and Pensions
<u>Exhibit./6.13(d)</u>	Collective bargaining, works agreements
<u>Exhibit./6.17</u>	Subsidies and grants

THIS SHARE PURCHASE AGREEMENT ("**Agreement**") is concluded between the following parties:

- (1) **Univ. Prof. Dr. Jürgen Stampfl**, born [***], with residential address at [***] (the "**Seller 1**");
- (2) **Dr. Robert Gmeiner**, born [***], with residential address at [***] (the "**Seller 2**");
- (3) **Dr. Johannes Benedikt**, born [***], with residential address at [***] (the "**Seller 3**");
- (4) **Dr. Johannes Homa**, born [***], with residential address at [***] (the "**Seller 4**");
- (5) **AM Ventures Additive Manufacturing Fonds I GmbH & Co. KG**, a limited partnership (*Kommanditgesellschaft*) under the laws of Germany with corporate seat in Starnberg, Germany and business address at Petersbrunner Straße 1b, 82319 Starnberg, Germany, registered with the Commercial Register (*Handelsregister*) of the Local Court (*Amtsgericht*) Munich under HRA 112189 (the "**Seller 5**"),
- (6) **Align Holding GmbH**, a limited liability company under the laws of Austria with corporate seat in Vienna, Austria and business address at Parkring 2, 1010 Vienna registered with the Commercial Register (*Firmenbuch*) of the Commercial Court Vienna under FN 603019 v (the "**Purchaser 1**"),
- (7) **Align Technology Switzerland GmbH**, a limited liability company under the laws of Switzerland with corporate seat in Risch, Switzerland and business address at Suurstoffi 22, 6343 Rotkreuz, Switzerland, registered with the Swiss company register (*Handelsregister*) of the Canton of Zug under CHE-146.357.660 ("**Purchaser 2**"), and
- (8) **Univ. Prof. Dr. Robert Liska**, born [***], with residential address at Mühlratzstraße 26, 2123 Schleinbach, Austria (the "**Co-Signor**").

The Seller 1, the Seller 2, the Seller 3, the Seller 4 and the Seller 5 are hereinafter individually referred to as a "**Seller**" and collectively referred to as the "**Sellers**". The Purchaser 1 and the Purchaser 2 are hereinafter individually referred to as a "**Purchaser**" and collectively referred to as the "**Purchasers**". The Sellers and the Purchasers are hereinafter individually referred to as a "**Party**" and collectively referred to as the "**Parties**".

PREAMBLE

- (A) Cubicure GmbH is a limited liability company duly established and validly existing under the laws of Austria with its corporate seat in Vienna and its business address at Gutheil-Schoder-Gasse 17, 1230 Vienna, registered with the Commercial Register (*Firmenbuch*) of the Commercial Court Vienna under FN 432472 p ("**Cubicure**" or the "**Company**"). Cubicure is active in the field of additive manufacturing of polymer parts and develops, produces and distributes innovative materials, equipment, and processes for industrial 3D printing.
- (B) The registered share capital (*Stammkapital*) of the Company currently amounts to EUR 40,274 (Euro forty thousand two hundred and seventy four) and is fully paid in cash. The Sellers hold together shares corresponding to a registered capital contribution of EUR 36,632 (Euro thirty six thousand six hundred and thirty two) which represent

approx. a 90.96% (ninety point ninety six percent) participation in the share capital of the Company. The remaining share, corresponding to a registered capital contribution of EUR 3,642 (Euro three thousand six hundred and forty two) and representing approx. a 9.04% (nine point zero four percent) participation in the share capital (*Stammkapital*) of the Company is held by the Purchaser 2.

- (C) The Seller 1 holds a share (*Geschäftsanteil*) in the Company corresponding to a registered capital contribution of EUR 17,270 (Euro seventeen thousand two hundred seventy) which represents approx. a 42.88% (forty two point eighty eight percent) participation in the share capital of the Company; a part of this share (*Geschäftsanteil*) in the Company corresponding to a registered capital contribution of EUR 3,454 (Euro three thousand four hundred fifty four) which represents approx. a 8.58% (eight point fifty eight percent) participation in the share capital of the Company is held by Seller 1 as trustee (*Treuhänder*) for the Co-Signor as trustor (*Treugeber*).
- (D) Subject to the terms and conditions of this Agreement, the Sellers intend to sell and transfer the Acquisition Shares to the Purchasers and the Purchasers intend to purchase and acquire the Acquisition Shares from the Sellers.

NOW, THEREFORE, THE PARTIES AGREE the following:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, the following terms shall have the meanings attributed to them in this Clause 1.1

"Accounts"	means the financial statements of the Company as of 31 December 2021 and 31 December 2022, respectively, prepared in accordance with applicable laws and Austrian GAAP as attached hereto as <u>Exhibit./6.3(a)</u> ;
"Acquisition Share 1"	has the meaning attributed to such term in Clause 2.1(a);
"Acquisition Share 2"	has the meaning attributed to such term in Clause 2.1(b);
"Acquisition Share 3"	has the meaning attributed to such term in Clause 2.1(c);
"Acquisition Share 4A"	has the meaning attributed to such term in Clause 2.1(d);
"Acquisition Share 4B"	has the meaning attributed to such term in Clause 2.1(d);
"Acquisition Share 5"	has the meaning attributed to such term in Clause 2.1(e);
"Acquisition Shares"	means the Acquisition Share 1, the Acquisition Share 2, the Acquisition Share 3, the Acquisition Share 4A, the Acquisition Share 4B and the Acquisition Share 5 collectively and "Acquisition Share" means any of the Acquisition Share 1, the Acquisition Share 2, the Acquisition Share 3, the Acquisition Share 4A, the Acquisition Share 4B and the Acquisition Share 5 individually;
"Affiliate"	means in respect of any Person, any other Person directly or indirectly Controlling or being, directly or indirectly, Controlled by or under common direct or indirect Control with such first Person;
"Affiliate Contracts"	means all agreements between the Company on the one hand and the Sellers or any Sellers' Affiliate or current or former shareholders of the Sellers or a Sellers' Affiliate on the other hand (irrespective of whether still valid or a matter of the past);

"Agreed Principles"	Accounting	means the methods and principles (together with the definitions and Specific Accounting Treatments) set out in <u>Exhibit./1.1(a)</u> , as consistently applied by the Company; such Exhibit to also include an Example Calculation of the Final Purchase Price and its elements;
"Agreement"		means this Share Purchase Agreement including its Exhibits;
"Anticorruption Laws"		means applicable laws, regulations or orders relating to anti-bribery or anticorruption including laws that prohibit the corrupt payment, offer, promise, or authorization of the payment or transfer of anything of value (including gifts or entertainment), directly or indirectly, to any official or employee of a government or government-related entity or undertaking, to obtain a business advantage;
"Audit Expert"		has the meaning attributed to such term in Clause 3.4(f);
"Austrian GAAP"		means Austrian generally accepted accounting principles under the Austrian Commercial Code (<i>Unternehmensgesetzbuch</i>);
"Balance Sheet Date"		means 31 December 2022;
"Best Knowledge of the Sellers"		means the actual knowledge of each of the Sellers as well as the knowledge such Persons should have had after due and careful inquiry of records and with Dr. Markus Kury (COO), Mr Clemens Roitner (CFO), Mr Thomas Förster-Romswinkel and Mr Raphael Krobath, based on the (x) specific representations and warranties given by the Sellers under this Agreement and (y) the specific questions/requests posed/made by the Purchasers and their advisors in writing during the Due Diligence, in each case as on the Signing Date;
"Business Day"		means a day when the banks are open for general banking business in Zug, Switzerland and Vienna, Austria;
"Cash"		has the meaning attributed to such term in <u>Exhibit./1.1(a)</u> ;
"Closing"		has the meaning attributed to such term in Clause 4.1;

"Closing Accounts"	means the accounts of the Company (balance sheet and profit and loss accounts but without notes) as at the end of the Closing Date prepared in accordance with Austrian GAAP and the Agreed Accounting Principles;
"Closing Cash"	means the actual Cash as at the end of the Closing Date as set forth in the final Closing Accounts;
"Closing Conditions"	has the meaning attributed to such term in Clause 4.2;
"Closing Date"	means the date when Closing takes place pursuant to Clause 4.1;
"Closing Indebtedness"	means the actual Indebtedness as at the end of the Closing Date as set forth in the final Closing Accounts;
"Closing Net Working Capital"	means the actual Net Working Capital as at the end of the Closing Date as set forth in the final Closing Accounts;
"Company"	has the meaning attributed to such term in Preamble (A);
"Competing Activity"	has the meaning attributed to such term in Clause 9.1(a)(i);
"Confidential Information"	has the meaning attributed to such term in Clause 12.1(a);
"Control"	a Person shall be regarded as being in control of another Person if it (i) owns, directly or indirectly, more than 50% (fifty percent) of (a) the share capital of the Person or (b) the voting rights in the Person's shareholders' meeting or equivalent corporate body (if applicable), or (ii) otherwise possesses, directly or indirectly, the power to (a) determine the composition of the majority of, or the outcome of decisions on financial or operating policies by, the board of directors or any other governing authority of the controlled Person (b) or to direct or procure the direction of the management and policies of such Person; and "Controlled" and "Controlling" shall be construed accordingly;
"Co-Signor"	has the meaning specified in the list of parties above;

"Cubicure"	has the meaning attributed to such term in Preamble (A);
"Damages"	has the meaning attributed to such term in Clause 7.2(a);
"Data Room"	means the data room for project Cabernet 3.0, accessible (i) via the internet link [***] in the timeframe from 12 July 2023 to Signing, and (ii) via the internet link [***] in the timeframe from 25 July 2023 to Signing;
"Data Room Index"	means the list of documents available in the Data Room at 13:00 hours Vienna time four (4) calendar days prior to Signing attached hereto as <u>Exhibit./1.1(b)</u> ;
"Disclosed"	means facts, matters or other information fairly disclosed by the Sellers in writing (i) by e-mail to Ms. Mu Li and Mr. Allan Kiang (cc Harald Stingl and Lorenz Pracht of CERHA HEMPEL Rechtsanwälte GmbH) with the word "DISCLOSURE" prominently stated in the subject line or header and provided that such e-mails are received no less than eight (8) calendar days prior to Signing, or (ii) to the Purchasers in the Disclosure Exhibits against the representations and warranties in Clause 6, in each case (a) in a specific manner (i.e. no disclosure of Data Room documents or other information in bulk), and (b) such that a respective fact, matter or other information as well as all material circumstances relating thereto are apparent for the Purchasers from the e-mail or the Disclosure Exhibits under (i), respectively (ii) above, for the Purchasers to understand on the face of such information that there is an issue and the nature of such issue (and the correlated terms " Disclosure ", " Disclose " and variations thereof shall be construed accordingly);

"Disclosure Exhibits"

means the Exhibit./6.5(a), Exhibit./6.5(c), Exhibit./6.7(b), Exhibit./6.7(e), Exhibit./6.7(k), Exhibit./6.10(c), Exhibit./6.13(c), Exhibit./6.13(d) and Exhibit./6.17 all of them prepared by the Sellers and attached hereto by the Parties qualifying the representations and warranties contained in Clause 6, a draft of which has been delivered to the Purchasers for review no less than eight (8) calendar days prior to Signing and the final form of which has been agreed between the Sellers and the Purchasers no less than four (4) calendar days prior to Signing;

"Due Diligence"

means the legal, financial and tax due diligence carried out by the Purchasers and their advisors with respect to the Company;

"DVD"

means the uneditable digital versatile disc jointly signed by Seller 2 and the Purchaser 1, containing the Data Room as of four (4) calendar days (13:00 hours Vienna time) prior to Signing in accordance with the Data Room Index;

"Encumbrance"

means any security interest (including any mortgage, charge, pledge, registered pledge, financial pledge, assignment or lien), right to acquire (including any option or right of pre-emption or first refusal) or any restriction of or right to restrict dealings with, or transferability, title, ownership or usage of, an asset or share (including any trust or retention of title, conditional sale, claim, attachment in the enforcement proceeding, usufruct right, sub-participation, voting right, right to receive dividends or participate in profits or gains or any other third party rights including consent rights of third parties) or any other security or preferential agreement or arrangement for any other Person, or any agreement or arrangement or obligation to create any of the foregoing, and, in each case, whether or not subject to conditions, and "**Encumber**" and "**Encumbered**" shall be construed accordingly;

"Escrow Agreement"

means the escrow agreement attached hereto as Exhibit./4.5(e);

"Escrow Amount"	means an amount corresponding to 8% (eight percent) of the Estimated Purchase Price which shall, upon Closing, not be paid to the Sellers but shall be held in escrow and paid pro rata to the Seller 1, Seller 2, Seller 3 and Seller 4 (i.e. excluding Seller 5) and/or the Purchasers subject to and in accordance with the Escrow Agreement;
"Estimated Closing Cash"	means the Cash as at the end of the Closing Date as estimated in good faith by the Company and set forth in the Estimated Closing Statement;
"Estimated Closing Indebtedness"	means the Indebtedness as at the end of the Closing Date as estimated in good faith by the Company and set forth in the Estimated Closing Statement;
"Estimated Closing Statement"	has the meaning attributed to such term in Clause 3.1(b);
"Estimated Net Working Capital"	means the Net Working Capital as at the end of the Closing Date as estimated in good faith by the Company and set forth in the Estimated Closing Statement;
"Estimated Purchase Price"	means the Company's good faith estimate of the Final Purchase Price as determined in Clause 3.1(b)3.1(a);
"FDI Clearance"	has the meaning attributed to such term in Clause 4.2(a)4.2(a);
"Final Purchase Price"	has the meaning attributed to such term in Clause 3.1(a);
"Hot Lithography Approach"	means hardware (including, printing technology), materials (including, Thermoplastic Photopolymers which are photopolymerisable plastics in which the physical bonding forces between the molecular chains predominate over the chemical bonding forces and which therefore have an impact strength (Charpy test, unnotched specimens) of 10kJ/m ² or more at room temperature (20°C)) or methods related to the layer-wise processing of photopolymers for additive manufacturing of filled and unfilled polymer parts, using elevated temperatures, but at least 45°C, and using materials in resin or pasty form with a minimum viscosity of 10 Pa.s at room temperature);

"Indebtedness"	has the meaning attributed to such term in <u>Exhibit./1.1(a)</u> ;
"Indemnifiable Taxes"	has the meaning attributed to such term in Clause 10.1(a);
"Information Technology"	has the meaning attributed to such term in Clause 6.6(a);
"IP Rights"	has the meaning attributed to such term in Clause 6.7(a);
"Key Employees"	has the meaning attributed to such term in Clause 6.13(a);
"Know-how"	has the meaning attributed to such term in Clause 6.7(e);
"Leased Real Properties"	has the meaning attributed to such term in Clause 6.4(b);
"Licensed IP Rights"	has the meaning attributed to such term in Clause 6.7(d);
"Longstop Date"	has the meaning attributed to such term in Clause 4.9(a);
"Material Adverse Effect"	means an event, change or occurrence which, individually or together with any other event, change or occurrence materially adversely affects the assets, business, financial condition or results of operations of the Company with a value impact of more than EUR 250,000 (two hundred fifty thousand Euros);
"Material Agreements"	has the meaning attributed to such term in Clause 6.10(a);
"Net Working Capital"	has the meaning attributed to such term in <u>Exhibit./1.1(a)</u> ;
"Objection Notice"	has the meaning attributed to such term in Clause 3.4(c);

