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# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

# FORM 10-K

**(Mark One)**

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

**For the fiscal year ended December 31, 2002**

**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: 0-32259**

# ALIGN TECHNOLOGY, INC.

**(Exact name of Registrant as Specified in its Charter)**

| **Delaware** | **94-3267295** |
|---|---|
| **(State or Other Jurisdiction of Incorporation or Organization)** | **(I.R.S. Employer Identification Number)** |

**881 Martin Avenue**
**Santa Clara, California 95050**
**(Address of Principal Executive Offices, including Zip Code)**

**(408) 470-1000**
**(Registrant's Telephone Number, Including Area Code)**

**Securities registered pursuant to Section 12(b) of the Act:**
**None**

**Securities registered pursuant to Section 12(g) of the Act:**
**Common Stock, $0.0001 par value**

Indicate by check mark whether 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 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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether Registrant is an accelerated filer (as defined in Rule 12b-2 of the Securities Exchange Act of 1934). Yes ☒ No ☐

As of June 28, 2002, the last business day of Registrant's most recently completed second fiscal quarter, there were 25,311,858 shares of Registrant's common stock outstanding, and the aggregate market value of such shares held by non-affiliates of Registrant (based upon the closing sale price of such shares on the NASDAQ National Market on June 28, 2002) was approximately $99,222,483. Shares of Registrant's common stock held by each executive officer and director and by each entity that owns 5% or more of Registrant's outstanding common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

On March 18, 2003, 57,785,523 shares of Registrant's common stock were outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of Registrant's definitive Proxy Statement relating to its Annual Stockholders' Meeting to be held on May 15, 2003 are incorporated by reference into Part III of this Annual Report on Form 10-K.

**ALIGN TECHNOLOGY, INC.**
**FORM 10-K**
**For the Year Ended December 31, 2002**
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## PART I

*The statements contained below and elsewhere in this report on Form 10-K that are not purely historical are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 and Section 21E of the Securities Exchange Act of 1934, including, without limitation, statements regarding our expectations, hopes, beliefs, anticipations, commitments, intentions and strategies regarding the future. Actual results could differ from those projected in any forward-looking statements for the reasons, among others, detailed below. The fact that some of the risk factors may be the same or similar to our past filings means only that the risks are present in multiple periods. We believe that many of the risks detailed here are part of doing business in the industry in which we compete and will likely be present in all periods reported. The fact that certain risks are characteristic to the industry does not lessen the significance of the risk. The forward-looking statements are made as of the date of this Annual Report on Form 10-K, and we assume no obligation to update the forward-looking statements or to update the reasons why actual results could differ from those projected in the forward-looking statements.*

### ITEM 1. BUSINESS.

**Overview**

Since the inception of Align Technology, Inc. (Align) in April 1997, we have been engaged in the design, manufacture and marketing of Invisalign, a proprietary system for treating malocclusion, or the misalignment of teeth. In July 1999, we commenced commercial sales of Invisalign. Prior to July 1999, we devoted nearly all our resources to developing our software and manufacturing processes, performing clinical trials of Invisalign and building our sales force, customer support and management teams. We exited the development stage in July 2000.

Invisalign has two components: ClinCheck™ and Aligners. ClinCheck™ is an Internet-based application that allows dental professionals to simulate treatment, in three dimensions, by modeling two-week stages of tooth movement. Aligners are thin, clear plastic, removable dental appliances that are manufactured in a series to correspond to each two-week stage of the ClinCheck™ simulation. Aligners are customized to perform the treatment prescribed for an individual patient by dental professionals using ClinCheck™.

Currently, two of our key production steps are performed in operations located outside of the U.S. At our facility in Costa Rica, technicians use a sophisticated, internally developed computer-modeling program to prepare electronic treatment plans, which are transmitted electronically back to the U.S. These electronic files form the basis of our ClinCheck™ product and are used to manufacture Aligner molds. A third party contract manufacturer in Mexico fabricates Aligners and ships the completed products to our customers. Our costs associated with these operations are denominated in Costa Rican colons, Mexican pesos and U.S. dollars.

In July 2002, we announced a plan to streamline worldwide operations. The plan included closing our facility in Pakistan and the United Arab Emirates, or the U.A.E. We transitioned the operations performed at these facilities to the United States and Costa Rica. For the period ending December 31, 2002, we recorded severance charges of $2.3 million, facility closure charges of $0.9 million, a loss on disposal of fixed assets of $1.1 million and an impairment charge of $0.9 million related to the land in Pakistan. The land was written down to a zero value to reflect its fair value as estimated by management. Approximately $0.1 million of accrued charges related to professional fees were included in accrued liabilities as of December 31, 2002. We discontinued operations at our facilities in Pakistan and the U.A.E in October and December 2002, respectively. We concluded the remainder of indirect operational activities related to the Costa Rica transition in January 2003. We will cease non-operational closing activities in Pakistan when the land is disposed of at that location and in the U.A.E when the necessary statutory filings have been completed.

Revenue from the sale of Invisalign and ancillary products is recognized upon product shipment, provided no significant obligations remain, transfer of title has occurred, and collection of the receivables is deemed

probable. The costs of producing the ClinCheck™ treatment plan, which are incurred prior to the production of Aligners, are deferred and recognized as related revenues are earned, i.e. upon shipment of the Aligners. We offer our dental professionals an opportunity to purchase case refinement in advance at a discount. The advance purchase price is non-refundable once Aligners are shipped and the related revenue is deferred until the earlier of shipment of the case refinement or case expiration. In cases where the dental professional does not purchase the case refinements in advance, case refinement revenues are recognized when the new Aligners are shipped.

Service revenues earned under agreements with third parties for training of dental professionals and staff for Invisalign are recorded as the services are performed. Charges to third parties are based on negotiated rates that are intended to approximate a mark-up on our anticipated costs.

We estimate and record a provision for amounts of estimated losses on sales, if any, in the period such sales occur.

**Industry Background**

*Malocclusion*

Malocclusion is one of the most prevalent clinical dental conditions, affecting over 200 million individuals, or approximately 75% of the U.S. population. Approximately two million people annually elect orthodontic treatment in the U.S., generating industry revenues of approximately $7 billion. While most individuals seek orthodontic treatment to improve their appearance, malocclusion may also be responsible for dental problems such as tooth decay, tooth loss, gum disease, jaw joint pain and headaches. Because of the compromised aesthetics, discomfort and other drawbacks associated with conventional orthodontic treatments, only a relatively small proportion of people with malocclusion seek traditional treatment.

*Traditional Orthodontic Treatment*

Currently dental professionals apply traditional techniques and principles of orthodontic treatment developed in the early 20th century. In the U.S., dental professionals treat malocclusion primarily with metal archwires and brackets, commonly referred to as braces. Occasionally, in an attempt to improve treatment aesthetics, dental professionals use ceramic, tooth-colored brackets or bond brackets on the inside, or lingual surfaces, of the patient's teeth. Dental professionals also augment braces with elastics, metal bands, headgear and other ancillary devices.

The average treatment takes approximately 12 to 24 months to complete and requires several hours of direct dental professional involvement, or chair time. To initiate treatment, a dental professional will diagnose a patient's condition and create an appropriate treatment plan. In a subsequent visit, the dental professional will bond brackets to the patient's teeth with cement and attach an archwire to the brackets. Thereafter, by tightening or otherwise adjusting the braces approximately every six weeks, the dental professional is able to exert sufficient force on the patient's teeth to achieve desired tooth movement. Because of the length of time between visits, the dental professional must tighten the braces to a degree sufficient to achieve sustained tooth movement during the interval. In a final visit, the dental professional removes each bracket and residual cement from the patient's teeth.

Fees for traditional orthodontic treatment typically range between U.S. $3,000 to $5,000 and generally only a portion of the fees are reimbursed by insurance, if covered at all. In addition, dental professionals commonly charge a premium for lingual or ceramic alternatives. Fees are based on the difficulty of the particular case and on the dental professional's estimate of chair time, and are generally negotiated in advance. A treatment that exceeds the dental professional's estimate of chair time generally results in decreased fees per hour of chair time, or reduced profitability for the dental professional.