"Owned IP Rights"	has the meaning attributed to such term in Clause 6.7(a);
"Party" or "Parties"	has the meaning specified in the list of parties above;
"Permits"	has the meaning attributed to such term in Clause 6.8(a);
"Person"	means any individual, corporation, limited liability company, sole proprietorship, partnership, foundation, association, trust, unincorporated organization, government or institution, in each case, irrespective of the jurisdiction of incorporation;
"Purchase Price Adjustment"	has the meaning attributed to such term in Clause 3.3(a);
"Purchaser"	means each of the Purchaser 1 and the Purchaser 2 individually and "Purchasers" means the Purchaser 1 and the Purchaser 2 collectively, in each case as specified in the list of the parties above;
"Purchaser 1"	has the meaning specified in the list of parties above;
"Purchaser 2"	has the meaning specified in the list of parties above;
"Qualifying Claim"	has the meaning attributed to such term in Clause 7.7(a);
"Sanctions Laws and Regulations"	means any economic, sectoral, financial or trade sanctions or trade/export control laws, regulations, embargoes, or other restrictive measures adopted, administered, enacted or enforced by Austria, the European Union, the United Kingdom, Switzerland or the United States of America, including secondary sanctions;
"Seller"	means each of the Seller 1, the Seller 2, the Seller 3, the Seller 4 and the Seller 5 individually and "Sellers" means the Seller 1, the Seller 2, the Seller 3, the Seller 4 and the Seller 5 collectively, in each case as specified in the list of the parties above;
"Seller 1"	has the meaning specified in the list of parties above;

"Seller 2"	has the meaning specified in the list of parties above;
"Seller 3"	has the meaning specified in the list of parties above;
"Seller 4"	has the meaning specified in the list of parties above;
"Seller 5"	has the meaning specified in the list of parties above;
"Signing" or "Signing Date"	means the date on which this Agreement is signed;
"Subsidiary"	means with respect to any undertaking or Person any other undertaking or Person which is directly or indirectly Controlled by such first undertaking or Person;
"Target Net Working Capital"	means the amount of EUR 1,381,000 (Euro one million three hundred eighty one thousand)
"Tax Authority(-ies)"	means any domestic, foreign, state, local and/or regional tax authorities as well as any other authority competent to impose any Tax liability or collect any levies on the Company, including any social security agency;
"Tax(-es)"	means any and all domestic, foreign, state, local and/or regional, taxes, levies, contributions, duties, charges and/or withholdings of any nature whatsoever, including all taxes, levies, contributions or duties on income, capital gains, VAT, importation and exportation of goods and services, registrations, licenses, payroll, employment, severance, social security contributions and stamp duties, together with all penalties, charges and interest relating to any of them, as well as any secondary liability in relation to Taxes and compensation payments in respect of Taxes (for the avoidance of doubt, the foregoing also including any tax benefits granted and re-claimed by Tax Authorities);
"Taxes and Fees"	has the meaning attributed to such term in Clause 13.2;

"Third Party Claims"	has the meaning attributed to such term in Clause 7.9(a);
"Threshold"	has the meaning attributed to such term in Clause 7.7(a);
"Transfer Deed"	means the share transfer agreement for the transfer of all the Acquisition Shares from the Sellers to the Purchasers in the form set out in <u>Exhibit/4.5(f)</u> ;
"TU Vienna"	has the meaning attributed to such term in Clause 9.1(e);
"VAT"	means value added tax within the meaning of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax as well as any other value added tax or similar tax under any tax law of any other jurisdiction.

1.2. Interpretation

In this Agreement unless the context requires otherwise:

- (a) words denoting any gender shall include all genders;
- (b) the words "including", "in particular" or any variations thereof means "including/in particular but not limited to";
- (c) references to Clauses, Sections and Exhibits are references to clauses and sections of, and exhibits to, this Agreement;
- (d) the words "herein", "hereof", "hereto" and "hereunder" and words of similar meaning when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (e) the table of contents and the headings in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement;
- (f) this Agreement has been fully and freely negotiated between the Parties, shall be considered as having been drafted jointly by all Parties, and shall be interpreted and construed as if so drafted without construction in favour of, or against, either Party;
- (g) this Agreement has been drawn up in English and the English language shall therefore be the governing language, provided that (i) Exhibit/6.3(a) and other Exhibits mutually agreed between the Parties may be attached in German language only and (ii) where a German language term has been inserted after an English language term in italics the German language term alone shall be authoritative for the purpose of interpreting such English language term;

- (h) the Exhibits form an integral part of this Agreement and shall be construed and shall have the same force and effect as if expressly set out in the body of this Agreement.

1.3. Sole Representatives of the Sellers and the Purchasers

- (a) For purposes of this Agreement, the Seller 1 is herewith authorized by all other Sellers and the Co-Signor to act in the name and on behalf of the Sellers and the Co-Signor; the other Sellers and the Co-Signor commit themselves not to withdraw this authorization without (i) adequate replacement and communication thereof to the Purchasers, or (ii) the prior written approval of the Purchaser 2.
- (b) Any notice, declaration, statement or other communication under or in connection with this Agreement by the Sellers may be made by Seller 1 and shall in such case, unless expressly otherwise stated therein, be deemed a notice, declaration, statement or other communication by, and with legal effect for and binding on, each of the Sellers and the Co-Signor. If any notices, declarations, statements or other communication under or in connection with this Agreement by the Sellers in their own names conflict with each other, all such notices, declarations, statements or other communication by the Sellers shall be ineffective towards the Purchasers, being understood that conflict means a situation where differing notices, declarations, statements or other communications create a dilemma for the Purchasers.
- (c) For purposes of this Agreement, the Purchaser 2 is herewith authorized by the Purchaser 1 to act in the name and on behalf of the Purchasers; the Purchaser 1 commits itself not to withdraw this authorization without (i) adequate replacement and communication thereof to the Sellers, or (ii) the prior written approval of the Seller 1.
- (d) Any notice, declaration, statement or other communication under or in connection with this Agreement (i) by a Seller to the Purchasers shall be sufficient if made to Purchaser 2 and shall be deemed a notice, declaration, statement or other communication to both Purchasers, (ii) by the Purchasers may be made by Purchaser 2 and shall in such case, unless expressly otherwise stated therein, be deemed a notice, declaration, statement or other communication by, and with legal effect for and binding on, each of the Purchasers. If any notices, declarations, statements or other communication under or in connection with this Agreement by the Purchasers in their own names conflict with each other, all such notices, declarations, statements or other communication by the Purchasers shall be ineffective towards the Sellers, being understood that conflict means a situation where differing notices, declarations, statements or other communications create a dilemma for the Sellers.

1.4. Joint Liability

The Sellers shall be jointly and severally liable towards the Purchasers (subject to the restrictions of Clause 7.7) for any breaches of the representations and warranties under Clause 6, other than the representations and warranties under Clause 6.1, Clause 6.2(d) and Clause 6.18.

2. SALE AND PURCHASE OF THE ACQUISITION SHARES

2.1. Sale and Purchase

- (a) The Seller 1 sells his share (*Geschäftsanteil*) in the Company corresponding to a registered capital contribution of EUR 17,270 (Euro seventeen thousand two hundred seventy) which represents approx. a 42.88% (forty two point eighty eight percent) participation in the share capital of the Company (the "**Acquisition Share 1**") a part of which corresponding to a registered capital contribution of EUR 3,454 (Euro three thousand four hundred fifty four) and representing approx. a 8.58% (eight point fifty eight percent) participation in the share capital of the Company is held by the Seller 1 as trustee (*Treuhänder*) for the Co-Signor as trustor (*Treugeber*),
- (b) the Seller 2 sells his share (*Geschäftsanteil*) in the Company corresponding to a registered capital contribution of EUR 7,253 (Euro seven thousand two hundred fifty three) which represents approx. a 18.01% (eighteen point zero one percent) participation in the share capital of the Company (the "**Acquisition Share 2**"),
- (c) the Seller 3 sells his share (*Geschäftsanteil*) in the Company corresponding to a registered capital contribution of EUR 1,848 (Euro one thousand eight hundred forty eight) which represents approx. a 4.59% (four point fifty nine percent) participation in the share capital of the Company (the "**Acquisition Share 3**"),
- (d) the Seller 4 (i) divides his share (*Geschäftsanteil*) in the Company corresponding in its entirety to a registered capital contribution of EUR 5,428 (Euro five thousand four hundred twenty eight) which represents approx. a 13.48% (thirteen point forty eight percent) participation in the share capital of the Company into (A) a share in the Company corresponding to a registered capital contribution of EUR 5,042.60 (Euro five thousand and forty two point sixty) which represents approx. a 12.52% (twelve point five two percent) participation in the share capital of the Company (the "**Acquisition Share 4A**"), and (B) a share in the Company corresponding to a registered capital contribution of EUR 385.40 (Euro three hundred eighty five point forty) which represents approx. a 0.96 % (zero point nine six percent) participation in the share capital of the Company (the "**Acquisition Share 4B**"), and (ii) sells the Acquisition Share 4A and the Acquisition Share 4B, and
- (e) the Seller 5 sells its share (*Geschäftsanteil*) in the Company corresponding to a registered capital contribution of EUR 4,833 (Euro four thousand eight hundred thirty three) which represents approx. a 12.00% (twelve percent) participation in the share capital of the Company (the "**Acquisition Share 5**"),
- (A) in case of the Acquisition Share 1, the Acquisition Share 2, the Acquisition Share 3, the Acquisition Share 4A and the Acquisition Share 5 to the Purchaser 1, and (B) in case of the Acquisition Share 4B to the Purchaser 2, and the Purchaser 1 and the Purchaser 2 hereby each purchase the respective Acquisition Share from the respective Seller with all rights, obligations and liabilities pertaining thereto pursuant to the terms and conditions set forth in this Agreement. For the avoidance of doubt, the Sellers' obligation to sell their shares in the Company (and assign and transfer them as foreseen under Clause 2.2) to the Purchasers

extends to and comprises any and all shares in the Company (i.e. the total share capital of the Company), except for the share held by Purchaser 2, irrespective of the amount of the above stated registered capital contributions.

2.2. Consent to Transfer, Waiver of Transfer Restrictions

The Parties (except for Purchaser 1), as shareholders of the Company, hereby agree to pass resolutions in writing and hereby resolve and approve of the division, sale and transfers of the Acquisition Shares to the Purchasers as set out in this Agreement (and the Co-Signor hereby consents thereto), and (ii) the Sellers have irrevocably waived any right of first offer, right of first refusal, pre-emption right, call option or other right to acquire any of the Acquisition Shares held by any of the Sellers (and the Co-Signor hereby consents thereto).

2.3. Transfer of Ownership

At Closing, each Seller shall assign and transfer ownership of his/its respective Acquisition Share to the respective Purchaser, and the respective Purchaser shall accept the assignment and take over ownership of the respective Acquisition Share from the respective Seller in accordance with Clause 4 below so that the Purchasers will, as of Closing, hold 100% (one hundred percent) of the registered share capital of the Company. Transfer of legal and economic ownership in the Acquisition Shares from the Sellers to the Purchasers shall, subject to Clause 4.6 (even if this provision is not contained in the Transfer Deed), occur upon Closing and all rights, obligations and liabilities connected with the Acquisition Shares shall pass from the Sellers to the Purchasers at such point in time.

2.4. Dividends

The Purchasers shall be entitled to receive all dividend payments of the Company on the Acquisition Shares following the Balance Sheet Date. Any dividend declared or distributed by the Company to the Sellers between the Balance Sheet Date and Closing shall be deducted from the Estimated Purchase Price in accordance with the Agreed Accounting Principles.

3. PURCHASE PRICE

3.1. Final Purchase Price and Estimated Purchase Price

(a) The purchase price for the Acquisition Shares (the "**Final Purchase Price**") will be an amount equal to

- (i) EUR 79,000,000 (Euro seventy nine million)(Enterprise Value)
- (ii) *plus* the total amount of Closing Cash,
- (iii) *minus* the outstanding amount of Closing Indebtedness,
- (iv) *minus* any liabilities of the Company (whether actual or contingent) that are triggered by, resulting from or otherwise associated with, the transactions contemplated under this Agreement, in particular the transfer of the Acquisition Shares upon Closing,

- (v) *minus* the amount of any dividend declared or received by the Sellers from the Company after the Balance Sheet Date,
- (vi) *plus/minus* the amount, if any, by which the Closing Net Working Capital exceeds/is less than the Target Net Working Capital, as applicable

the total of (i) through (vi) multiplied by 90.96% (ninety point ninety six percent) and rounded up or down to the nearest hundredth.

- (b) No later than five (5) Business Days prior to the Closing Date and within three (3) Business Days upon fulfilment or waiver of the last Closing Condition, the Sellers shall procure that the Company provides the Parties with a written statement (the "**Estimated Closing Statement**") setting forth the (i) Enterprise Value (ii) *plus* Estimated Closing Cash, (iii) *minus* Estimated Closing Indebtedness, (iv) *minus* any liabilities of the Company (whether actual or contingent) that are triggered by, resulting from or otherwise associated with, the transactions contemplated under this Agreement, (v) minus dividends declared or received, (vi) *plus/minus* the amount, if any, by which the Estimated Net Working Capital exceeds/is less than the Target Net Working Capital, the total of (i) through (vi) multiplied by 90.96% (ninety point ninety six percent) and rounded up or down to the nearest hundredth and (vii) the Estimated Purchase Price resulting therefrom (the "**Estimated Purchase Price**"), in each case determined in accordance with the Agreed Accounting Principles, together with such schedules and data to support the calculations set forth in the Estimated Closing Statement. A specimen of the Estimated Closing Statement is set out in Exhibit./3.1(b). Furthermore, the Sellers shall provide the Purchasers, no later than (5) Business Days prior to the Closing Date, with a written notice setting forth the allocation of the Estimated Purchase Price, less the Escrow Amount, to each of the Sellers (such written notice also to include a pro-rata allocation of the respective portion of the Estimated Purchase Price to the Acquisition Share 4A and the Acquisition Share 4B).
- (c) The Estimated Purchase Price and the Final Purchase Price both are gross purchase prices, each including all Taxes. In particular, the Sellers will not charge the Purchasers any VAT in connection with the sale and transfer of the Acquisition Shares.
- (d) In connection with the preparation of the Estimated Closing Statement, the Sellers shall consult in good faith with the Purchasers regarding the amounts and calculations therein and consider in good faith any comments or modifications from the Purchasers. The Sellers shall and shall procure that the Company shall provide the Purchasers and their representatives with reasonable access to all relevant information and personnel of the Company in connection with the preparation of and the Purchasers' review of the Estimated Closing Statement. If the Sellers have complied with their obligations hereunder but the Parties are nevertheless unable to resolve any disagreement with respect to the Estimated Closing Statement, Closing shall not be unduly delayed by the Purchasers and the amounts calculated by the Company in good faith for the Estimated Closing Statement shall be used for the determination of the Estimated Purchase Price.

3.2. Payment of the Estimated Purchase Price and the Escrow Amount

- (a) Upon Closing, the Purchasers shall pay the Estimated Purchase Price, less the Escrow Amount, as allocated to the Sellers in the notification of the Sellers pursuant to Clause 3.1(b), to the Sellers in full in Euro by wire transfer of immediately available funds in cash, free and clear of all fees (other than fees of the recipient's bank), deductions, withholdings and charges to the following bank accounts of the Sellers:
- (i) Seller 1: IBAN: [***];
 - (ii) Seller 2: IBAN: [***];
 - (iii) Seller 3: IBAN: AT47 2011 1848 9183 9100, Bank: Erste Bank, BIC: GIBAATWWXXX;
 - (iv) Seller 4: IBAN: [***]; and
 - (v) Seller 5: IBAN: [***].
- (b) Furthermore, upon Closing, the Purchasers shall pay the Escrow Amount to such bank account of the escrow agent as set forth in the Escrow Agreement in full in Euro by wire transfer of immediately available funds in cash, free and clear of all fees (other than fees of the recipient's bank), deductions, withholdings and charges.
- (c) The Parties are in agreement that the remaining amount of the Escrow Amount once due for payment to the Sellers, if any, shall be distributed pro rata exclusively to each Seller 1 – 4 and thus increase only the respective Final Purchase Price of each Seller 1 – 4. Seller 5 shall not receive and has no right to receive any amount from the Escrow Amount.

3.3. Adjustment of the Estimated Purchase Price after Closing

- (a) The Estimated Purchase Price shall be adjusted after Closing as follows (the "**Purchase Price Adjustment**"):
- If the Final Purchase Price based on the Closing Accounts and calculated in accordance with Clause 3.1(a) falls short of or exceeds the Estimated Purchase Price determined in the Estimated Closing Statement in accordance with Clause 3.1(b), then the Estimated Purchase Price shall be reduced or increased, as the case may be, by the full amount of such difference.
- (b) Exhibit./1.1(a) contains an example of the calculation of the Purchase Price Adjustments pursuant to Clauses 3.1(a) and 3.3(a) for mere illustrative purposes.
- (c) The amount payable based on this Purchase Price Adjustment according to Clause 3.3(a) by the Sellers or the Purchasers shall be a separate payment obligation of either the Sellers or the Purchasers, due and payable, without prejudice to Clause 3.3(d), within twenty (20) Business Days after the Closing Accounts are final and binding on the Parties in accordance with Clause 3.4. Any such payments shall be made (i) if to the Purchasers, to an account specified by the Purchasers in writing for such purpose,

and (ii) if to the Sellers, in such proportion and to such bank accounts as specified in Clause 3.2(a).

- (d) If, on the basis of the final and binding Closing Accounts, the Final Purchase Price falls short of the Estimated Purchase Price (such difference, the "**Shortfall Amount**"), the Purchaser 2 is authorized to instruct, also on behalf of the Sellers and Purchaser 1, the escrow agent under the Escrow Agreement to release from the Escrow Amount and pay to the Purchasers an amount in cash equal to the Shortfall Amount. Such payment releases the Sellers from their payment obligation under Clause 3.3(c) subject to the Escrow Amount being sufficient to cover the Shortfall Amount.

3.4. Closing Accounts

- (a) The Closing Accounts shall be prepared as of the end of the Closing Date in accordance with Austrian GAAP and the Agreed Accounting Principles. For the purpose of this Agreement, the sole purpose of the Closing Accounts shall be the computation of the Final Purchase Price (calculated in accordance with the formula set out in Clause 3.1(a) including Exhibit./1.1(a)) and the Purchase Price Adjustment; accordingly, the amounts of the Closing Cash, the Closing Indebtedness and the Closing Net Working Capital shall be derived from the Closing Accounts.
- (b) The Purchasers, as the new legal owners of the Company following Closing, shall procure and the Sellers (in particular, those holding management positions in the Company) and the Co-Signor shall support and in any event not obstruct or otherwise hinder, delay or condition, that draft Closing Accounts are prepared and delivered to the Sellers together with the Purchasers' draft calculation of the Purchase Price Adjustment within seventy (70) Business Days after Closing and the Sellers shall procure that all information and support reasonably required by the Company to produce draft Closing Accounts are made available without undue delay.
- (c) The Sellers shall jointly notify the Purchasers in writing within thirty (30) Business Days after receipt whether or not the Sellers accept the draft Closing Accounts and the calculation of the Purchase Price Adjustment (such notice in case of non-acceptance an "**Objection Notice**"). An Objection Notice shall not be made if the amount in dispute in the aggregate (i.e. taking all dispute items together) does not exceed EUR 50,000 (fifty thousand Euro) and shall set out in reasonable detail the Sellers' reasons for such non-acceptance and specify the adjustments which, in the Sellers' opinion, should be made to the draft Closing Accounts or the calculation of the Purchase Price Adjustment in order for it to comply with the requirements of this Agreement. Any item or amount not specifically objected to in the Objection Notice shall become final and binding on the Parties for purposes of this Agreement, except to the extent that an adjustment to a disputed item made in accordance with this Clause 3.4 requires an offsetting adjustment to be made to an undisputed item.
- (d) If the Sellers serve an Objection Notice in accordance with Clause 3.4(c), the Purchasers and the Sellers shall use all reasonable efforts to meet and discuss the objections of the Sellers and to agree the adjustments (if any) required to be made to the draft Closing Accounts (and/or Purchasers' draft calculation of the Purchase Price

Adjustment), in each case within fifteen (15) Business Days after receipt by the Purchaser 2 of the Objection Notice.

- (e) If the Sellers are satisfied with the draft Closing Accounts (either as originally submitted or after adjustments agreed between the Sellers and the Purchasers pursuant to Clause 3.4(d)) or if the Sellers fail to give a joint Objection Notice within the thirty (30) Business Days period referred to in Clause 3.4(c), then the draft Closing Accounts and calculation of the Purchase Price Adjustment prepared in accordance with this Agreement or after adjustments agreed between the Sellers and the Purchasers pursuant to Clause 3.4(d) shall constitute the final Closing Accounts and Purchase Price Adjustment.
- (f) If the Sellers and the Purchasers do not reach agreement within fifteen (15) Business Days of receipt by the Purchaser 2 of the Objection Notice, then the matters in dispute as set out in the Objection Notice (to the extent unresolved) may be referred (on the application of either the Sellers or the Purchasers) for determination by PwC Österreich GmbH Wirtschaftsprüfungsgesellschaft or, if that firm is unable or unwilling to act, by such other independent firm of chartered accountants of international standing as the Sellers and the Purchasers shall agree or, failing agreement, appointed by the President of the Austrian Chamber of Tax Advisors and Auditors (*Präsident der Österreichischen Kammer der Steuerberater und Wirtschaftsprüfer*) (the "**Audit Expert**"). The Audit Expert shall be requested to make its decision within thirty-five (35) Business Days (or such later date as the Sellers, the Purchasers and the Audit Expert agree in writing) of confirmation and acknowledgement by the Audit Expert of its appointment and the receipt of the last submission of any Party in accordance with this paragraph. The following provisions shall apply once the Audit Expert has been appointed:
 - (A) within fifteen (15) Business Days following the acknowledgement by the Audit Expert of its appointment, the Sellers (jointly) and the Purchasers (jointly) shall each prepare a written statement on the matters in dispute which (together with the relevant supporting documents) shall be submitted to the Audit Expert for determination and copied at the same time to the respective other Parties;
 - (B) following delivery of their respective submissions, the Purchasers (jointly) and the Sellers (jointly) shall each have the opportunity to comment once only on the other's submission by written comment delivered to the Audit Expert not later than ten (10) Business Days after receipt of the other's submission and, thereafter, neither the Sellers nor the Purchasers shall be entitled to make further statements or submissions except insofar as the Audit Expert so requests (in which case it shall, on each occasion, give the respective other Parties (i.e. the Sellers (jointly) or the Purchasers (jointly), as the case may be) (unless otherwise directed) ten (10) Business Days to respond to any statements or submissions so made). There shall be no material *ex parte* communication with the Audit Expert;
 - (C) in giving its determination, the Audit Expert shall state what adjustments (if any) are necessary, solely for the purposes of this Agreement, to the draft Closing Accounts and/or the calculation of the Purchase Price Adjustment in respect of the matters in dispute in order to comply with the requirements of this Agreement and

to determine finally the Closing Accounts, the Final Purchase Price and the Purchase Price Adjustment; for the avoidance of doubt, the Audit Expert (i) shall be bound by the terms and conditions of this Agreement, in particular the Agreed Accounting Principles, and (ii) shall make its determination based solely on the written presentations and supporting materials provided by the Parties and at least one (1) oral hearing (which must be held in the presence of the Parties and their advisors, including by way of video conference) and (iii) may not assign a value to any item (A) greater than the greatest value for such item claimed by either Party (i.e. the Sellers (jointly) or the Purchasers (jointly)) or (B) less than the smallest value for such item claimed by either Party (i.e. the Sellers (jointly) or the Purchasers (jointly)) in each case in such Party's (i.e. the Sellers (jointly) or the Purchasers (jointly)) final submission to the Audit Expert. The Audit Expert shall specify the grounds for its decision with respect to all points of contention between the Sellers and the Purchasers; and

- (D) the Audit Expert shall act as an expert (and not as an arbitrator) in making its determination on the basis of this Agreement (in particular the Agreed Accounting Principles) which shall, in the absence of manifest error, be final and binding on the Parties and, without prejudice to any other rights which they may respectively have under this Agreement, the Parties expressly waive, to the extent permitted by law, any rights of recourse they may otherwise have to challenge it.
- (g) The Sellers and the Purchasers shall each be responsible for their own costs in connection with the preparation, review and agreement or determination of the Closing Accounts. The fees and expenses of the Audit Expert shall be advanced by the Sellers and the Purchasers in 50/50 proportion, provided that in case of a failure of payment of the share of such advance of the Audit Expert by a Party (i.e. the Sellers or the Purchasers), the other Party (i.e. the Purchasers or the Sellers) may decide in its sole discretion to pay the share of the first mentioned Party to the Audit Expert. Such Party/ies shall be entitled to claim the reimbursement of such advance from the other Party/ies. The Parties shall bear the cost of the Audit Expert in proportion to their respective success and defeat. The Parties shall all be treated as clients (*Auftraggeber*) within the meaning of the General Terms and Conditions for Auditors 2018 (*Allgemeine Auftragsbedingungen für Wirtschaftstreuhandberufe 2018*).
- (h) To enable the Sellers to meet their obligations under this Clause 3.4, the Purchasers shall provide, and procure that the Company provides, to the Sellers the reasonably necessary access to books, records and other documents of the Company, to the extent legally permitted, to the date that the draft Closing Accounts are agreed or determined.
- (i) When the Closing Accounts, the Final Purchase Price and the Purchase Price Adjustment have been agreed or determined in accordance with the preceding provisions of this Clause 3.4, then the Closing Accounts (including the Closing Cash, Closing Indebtedness and Closing Net Working Capital reflected in the Closing Accounts) as well as the Final Purchase Price and the Purchase Price Adjustment shall be final and binding upon the Parties for the purposes of the determination of the Purchase Price Adjustment.

3.5. No set off

No Party is entitled to exercise any right of retention (*Zurückbehaltungsrecht*) or set-off (*Aufrechnung*) in respect of any amount payable by such Party under or pursuant to this Agreement (including the Estimated Purchase Price, the Final Purchase Price, the Purchase Price Adjustment) for or with claims it may have (under this Agreement or otherwise) against the respective other Party/ies and shall not otherwise withhold the proper payment, in full, of any amount payable by such Party/ies to the respective other Party/ies under or pursuant to this Agreement.

3.6. Default Interest

Any failure by a Party to make any payment under this Agreement when it is due shall result in the respective Party's (i.e. all Purchasers or all Sellers, as the case may be) immediate default, without any reminder by the other Party/ies being required. In this case, default interest pursuant to Sec 456 of the Austrian Commercial Code (*Unternehmensgesetzbuch*) shall be payable as from and including the relevant due date until and excluding, the date on which such payment is actually made, without prejudice to any other rights and remedies arising from such failure under this Agreement or applicable law.

3.7. Post-Closing Payments

If any payments are made after Closing by the Sellers to the Purchasers or are made by the Purchasers to the Sellers, in each case, under this Agreement, the Final Purchase Price shall be deemed to have been decreased if the payments are made by the Sellers to the Purchasers, or increased if the payments are made by the Purchasers to the Sellers, in each case, by an amount equal to such payments.

4. CLOSING

4.1. Place and Date of Closing

The completion of the sale of the Acquisition Shares contemplated in this Agreement ("**Closing**") shall take place at the offices of CERHA HEMPEL Rechtsanwälte GmbH or in such other location as mutually agreed upon by the Parties in writing, on such day as mutually agreed upon by the Parties in writing or, if there is no such agreement, on the first Business Day of the month following the month in which the last Closing Condition has been fulfilled or waived, unless fulfilment or waiver of the last Closing Condition happens less than eight (8) Business Days before such day in which case Closing shall not take place on the first Business Day of the following month but on the first Business Day of the month thereafter, provided however that if the first Business Day of the month thereafter is in December 2023, the Closing shall take place on the first Business Day of January 2024 (such date being the "**Closing Date**"). The Parties currently envisage the Closing to occur by 02 November 2023.

4.2. Closing Conditions

Closing shall be subject to each of the following conditions (the "**Closing Conditions**") having been either fulfilled or waived by the Parties pursuant to Clause 4.4:

- (a) approval under the Austrian Investment Control Act (*Investitionskontrollgesetz*) by the Austrian Federal Ministry of Labour and Economy has been granted or is deemed to have been granted (e.g., after expiry or termination of an applicable time limit for taking a decision) or the Austrian Federal Ministry of Labour and Economy has determined that its approval or clearance for the sale and transfer of the Acquisition Shares pursuant to this Agreement is not required under applicable law (the "**FDI Clearance**");
- (b) no breach of any of the covenants set out in Clause 5 has occurred in any material respect;
- (c) the representations and warranties of the Sellers under Clause 6 are true and correct in all material respects;
- (d) no Material Adverse Effect has occurred since the Signing Date;
- (e) the counterparties to the agreements listed in Exhibit/4.2(e) have granted their unconditional and irrevocable consent to the transfer of the Acquisition Shares to the Purchasers (including any waiver of rights triggered by such transfer) as contemplated by this Agreement;
- (f) the Seller 1 entering into a consultancy agreement and the Seller 2 entering into an employment agreement, in both cases including retention, non-competes and non-solicitation, with the Company, and the Seller 1 entering into a termination agreement regarding his existing managing director function including a waiver of payment claims triggered by or otherwise associated with such termination;
- (g) termination (or removal of first bullet point) of ancillary side letter with [***].