*Limitations of Traditional Orthodontic Treatment*

Although braces are generally effective in correcting a wide range of malocclusions, they are subject to many limitations and disadvantages. Conventional orthodontic treatment is associated with:

- *Unattractive appearance*. Braces call attention to the patient's condition and treatment. In addition, braces trap food, which can further compromise appearance. Braces can also result in permanent discoloration of teeth. Many adults associate braces with adolescence. As a result of these and other limitations, less than one half of one percent of American adults with malocclusion elect traditional orthodontic treatment annually.
- *Oral discomfort*. Braces are sharp and bulky and can abrade and irritate the interior surfaces of the mouth. The tightening or adjustment of braces results in root and gum soreness and discomfort, especially in the few days immediately following an orthodontic visit.
- *Poor oral hygiene*. Braces compromise oral hygiene by making it more difficult to brush and floss. These problems can result in tooth decay and periodontal damage. Additionally, the bonding of brackets to teeth can cause permanent markings on the teeth.
- *Inability to project treatment*. Historically, dental professionals have not had a means to model the movement of teeth over a course of treatment. Accordingly, dental professionals must rely on intuition and judgment to plan and project treatment. As a result, they cannot be precise about the direction or distance of expected tooth movement between patient visits. This lack of predictability may result in unwanted tooth movements and can limit the dental professional's ability to estimate the duration of treatment. Because most orthodontic treatment is performed on a fixed price basis, extended treatment duration reduces profitability for the dental professional.
- *Physical demands on dental professional*. The manipulation of wires and brackets requires sustained manual dexterity and visual acuity, and may place other physical burdens on the dental professional.
- *Root resorption*. The sustained high levels of force associated with conventional treatment can result in root resorption, which is a shortening of tooth roots. This shortening can have substantial adverse periodontal consequences for the patient.
- *Emergencies*. At times, braces need to be repaired or replaced on an emergency basis. Such emergencies cause significant inconvenience to both the patient and the dental professional.

Due to the poor aesthetics, discomfort and other limitations of braces, relatively few people with malocclusion elect traditional orthodontic treatment. Accordingly, we believe there is a large unmet need for an orthodontic system that addresses these patient concerns. We also believe there is an unmet need among dental professionals for a treatment system that increases the predictability and efficiency of treatment and enhances practice profitability.

**The Align Solution**

Invisalign is a proprietary system for treating malocclusion. Invisalign consists of two components: ClinCheck™ and Aligners.

*ClinCheck™*. ClinCheck™ is an interactive Internet application that allows dental professionals to diagnose and plan treatment for their patients. We use a dental impression and a treatment prescription submitted by a dental professional to develop a customized, three-dimensional treatment plan that simulates appropriate tooth movement in a series of two-week increments. ClinCheck™ allows the dental professional to view this three- dimensional simulation with a high degree of magnification and from any angle. Accordingly, ClinCheck™ enables the dental professional to project tooth movement with a level of accuracy not previously possible.

Upon review of the ClinCheck™ simulation, the dental professional may immediately approve the projected treatment, or may provide us with feedback for modification. We reflect any requested adjustments in a modified simulation. Upon the dental professional's approval of the ClinCheck™ simulation, we use the data underlying the simulation to manufacture the patient's Aligners.

*Aligners*. Aligners are custom-manufactured, clear, removable dental appliances that, when worn in a prescribed series, provide orthodontic treatment. Each Aligner covers a patient's teeth and is nearly invisible when worn. Aligners are commonly worn in pairs, over the upper and lower dental arches. Aligners are generally worn for consecutive two-week periods which correspond to the approved ClinCheck™ treatment simulation. After two weeks of use, the patient discards the Aligners and replaces them with the next pair in the series. This process is repeated until the final Aligners are used and treatment is complete. Upon completion of the treatment, the dental professional may, at his or her discretion, have the patient use the last Aligner as a temporary retainer or go directly to a conventional retainer.

**Benefits of Invisalign**

We believe that Invisalign provides benefits to patients and dental professionals that have the potential to establish Invisalign as the preferred alternative to conventional braces.

*Benefits to the Patient*

- *Excellent aesthetics*. Aligners are nearly invisible when worn, eliminating the aesthetic concerns associated with conventional braces.
- *Comfort*. By replacing the six-week adjustment cycle of traditional braces with two-week stages, Aligners move teeth more gently than conventional braces. Also, Aligners are thin, smooth and low in profile. As a result, Aligners are substantially more comfortable and less abrasive than conventional braces.
- *Improved oral hygiene*. Patients can remove Aligners for tasks that are difficult with conventional braces, such as eating, brushing and flossing. We believe this feature has the potential to reduce tooth decay and periodontal damage during treatment, which may result from conventional braces.
- *Potentially reduced overall treatment time*. Aligners control force by distributing it broadly over the exposed surfaces of the teeth. In addition, the ClinCheck™ simulation from which Aligners are produced is designed to reduce unintended and unnecessary tooth movements. Together, these factors may reduce overall treatment time relative to conventional braces.
- *Potentially reduced root resorption*. We believe that controlling force and shortening treatment time has the potential to reduce the incidence of root resorption.
- *Reduced incidence of emergencies*. Typically, a lost or broken Aligner is simply replaced with the next Aligner in series, minimizing inconvenience to both patient and dental professional.

We believe that these benefits will prove attractive to people who currently do not seek treatment because of the limitations of conventional braces.

*Benefits to the dental professional*

- *Ability to visualize treatment and likely outcomes*. ClinCheck™ enables dental professionals to preview a course of treatment and the likely outcome of treatment in an interactive three-dimensional computer model. ClinCheck™ allows dental professionals to analyze multiple treatment alternatives before selecting the course of action they feel is most appropriate for the patient.

- *Minimal additional training*. The biomechanical principles that underlie Invisalign are consistent with those of traditional orthodontics. Dental professionals can complete our initial training and certification program within two days.
- *Ease of use*. When treating patients with Invisalign, dental professionals do not spend their time manipulating wires and brackets. This allows them to spend proportionately more time diagnosing and interacting with their patients.
- *Expanded patient base*. We believe that Invisalign has the potential to transform the practice of orthodontics. Currently, less than one percent of the over 200 million people with malocclusion in the U.S. enter treatment each year. We believe that Invisalign will allow dental professionals to attract patients who would not otherwise seek orthodontic treatment.
- *Decreased dental professional and staff time*. We believe that Invisalign reduces both the frequency and length of patient visits. Invisalign eliminates the need for time-intensive processes such as bonding appliances to the patient's teeth, adjusting archwires during the course of treatment and removing the appliances at the conclusion of treatment. As such, use of Invisalign reduces dental professional and staff chair time and can increase practice throughput.
- *Practice productivity*. We believe that as dental professionals move to a higher volume of Invisalign patients, the dental professionals will be able to better leverage their existing resources, including office space and staff time, resulting in an increase in daily patient appointments and practice productivity.

We believe the combination of increased patient volume, reduced chair time and increased practice productivity has the potential to improve orthodontic practice profitability.

**Limitations of Invisalign**

In some instances, Invisalign may have certain limitations relative to conventional treatment. Aligners cost more to produce than conventional braces, and we charge dental professionals more than they generally pay for the supplies used in conventional treatment. Depending on the individual pricing policies of each dental professional, the cost of Invisalign to the patient may be greater than for conventional braces. Dental professionals must also incorporate our manufacturing cycle times into their overall treatment plan. Once a dental professional submits a case to us, there is generally a turn-around time of a month or more before the corresponding Aligners are delivered. Aligners may not be appropriate for all cases, such as severe malocclusion, which may require Aligners to be used in combination with conventional braces for optimal results. In addition, because Aligners are removable, treatment using Invisalign depends on patients wearing their Aligners as recommended. Some patients may experience a temporary period of adjustment to wearing Aligners that may mildly affect speech. We believe that these limitations are outweighed by the many benefits of Invisalign to both patients and dental professionals.

**Our Target Market**

Commercial sales of Invisalign commenced in the U.S. in July 1999. As of December 31, 2002 approximately 80,000 patients worldwide had entered treatment using Invisalign.

Medical devices are classified into one of three classes based on the controls necessary to reasonably assure their safety and effectiveness. Class I or II devices require the manufacturer to submit a pre-market notification to the Food and Drug Administration, or the FDA, requesting permission for commercial distribution, which is known as 510(k) clearance. We obtained our 510(k) clearance in September 1998. Our 510(k) clearance allows us to market Invisalign to treat patients with any type of malocclusion. We voluntarily restrict the use of Invisalign to adults and adolescents with mature dentition. Individuals with mature dentition have fully erupted second molars and substantially complete jaw growth. This group represents approximately 160 million people in the U.S. Typically, girls by the age of 13 years and boys by the age of 16 years will have developed mature

dentition. Currently, we do not treat children whose teeth and jaws are still developing, as the effectiveness of Invisalign relies on our ability to accurately predict the movement of teeth over the course of treatment. Based on our clinical studies to date, we recommend that dental professionals use Invisalign as a complete treatment for a broad range of malocclusions and as a component of treatment for severe malocclusions.