4.3. Responsibility for Closing Conditions

- (a) Without prejudice and subject to the qualifications in Clause 4.7,
 - (i) the Sellers shall ensure that the Closing Conditions in Clauses 4.2(b), 4.2(c), 4.2(d), 4.2(e), and 4.2(g) are fulfilled,
 - (ii) the Sellers and the Purchasers shall jointly use commercially reasonable efforts that the Closing Conditions in Clause 4.2(a) and 4.2(f) are fulfilled,

in each case as soon as reasonably possible after the date of this Agreement and in any event before the Longstop Date at the latest.
- (b) The Sellers and the Purchasers shall keep each other informed of the status of the satisfaction of the Closing Conditions and shall notify the other as soon as reasonably practicable (but in any event within five (5) Business Days) upon becoming aware that any of the Closing Conditions have been fulfilled or can definitely not be fulfilled.

4.4. Waiver of Closing Conditions

At any time prior to Closing the Purchasers (jointly) may alone waive in writing in whole or in part the Closing Conditions set forth in Clause 4.2(b) to 4.2(g), however, the Closing Condition

in Clause 4.2(f) may only be waived jointly by the Purchasers and the respective Seller 1 and Seller 2.

4.5. Deliveries and Actions at Closing

On the Closing Date, the Sellers and the Purchasers shall perform the following actions in the following order:

- (a) The Sellers shall deliver a written statement issued by all Sellers confirming that (i) no breach of any of the covenants set out in Clause 5 has occurred in any material respect, (ii) the representations and warranties of the Sellers under Clause 6 are true and correct in all material respects, and (iii) that no Material Adverse Effect has occurred since the Signing Date;
- (b) The Sellers shall deliver to the Purchasers evidence that the counterparties to the agreements listed in Exhibit./4.2(e) have granted their unconditional and irrevocable consent (including any waiver of rights triggered by such transfer) to the transfer of the Acquisition Shares to the Purchasers (including any waiver of rights triggered by such transfer) as contemplated by this Agreement;
- (c) The Sellers shall deliver to the Purchasers (i) copies of relevant agreements evidencing that the Seller 1 has entered into a consultancy agreement and the Seller 2 has entered into an employment agreement, in both cases including retention, non-competes and non-solicitation, with the Company, and the Seller 1 has entered into a termination agreement regarding his existing managing director function including a waiver of payment claims triggered by or otherwise associated with such termination, and (ii) a resignation letter issued by the Seller 1 in his capacity as managing director of the Company with effect as of the end of the Closing Date, and (iii) a declaration by the Sellers and the Co-Signor that the Company and Purchaser 2 are released from the shareholders' agreement between the Sellers, Purchaser 2 and the Company dated 21 June 2021 and any and all obligations which may have arisen thereunder, each with effect as of Closing.
- (d) The Purchasers shall present to the Sellers written evidence that the FDI Clearance has been duly granted or is deemed to have been granted;
- (e) The Parties shall execute the Escrow Agreement with the escrow agent in form and substance as set out in Exhibit./4.5(e) (to the extent not already executed prior to Closing);
- (f) The Parties shall execute the Transfer Deed in form and substance as set out in Exhibit./4.5(f) for the transfer of all Acquisition Shares from the Sellers to the Purchasers;
- (g) The Purchasers shall pay to the Sellers the Estimated Purchase Price less the Escrow Amount, and to the escrow agent set forth in the Escrow Agreement the Escrow Amount in accordance with Clause 3.2 and as evidence of such payment, the Purchasers shall provide the Sellers with irrevocable SWIFT or SEPA confirmations issued by their bank, confirming release of funds in an amount equal to the amount of the Estimated

Purchase Price to the Sellers' bank accounts set out in Clause 3.2(a) respectively to the escrow agent's bank account according to Clause 3.2(b). Such confirmations shall be considered provided once the Sellers' respective banks confirm (oral reply sufficient) that the irrevocable SWIFT or SEPA confirmations correspond to form and that accordingly payment transfer was plausibly initiated; being understood that such confirmations by Sellers' banks shall not be required if they are not reachable, not capable to give such comfort or not willing to provide such service.

- (h) The Sellers shall deliver to the Purchasers at least one set of one DVD which the Purchasers and/or their advisors could review, in particular for compliance with the Data Room Index, at least ten (10) Business Days prior to Closing; and
- (i) The Parties shall terminate the shareholders' agreement between the Sellers, Purchaser 2 and the Company dated 21 June 2021 (Syndication Agreement) and release the Sellers, Purchaser 2 and the Company from any and all (future) obligations in particular the obligations deriving from Art 3 (Non-competition and non-solicitation agreements), each with effect as of Closing, it being understood that claims for breaches (if any) of the Syndication Agreement that may have occurred prior to Closing shall remain unaffected. The termination shall be such that none of the provisions shall have any effect after the termination except Art 13 (9) Confidentiality.

4.6. Simultaneous Action

All of the deliveries and actions described under Clauses 4 constitute the Closing hereof and shall be deemed to have occurred simultaneously. Non-occurrence of any of such deliveries or actions will render null and void any other delivery or action with the effect that (i) Closing has not occurred unless such delivery or action has been waived in writing by the Party to whose benefit it had been provided for and (ii) any payment made by the Purchasers in accordance with Clause 4.5(g) shall be returned to the Purchasers. If a delivery or action has been waived by a Party, it shall nevertheless be entitled to all remedies under this Agreement or applicable law.

4.7. Regulatory Proceedings

- (a) Notwithstanding the fact that the Parties are jointly responsible for obtaining the FDI Clearance as set out in Clause 4.2(a), the Purchasers shall be primarily responsible to take the steps reasonably necessary for that purpose, including making appropriate submissions, notifications and filings as soon as reasonably practicable, in consultation with the Sellers provided that the Sellers have within a reasonable time limit from a relevant request provided the Purchasers or their advisers with all documents, data and information relating to the Company requested by the Purchasers or their advisers to enable the Purchasers to make such submissions, notifications and filings which are in the possession or under control of any of the Sellers or the Company. The Purchasers shall for this purpose:
 - (i) without undue delay notify the Sellers and provide the Sellers, to the extent legally permissible and protecting confidential information, with copies of any material

written communications with the Austrian Federal Ministry of Labour and Economy relating to FDI Clearance;

- (ii) when communicating with any such authorities, take into consideration any reasonable comments and requests of the Sellers and their advisers; and
 - (iii) to the extent reasonably requested by the Sellers, discuss with the Sellers the progress of any submissions, notifications or filings with a view to obtaining FDI Clearance at the earliest reasonable opportunity.
- (b) If the Austrian Federal Ministry of Labour and Economy is prepared to grant FDI Clearance only subject to compliance with specific conditions, commitments, restrictions or obligations for the Purchasers, the Purchasers shall be under no obligation whatsoever to propose, accept, undertake or implement any such conditions, commitments, restrictions or obligations (including, for the avoidance of doubt, any sale, divestments, or holding separate) in respect of its or its Affiliates' or the Company's businesses and assets, and Purchasers shall have no liability whatsoever in relation thereto.
- (c) The Sellers shall, to the extent legally permissible, within a reasonably short time from a relevant request, provide the Purchasers or their advisers with all documents, data and information relating to the Company requested by the Purchasers or their advisers or the Austrian Federal Ministry of Labour and Economy to enable the Purchasers to timely, correctly and completely make such submissions, notifications and filings, which are in the possession or under control of the Sellers or the Company.

4.8. Closing Memorandum / Application to the Commercial Register

- (a) Upon all Closing deliveries and actions constituting the Closing having occurred, the Parties shall sign a Closing memorandum (substantially as set out in Exhibit/4.8(a)) setting out the deliveries and actions taken by the Parties at Closing and confirming that Closing has taken place. By signing the Closing memorandum the Parties expressly confirm that all Closing deliveries and actions have been performed or are thereby waived. The signing of the closing memorandum confirms receipt of the payments according to Clause 3.2 only if this is expressly set out therein.
- (b) Simultaneously on the Closing Date, the Seller 1 and the Seller 2 shall sign, as managing directors of the Company, an application to the Commercial Register regarding the deletion of the Sellers as shareholders and the registration of the Purchasers as sole shareholders of the Company, such application to be filed as soon as the Estimated Purchase Price and the Escrow Amount have been credited to the bank accounts of the Sellers and the escrow agent's bank account according to Clause 3.2(b).

4.9. Non-occurrence of Closing

- (a) If the Closing Conditions have not been satisfied or waived and Closing has not taken place by 31 March 2024 (the "**Longstop Date**"), each of the Purchasers (only jointly) on the one hand and the Sellers (only jointly) on the other hand shall be entitled to withdraw

from and terminate this Agreement by giving written notice to the respective other Party. A Party shall not have a right to withdraw from and terminate this Agreement if it has prevented the satisfaction of any of the Closing Conditions or the Closing.

- (b) The Purchasers (only jointly) shall have the right to withdraw from and terminate this Agreement with immediate effect at any time before Closing by way of a written notification to the Sellers if and as soon as the Purchasers reasonably establish that any of the Closing Conditions will not be fulfilled and the Purchasers (in their sole discretion) decide not to waive such Closing Condition in accordance with Clause 4.4. This right to withdraw from and terminate this Agreement does not apply if the fulfilment of the respective Closing Condition has been deliberately prevented by any of the Purchasers.
- (c) In case a Party has a right to withdraw from and terminate this Agreement pursuant to Clause 4.9(a) or Clause 4.9(b), the respective Party shall be nevertheless and in addition entitled to all other rights and remedies available to it against the respective other Parties under this Agreement and applicable law including specific performance and/or claims for damages (including default interest pursuant to Clause 3.6).

4.10. Surviving Provisions

Upon termination, this Agreement shall expire and shall have no further effect on the Parties, except for Clause 1 (*Definitions and Interpretation*), Clause 3.5 (*No set off*), Clause 4.9 (*Non-occurrence of Closing*), Clause 4.10 (*Surviving Provisions*), Clause 12 (*Confidentiality*), Clause 13 (*Costs and Transfer Taxes*), Clause 14 (*Applicable Law and Jurisdiction*) and Clause 15 (*General Provisions*) which shall continue to apply.

5. SELLERS' COVENANTS BETWEEN SIGNING AND CLOSING

- (a) Between the Signing Date and the Closing Date, the Sellers will, to the extent legally and factually possible, cause the Company
 - (i) to carry on its business in all respects in the ordinary course consistent with past practice, in particular, to
 - (A) continue to collect its receivables and pay its creditors consistent with past practice, but in any event when due and payable, as well as any Taxes in accordance with applicable laws;
 - (B) maintain customer, supplier, licensor, licensee and other trade relationships in accordance with past practice and keep all material assets in good working condition (ordinary wear and tear excepted);
 - (C) comply with all relevant legal and regulatory requirements in all material aspects and with obligations under any agreements of the Company. In this context, "in all material aspects" means in a way not giving reason to fines, restrictions or withdrawal of licenses/permits or similar sanctions;
 - (ii) not to do any of the following:

- (A) take any measure for any merger or de-merger or any other type of restructuring, joint venture, partnership or business combination, any issue or redemption of shares, options or securities, or acquire any interest or participation in any business or Person;
 - (B) enter into transactions or negotiations with third Persons or take any measures that would inhibit or would otherwise materially interfere with the transactions contemplated hereunder;
 - (C) enter into, amend or terminate any agreement except in the ordinary course of business and on arm's length terms;
 - (D) incur, assume or guarantee any indebtedness or create any Encumbrance for the benefit of any third Person or the Sellers;
 - (E) adopt any changes in its business policies or practices except as necessitated by applicable mandatory law;
 - (F) change or depart from the accounting (including, without limitation, valuation and consolidation) and taxation policies or practice of the Company except as necessitated by applicable mandatory law;
 - (G) license, transfer, terminate or let expire or elapse any Owned IP Rights;
 - (H) acquire, lease, license or sell any material assets or make any material investments or divestment other than (y) in the ordinary course of business, including the acquisition of inventory, equipment or machinery in the ordinary course of business, or (z) not in excess of EUR 100,000 (one hundred thousand Euro) in the aggregate;
 - (I) not to appoint, nor to revoke the appointment of any managing director of the Company or – other than foreseen under Clause 4.2(f) – to amend the terms (including the compensation) of the respective mandate of such managing director or of any employment agreements with employees of the Company as well as of any ancillary agreements thereto; regarding employment agreements this applies except as necessary according to mandatory law;
 - (J) establish, adopt or amend any employee benefit plan except as necessary according to applicable mandatory law; or
 - (K) agree to take any of the actions specified in this Clause 5(a)(ii);
- (iii) to exchange to the extent permitted by applicable law all relevant information with respect to the Company with the Purchasers or their advisors and keep the Purchasers regularly informed about all material developments (in particular, regarding circumstances set out under (i) and (ii) above or reasonably likely to result in a Material Adverse Effect or breach of representations and warranties hereunder) related to the Company;

- (iv) to give, to the extent permitted by applicable law, upon advance notice during normal business hours adequate access to all the books and records, financial and operating data and other information, and to the premises and the management and advisors of the Company, to the extent reasonably required by the Purchasers in connection with the transactions contemplated hereunder including any acquisition financing of the Purchasers, and reasonably cooperate with the Purchasers in connection with such acquisition financing;
 - (v) to notify all counterparties of agreements concluded with the Company of the transfer of the Acquisition Shares to the Purchasers as contemplated by this Agreement where the omission to do so would constitute a breach under such agreement or otherwise entitle such counterparty to exercise any rights to the detriment of the Company under the respective agreement.
- (b) Clause 5(a) shall not operate in particular as to restrict or prevent:
- (i) the Sellers or the Company from undertaking any matter required by any law or authority;
 - (ii) any matter explicitly foreseen under this Agreement or undertaken at the request of or with the prior written consent of the Purchaser 2 (such consent not to be unreasonably withheld), email from Ms Mu Li or from Mr Srinu Kaza to either Seller 1 or Seller 2 shall be sufficient; and
 - (iii) any matter explicitly foreseen in the business plan or budget provided to the Purchasers prior to the date hereof.
- (c) The Sellers will use reasonable commercial efforts to terminate/amend, and shall also use their reasonable commercial efforts to cause the respective counterparty to the Company to agree to the termination/amendment, of the following agreements:
- termination (or removal of first bullet point) of ancillary side letter with [***]; with effect latest as of the Closing Date and with no additional cost to the Company.

6. REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Each of the Sellers, or where specifically indicated only particular Sellers specifically indicated on their own, hereby represents and warrants towards the Purchasers, subject to the terms and limitations set forth in Clause 7, the following as of the Signing Date and the Closing Date, or as of such other date specified in relation to a specific representation and warranty.