Approximately two million patients enter into traditional orthodontic treatment in the U.S. annually. These patients represent approximately one percent of the population of people with malocclusion. Of these, over 50%, or more than one million patients, have mature dentition and are therefore potential candidates for Invisalign.

In addition, we believe that we have an immediate and substantial market expansion opportunity. Our market research indicates that the vast majority of people with malocclusion who desire treatment do not elect traditional treatment because of its many limitations. We believe that, since Invisalign addresses the primary limitations of braces, persons with malocclusion will be more likely to seek treatment. We believe that adults, who are particularly sensitive to the aesthetic limitations of traditional treatment, represent our most significant market expansion opportunity.

In each of fiscal 2002, 2001 and 2000, no single customer accounted for 10% or more of our total revenues.

We continue to focus on the domestic market opportunity and on selected international markets.

**Business Strategy**

Our objective is to establish Invisalign as the standard method for treating orthodontic malocclusion. Key elements of our strategy include the following:

*Educate dental professionals and stimulate demand for Invisalign treatment*. Our market research indicates that the vast majority of people with malocclusion who desire treatment do not elect traditional treatment because of its many limitations. By communicating the benefits of Invisalign to both dental professionals and consumers, we intend to increase the number of patients who seek orthodontic treatment annually. We advertise nationally using a broad marketing mix to drive consumer and dental professional demand and to reinforce the breadth of applicability of Invisalign. In October 2001, we expanded our training of dental professionals in our domestic market to include general practitioner dentists. As of December 31, 2002, we had trained over 18,000 dental professionals worldwide on the use and benefits of Invisalign.

*Communicate practice benefits of Invisalign to dental professionals*. Invisalign provides substantial financial incentives to dental professionals by enabling them to increase patient volume, charge a premium price and reduce chair time per treatment. We intend to continue to emphasize these practice benefits to dental professionals through our sales and training efforts.

*Expand and enhance manufacturing capability*. Our manufacturing operations are designed to produce large numbers of custom Aligners at a high level of quality. To improve cost efficiency, we conduct labor intensive processes in relatively low-wage countries. We intend to maintain manufacturing capacity in excess of projected demand to reduce the risk that manufacturing capacity may place on our ability to grow. Our proprietary software underlies our manufacturing process. By continually developing this software and other manufacturing processes, we plan to increase the level of production automation. Increased automation will enhance production capacity and reduce both unit costs and production times.

*Extend and defend technology leadership*. Invisalign represents a significant technological advancement in orthodontics. We believe that our issued patents, multiple pending patents and other intellectual property provide us with a substantial lead over potential competitors. One of our issued U.S. patents is written broadly to cover any algorithmic method of segmenting orthodontic treatment into a sequence of three or more steps, based on calculated initial and final digital representations of a patient’s dentition. We continue to pursue further

intellectual property protection through U.S. and foreign patent applications and non-disclosure agreements. We also seek to protect our software, documentation and other written materials under trade secret and copyright laws.

*Expand our target patient base*. Invisalign can provide complete treatment for patients with mature dentition and a broad range of malocclusion. In addition, we believe that Invisalign can provide partial treatment of severe malocclusion. In an effort to demonstrate Invisalign's ability to comprehensively treat such cases, we initiated the publication of a series of clinical case studies and articles that highlight the applicability of Invisalign to malocclusion cases of severe complexity. We are also undertaking post-marketing studies and making additional improvements to the product.

*Build an international presence*. While we focus primarily on the domestic market, we continue to introduce Invisalign in selected international markets on a limited basis.

**Manufacturing**

We produce highly customized, highly precise, medical quality products in volume. To do so, we have developed a number of proprietary processes and technologies. These technologies include complex software solutions, computed tomography, known as CT scanning, stereolithography and automated Aligner fabrication.

We believe the complexity inherent in producing such highly customized devices in high volumes is a barrier to potential competitors. Furthermore, we believe the sophisticated software we use to guide a custom manufacturing process on a high volume was not available until we developed it. We rely on two vendors who are each the sole source of the polymer and resin used in our manufacturing process. In the event that either of these vendors becomes unable for any reason to supply us with their respective products, we would experience a manufacturing disruption while we qualify and obtain an alternate source.

Manufacturing is coordinated in Santa Clara, California. As of December 31, 2002, we employed a manufacturing staff in the U.S. and Costa Rica of approximately 340 people. In addition, in the U.S. we employed a software development team comprised of approximately 26 software engineers with experience in computational geometry, animation, computer-aided design and various manufacturing industries. We also contracted with approximately 20 software engineers in Pakistan and Russia, who were part of the team responsible for the creation of treatment simulation software. The operations team in Costa Rica creates treatment simulations using ClinCheck™. We outsource the fabrication and packaging of Aligners to a contract manufacturer based in Juarez, Mexico.

**The Invisalign Treatment Process**

The Invisalign treatment process comprises the following five stages:

*Orthodontic diagnosis and transmission of treatment data to us*. In an initial patient visit, the dental professional determines whether Invisalign is an appropriate treatment. The dental professional then prepares a treatment data package which consists of a polyvinyl-siloxane, or PVS, impression of the relevant dental arches, x-rays of the patient's dentition, photographs of the patient, a wax bite depicting the relationship between the patient's upper and lower dental arches and an Invisalign treatment planning form, or prescription. The impression is a critical component of Invisalign as it depicts the three-dimensional geometry of the patient's teeth and hence forms the basis for our computer models. An impression requires the patient to bite into a viscous material. This material hardens, capturing the shape of the patient's teeth. The prescription is also a critical component of Invisalign, describing the desired positions and movement of the patient's teeth. The dental professional sends the treatment data to our Santa Clara facility.

*Preparation of three-dimensional computer models of the patient's initial malocclusion.* Upon receipt, we use the treatment data to construct digital models of the patient's dentition. Using CT scanning, we scan the PVS impression to develop a digital, three-dimensional computer model of the patient's current dentition. We then transmit this initial computer model together with the dental professional's prescription electronically to our facilities in Costa Rica.

*Preparation of computer-simulated treatment and viewing of treatment using ClinCheck™.* In Costa Rica we transform this initial digital model into a customized, three-dimensional treatment plan that simulates appropriate tooth movement in a series of two-week increments. This simulation is then reviewed for adherence to prescribed clinical, treatment and quality standards. Upon passing review, the simulation is then delivered to the prescribing dental professional via ClinCheck™, which is available on our website at www.invisalign.com and www.aligntech.com. The dental professional then reviews the ClinCheck™ simulation and, on occasion, asks us to make adjustments. By reviewing and amending the treatment simulation, the dental professional retains control over the treatment plan and, thus, participates in the customized design of the Aligners. At this point, the dental professional may also invite the patient to review ClinCheck™, allowing the patient to see the projected course of treatment. The dental professional then approves the proposed treatment and, in doing so, engages us for the manufacture of corresponding Aligners.

*Construction of molds corresponding to each step of treatment*. We use the approved ClinCheck™ simulation to construct a series of molds of the patient's teeth. Each mold is a replica of the patient's teeth at each two-week stage of the simulated course of treatment. These molds are fabricated at our Santa Clara, California manufacturing facility using custom manufacturing techniques, including stereolithography, that we have adapted for use in orthodontic applications.

*Manufacture of Aligners and shipment to the dental professional*. From these molds, our contract manufacturer in Mexico fabricates Aligners by pressure-forming polymeric sheets over each mold. The Aligners are then trimmed, polished, cleaned and packaged. Following final inspection, the Aligners are shipped directly to the prescribing dental professional. We ship all of the Aligners in a single batch. In certain cases, dental professionals may use Invisalign in conjunction with clear attachments bonded to the patient's teeth. These attachments are used to increase the force applied to a tooth or teeth in circumstances where the Aligners alone may have difficulty in effecting the desired movement.

In certain cases, we provide an aligner-like template to the dental professionals to aide the placement of bonding attachments to the patient's teeth. These attachments are used to optimize the force applied to a tooth or teeth in circumstances where the Aligners alone may have difficulty in effecting the desired movements. Also, in cases where intraproximal reduction, or IDR, is requested by the dental professional, we provide an IDR prescription form, quantifying the amount of space to be created through enamel reduction, location, and timing of IDR.

*Throughput Management*

Because we manufacture each case on a build-to-order basis, we do not build inventories. As a result, we must conservatively build manufacturing throughput for anticipated demand. To increase throughput, we must improve the efficiency and increase the scale of our manufacturing processes.