1.1. Status of the Sellers

- (a) Only Seller 5 represents and warrants that Seller 5 is a company duly organized and validly existing under the laws of Germany.
- (b) Every Seller only for himself/itself and regarding his own Acquisition Shares represents and warrants (i) to have full power and authority and to have received all requisite internal approvals (if required) to execute this Agreement and to consummate the

transactions contemplated under this Agreement and that (ii) this Agreement, and any other documents or instruments to be executed by the Sellers pursuant to this Agreement, will, when executed, constitute legal, valid, binding obligations of him/it enforceable in accordance with their respective terms.

- (c) Every Seller only for himself/itself and regarding his own Acquisition Shares represents and warrants that the execution of this Agreement and the fulfillment of the terms hereof do – subject to the FDI Clearance – not result in a breach of any applicable law, order, judgement or decree of any court or governmental authority or agency or of any agreement to which any of the Company or he/it or his/its Affiliates is a party or by which any of them is bound.
- (d) Every Seller only for himself/itself represents and warrants that he/it is not insolvent or bankrupt within the meaning of the insolvency or bankruptcy laws applicable to him/its and there are no circumstances which could justify the opening of insolvency, reorganisation or other proceedings for the protection of or from creditors against him/its.
- (e) Every Seller only for himself/itself and regarding his own Acquisition Shares represents and warrants that there is no action, suit, investigation or other proceeding pending or threatened against or affecting any of the Company or such Seller or their respective Affiliates before any court, arbitrator, governmental body, agency or official that in any manner challenges or seeks to prevent, enjoin, alter or materially delay the execution or consummation of this Agreement or the transactions contemplated therein, and there are no circumstances likely to give rise to any of the foregoing.

1.2. Existence / Ownership of the Acquisition Shares

- (a) The Company is a limited liability company duly established and validly existing and in good standing under Austrian law. It is not insolvent or bankrupt within the meaning of the insolvency or bankruptcy laws applicable to it and there are no circumstances which could justify the opening of insolvency, reorganisation or other proceedings for the protection of or from creditors. The Company has not initiated any proceedings for a compromise or arrangement with its creditors or for its dissolution, liquidation or reorganisation or the winding-up or cessation of its business. The Company is not in a crisis within the meaning of Sec 2 para 1 of the Austrian Act on Equity Replacement (*Eigenkapitalersatzgesetz*).
- (b) The Company has a fully paid-up share capital (*Stammkapital*) of EUR 40,274 (Euro forty thousand two hundred and seventy four). The shares in the Company have been duly authorised and validly issued and are fully paid up in cash, such payments have been made in compliance with applicable laws and no share capital thereof has been repaid (whether openly or hidden); the shares in the Company are free of additional payment obligations.
- (c) Subject to Preamble (C) and the trust relation involving Seller 1 and the Co-Signor described therein, the respective Acquisition Shares are in the respective Seller's sole, unrestricted and not Encumbered ownership as set forth in Clause 2.1 and the Sellers are entitled to freely dispose of the Acquisition Shares.

- (d) The Acquisition Shares represent approx. 90.96% (ninety point ninety six percent) of the share capital, the dividend rights and the voting rights of the Company. Regarding the sale and transfer of the Acquisition Shares to the Purchasers any pre-emptive rights, rights of first refusal, tag/drag along rights and any (other) rights of recourse of the Sellers have been validly and irrevocably waived and the approval of the shareholders' meeting of the Company for the sale, assignment and transfer of the Acquisition Shares has been validly and irrevocably granted. Every Seller only for himself/itself and regarding his/its own Acquisition Shares represents and warrants that upon Closing the Purchasers will acquire the sole, uncontestable legal and beneficial ownership in the Acquisition Shares, free and clear from any Encumbrances.
- (e) The Company has not concluded and is not bound by any control agreements, silent partnership agreements or profit participation agreements; apart from the Sellers and the Purchaser 2 as the sole legal owners and the Sellers, the Purchaser 2 and the Co-Signor as sole beneficial owners of the shares in the Company as of Closing, there are no third Persons who have any claims against the Company to a participation in the assets, profits, revenues or otherwise in the corporate results of the Company or a claim to a profit-related or profit-based interest. This representation and warranty does not apply to regulations with employees or revenue or profit oriented regulations in license agreements, in each case to the extent they have been Disclosed.
- (f) Neither the Sellers nor any of their respective Affiliates and related parties have any outstanding loan or other shareholder funding (with exception of already provided equity contributions) or credit support to the Company (or any rights associated therewith).
- (g) The Company does not hold any participations in other companies with the exception of an approx. [***] shareholding in [***] ([***]).

1.3. Accounts

- (a) The Accounts (as attached in Exhibit./6.3(a)) and the Estimated Closing Statement (in line with Exhibit./3.1(b)) have each been prepared with the care of a prudent businessman and in accordance with applicable laws, Austrian GAAP, on a consistent basis with the respective preceding financial statements, including the consistent use of any discretionary rights (*Bilanzierungs- und Bewertungswahlrechte*). The Accounts are each complete and correct and give in all material respects a true and fair view of (i) the assets and liabilities of the Company and of the state of affairs and the financial position as at their respective balance sheet date and (ii) the profits/losses of the Company for the financial year ended on the respective balance sheet date. Except as shown in the Accounts, the Company has no liabilities or obligations, whether accrued, contingent or otherwise, relating to any period prior to the effective date of the respective Accounts (*Bilanzstichtag*).
- (b) The management accounts (for the year-to-date period 2023 attached hereto as Exhibit./6.3(b)) (i) have in all material respects been prepared with the diligence of a prudent business person by consistently applying the accounting rules and procedures established with and for the Company as used in previous periods for monthly accounts, and (ii) do not misstate in any material respect the assets and liabilities and earnings of

the Company as of its date, taking into account their internal and working character and preparation based on the Company's monthly financial statements closing process. To the extent deviations are non-material in the aggregate, they will not be considered a misstatement of the assets, liabilities and earnings of the Company. The materiality threshold for purposes of the foregoing sentence is set at 3% of the fiscal year 2022 revenues.

- (c) Since 31 December 2021 (i) the Company has not sold, pledged or otherwise disposed of any of its material assets and, (ii) there has been no material deterioration in the assets, business, financial condition, results of operations or prospects of the Company, (iii) the Company has carried on its businesses in the ordinary and usual course and without any material interruption, change or reorganisation; (iv) the Company has not delayed any capital expenditure provided for in the business plan or budget; and (v) the Company has not been in default with payments to creditors. For the avoidance of doubt, the Parties agree that the granting of IP-licenses in the ordinary course of business in line with past practice is not considered as disposal of material assets according to this Clause.
- (d) The books and accounting and other records of the Company have been maintained in accordance with applicable legal requirements on a proper and consistent basis and are to the Best Knowledge of the Sellers in all material respects up to date and contain complete and accurate details of the business activities and financial position of the Company.
- (e) Without limiting the generality of the foregoing,
 - (i) the inventories shown in the Accounts are valued at the lower of cost or market, taking into account sufficient adjustments for obsolete or otherwise not marketable items;
 - (ii) sufficient adjustments (*Abschreibungen, Einzel- und Pauschalwertberichtigungen*) were made in the Accounts for doubtful accounts or non-collectible receivables, and the accounts receivable are good and collectible in the ordinary course of business without any withholding rights, rights of set-off or rights of deduction;
 - (iii) the provisions (*Rückstellungen*) in the Accounts cover all risks for which provisions have to be made according to applicable law and are sufficient to cover all liabilities relating to any period prior to the effective date of the respective Accounts (*Bilanzstichtag*) that are not reflected as liabilities; and
 - (iv) the financial position or earnings of the Company as reflected in the Accounts have not been influenced by (aa) inconsistencies of accounting practices, (bb) the inclusion of accounting policy changes, (cc) one-off income or expenditures of more than EUR 50,000 in the aggregate not related to the ordinary course of the business of the Company or (dd) any other factors rendering such results exceptionally high or low. The ordinary course of business of the Company comprises project related income and expenditures that exceed in the aggregate the amount stated in (cc) above and such income or expenditures shall therefore

not be considered as "one off" even if they happened occasionally and not continuously.

1.4. Leased Real Property

- (a) The Company does not own real property or any rights equivalent to real property (*grundstücksgleiche Rechte*), including superstructures, building rights or similar.
- (b) Exhibit./6.4(b) contains a complete and accurate list of all real properties, buildings, rights in or to real property leased or rented by the Company ("**Leased Real Properties**"). The remaining lease or rental term for the Leased Real Properties is properly reflected in Exhibit./6.4(b). The agreements set forth in Exhibit./6.4(b) have neither been terminated nor threatened to be terminated until Signing. The Company has not engaged in any conduct which would entitle a contractual partner to terminate the relevant contractual relationship prematurely. The Company has the full and unrestricted right to use and the full and unrestricted possession of the Leased Real Properties leased or rented by it in line with the respective lease or rental agreement. With respect to the Leased Real Properties, there are no contractual or statutory change-of-control provisions, except for those provisions contained in the Austrian statutory lease law in Sec 12 a (*§ 12a Mietrechtsgesetz*) (if applicable), which would entitle the respective counterparty to terminate such lease or rental agreements, increase the rent/fees payable thereunder or in any other way alter the terms of such lease or rental agreements.
- (c) The Leased Real Properties are (i) sufficient for the operation of the business of the Company as currently operated, (ii) maintained to an extent sufficient for the continued operation of the business and are in good and serviceable condition, normal wear and tear excepted, and (iii) not contaminated, through the cause of the Company, with any environmentally hazardous substances or substances requiring disposal, and to the Best Knowledge of the Sellers not otherwise contaminated with such substances.

1.5. Assets

- (a) The Company has full and unrestricted title to, and undisturbed possession of, all tangible and intangible fixed assets which are required for the conduct and continuation of its business as currently conducted without any Encumbrance except for Encumbrances listed in Exhibit./6.5(a). For the avoidance of doubt, this representation and warranty does not apply to IP assets.
- (b) All material fixed assets of the Company have been properly maintained and are in good and serviceable condition, normal wear and tear excepted.
- (c) The Company owns and possesses all current assets and goods which are required for the conduct and continuation of its business as currently conducted not subject to any Encumbrances other than customary retention of title rights of suppliers except for leased assets as listed in Exhibit./6.5(c). For the avoidance of doubt, this representation and warranty does not apply to IP assets.

1.6. IT, Data Protection and E-Commerce

- (a) The Company either owns or holds valid leases and/or licenses to all computer hardware, software, networks and other information technology (collectively "**Information Technology**") which is used by or necessary for the Company to conduct its business as currently conducted.
- (b) The Information Technology is in a condition suitable for use and has been regularly maintained; no material interruptions, data losses or similar incidents have occurred in the last 24 (twenty four) months. The Information Technology owned or used by the Company has the capacity and performance necessary to meet the requirements of the Company.
- (c) The Company has not received any notice or allegation from any governmental authority or Person (i) alleging non-compliance with data protection laws or E-Commerce or (ii) claiming a right to compensation under data protection laws.

1.7. Intellectual Property

- (a) Exhibit./6.7(a) includes for the Company a correct and complete list of all patents, patent applications, utility models (*Gebrauchsmuster*), registered designs (*Geschmacksmuster*), trademarks (*Marken*), design rights, copyrights, trade names, business and domain names, software protection rights, protected know-how and other intellectual property rights (*gewerbliche Schutzrechte*) and applications with respect to such rights (such rights, including source codes whether or not included in the list, the "**IP Rights**") owned by the Company and correctly states for each such IP Right the type, subject matter, applicable register or other identification data (the IP Rights listed in Exhibit./6.7(a) the "**Owned IP Rights**").
- (b) Except as otherwise explicitly Disclosed in Exhibit./6.7(b) the Company is the unrestricted legal and beneficial owner of the Owned IP Rights listed in Exhibit./6.7(a) and no Owned IP Right is (i) Encumbered with any rights of any third Person, including, without limitation, Sellers or Sellers' Affiliates; or (ii) subject to any non-registered or otherwise pending transfer or other disposition or any sale, contribution or other contractual arrangement creating an obligation to transfer or to create, change or abolish any Encumbrances. The Company is free to dispose of the Owned IP Rights in any manner, and such dispositions do not violate any legal obligations of the Company.
- (c) The Company has properly maintained and is continuing until the Closing of this Agreement to properly maintain the Owned IP Rights, in particular to apply in a timely manner for renewals and to pay when due all registration fees. There are no cancellation or annulment proceedings with respect to the Owned IP Rights pending or threatened.
- (d) Exhibit./6.7(d) includes for the Company a list of all IP Rights licensed or sub-licensed by any third Person (including, without limitation, Sellers or Sellers' Affiliates) to the Company, and correctly states for each such IP Right the type, subject matter, applicable register or other identification data, if any, the licensor and the date of the license agreement (the IP Rights listed in Exhibit./6.7(d) (the "**Licensed IP Rights**"). All agreements providing for a license to the Company of any rights to use any Licensed IP

Rights are in full force and effect, have been granted at arm's length terms and are enforceable against the licensor in accordance with their terms.

- (e) Except as otherwise explicitly Disclosed in Exhibit./6.7(e), the Company is the unrestricted legal and beneficial owner of all business information (whether embodied in written, electronic or magnetic form), trade and/or business secrets, unpatented inventions and other tangible or intangible information, including all documentation on research & development (encompassing without limitation research materials, test data, product data and safety data) in relation to the business of the Company ("**Know-How**"). To the Best Knowledge of the Sellers, the Company is free to dispose of the Know-How in any manner, and such dispositions do not violate any legal obligations of the Company. All Know-how is adequately documented in writing. The Company has taken all commercially reasonable steps necessary to protect Know-How, including, without limitation, adequate security measures.
- (f) The Owned IP Rights and Licensed IP Rights, including Know-How, are sufficient to allow the Company to conduct and continue its business as currently conducted prior to and as of the Signing Date.
- (g) Except as otherwise explicitly Disclosed in Exhibit./6.7(b), the Company has not granted any license rights or other rights of use to the Owned IP Rights or Licensed IP Rights except for non-exclusive licenses to customers, distributors and suppliers granted in the ordinary course of business.
- (h) The Owned IP Rights and Licensed IP Rights have not been challenged (*angegriffen*) by any third Person; no such challenge has been threatened in writing and according to the Best Knowledge of the Sellers there are no circumstances which would give rise to such challenge. None of such IP Rights is subject to any pending judgment, injunction, order or decree issued against any of the Sellers or the Company restricting the use thereof by it or restricting the licensing thereof by it to any third Person.
- (i) The Company does not infringe upon (*verletzt*) any IP Right or other right of any third Person (including without limitation those of Sellers and Sellers' Affiliates). No such infringement has been asserted in writing. To the Best Knowledge of the Sellers neither the Technical University of Vienna nor any third Person (including without limitation Sellers and Sellers' Affiliates) infringes upon any of the Owned IP Rights or the Know-How.
- (j) There are no proceedings, actions or claims pending or threatened in writing and received by the Company or any of the Sellers, against any Seller and/or the Company, and neither a Seller nor the Company has received (directly or through a third party) a written communication, (i) impugning the title, validity or enforceability of any of the Owned IP Rights; (ii) opposing or seeking invalidation or revocation of any of the Owned IP Rights; or (iii) asserting that the use by the Company of any IP Rights infringes or misappropriates, or has infringed or misappropriated, the rights of any third Person.
- (k) Except as Disclosed in Exhibit./6.7(k) the Sellers represent and warrant the following: all employee inventions forming part of the Owned IP Rights have been validly claimed and

belong to the Company. All current or former employees have been fully and completely compensated for inventions or other intellectual achievements, of which the Company was notified until the date of this Agreement or which are known to the Sellers, as far as possible according to applicable law. Previous and current managing directors or other executives of the Company have completely transferred to the extent legally possible their rights in respect of inventions and other intellectual achievements (other than copyrights which are by nature not transferable) made or acquired during their period of service for the Company, to the Company. None of them has any compensation claims.