In order to increase the efficiency of our manufacturing processes, we focus our efforts on software development and the improvement of rate-limiting processes, or bottlenecks. We continue to upgrade our proprietary, three-dimensional treatment-planning software to enhance computer analysis of treatment data and to reduce time spent on manual and judgmental tasks for each case, thereby increasing the efficiency of our technicians in Costa Rica. We are also continuing the development of automated systems for the fabrication of Aligners currently conducted in Mexico. In order to scale our manufacturing capacity, we continue to invest in facilities and capital equipment.

*Quality Assurance*

Our quality assurance system is compliant with FDA Medical Device regulations 21CFR Part 820, and we are ISO 9001:1994 certified, an internationally recognized quality system. Our system defines processes and procedures to ensure product and service quality, and includes methods to monitor levels of quality, based on internal data and direct customer feedback. We utilize this data to continuously improve our systems and processes, taking corrective action as required.

Since we custom manufacture Aligners on a build-to-order basis, we do not offer refunds on our products. Because each ClinCheck™ and each Aligner is unique, we inspect 100% of the product at various points in the manufacturing process, to ensure that the product meets our customers' expectations. Aligners are subject to the Invisalign product warranty, which covers defects in materials and workmanship. Our materials and workmanship warranty is in force until the Invisalign case in completed. In the event the Aligners fall within the scope of the Invisalign product warranty, we will replace the Aligners at our expense. Our warranty is contingent upon proper use of the Aligners for the purposes for which they are intended. If a patient chooses not to wear the Aligners, and as a result, requests additional Invisalign treatment, the dental professional pays the additional expense of the replacement Aligners.

The Invisalign product warranty does not provide any assurances regarding the outcome of treatment using Invisalign. However, if actual treatment results deviate significantly from the approved ClinCheck™ treatment plan, the dental professional may request a mid-course correction under the Invisalign product warranty. These deviations have typically been the result of unpredictable biological factors, such as variations in bone density or tooth topography and abnormal jaw growth. A mid-course correction requires that the dental professional submit new impressions of the patient's dentition to us. We use the impressions to create a new ClinCheck™ treatment plan for the dental professional to approve, from which a successive series of Aligners will be produced that will allow the patient to finish treatment.

In the event that a dental professional wishes to effect additional adjustments to a patient's treatment when the actual treatment results are in accordance with the approved ClinCheck™ treatment plan, the dental professional may request a case refinement or additional Aligners. However, in these cases, the case refinement and additional Aligners are provided at the dental professional's expense. In addition, should a dental professional request a replacement for a lost Aligner, we charge the dental professional for the cost of the replacement Aligner.

**Sales and Marketing**

We market Invisalign by communicating Invisalign's benefits directly to consumers and dental professionals with a nationwide advertising campaign. Based on our experience with advertising and commercial sales in our test markets, we believe that making consumers aware of Invisalign as a new treatment alternative generates significant demand for Invisalign. In order to serve anticipated worldwide demand, we are training a broad base of dental professionals.

*Consumer Marketing*

Our national consumer marketing efforts primarily focus on television advertising and are supported by print, public relations and direct mail campaigns. We advertise nationally using a broad marketing mix to drive consumer and dental professional demand.

Our experience indicates that prospective patients exposed to our advertising seek information from four primary sources:

- an orthodontist;
- a general practice dentist;

- our toll-free support line (1-800-INVISIBLE); and
- our website, which can be accessed at either www.invisalign.com or www.aligntech.com.

Our marketing efforts have generated substantial consumer interest directed toward our telephone support line and our website. Our telephone support line and our website not only provide consumers with information on Invisalign, but, importantly, also allow us to channel consumer interest to dental professionals. We have outsourced the telephone support function to a national call center operator.

*Professional Marketing*

Professional marketing consists of training dental professionals and assisting them in building their practices. As of December 31, 2002, our domestic sales team consisted of 32 salespeople supporting the orthodontic market, and 2 area managers and 17 contract salespeople supporting the general practitioner dentist market. Our international sales team consisted of 33 salespeople supporting the orthodontic market and the general practitioner dentist market. Approximately 30 customer support staff, together with the marketing department and our in-house orthodontic staff, support the domestic sales team. Our sales and support staff has been engaged in marketing Invisalign to orthodontists since July 1999. In 2001, we began marketing Invisalign to general practitioner dentists in our domestic market. We provide training, certification, marketing and clinical support to orthodontists and general practitioner dentists in the U.S. and Canada, which we consider our domestic market, and internationally.

As of December 31, 2002, we had trained over 18,000 dental professionals worldwide to use Invisalign. Of those dental professionals trained, approximately 67% are dental professionals in our domestic market. Within our domestic market, we have trained approximately 7,000 orthodontists, representing approximately 80% of all practicing orthodontists in the U.S. and Canada, and approximately 5,300 general practitioner dentists. As of December 31, 2002, approximately 8,500 of the worldwide dental professionals we have trained had submitted one or more cases to us, and over 80,000 patients have commenced treatment with Invisalign. Our sales and orthodontic teams conduct training primarily in a workshop format. The key topics covered in training include Invisalign applicability, instructions on filling out the Invisalign prescription form, clinical tips and techniques guidance on pricing and instructions on interacting with our ClinCheck™ software and the many other features of our website.

Invisalign relies on the same orthodontic principles that apply to traditional treatment, and we present our training material in a manner consistent with dental professionals' training and experience. Our success in training a large number of dental professionals confirms our belief that training represents a minimal barrier to adoption for most dental professionals.

After training, sales representatives follow up with the dental professional to ensure that their staff is prepared to handle Invisalign cases. Such follow up may include assisting the dental professional in taking dental impressions, establishing an Internet connection and familiarizing them with our website. Sales representatives may also provide practice-building assistance, including helping the dental professional to market Invisalign to prospective patients through direct mail or other forms of media. Many dental professionals have commenced promotional activity in their local region with our assistance.

General practitioner dentists play an important role in informing their patients about orthodontics and are a key source of both referrals to orthodontists and Invisalign case submissions. There are over 120,000 active general practice dentists in the U.S. and Canada.

**Research and Development**

As of December 31, 2002, our research and development team consisted of 15 individuals with medical device development, orthodontic and other relevant backgrounds. In addition, we employed a software development team comprised of approximately 26 software engineers in the U.S. with experience in computational geometry, animation, computer-aided design and various manufacturing industries. We also contracted with approximately 20 software engineers in Pakistan and Russia, who were part of the team responsible for the creation of treatment simulation software. Prior to commercial launch in July 1999, our research and development strategy had three primary objectives: developing Invisalign, establishing the ability of Invisalign to treat malocclusion and developing software and processes to enable the manufacture of Aligners in volume. Since our commercial launch, our research and development effort has focused on extending the range of dental applicability of Invisalign, enhancing the software used in the manufacturing process and enhancing our line of products. Our research and development expenses were $13.1 million, $15.6 million and $9.4 million in fiscal 2002, 2001 and 2000, respectively.

In an effort to demonstrate Invisalign's broad treatment capabilities, we initiated the publication of a series of clinical case studies and articles that highlight the applicability of Invisalign to malocclusion cases, including those of severe complexity. We are also undertaking post-marketing studies and making additional technological improvements to the product and manufacturing process. Our product development team is testing enhanced materials and a number of complementary products that we expect will provide additional revenue opportunities.

In fiscal 2002, we continued to enhance our proprietary, three-dimensional treatment-planning software primarily to increase our manufacturing capacity and efficiency.

**Intellectual Property**

We believe our intellectual property position represents a substantial business advantage. As of December 31, 2002, we had 29 issued U.S. patents, 20 issued foreign patents, 69 pending U.S. patent applications, and numerous pending foreign patent applications.

We continue to pursue further intellectual property protection through U.S. and foreign patent applications and non-disclosure agreements. We also seek to protect our software, documentation and other written materials under trade secret and copyright laws. We cannot be certain that patents will be issued as a result of any patent application or that patents that have been issued to us or that may be issued in the future will be found to be valid and enforceable and sufficient to protect our technology or products.

**Competition**

We compete directly with companies such as Ormco Orthodontics, a wholly owned subsidiary of Sybron Dental Specialties, which manufactures and distributes a product called Red, White & Blue, a product that is similar in use to Invisalign, but different in features, manufacturing process and delivery. We compete for the attention of dental professionals with manufacturers of other orthodontic products. These manufacturers of traditional orthodontic appliances include 3M Company, Ormco Orthodontics and Dentsply International, Inc.

We believe that, in addition to price, the principal competitive factors in the market for orthodontic appliances include the following factors:

- aesthetic appeal of the treatment method;
- comfort associated with the treatment method;
- oral hygiene;
- effectiveness of treatment;

- ease of use; and
- dental professionals' chair time.

We believe that Invisalign compares favorably with our competitors' products with respect to each of these factors.

**Government Regulation**

*FDA Regulation of Medical Devices*. Invisalign is regulated as a medical device. Accordingly, our product development, labeling, manufacturing processes and promotional activities are subject to extensive review and rigorous regulation by government agencies in those countries in which we sell our products.

In the U.S., the FDA regulates the design, manufacture, distribution, preclinical and clinical study, clearance, and approval of medical devices. Medical devices are classified in one of three classes on the basis of the controls necessary to reasonably assure their safety and effectiveness. Class I or II devices require the manufacturer to submit a pre-market notification requesting permission for commercial distribution, which is known as 510(k) clearance. Class III devices, which are deemed by the FDA to pose greater risk than Class I and II devices, require FDA approval of a pre-market approval application which includes, among other things, extensive preclinical and clinical trial data and information about the devices and components' design, manufacturing and labeling.

Invisalign is a Class I device, the least stringent class, which only requires general controls, including labeling, pre-market notification and adherence to the FDA's Quality System regulations. In addition, because Invisalign is a Class I device, we are required to register contract manufacturers located outside the U.S. with the FDA. Accordingly, we have registered Elamex, our Mexico-based contract manufacturer, with the FDA. Elamex is certified under ISO, an internationally recognized quality standard, and also performs subcontractor manufacturing for other U.S.-based medical device companies. Our quality system and procedures are set up to comply with all FDA regulations. Elamex has dedicated an area in its facilities and certain personnel for our exclusive use. We have supplied Elamex with procedures to manufacture and ship our products and have trained Elamex's personnel, thus ensuring compliance with FDA regulations as long as the procedures are followed. We conduct frequent visits to the Mexico facility to monitor Elamex's performance and its compliance with our procedures.

In November 1998, Invisalign received 510(k) Pre-Market Notification by the FDA, allowing us to market Invisalign in the U.S. The manufacture and distribution of Invisalign are subject to continuing regulation by the FDA. We are subject to routine inspections by the FDA to determine compliance with facility registration, product listing requirements, medical device reporting regulations and Quality System requirements. The Quality System regulation is similar to good manufacturing practices and relates to product testing and quality assurance, as well as the maintenance of records and documentation.

If the FDA finds that we have failed to comply with the applicable FDA regulations, it can institute a wide variety of enforcement actions against us, ranging from a public Warning Letter to more severe sanctions, including but not limited to financial penalties, withdrawal of 510(k) pre-market notification clearances already granted, and criminal prosecution.

In Europe, Invisalign is regulated as a custom device. As such, we are not subject to regulations promulgated by the European Union, although we have the option to CE mark our product. We are ISO 9001:1994 certified, which facilitates the commercialization of Invisalign outside the U.S.

*Health Insurance Portability and Accountability Act of 1996.* Under the Health Insurance Portability and Accountability Act of 1996, or HIPAA, Congress mandated a package of interlocking administrative

simplification rules to establish standards and requirements for electronic transmission of certain health information. Confidentiality of patient records and the circumstances under which these records may be released are subject to substantial regulations under the HIPAA Standards for Privacy of Individually Identifiable Health Information, referred to as the Privacy Standard, and other state laws and regulations. The Privacy Standard governs both the disclosure and the use of confidential patient medical information. Although compliance is principally the responsibility of the hospital, physician or other healthcare provider, our agreements with orthodontists and other healthcare professionals require that we comply with the Privacy Standard when providing technical services and when handling patient information and records. We have designed our product and service offerings to enable compliance with HIPAA and applicable corresponding state laws and regulations. Compliance with these laws and regulations is costly and could require complex changes in our systems and services. Additionally, our success may be dependent on the success of healthcare participants in dealing with HIPAA requirements and the Privacy Standard.

*Other Federal and State Laws*. As a participant in the health care industry we are subject to extensive and frequently changing regulation under many other laws administered by governmental entities at the federal, state and local levels, some of which are, and others of which may be, applicable to our business. Furthermore, our health care service provider customers are also subject to a wide variety of laws and regulations that could affect the nature and scope of their relationships with us.

Laws regulating medical device manufacturers and health care providers cover a broad array of subjects. For example, the confidentiality of patient medical information and the circumstances under which such information may be released for inclusion in our databases, or released by us to third parties, are subject to substantial regulation by state governments. These state laws and regulations govern both the disclosure and the use of confidential patient medical information and are evolving rapidly. In addition, provisions of the Social Security Act prohibit, among other things, paying or offering to pay any remuneration in exchange for the referral of patients to a person participating in, or for the order, purchase or recommendation of items or services that are subject to reimbursement by, Medicare, Medicaid and similar other federal or state health care programs. Most states have also enacted illegal remuneration laws that are similar to the federal laws. These laws are applicable to our financial relationships with, and any marketing or other promotional activities involving, our dental professional customers. Finally, various states regulate the operation of an advertising and referral service for dentists, and may require registration of such services with a state agency as well as compliance with various requirements and restrictions on how they conduct business and structure their relationships with participating dentists. Violations of any of these laws or regulations could subject us to a variety of civil and criminal sanctions.

**Employees**

As of December 31, 2002, we had approximately 608 employees, approximately 282 of whom were employed in the U.S., 251 in Costa Rica, 46 in Europe, 12 in Latin America, 10 in Asia/Pacific and 7 in the U.A.E. As of December 31, 2002, of our U.S. employees, approximately 91 were employed in manufacturing, 67 were employed in various management, administrative and support positions, 49 were marketing and customer support staff, 34 were sales representatives, 26 were software engineers and 15 were employed in research and development.

**Web Site Postings**

We make our annual report on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, and amendments to such reports, available free of charge through our web site as soon as reasonably practicable after we electronically file such material with, or furnish it to, the United States Securities and Exchange Commission, at the following addresses: www.aligntech.com and www.invisalign.com. The information in, or that can be accessed through, our web site is not part of this report.

**ITEM 2. PROPERTIES.**

Our headquarters are located in Santa Clara, California. We lease approximately 90,000 square feet of space where we house our manufacturing, customer support, software engineering and administrative personnel. We lease our Santa Clara facilities under two leases, both of which expire at the end of 2005. The combined monthly rent for the Santa Clara facilities is approximately $270,000.

We also operate a facility in San Jose, Costa Rica. The main facility comprises approximately 25,000 square feet of manufacturing and office space. The monthly rent for the Costa Rica facility is approximately $14,000. The lease for this facility expires at the end of 2006.

We believe that our existing facilities are adequate to meet current requirements and that additional or substitute space will be available as needed to accommodate any expansion of operations.

**ITEM 3. LEGAL PROCEEDINGS.**

In January 2003, Ormco Corporation filed suit against Align Technology, Inc., in the United States District Court for the Central District, Orange County Division, asserting infringement of U.S. Patent Nos. 5,447,432, 5,683,243 and 6,244,861. The complaint seeks unspecified monetary damages and injunctive relief. In February 2003, Align answered the complaint and asserted counterclaims seeking a declaration by the Court of invalidity and non-infringement of the asserted patents. In addition, Align counterclaimed for infringement of its U.S. Patent No. 6,398,548, seeking unspecified monetary damages and injunctive relief. Ormco filed a reply to Align's counterclaims on March 10, 2003 and asserted counterclaims against Align seeking a declaration by the Court of invalidity and non-infringement of U.S. Patent No. 6, 398, 548. Align's response to Ormco's counterclaims is due in early April 2003. No trial or other dates have yet been set by the Court.

Three years ago, Ormco filed suit against Align asserting infringement of U.S. Patent Nos. 5,447,432 and 5,683,243. In June 2000, the parties entered into a Stipulation of Dismissal with Ormco. Ormco agreed for a period of at least two years not to pursue litigation with respect to these patents, except as set forth below. Further, Ormco agreed that it would not bring any patent action against Align for at least a period of one year with respect to any as yet unissued patents. If Ormco were to bring such an action concerning as yet unissued patents after one year, the Stipulation of Dismissal would allow Ormco to include in such an action claims involving U.S. Patent Nos. 5,447,432 and 5,683,243. In August 2001, Ormco notified Align of the issuance of U.S. Patent No. 6,244,861 and offered a license for this patent. Align did not take a license to this patent. Five months after Ormco's notification, it filed the lawsuit that is currently pending.