1.8. Licences and Permits

- (a) The Company has all necessary licences, concessions, approvals, authorisations and permits (collectively "**Permits**") required for the conduct and continuation of its business as currently conducted and all such Permits are in full force and effect and are not subject to any unusual or onerous conditions.
- (b) The Company is in all material respects compliant with the Permits. There are, in particular, no actions or other proceedings for fines, penalties or which seek the revocation, withdrawal, amendment or challenge of any Permits and there are no unfulfilled or outstanding conditions or instructions imposed by authorities which would materially adversely affect the business operations of the Company or require material investments or expenses by the Company. There is no event or circumstance, which could reasonably be expected to result in a fine, penalty or the revocation, withdrawal, amendment or challenge of any Permits where such revocation, withdrawal, amendment or challenge could reasonably be expected to have a material adverse effect on the business or the financial situation of the Company.

1.9. Compliance with Laws

The Company conducts its respective business and corporate affairs in all material respects in compliance with all applicable laws and regulations and agreements in each country in which its business is carried on and it has not received any demands, notices or claims of non-compliance that Sellers have not Disclosed to the Purchasers. In particular, the Company complies with all applicable laws and regulations, permits, official requirements and conditions as well as with orders, decrees or rulings of, or restrictions imposed by, any court or authority in particular in connection with (i) environmental and waste management law, (ii) labor law and employee protection as well as laws related to health and safety, (iii) all applicable Sanctions Laws and Regulations, (iv) competition and anti-trust law, (v) e-commerce and data protection legislation and (vii) trade law. This Clause 6.9 also extends to compliance in the past, if and to the extent a past non-compliance could still result in fines, penalties or other claims against the Company.

1.10. Material Agreements

- (a) Exhibit./6.10(a) includes for the Company a list of the following agreements with a third Person with respect to which the primary contractual obligations have not yet been fully performed, and correctly state for each such agreement the type of agreement, parties,

date and nature (including of any ancillary agreements, amendments, side letters and similar documents) (such agreements the "**Material Agreements**"):

- (i) agreements for research and/or development of products, technologies, processes, designs, software and other forms of cooperation or similar purposes;
 - (ii) credit or financing agreements (active and passive) or any instruments collateralizing or securing any indebtedness of the Company as well as subsidies/state aid agreements with the Company;
 - (iii) agreements to sell or otherwise dispose of any assets with a fair market or replacement value in excess of EUR 30,000 (Euro thirty thousand);
 - (iv) agreements relating to capital expenditures involving an amount exceeding EUR 30,000 (Euro thirty thousand);
 - (v) license agreements with the Company as licensee or licensor;
 - (vi) agreements with the top ten customers based on sales in the last fiscal year;
 - (vii) agreements with the top ten suppliers based on supplies in the last fiscal year;
 - (viii) agency agreements, agreements with independent dealers and distributors, franchise agreements or other distribution agreements;
 - (ix) consultancy agreements providing for an annual remuneration in excess of EUR 30,000 (Euro thirty thousand);
 - (x) any contractual arrangements of the Company (as beneficiary or obligor) providing for a non-compete and/or non-solicitation and/or confidentiality protecting IP Rights and/or Know-How; and
 - (xi) as of the Closing Date, the agreements being Closing Conditions referred to in Clause 4.2(f).
- (b) Furthermore, the term Material Agreements and the Exhibit/6.10(a) also include all agreements of the Company with co-shareholders (whether corporate or contractual) of the [***] ([***) and no such agreements provide for any put, call, pre-emption, right of first refusal, right of first offer, tag, drag, termination, discontinuation, acceleration or other comparable right of such co-shareholders that might be triggered by the transactions contemplated hereunder.
- (c) Except as Disclosed in Exhibit/6.10(c) each of the Material Agreements is in full force and effect and is enforceable against the parties thereto in accordance with their terms. No party to a Material Agreement has given notice of termination or indicated that it will give notice of termination, and no circumstances exist which give any party to a Material Agreement the right to terminate or modify such Material Agreement; no party to a Material Agreement is in material breach of or in default under a Material Agreement; the execution or consummation of this Agreement or the transactions contemplated therein do not trigger any change-of-control rights of any party to a Material Agreement (in

particular, rights to terminate, discontinue, accelerate or in any other way alter the terms of such Material Agreement).

- (d) The Company (i) has, except to Affiliates of the Purchasers, only sold two [***] machines in total, one to [***] and one to [***] , and (ii) was, at the time of any sales of machines produced by it, not aware and had no indications that any machines sold by it were intended for use in the dental, orthodontics or cranial facial fields.

1.11. Affiliate Contracts

- (a) Exhibit./6.11(a) lists those Affiliate Contracts which are still valid.
- (b) All Affiliate Contracts are entered into and are and have been consummated on arm's length terms.

1.12. Product Liability

- (a) To the Best Knowledge of the Sellers the products designed, manufactured or distributed and the services rendered by the Company prior to the Closing Date do not suffer from any defects which give or could give rise to any product liability or warranty claims and no such claims have been raised against the Company.
- (b) The Company produces, sells and distributes its goods and products and has done so for the past five (5) years in compliance with all applicable regulatory, contractual or other regulations and requirements, and to the Best Knowledge of the Sellers, with all other applicable legal requirements, safety standards and technical norms.

1.13. Employment Law

- (a) The key employees of the Company are listed, together with their salaries, bonuses, pension entitlements and all other entitlements and benefits, in Exhibit./6.13(a) (such persons the "**Key Employees**") and no such Key Employee has given or received notice of termination of his or her employment and to the Best Knowledge of the Sellers no such employee has any current intention of giving such notice.
- (b) The Company has complied with its respective obligations (including health and safety obligations) to or in respect of all its respective employees and former employees arising out of or in connection with their terms and conditions of employment and/or with any relevant requirement under applicable law including any judgments, decisions, orders and awards made in respect of any of them and no amount due (irrespective of whether such amount is due by law, under an agreement, under a collective bargaining agreement or for any other legal reason) to or in respect of any employee or former employee is in arrears and unpaid (including holiday pay and bonuses except claims reflected in the management accounts (Exhibit./6.3(b)) for which sufficient accruals/reserves/provisions have been made) other than salary for the month current at the date of this Agreement. The Company has made all filings and taken all actions required to be made or taken under applicable labour laws.
- (c) Except as Disclosed in Exhibit./6.13(c), the Company (i) does not have a share incentive scheme, share option scheme or profit-sharing scheme or (ii) is not bound by any

severance payment commitments, pension, life-insurance or similar commitments (apart from the statutory severance payment scheme and the statutory pension scheme of the state), in each case in relation to its respective active and former managers and employees.

- (d) Except as Disclosed in Exhibit.16.13(d), there are, apart from statutory applicable collective bargaining agreements, no other collective bargaining agreements (*Kollektivverträge*) or works agreements (*Betriebsvereinbarungen*) or company practices (*betriebliche Übungen*) in respect of employees to which the Company is or is required by law to be a party.
- (e) During the last five (5) years, the Company has not been affected by strikes, collective labor disputes or other labor disturbances.

1.14. Taxes

- (a) The Company has (i) fulfilled all its obligations in connection with Taxes and has in particular filed all Tax returns, reports, notices and all other information required to be supplied to the Tax Authorities within the respective time limits and all such returns, reports, notices and other information were complete and accurate, and (ii) timely paid all Taxes that have become due for payment in full, in particular, all Taxes which the Company is or was required to withhold or collect according to applicable laws and regulations have been duly withheld or collected when due or (iii) obtained and filed or kept the required documentation according to applicable law in case an exemption was claimed.
- (b) The Company is not involved in any dispute with any Tax Authority and there are no Tax related audits, investigations or disputes initiated or indicated by a Tax Authority against or with respect to the Company.

1.15. Litigation and Investigations

- (a) The Company is not involved in or subject to any material civil, criminal, arbitration, regulatory, administrative, enforcement or other claim, dispute, litigation, lawsuit, court or governmental or regulatory authority decision or proceedings in any jurisdiction and no such proceedings are pending or threatened by or against the Company. To the Best Knowledge of the Sellers there are no circumstances which may be expected to result in any such proceedings.
- (b) Neither the Company nor, to the Best Knowledge of the Sellers, any of its directors or officers, in their capacity as such, are subject to any proceedings, investigations or enquiries by any governmental, administrative, fiscal, regulatory or other body and no such proceedings, investigations or enquiries are currently pending, threatened or expected.

1.16. Insurance

- (a) The Company is currently appropriately insured against all risks, for such amounts for which a prudent businessman in the area of business of the Company would usually be

insured, including, without limitation, third party liability, fire (and other comparable risks), damage and product liability insurance (for the avoidance of doubt, the term appropriately shall refer, without limitation, to a coverage which is sufficient to adequately cover such risks) and there is no liability or loss that might not have been appropriately insured in the past which is not fully reflected in the Accounts (Exhibit./6.3(a)) or the management accounts (Exhibit./6.3(b)).

- (b) All insurance contracts of the Company are in full force and effect and will remain in full force and effect irrespective of the consummation of the transactions contemplated by this Agreement. The Company is not in arrears with the payment of insurance premiums or has failed to comply with any obligations under the policies.

1.17. Subsidies

Except as Disclosed in Exhibit./6.17 the conclusion of this Agreement as well as the consummation of this Agreement and the transactions contemplated thereunder do not give any grantor of a subsidy or a public aid a right to terminate, accelerate, claim repayment or in any other way alter the terms of the subsidies and/or public aids received by the Company.

1.18. Bribery and Corruption

The Company and every Seller only for himself/itself and, to the Best Knowledge of the Sellers, their respective current and former directors, officers and employees have in the course of their respective duties complied with all Anticorruption Laws. None of the Company and the Sellers nor, to the Best Knowledge of the Sellers, any of their respective current and former directors, officers and employees are involved in any proceedings in relation to an alleged bribery or corruption offence, nor are any such proceedings pending or threatened by or against any of the Company, the Sellers or any current or former director, officer or employee of the Company or the Sellers.

1.19. All Relevant Information

All documents and information disclosed or otherwise provided by the Sellers or the Company to the Purchasers in the Disclosure Exhibits, in e-mails sent to Ms Mu Li and Mr Allan Kiang marked "DISCLOSURE" in the header/subject line, or in the Data Room according to the Data Room Index, are true, correct, not misleading and, compared to the information and data requested by the Purchasers, complete.

7. LIABILITY, REMEDIES, LIMITATIONS, EXCLUSION OF CLAIMS

7.1. Notice of Claims

All claims asserted against the Sellers for breach of a representation and warranty pursuant to Clause 6 shall be raised by the Purchasers by giving written notice to the Sellers with the basis of such claim and available documents evidencing such claim within forty five (45) Business Days after (i) a Purchaser has become actually aware of the breach of a representation and warranty under this Agreement or (ii) receipt by a Purchaser of a written notice of any claim made or threatened to be made by any third Person which may give rise to a claim hereunder. Failure by the Purchasers to give notice within the period specified above shall exclude or limit

the rights of the Purchasers to make a claim only if and to the extent that such non-compliance has caused or increased the Sellers' liability under this Agreement.

7.2. Remedies

- (a) With respect to a breach of a representation and warranty under this Agreement notified by the Purchasers to the Sellers pursuant to Clause 7.1, the Sellers have the opportunity to create, within forty five (45) Business Days after receipt of such notice of breach by the Sellers, at their own expense the position (either in kind or through the payment of an equivalent amount) which would have existed had the respective representation and warranty of the Sellers been true and correct (*Verbesserung/Naturalrestitution*). If and to the extent the Sellers do not want or are not in the position to perform this kind of remedy, the Purchasers may claim for payment of the monetary compensation in the amount of all damages (whether direct, indirect, incidental or consequential), including, but not limited to, lost profits, interest, fines, Taxes, penalties, costs (including reasonable legal, accounting and other fees and expenses of professional advisors) and other losses (collectively "**Damages**") which the Purchasers and the Company, respectively, have suffered or incurred and would not have suffered or incurred if the representation and warranty in question had been true and correct.
- (b) For taxation reasons, any payment made by the Sellers to the Purchasers as monetary compensation in respect of a breach of a representation and warranty shall be treated as a reduction of the Final Purchase Price (*Preisminderung*) independently whether it would be a payment for damages (*Schadenersatz*) or based on other legal grounds such as performance under warranty (*Gewährleistung*).

7.3. No Other Representation or Warranty

- (a) The Purchasers acknowledge that, other than as expressly provided in Clause 6, the Sellers have not made any guarantee, representation or warranty pertaining to the subject matter of this Agreement and Clauses 6 and 7 contain the exclusive remedies for any kind of claim for a breach of a representation or warranty under Clause 6.
- (b) Each of the representations and warranties referred to in Clause 6, shall be construed as a separate one and shall not be otherwise limited or restricted by reference to or inference from the terms of any other representation and warranty except as explicitly stated.

7.4. Statute of Limitations

All claims asserted against the Sellers for breach of a representation and warranty under this Agreement shall be time-barred (*verjährt*) – to avoid that a claim becomes time-barred the Purchasers shall file such claim with the courts competent according to Clause 14(b) of this Agreement before expiration of the term –

- (a) in relation to a representation and warranty referred to in Clause 6.14 (*Taxes*), if a Tax proceeding has not been commenced by a Tax Authority within six (6) years from the Closing Date, but if such Tax proceeding has been commenced within six (6) years from the Closing Date, upon the expiration of six (6) months after the final and formal as well

as materially conclusive assessment of the relevant Taxes (including, if applicable, exhaustion of all extraordinary legal remedies);

- (b) in relation to a representation and warranty referred to in Clause 6.1 (*Status of the Sellers*) or Clause 6.2 (*Existence / Ownership of the Acquisition Shares*) after five (5) years from the Closing Date;
- (c) in relation to a representation and warranty referred to in (A) Clause 6.7 (*Intellectual Property*) other than Clause 6.7(f) or 6.7(i), or (B) in Clause 6.15 (*Litigation and Investigations*), after three (3) years from the Closing Date
- (d) in relation to (A) a representation and warranty referred to in Clause 6.7(f) or 6.7(i), (B) all other representations and warranties not referred to above in Clauses 7.4(a) to 7.4(c) after two (2) years from the Closing Date;

provided that if a Third Party Claim which could give rise to a claim for breach of a representation or warranty referred to under any of the Clauses 7.4(b) through 7.4(d) is raised within the limitation periods specified in such Clauses, claims against the Sellers for breach of a respective representation and warranty shall be time-barred (*verjährt*) upon the expiration of six (6) months after the final and formal resolution of the respective Third Party Claim (including, if applicable, exhaustion of all extraordinary legal remedies).