The claims in U.S. Patent Nos. 5,447,432 and 5,683,243 relate to methods and systems for forming and manufacturing custom orthodontic appliances. The relevant claims are limited to computerized methods and algorithms for determining the final positioning of a patient's teeth based upon a derived or ideal dental archform of the patient. The claims in U.S. Patent No. 6,244,861 are more generic claims relating to the methods and systems for forming and manufacturing custom orthodontic appliances. Based on the disclosure in the patent, however, the relevant claims also appear to be limited to computerized methods and algorithms for determining the final positioning of a patient's teeth based upon a derived or ideal dental archform of the patient. The treatment plan simulation developed in Align's facilities determines the final positioning of a patient's teeth but is not based on a derived or ideal dental archform of the patient.

The claims in Align's U.S. Patent No. 6,398,548 relate to methods and systems for incrementally moving teeth using a series of appliances designed to be placed successively on the patient's teeth.

Align strongly believes that Ormco's claims of infringement lack merit and that Align's counterclaim of infringement will be successful. However, the outcome of a lawsuit is inherently unpredictable. Should Align's technology be found to infringe any one of Ormco's asserted patents, Align would have to seek a license from

Ormco, which license might not be available on commercially reasonable terms or at all. In that event, Align could be subject to damages or an injunction which could materially adversely affect its business.

On May 1, 2002, GW Com, Inc. filed a complaint in Santa Clara Superior Court against us and James Lindsey, the owner of the premises located at 851 Martin Avenue, Santa Clara, California. We were parties with GW Com to a sub-sublease for such premises, the term of which expired on August 14, 2002. In early 2001, we engaged in negotiations with GW Com to amend the sub-sublease to add additional space and to extend the term through November 30, 2004. The proposed amendment, however, required the consent of the owner of the subject property, Mr. Lindsey. We withdrew from the negotiations of the amendment, after, among other things, Mr. Lindsey's consent could not be obtained. GW Com's complaint alleged breach of contract against us and breach of contract and intentional interference with contract against Mr. Lindsey. In the complaint, GW Com sought damages of more than $4 million. In February 2002 we entered into a written settlement agreement pursuant to which GW Com paid us an aggregate of $188,000 and Mr. Lindsey paid us an aggregate of $10,000.

On April 9, 2002, we exercised our right to terminate an Exclusive Marketing Agreement dated October 18, 2001 with Discus Dental Impressions, Inc. pursuant to the express terms of the Agreement and we issued a press release reporting this termination. On or about May 14, 2002, we received a demand for arbitration submitted by Discus Dental with the American Arbitration Association in San Jose, California. In its arbitration demand, Discus Dental seeks damages of approximately $30 million, including commissions and bonus payments it claims it would have received under the Agreement as well as other expenses, attorneys' fees and injunctive relief to prevent us from selling Invisalign to dentists in the U.S. and Canada. However, prior to terminating the Agreement, we conducted a thorough review of the Agreement and each party's performance thereunder. Based upon that review of the factual and legal issues, we deny all claims made by Discus Dental in its demand and contend that such claims are entirely without merit. In addition, on or about June 13, 2002 we submitted a counterclaim against Discus Dental in the arbitration seeking damages of approximately $40 million arising out of our claims for misrepresentation, breach of confidentiality provisions and unfair competition, among others. The three arbitrators have been selected, and the parties are exchanging and reviewing documents in response to document demands. The matter is currently set for arbitration on August 18, 2003.

In February 2001, Align Technology was named in a class action lawsuit filed on behalf of all licensed dentists (excluding orthodontists) in the U.S. The complaint alleged that Align Technology's policy of selling Invisalign exclusively to orthodontists violated the U.S. antitrust laws. Without admitting any wrongdoing, the company entered into a Stipulation and Agreement of Settlement with the plaintiffs to settle the lawsuit. The total legal and other settlement costs that Align has agreed to pay are approximately $400,000 in legal fees. In November 2001, the Court approved the Stipulation and Agreement of Settlement. Pursuant to the settlement, we trained and certified approximately 5,000 in fiscal 2002, and have undertaken to certify 5,000 general practitioner dentists each year over the next three years.

From time to time, we have received, and may again receive, letters from third parties drawing our attention to their patent rights. While we do not believe that we infringe any such rights that have been brought to our attention, there may be other more pertinent proprietary rights of which we are presently unaware.

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.**

There were no matters submitted to a vote of security holders during the fourth quarter of fiscal 2002.

**ITEM 4A. EXECUTIVE OFFICERS OF THE REGISTRANT.**

The following table sets forth certain information regarding our executive officers as of March 18, 2003.

| Name | Age | Position |
|---|---|---|
| Thomas M. Prescott | 47 | President and Chief Executive Officer |
| Eldon M. Bullington | 51 | Chief Financial Officer and Vice President, Finance |
| Amir Abolfathi | 38 | Vice President, Research and Development |
| Jon Fjeld | 51 | Vice President, Technology |
| Roger E. George | 37 | Vice President, Legal Affairs, and General Counsel |
| Len M. Hedge | 45 | Vice President, Operations |
| David S. Thrower | 38 | Vice President, Global Marketing |

*Thomas M. Prescott* has served as our President and Chief Executive Officer since March 27, 2002, at which time he was also appointed as a director by our Board of Directors to fill a vacancy on the Board. Prior to joining us, Mr. Prescott was President and Chief Executive Officer of Cardiac Pathways, Inc. from May 1999 to August 2001 and a consultant for Boston Scientific Corporation from August 2001 to January 2002 after its purchase of Cardiac Pathways in August 2001. Prior to Cardiac Pathways, Mr. Prescott held various sales, general management and executive roles at Nellcor Puritan Bennett, Inc. from April 1994 to May 1999, and various management positions at GE Medical Systems from October 1987 to April 1994. In addition, Mr. Prescott served in sales, marketing and management roles at Siemens from December 1980 to July 1986. Mr. Prescott serves as a director of R2 Technologies, Inc., a privately held company. He earned his Masters degree from Kellogg Graduate School of Management, Northwestern University and his Bachelors degree in Civil Engineering from Arizona State University.

*Eldon M. Bullington* has served as our Vice President and Chief Financial Officer since October 2002. Mr. Bullington was previously Vice President, Finance and CFO of Milpitas, CA-based Verplex Systems, Inc. where he established financial controls and policies, software revenue recognition disciplines, business plans and cultivated investment banking relationships for the early stage electronic design and automation company. Prior to that, Mr. Bullington spent two years as the Vice President and CFO at Cardiac Pathways, Inc., where he helped lead the successful financial turnaround and sale of Cardiac Pathways to Boston Scientific. Prior to Cardiac Pathways, Mr. Bullington was Vice President and CFO at Saraide, Inc. He also served in executive financial management roles at Verifone, Inc. and Radius, Inc., both Bay Area technology companies and prior to that spent five years with IBM providing business and financial planning leadership at IBM North American Operations and its System Technology Division. Mr. Bullington began his financial career with Arthur Andersen, and graduated Cum Laude from California State University, Long Beach with a B.S. degree in Business Administration and Accounting.

*Amir Abolfathi* has served as our Vice President of Research and Development since March 2000. From November 1999 to March 2000, Mr. Abolfathi served as our Senior Director of Planning. Prior to joining Align Technology, Mr. Abolfathi served as a consultant for a number of newly venture funded medical device companies from February 1999 through November 1999, including Embolic Protection, Inc. and Novasys Medical, Inc. From April 1995 through January 1999, Mr. Abolfathi served as Senior Director of Research and Development and Vice President of Research and Development for EndoTex Interventional Systems, Inc., a company focused on the treatment of neurovascular diseases that he co-founded. From 1988 to 1995, he held a variety of management and engineering positions at Pfizer, Inc., Guidant Corporation and Baxter, Inc. Mr. Abolfathi received his M.S. in engineering management from the University of Southern California and his B.S. in biomedical engineering from the University of California at San Diego.

*Jon Fjeld* has served as our Vice President of Technology since December 2000. Prior to joining us, Mr. Fjeld was the President and Chief Executive Officer of Raindrop Geomagic, Inc., a software company. From January 1998 through June 1998, Mr. Fjeld served as Vice President of Larscom, Inc., a networking company.

From August 1995 through December 1997, Mr. Fjeld served in various positions at Netedge Systems, Inc., a networking company, including Vice President of Marketing and later as President and Chief Executive Officer. From 1982 to 1995 he held several management and executive positions in the networking and software business units at IBM. Mr. Fjeld received his M.B.A. from Duke University and his PhD and M.A. from the University of Toronto, his M.S. from the University of North Carolina and his B.A. from Bishop's University.

*Roger E. George* has served as the Vice President, Legal Affairs, and General Counsel at Align since July 2002. Prior to joining Align, Mr. George was the Chief Financial Officer, Vice President of Finance and Legal Affairs and General Counsel of SkyStream Networks, a privately held broadband and broadcast network equipment company, in Sunnyvale, Ca. Prior to SkyStream, Mr. George was a partner at Wilson Sonsini Goodrich & Rosati, P.C. in Palo Alto, California. He is a Certified Public Accountant. Mr. George attended the University of Virginia where he earned the degrees of B.S. in Commerce and Juris Doctor.

*Len M. Hedge* has served as our Vice President, Operations since March 2002, having served as our Vice President of Manufacturing from January 1999 to March 2002. Mr. Hedge served as Vice President of Operations for Plynetics Express Corporation, a rapid-prototyping and stereolithography services supplier, from December 1996 to December 1998. From October 1991 to December 1996, Mr. Hedge worked at Beckman Instruments Corporation as Manager for Prototype Manufacturing and Process Development. Prior to joining Beckman, Mr. Hedge spent 13 years with General Dynamics Corporation, holding positions of increasing responsibility from Machinist to Manager of Mechanical Fabrication. Mr. Hedge received his B.S. from La Verne University.

*David S. Thrower* has served as our Vice President, Global Marketing since August 2002. Prior to joining Align, Mr. Thrower served as Senior Vice President of Global Marketing and Sales of Camarillo, CA-based BioSource International, a publicly held life science reagent company. At BioSource, Mr. Thrower was responsible for sales, marketing, business development and R&D for signal transduction products. Prior to that, he served as Senior Vice President, Global Marketing at GN ReSound, Inc. a Redwood City, CA-based hearing and communications device company where he led strategic marketing and managed a joint partnership effort in a significant corporate turnaround and launched the company's first digital product line. Mr. Thrower also has previous experience in large and small independent management consulting firms, including five years with Boston-based Bain & Company where he specialized in assisting corporate clients in the development and execution of strategy, marketing and customer loyalty initiatives. Mr. Thrower holds a B.S. in Math and Computational Sciences from Stanford University and a MBA from Harvard Graduate School of Business.

Our executive officers are elected by the Board of Directors and serve until their successors have been duly elected and qualified. There are no family relationships among any of our directors or executive officers.

## PART II

### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.

*(a) Price Range of Common Stock*

Our common stock is listed on the Nasdaq National Market under the symbol "ALGN." Public trading of our common stock commenced on January 26, 2001. Prior to that date, there was no public market for our common stock. The following table shows, for the periods indicated, the high and low per share closing prices of common stock, as reported by the Nasdaq National Market:

| | High | Low |
|---|---|---|
| Year Ended December 31, 2002: | | |
| Fourth quarter | $ 3.59 | $ 1.30 |
| Third quarter | $ 3.50 | $ 1.70 |
| Second quarter | $ 5.48 | $ 3.32 |
| First quarter | $ 5.98 | $ 4.05 |
| Year Ended December 31, 2001: | | |
| Fourth quarter | $ 5.59 | $ 2.87 |
| Third quarter | $ 8.00 | $ 2.18 |
| Second quarter | $ 12.07 | $ 5.45 |
| First quarter (from January 30, 2001) | $ 16.88 | $ 6.69 |

On March 18, 2003, the last reported sale price of our common stock on the NASDAQ National Market was $5.48 per share. As of March 18, 2003 there were approximately 57,785,523 holders of record of our common stock.

We have never declared or paid any cash dividends on our common stock. We currently intend to retain any future earnings to fund the development and growth of our business and do not anticipate paying any cash dividends in the foreseeable future.

*(b) Sales of Unregistered Securities*

In November 2002, we completed a financing deal for a private placement of 9,578,944 shares of common stock to a group of institutional investors led by existing shareholders, raising $18.1 million, net of issuance costs. The investors include Dionis Trust, Gordon Gund-Grant Gund Generation Skipping Trust, Gordon Gund-G. Zachary Gund Generation Skipping Trust, Kleiner Perkins Caulfield Byers VIII, L.P., KPCB VIII Founders Fund, L.P., Carlyle Partners III, L.P., CP III Coinvestment, L.P., Warren Thaler, Thomas M. Prescott, Oak Hill Capital Partners, L.P. and Oak Hill Capital Management Partners, L.P. The shares sold are unregistered and were issued pursuant to the private placement exemption from the registration requirements of Section 5 of the Securities Act of 1933. We are obligated to file an S-3 Registration Statement registering the shares for resale at least 30 days prior to November 26, 2003, and to use our reasonable best efforts to cause the S-3 Registration Statement to become effective as soon thereafter as practicable but not prior to November 26, 2003.

*(c) Use of Proceeds from Sales of Registered Securities*

We did not issue any registered securities during the fiscal year ended December 31, 2002.

The information required by this item regarding equity compensation plans is incorporated by reference to the information set forth in Item 12 of this Report on Form 10-K.

**ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA.**

The following tables set forth selected consolidated financial data for each of the years in the five-year period ended December 31, 2002. The selected consolidated financial data is qualified in its entirety and should be read in conjunction with our consolidated financial statements as of December 31, 2002 and 2001 and for each of the years in the three year period ended December 31, 2002 and notes thereto set forth on pages 42 to 66 and "Management's Discussion and Analysis of Financial Condition and Results of Operations" beginning on page 22.

The historical results presented below are not necessarily indicative of future results.

**SELECTED CONSOLIDATED FINANCIAL DATA**
**(in thousands, except per share data)**
**(unaudited)**

| | Year Ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2002 | 2001 | 2000 | 1999 | 1998 |
| **Consolidated Statement of Operations Data (1):** | | | | | |
| Total revenues | $ 75,395 | $ 46,384 | $ 6,741 | $ 411 | $ — |
| Loss from operations | (68,237) | (99,194) | (81,115) | (14,705) | (3,951) |
| Other income (expense), net | 116 | 1,730 | (7,633) | (710) | 176 |
| Net loss before provision for income taxes | (68,121) | (97,464) | (88,748) | (15,415) | (3,775) |
| Provision for income taxes | — | 10 | — | — | — |
| Net loss | (68,121) | (97,474) | (88,748) | (15,415) | (3,775) |
| Dividend related to beneficial conversion feature of preferred stock | — | (11,191) | (53,516) | — | — |
| Net loss available to common stockholders | $ (68,121) | $ (108,665) | $ (142,264) | $ (15,415) | $ (3,775) |
| Net loss per share available to common stockholders, basic and diluted | $ (1.42) | $ (2.57) | $ (25.64) | $ (3.65) | $ (1.33) |
| Shares used in computing net loss per share available to common stockholders, basic and diluted | 47,878 | 42,247 | 5,548 | 4,218 | 2,842 |

(1) Certain reclassifications of prior period amounts have been made to conform with current year presentation.

| | December 31, | | | | |
|---|---|---|---|---|---|
| | 2002 | 2001 | 2000 | 1999 | 1998 |
| **Consolidated Balance Sheet Data:** | | | | | |
| Working capital | $ 47,433 | $ 63,747 | $ 18,273 | $ 10,027 | $ 6,815 |
| Total assets | 92,856 | 118,218 | 70,561 | 17,091 | 8,117 |
| Total long-term liabilities | 3,837 | 980 | 1,455 | 3 | 10 |
| Convertible preferred stock and preferred stock warrants | — | — | 130,691 | 32,755 | 12,147 |
| Stockholders' equity (deficit) | 70,620 | 99,402 | (84,674) | (19,414) | (4,433) |

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

The following discussion and analysis of our financial condition and results of operations should be read together with "Selected Consolidated Financial Data" and our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K.

*In addition to historical information, this report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These statements include, among other things, statements concerning 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 the following sections entitled "Factors That May Affect Operating Results" and "Management's Discussion and Analysis of Financial Condition and Results of Operations." We undertake no obligation to revise or publicly release the results of any revision to these forward-looking statements. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements.*

**Overview**

Since our inception in April 1997, we have been engaged in the design, manufacture and marketing of Invisalign, a proprietary system for treating malocclusion, or the misalignment of teeth.

Invisalign has two components: ClinCheck™ and Aligners. ClinCheck™ is an Internet-based application that allows dental professionals to simulate treatment, in three dimensions, by modeling two-week stages of tooth movement. Aligners are thin, clear plastic, removable dental appliances that are manufactured in a series to correspond to each two-week stage of the ClinCheck™ simulation. Aligners are customized to perform the treatment prescribed for an individual patient by dental professionals using ClinCheck™.