7.5. No Multiple Recovery

The Purchasers shall not be entitled to multiple recovery, including in the event any circumstances constitute a breach of more than one representation and warranty or result in an indemnity claim under Clauses 10 or 11.

7.6. Mitigation of Losses and Damages

This Clause 7 shall not restrict or limit the obligation of the Purchasers to mitigate any loss or damage which they may suffer in consequence of a breach of a representation and warranty of the Sellers under this Agreement in accordance with applicable law.

7.7. Thresholds and Cap

- (a) The Purchasers shall not be entitled to be paid any sum in respect of a claim for a breach of a representation and warranty pursuant to Clause 6 unless (i) such claim towards the Sellers exceeds on a stand-alone basis the amount of EUR 30,000.00 (thirty thousand Euros) (the "**Qualifying Claim**") and (ii) the liability of the Sellers to Purchasers in respect of such Qualifying Claim exceeds when aggregated with the aggregated liability of the Sellers hereunder in respect of all other Qualifying Claims, the sum of EUR 150,000.00 (one hundred fifty thousand Euros) (the "**Threshold**"), in which case the entire amount and not only the excess amount shall be payable.
- (b) Subject to Clause 7.7(c), the total liability of the Sellers for a breach of a representation and warranty pursuant to Clause 6 in the aggregate shall not exceed an amount of 35% (thirty five percent) of the Final Purchase Price received by each individual Seller, except that in respect of a breach of the representations and warranties given in Clause 6.1 (*Status of the Sellers*) and Clause 6.2 (*Existence / Ownership of the Acquisition Shares*)

the total liability of the Sellers shall not exceed an amount of 100% (one hundred percent), provided that in relation to a breach of a representation or warranty under Clauses 6.7(f) or 6.7(i) the total liability of the Sellers shall not exceed an amount of 10% (ten percent) which shall constitute a basket separate from the 35% (thirty five percent) cap set out above. For the avoidance of doubt, even if the joint and several liability (Clause 1.4) applies, under the foregoing sentence the aggregate amount of liability for each individual Seller shall not exceed the caps set out above.

- (c) The total liability of the Seller 5 for a breach of a representation and warranty (i) given in Clause 6.1 (*Status of the Sellers*) and Clause 6.2 (*Existence / Ownership of the Acquisition Shares*) shall not exceed an amount of 100% (one hundred percent) of the Final Purchase Price received by Seller 5, and (ii) given in Clauses 6.3 through 6.19 shall be limited to the Escrow Amount held in escrow on the escrow account subject to and in accordance with the Escrow Agreement.

7.8. Reduction and Limitation of Claims

In addition to Clause 7.6, the liability of the Sellers shall be excluded or reduced, as the case may be, if and to the extent that:

- (a) the Purchasers or the Company have/has actually recovered from any third Person any sum in respect of the same matter to which a claim relates; or
- (b) the circumstances constituting the breach of a representation and warranty have been Disclosed; or
- (c) a specific provision or reserve for the fact, matter or circumstance underlying the liability of the Sellers has been made in the Closing Accounts reducing the Final Purchase Price.
- (d) the Purchasers did not bring to the attention of the Sellers existing breaches of a representation or warranty under Clause 6 of this Agreement, of which Purchasers were actually aware prior to the Signing of this Agreement.

This Clause 7.8 shall not apply for any claims asserted by the Purchasers based on a breach of a representation and warranty set forth in Clause 6.1 (*Status of the Sellers*) and Clause 6.2 (*Existence / Ownership of the Acquisition Shares*) and Clause 6.19 (*All Relevant Information*).

7.9. Third Party Claims

- (a) The Purchasers shall notify the Sellers as soon as reasonably practicable, but in any event within 15 (fifteen) Business Days, of any claims or disputes raised by any third Person in writing before ordinary and extraordinary courts, arbitral courts, administrative, regulatory, social security, Tax or other authorities that arise after Closing and which may cause the Sellers to be liable to the Purchasers under the terms of this Agreement (herein collectively "**Third Party Claims**").
- (b) The Purchasers shall, and shall procure that the Company, assist and cooperate with the Sellers, acting reasonably, in relation to the handling of any Third Party Claim. In particular, the Purchasers (i) shall, and shall, subject to applicable law, procure that the

Company, provide the Sellers without undue delay with all information available for the defence of Third Party Claims and regularly update any information relating to Third Party Claims; (ii) provided that the Sellers have unconditionally assumed in writing towards the Purchasers their liability in full under this Agreement for any loss or liability for the Company or the Purchasers under or in connection with a Third Party Claim, shall obtain the prior written approval of the Sellers for any admission, waiver, acknowledgement, compromise, agreement, withdrawal of action or settlements regarding Third Party Claims; and (iii) shall, and shall, subject to applicable law, procure that the Company, allow the Sellers' legal counsel to participate in any proceedings, audits, meetings or other hearings relating to Third Party Claims at any time (or inform the Sellers as reasonably practical of any outcome of meetings or discussions if the Sellers were not present).

8. REPRESENTATIONS AND WARRANTIES OF THE PURCHASERS

- (a) The Purchasers hereby represent and warrant (each individually for itself) the following as of the Signing Date and of the Closing Date, except for those representations and warranties which are explicitly given as of a specific date which shall be given as of such time only:
- (i) The Purchaser 1 is a company duly organized and validly existing under the laws of Austria. The Purchaser 2 is a company duly organized and validly existing under the laws of Switzerland.
 - (ii) The Purchaser 1, respectively Purchaser 2, has full corporate power and authority and has received all requisite corporate approvals to execute this Agreement and to perform its obligations hereunder.
 - (iii) Subject to regulatory clearances, this Agreement constitutes, and the agreements contemplated hereunder to be executed by the respective Purchaser will, when executed, constitute legal, valid and binding obligations of the respective Purchaser enforceable against the respective Purchaser in accordance with their respective terms.
 - (iv) The execution of this Agreement and the fulfillment of the terms hereof do not result in a breach of any material contract to which the respective Purchaser is a party.
 - (v) As of the date hereof, to the best knowledge of the respective Purchaser, there is no lawsuit or proceeding pending or threatened against the respective Purchaser before any court, arbitration tribunal or governmental authority which challenges or seeks to prevent the execution or consummation of this Agreement.
 - (vi) The Purchasers are not insolvent or bankrupt within the meaning of the insolvency or bankruptcy laws applicable to them.
 - (vii) In the period from Signing to Closing, the Purchasers and their Affiliates being the most important customers of the Company and the Purchaser 2 being co-

shareholder of the Company shall maintain the business relationship with the Company in ordinary course and refrain from materially changing their existing long term business practices with and conduct towards the Company.

- (b) Clauses 7.1, 7.2(a), 7.3, 7.4(d), 7.5, 7.6, 7.7 (with the cap of 10% (ten percent) applying) and 7.8 shall apply *mutatis mutandis* to any claims of the Sellers against the Purchasers for a breach of a representation or warranty, declaration or other obligation under this Agreement by the Purchasers.

9. FURTHER COVENANTS OF THE PARTIES

9.1. Non-Compete and Non-Solicitation

- (a) For a period of three (3) years from the Closing Date, each of the Sellers (other than Seller 5) and the Co-Signor shall refrain, and shall procure that its respective Affiliates refrain from:
 - (i) engaging in or promoting, directly or indirectly, any activity in the geographic (including, in particular, Europe (geographically), USA and Japan as well as any other countries into which the Company has sold a Caligma or Cerion printer in the 3 (three) years prior to Closing, if any) and business, including, in particular, any activity or action with the goal to develop, establish, sell, provide, trade with or make commercially available lithographic generative (layer-by-layer) production technology based on the Company's Hot Lithography Approach and/or based on the Company's IP portfolio or trying to circumvent the Company's IP portfolio in terms of making high viscous and tough photopolymer materials processable in Additive Manufacturing processes (any of such business activities a "**Competing Activity**"). For the avoidance of doubt, Competing Activity does not include the usage of the aforementioned Additive Manufacturing technology to produce parts for various industries and providing services to third parties by producing such parts.
 - (ii) holding, directly or indirectly, any equity interest in any legal entity engaging, directly or indirectly, in any Competing Activity, except for equity interests that are held as financial investment only and do not exceed 5% (five percent) of the share capital and the voting rights of the respective legal entity or otherwise confer the possibility to exert influence over the management or the business of the respective legal entity;
 - (iii) serving as a representative for any individual person or legal entity engaging, directly or indirectly, in any Competing Activity; or
 - (iv) selling or otherwise making available, directly or indirectly, to any individual person or legal entity engaging, directly or indirectly, in any Competing Activity any know-how or other elements of goodwill, trade secrets or other information of a confidential nature of the Company.

- (b) In the case of a breach of the obligations in Clause 9.1(a), the Damages of Purchasers for which the respective breaching party shall be liable as a result thereof shall include, without limitation, any Damages suffered by the Company. In addition to any other remedies available to Purchasers under this Agreement or applicable law, the respective breaching party shall pay to Purchasers irrespective of fault a penalty of EUR 200,000 (Euro two hundred thousand) for each individual breach of any of the obligations set out in Clause 9.1(a) by any such breaching party. If a breach continues for more than sixty (60) days, such continuation shall be regarded as a new and separate breach within the meaning of this Clause 9.1(b). Purchasers shall not be deemed to have waived the requirement of the Sellers and the Co-Signor, and the Sellers and the Co-Signor shall not be deemed to be relieved of their obligation, to comply with the obligations of Clause 9.1(a) by Purchasers accepting payment of such penalty or seeking any other remedy available to which Purchasers may be entitled under this Agreement or applicable law. For the avoidance of doubt, in case of a breach of Clause 9.1(a) by any of the Sellers' and/or Co-Signor's Affiliates, such breach shall be treated as a breach by the respective Seller and/or Co-Signor (as applicable) whose Affiliate is in breach with Clause 9.1(a).
- (c) For a period of three (3) years from the Closing Date, the Sellers and the Co-Signor shall refrain, and shall procure that their respective Affiliates refrain, from:
- (i) influencing or attempting to influence any customer, supplier, consultant or other third party maintaining a contractual or other business relationship with the Company to terminate or discontinue such relationship or to reduce the volume of goods or services provided thereunder;
 - (ii) soliciting or attempting to solicit the service or employment of any current or future director, officer or employee of the Company; or
 - (iii) directly or indirectly enticing away any of the Company's officers, employees, other staff and consultants or contractual partners, nor to induce or influence any of them to terminate the respective contractual relationship with the Company (for the avoidance of doubt, this Clause 9.1(c) shall not be deemed fulfilled if an employee of the Company is employed as consequence of a job advertisement addressed to the general public).

Clause 9.1(b) shall apply *mutatis mutandis*, provided that the penalty for each case of breach by the Sellers and/or the Co-Signor of the obligations in this Clause 9.1(c) shall be EUR 200,000 (Euro two hundred thousand).

- (d) The Parties understand and agree that in the case of a breach by the Sellers and/or the Co-Signor of the obligations in this Clause 9.1, the remedies available to Purchasers under this Agreement may not be sufficient to indemnify Purchasers and the Company fully against all damage, and that therefore Purchasers shall be entitled to enforce any claims for specific performance and injunctive relief without having to establish irreparable harm and without having to provide a bond or other collateral.

- (e) For the avoidance of doubt, the Co-Signor's basic research activities conducted in the field of resins for hot lithography at the Technical University of Vienna (*Technische Universität Wien* – "TU Vienna") without any commercial goal or purpose, and not based on the Company's IP portfolio or trying to circumvent the Company's IP portfolio, shall not fall under para. (a) of Clause 9.1, it being further understood that (i) in accordance with university regulations and statutory provisions the Co-Signor must immediately inform TU Vienna about any IP generated and has no influence on TU Vienna's actions regarding the generated IP, and (ii) the Co-Signor's activity as head of the research group "Polymer Chemistry and Technology" at the TU Vienna has, without prejudice to applicable non-disclosure obligations, no means to restrict the scientific freedom and activities of the junior research group leaders.

9.2. Post Closing Actions

- (a) Within 90 days following Closing, the Purchasers or Purchasers' Affiliates shall provide certain employees of the Company, other than Seller 1 and Seller 2, with an award of restricted stock units of Align Technology, Inc. and/or cash bonuses and shall also reserve an amount for sign-on awards for employees to be hired by the Company after Closing. Seller 1 and Seller 2 shall negotiate with Purchasers in good faith to determine which employees shall receive such awards and their amount and form for each such employee. The total aggregate amount for the awards under this Clause 9.2(a) shall be approximately EUR 3.8 million (three million eight hundred thousand). The terms of any awards made pursuant to this Clause 9.2(a) are subject to the terms and conditions, including the vesting schedule, of the Align Technology, Inc. 2005 Incentive Plan (as amended).
- (b) To the extent not implemented prior to Closing, following Closing the Sellers shall provide all reasonable assistance that is legally within their possibilities and with no cost to the Sellers to enable the Purchasers to implement, where appropriate solely in the view of the Purchasers and to the extent permitted by applicable law, including applicable employment law, (i) new contracts or amendments of the contracts with Company employees to improve protection of the Company in respect of its IP rights, confidential information and non-competition and non-solicitation provisions, (ii) improvements of practices and documents of the Company to ensure compliance with applicable data protection laws and regulations and (iii) improvements and expansions (territorial, contractual and other) of the protection of IP rights of the Company.

10. TAX INDEMNITY

10.1. General

- (a) Subject to the provisions of this Clause 10, the Sellers shall indemnify and hold harmless (*freistellen*) Purchasers, and/or at Purchasers' election the Company, from and against any and all Taxes (as well as any losses, liabilities, costs and expenses, including court fees, attorneys and other professional fees, demands and damages in connection with such Taxes) imposed on, assessed against or payable by, the Company and allocable to any periods or portions thereof ending on or before the Closing Date

(including by reference to any income, profits or gains which were earned, accrued or received on or before Closing or in respect of any period ending on or before Closing) if and to the extent that such Taxes have not been fully paid on or prior to the Closing Date or have not been specifically provided for as a provision or liability in the Closing Accounts (the "**Indemnifiable Taxes**").

- (b) On the Purchasers' demand the Sellers shall pay an amount equal to 90.96% (ninety point ninety six percent) of the Indemnifiable Taxes to the Purchasers or, at Purchasers' election, to the Company. For the avoidance of doubt, if any Indemnifiable Tax is directly imposed on, assessed against or payable by, the Purchasers, the Sellers shall indemnify 90.96% (ninety point ninety six percent) of such Indemnifiable Tax.
- (c) Sellers shall make payment hereunder at the latest on the date when the Company has to pay the respective Indemnifiable Taxes.
- (d) The Indemnifiable Tax shall be reduced (on a discounted basis and excluding penalties and late payment interest) if and to the extent it gives rise to a corresponding Tax reduction or benefit relating to any Taxes arising after the Closing Date at the level of the Company.

10.2. Cooperation in Tax Matters

Without prejudice to the indemnification obligation of the Sellers hereunder, Clause 7.9 shall apply *mutatis mutandis* to any matters which may give rise to an Indemnifiable Tax including the conduct of any inquiry, examination, audit, investigation, negotiation, dispute, appeal or litigation in respect of any Indemnifiable Tax.

10.3. Time Limitation and Cap

- (a) Any claims of Purchasers under Clause 10 shall be time-barred (I) if a Tax proceeding has not been commenced by a Tax Authority within six (6) years from the Closing Date but (II) if such Tax proceeding has been commenced within six (6) years from the Closing Date, upon the expiration of six (6) months after the final and formal as well as materially conclusive assessment of the relevant Taxes (including, if applicable, exhaustion of all extraordinary legal remedies).
- (b) The cap of 35% (thirty five percent) set out above under Clause 7.7(b) shall also apply to any indemnification obligation of the Sellers under this Clause 10, provided, however, that the liability of Seller 5 under this Clause 10 shall be limited to the Escrow Amount held in escrow on the escrow account subject to and in accordance with the Escrow Agreement.

11. OTHER SPECIFIC INDEMNITIES

- (a) Subject to the provisions of this Clause 11, the Sellers shall indemnify and hold harmless (*freistellen*) Purchasers, and/or at Purchasers' election the Company, from and against all Damages resulting from or associated with:

- (i) any grantors of subsidies (loans or grants), state-aids or similar (which have been granted and paid to the Company prior to Closing) claiming total or partial repayment, increased interest rates or fines (including, without limitation, the repayment amount of any grants itself) (A) triggered by the transactions contemplated under this Agreement, (B) due to any non-compliance prior to Closing with the terms and conditions applicable to such subsidies (loans or grants), state-aids or similar;
 - (ii) the business activities of the Company in Japan prior to Closing, including without limitation the secondment of [***] or any other employee or representative of the Company to Japan and/or the maintenance of an office lease/business premises or presence in Japan prior to Closing (including in all cases, without limitation, any non-compliance with, or adverse consequences under, applicable employment, social securities and Tax laws);
 - (iii) any potential non-compliance of the Company prior to Closing with applicable employee protection regulations, minimum wage regulations or overtime regulations for working time, anti-trust, competition or trade laws, data protection regulations (in particular GDPR);
 - (iv) any payments triggered by or otherwise associated with the termination of the service agreement of Seller 1 in his position as managing director of the Company;
- (b) Without prejudice to the indemnification obligation of the Sellers hereunder, Clause 7.9 shall apply *mutatis mutandis* to any matters which may give rise to a specific indemnity set out under Clause 11(a) above.
 - (c) Any claims of Purchasers under Clause 11 shall be time-barred, if a claim associated with any of the foregoing has not been raised, in each case within two (2) years from the Closing Date, but if such claim has been raised within two (2) years from the Closing Date, upon the expiration of six (6) months after the final and formal as well as materially conclusive termination of the relevant proceedings regarding such claim (including, if applicable, exhaustion of all extraordinary legal remedies).
 - (d) The cap of 35% (thirty five percent) set out above under Clause 7.7(b) shall also apply to any indemnification obligation of the Sellers under this Clause 11, provided, however, that the liability of Seller 5 under this Clause 11 shall be limited to the Escrow Amount held in escrow on the escrow account subject to and in accordance with the Escrow Agreement.

12. CONFIDENTIALITY AND PUBLIC ANNOUNCEMENTS

12.1. Confidentiality

- (a) The Parties shall keep this Agreement, its content as well as any information about the respective other Party/ies and its/their Affiliates obtained in connection with the negotiation of this Agreement and the transactions contemplated thereunder

("Confidential Information") strictly confidential and shall not disclose the same to any third Persons without the prior written approval of the other Parties.

- (b) The obligation to keep Confidential Information confidential shall not apply if and to the extent (i) as required by law or regulation in which case the disclosing Party shall to the extent possible give prior notice to the other Party/ies and limit such disclosure to the maximum extent possible, (ii) expressly foreseen in this Agreement, (iii) any such disclosure is made to the advisors, auditors, financing banks or Affiliates or employees of a Party on a strictly confidential and need to know basis and provided that such Persons are (to the extent that they are not already subject to a professional duty of secrecy) bound by a comparable confidentiality agreement not less onerous than the confidentiality obligations contained herein, (iv) any such information is already in the public domain, or (v) required to enable a Party to enforce its rights under this Agreement.
- (c) The restrictions contained in this Clause 12.1 shall continue to apply, also after termination of this Agreement, for the maximum term permissible under applicable law.
- (d) The Parties shall procure that their directors, officers, employees, agents, other representatives and advisors and Affiliates (and their respective directors, officers, employees, agents, other representatives and advisors) adhere to this Clause 12.1.

12.2. Public Announcements

Following Signing, the Sellers may, following the prior written consent of the Purchaser 2 (such consent not to be unreasonably withheld, conditioned or delayed), and the Purchasers (or their Affiliates) may make press releases or public announcements as well as public relations activities concerning the existence and/or the subject matter of this Agreement.

13. COSTS AND TRANSFER TAXES

13.1. Costs

Subject to Clause 13.2, each Party shall bear its own costs and expenses arising in connection with the preparation, negotiation, execution and performance of this Agreement or any other agreement contemplated hereunder as well as the respective transactions contemplated therein, in particular expert fees such as attorneys' fees, auditors' fees, as well as fees of other representatives or advisors.

13.2. Transfer Taxes and Fees

The cost for notary, registration, filing and court fees for this Agreement and the Transfer Deed as well as costs under or in connection with the Escrow Agreement and any transfer taxes which are imposed or chargeable in connection with the execution or the implementation of this Agreement (collectively "**Taxes and Fees**") shall be borne and paid by the Purchasers. Costs for possible powers of attorney in connection with this Agreement, the Escrow Agreement and the Transfer Deed shall be borne by the Party conferring such powers of attorney. Any stamp duties (*Rechtsgeschäftsgebühren*) triggered in connection with the transactions contemplated under this Agreement shall be borne by the Party that (by itself or

through its representatives or otherwise) has triggered such stamp duty (*Rechtsgeschäftsgebühr*).

14. APPLICABLE LAW AND JURISDICTION

- (a) This Agreement (including any non-contractual obligations in connection with this Agreement) is subject exclusively to Austrian law, excluding its conflict of laws rules and the provisions of the UN Convention on Contracts for the International Sale of Goods.
- (b) For all disputes between the Parties arising from or in connection with this Agreement, including disputes about the valid conclusion, infringement, termination or invalidity of this Agreement, the exclusive jurisdiction of the Viennese courts competent for the first district is agreed upon, as far as legally permissible.

15. GENERAL PROVISIONS

15.1. Entire Agreement

This Agreement and the other agreements contemplated hereunder (in particular the Escrow Agreement and the Transfer Deed) contain all agreements among the Parties pertaining to the matters contemplated hereunder.

15.2. Assignment

This Agreement or any other agreement contemplated hereunder and any rights and obligations of the Parties contained therein may not be assigned or delegated or sub-contracted by a Party to a third Person without the prior written consent of the respective other Party/ies.

15.3. Amendments

This Agreement may not be amended, supplemented or changed, except by a written instrument signed by those Parties whose rights or obligations may be affected by the amendment making specific reference to this Agreement.

15.4. No Rescission

With respect to this Agreement any claims of a Party for rescission (*Anfechtung*) or adaptation (*Anpassung*) for error (*Irrtum*), avoidance (*Wandlung*), gross inadequacy (*laesio enormis*), impracticability or frustration, changed circumstances (*Wegfall der Geschäftsgrundlage*), *clausula rebus sic stantibus*, cancellation (*Rücktritt*), termination (*Kündigung*) of whatever kind and on whatever ground including for *culpa in contrahendo* and any right or remedy which would have a similar legal effect shall be, to the maximum extent legally possible, expressly excluded unless explicitly otherwise foreseen in this Agreement. In the event that one or more of Sellers, notwithstanding the foregoing, successfully challenge this Agreement, the Purchasers shall have the right to decide in their sole discretion, whether this Agreement shall continue in full force and effect with the non-challenging Seller/s or whether it shall terminate in its entirety.

15.5. Remedies and Waivers

No delay by or omission of any Party in exercising any right or remedy under this Agreement or any other agreement contemplated hereunder shall operate to impair such right or remedy or be construed as a waiver thereof, provided that such right or remedy is not time-barred or precluded, or preclude any future exercise thereof or the exercise of any other right or remedy.

15.6. Severability and Invalidity

Should any provision of this Agreement be or become invalid or unenforceable in whole or in part, this shall not affect the validity or enforceability of the remaining provisions hereof. The invalid or unenforceable provision shall be replaced by a valid or enforceable provision which closest reflects the purpose of the invalid or unenforceable term; the same applies by analogy to any gaps in this Agreement.

15.7. Effects on Third Parties

Unless explicitly foreseen otherwise in this Agreement no Person other than the Parties shall have any rights or benefits under this Agreement, and nothing in this Agreement is intended to confer on any Person other than the Parties any rights, benefits or remedies.

15.8. Notices

All notices or other communication under or in connection with this Agreement shall be given in writing by an authorized representative of the relevant Party (if any, otherwise by the relevant Party) and shall be sent to the recipient (i) by registered letter or courier service, return receipt requested (DHL or similar) and (ii) in addition by simultaneous e-mail transmission of the same contents to the addresses specified below or any other address specified by the relevant Party in accordance with and with reference to this Clause 15.8:

If to the Sellers:

Seller 1
Univ.Prof.DI.Dr. Jürgen Stampfl

[***]

Seller 2
DI Dr. Robert Gmeiner
Nikolsdorfer Gasse 39-41/30

[***]

Seller 3
DI Dr. Johannes Benedikt

[***]

Seller 4
Dipl.Ing.Dr. Johannes Homa

[***]

Seller 5
AM Ventures Additive Manufacturing Fonds I GmbH &
Co. KG

[***]

If to the Purchasers:
Align Technology Switzerland GmbH
Surstoffi 22, 6343 Rotkreuz, Switzerland

[***]

with copy to:
Align Technology, Inc.
410 N Scottsdale Rd Suite 1300
Tempe, Arizona 85288, USA
Attn: CFO and Chief Legal Officer

[***]

All notices, communications or instructions made under or in connection with this Agreement shall only be effective when received by the Party to whom it is addressed. Simple notification via email shall be sufficient for those cases where expressly stated in this Agreement.

15.9. Counterparts

Each of the Parties shall receive a certified copy of this Agreement.

[REMAINDER OF PAGE DELIBERATELY LEFT BLANK. SIGNATURE PAGE FOLLOWING.]

/s/ Dr. Jürgen Stampfl
Univ. Prof. Dr. Jürgen Stampfl

/s/ Dr. Robert Gmeiner
Dr. Robert Gmeiner

/s/ Dr. Johannes Benedikt
Dr. Johannes Benedikt

/s/ Dr. Johannes Homa
Dr. Johannes Homa

/s/ Johann Oberhofer
**AM Ventures Additive Manufacturing
Fonds|GmbH & Co. KG**

/s/ Harald Stingl

Align Holding GmbH

/s/ Harald Stingl

Align Technology Switzerland GmbH

Co-signed and thereby (i) agreeing to this Agreement (in particular, to the sale and transfer of the Acquisition Shares according to the terms of this Agreement, the non-compete and non-solicitation according to the terms of this Agreement as well as to the release of the Company and the Purchaser 2 from the shareholders' agreement between the Sellers, Purchaser 2 and the Company dated 21 June 2021 as of Closing), and (ii) undertaking neither to take nor omit any actions which could prejudice or compromise the transactions contemplated under this Agreement in any way.

/s/ Dr. Robert Liska

Univ. Prof. Dr. Robert Liska

Exhibit./1.1(a) – Agreed Accounting Principles

1. Applicable Accounting Principles

The Closing Accounts shall be prepared in accordance with the following methods and principles (together with the definitions and Specific Accounting Treatments set out below the "**Agreed Accounting Principles**"), which shall apply in the order of priority shown below:

- (1) The specific accounting principles set out in this Exhibit (including the definitions and Specific Accounting Treatments) below.
- (2) The accounting principles, practices and policies applied in the preparation of the financial statements of the Company dated 31 December 2022
- (3) Austrian GAAP as in force on 31 December 2022.

For the avoidance of doubt, limb (1) shall take precedence over limbs (2) and (3) above and limb 2 above shall take precedence over limb 3 above.

2. Definitions, Example Calculation

Definitions of Cash, Indebtedness, Net Working Capital as well as an Example Calculation are attached hereto in the excel sheet which shall form an integral part of this Exhibit and the SPA.

3. Specific Accounting Treatments

The following Specific Accounting Treatments shall apply in the preparation of the Closing Accounts:

- (1) The Closing Accounts shall be prepared in accordance with the procedures normally applied to annual financial statements at the end of a financial year including in relation the performance of stock counts and with regard to completeness of recognition and cut-off of assets, liabilities, provisions and other balance sheet items as well as valuation procedures. Income and expenses (and corresponding accounts receivable, accounts payable and provisions) which are usually calculated on an annual basis shall also be reflected in the Closing Accounts on a pro-rata temporis basis. Items relating to Taxes shall be reflected in the Closing Accounts based on the calculation of provisions for income Taxes and other Taxes for the period ending on the Closing Date.
- (2) Information in respect of subsequent events shall be taken into account up to the date when the Closing Accounts become binding on the Parties.
- (3) The Closing Accounts shall be prepared on the basis that the Company is a going concern.
- (4) No item shall be included in the Closing Accounts more than once (no double counting).

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: November 3, 2023

/s/ JOSEPH M. HOGAN

Joseph M. Hogan

President and Chief Executive Officer

CERTIFICATION

I, John F. Morici, certify that:

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

Date: November 3, 2023

/s/ JOHN F. MORICI

John F. Morici

Chief Financial Officer and Executive Vice President, Global Finance

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

In connection with the Quarterly Report of Align Technology, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2023 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 results of operations of the Company.

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

Date: November 3, 2023

In connection with the Quarterly Report of Align Technology, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2023 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 results of operations of the Company.

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

Date: November 3, 2023