Currently, two of our key production steps are performed in operations located outside of the U.S. At our facility in Costa Rica, technicians use a sophisticated, internally developed computer-modeling program to prepare electronic treatment plans, which are transmitted electronically back to the U.S. These electronic files form the basis of our ClinCheck™ product and are used to manufacture Aligner molds. A third party manufacturer in Mexico fabricates Aligners and ships the completed products to our customers.

In July 2002, we announced a plan to streamline worldwide operations. The plan included closing our facilities in Pakistan and the U.A.E. We transitioned the operations performed at these facilities to the United States and Costa Rica. For the period ending December 31, 2002, we recorded severance charges of $2.3 million, facility closure charges of $0.9 million, a loss on disposal of fixed assets of $1.1 million and an impairment charge of $0.9 million related to the land in Pakistan. The land was written down to a zero value to reflect its fair value as estimated by management. Approximately $0.1 million of accrued charges related to professional fees were included in accrued liabilities as of December 31, 2002. We discontinued operations at our facilities in Pakistan and the U.A.E in October and December 2002, respectively. We concluded the remainder of indirect operational activities related to the Costa Rica transition in January 2003. We will cease non-operational closing activities in Pakistan when the land is disposed of at that location and in the U.A.E when the necessary statutory filings have been completed.

Revenue from the sale of Invisalign and ancillary products is recognized upon product shipment, provided no significant obligations remain, transfer of title has occurred, and collection of the receivables is deemed probable. The costs of producing the ClinCheck™ treatment plan, which are incurred prior to the production of

Aligners, are deferred and recognized as related revenues are earned, i.e. upon shipment of the Aligners. We offer our dental professionals an opportunity to purchase case refinement in advance at a discount. The advance purchase price is non-refundable once Aligners are shipped and is deferred until the earlier of shipment of the case refinement or case expiration. In cases where the dental professional does not purchase the case refinements in advance, case refinement revenues are recognized when the new Aligners are shipped.

Service revenues earned under agreements with third parties for training of dental professionals and staff for Invisalign are recorded as the services are performed. Charges to third parties are based on negotiated rates which are intended to approximate a mark-up on our anticipated costs.

We estimate and record a provision for amounts of estimated losses on sales, if any, in the period such sales occur.

We have incurred significant operating losses and negative operating cash flows since inception and have not yet achieved profitability. As of December 31, 2002, we had an accumulated deficit of approximately $274.2 million.

We expect to expend significant capital to continue to build our national brand, expand our dental professional channel, automate our manufacturing processes and develop both product and process technology. In November 2002, we completed a private placement of common stock to a group of investors led by existing shareholders, raising $18.1 million, net of issuance costs. In December 2002, we secured an accounts receivable-based revolving line of credit of up to $10 million and an equipment-based term loan of $5 million, which was accessed in December 2002. As of December 31, 2002 and March 18, 2003, we had not utilized the accounts receivable-based revolving line of credit. Accessing the accounts receivable-based revolving line of credit is restricted based on qualifying accounts receivable and compliance with certain loan covenants. However, there can be no assurance that such financing will be adequate for us to avoid reducing operating expenses by, including but not limited to, reducing planned capital expenditures relating to enhancing our manufacturing process and reducing worldwide staff.

**Results of Operations**

**Comparison of Years Ended December 31, 2002 and 2001:**

*Revenues.* Revenues for the year ended December 31, 2002 increased 63% to $75.4 million compared to $46.4 million for the year ended December 31, 2001. Revenues of $69.4 million were derived from the sale of Invisalign compared to revenues of $45.0 million for the years ended December 31, 2002 and 2001, respectively. The increase in Invisalign revenues was primarily due to an increase in the domestic orthodontic channel of $8.6 million, the domestic general practitioner channel of $10.8 million and the international channel of $5.0 million for the year ended December 31, 2002 over the year ended December 31, 2001. The balance of our revenues represented sales of ancillary products and other services of $6.0 million for the year ended December 31, 2002 and $1.4 million for the year ended December 31, 2001, with the increase primarily attributable to training.

*Cost of revenues.* Cost of revenues for the year ended December 31, 2002 was $46.0 million compared to $46.8 million for the year ended December 31, 2001. Cost of revenues include the salaries for staff involved in production, the cost of materials and packaging, shipping costs, depreciation on the capital equipment used in the production process, under/over absorbed manufacturing capacity, training costs and the cost of facilities. Also included in cost of revenues are stock based compensation expenses of $3.4 million and $4.6 million in 2002 and 2001, respectively, and $0.6 million of restructuring charges incurred as part of our July 2002 plan to streamline worldwide operations. Gross margin for the year ended December 31, 2002 was $29.4 million or 39% of revenue, compared with a negative gross margin of $0.4 million for the year ended December 31, 2001. We achieved positive gross margins in 2002 and the second half of 2001 mainly due to efficiencies in manufacturing

as well as increased production volumes. Our gross margin is affected by changes in manufacturing volume, manufacturing capacity and changes in our average selling price.

*Sales and marketing.* Sales and marketing expenses for the year ended December 31, 2002 were $45.3 million compared to $51.9 million for the year ended December 31, 2001. Sales and marketing expenses include sales force compensation together with expenses for professional marketing, conducting training workshops and market surveys, advertising and attending dental professional trade shows. The decrease in sales and marketing expenses for the year ended December 31, 2002 resulted primarily from reduced spending in North America for media and advertising by approximately $13.2 million and reduced spending of direct mail advertising by approximately $1.6 million, partially offset by an increase in spending of $1.6 million related to incremental headcount in our North American sales force. Also offsetting spending reductions was an increase in spending at our international locations by approximately $5.7 million primarily in the first two quarters of fiscal 2002. Also included in sales and marketing expenses are stock based compensation expenses of $2.9 million and $3.9 million in 2002 and 2001, respectively, and $1.2 million of restructuring charges related to severance incurred as part of our July 2002 plan to streamline worldwide operations.

*General and administrative.* General and administrative expenses for the year ended December 31, 2002 were $39.3 million compared to $30.8 million for the year ended December 31, 2001. General and administrative expenses include salaries for administrative personnel, outside consulting services, facilities, legal expenses and general corporate expenses. The increase in general and administrative expenses for the year ended December 31, 2002 resulted primarily from expanded support infrastructure at our international locations primarily in the first two quarters of fiscal 2002. Included in general and administrative expenses in 2002 were $3.4 million of restructuring charges for severance charges of $0.5 million, facility closure charges of $0.9 million, a loss on disposal of fixed assets of $1.1 million and an impairment charge of $0.9 million related to the land in Pakistan, incurred as part of our July 2002 plan to streamline worldwide operations.

*Research and development.* Research and development expenses for the year ended December 31, 2002 were $13.1 million compared to $15.6 million for the year ended December 31, 2001. Research and development expenses include the costs associated with software engineering, the cost of designing, developing and testing our products and the conducting of both clinical and post-marketing trials. We expense our research and development costs as they are incurred. The decrease in research and development expenses for the year ended December 31, 2002 was primarily due to a decrease in outside consulting services of approximately $1.2 million and a decrease in headcount expense related to product development activities of approximately $1.5 million. Research and development expenses for 2002 also included $0.1 million of restructuring charges incurred as part of our July 2002 plan to streamline worldwide operations, and $3.2 million and $4.1 million of stock based compensation expense for 2002 and 2001, respectively.

*Litigation settlement expenses.* In February 2001 Align was named in a class action lawsuit filed on behalf of all licensed dentists (excluding orthodontists) in the U.S. The complaint alleged that Align's policy of selling Invisalign exclusively to orthodontists violated the U.S. antitrust laws. Without admitting any wrongdoing, we entered into a Stipulation and Agreement of Settlement with the plaintiffs to settle the lawsuit. The total legal and other settlement costs that Align has agreed to pay are approximately $0.4 million in legal fees. In November 2001, the Court approved the Stipulation and Agreement of Settlement. Pursuant to the settlement, we trained and certified approximately 5,000 in fiscal 2002, and have undertaken to certify 5,000 general practitioner dentists each year over the next three years.

*Interest and other income (expense), net.* Interest and other income was $0.1 million for the year ended December 31, 2002 compared to $1.7 million for the year ended December 31, 2001. Interest income decreased in 2002 by $4.0 million primarily due to the decrease in our cash, cash equivalent and marketable securities balances. Interest income for the year ended December 31, 2001 was primarily generated from our cash and cash equivalents balance and investments in short-term marketable securities. Offsetting this income in the first quarter of 2001 was non-cash interest expense of $1.8 million, related to the beneficial conversion feature embedded in convertible subordinated notes.

*Dividend related to beneficial conversion feature of preferred stock.* In 2000 we issued 9,535,052 shares of Series D preferred stock which were subject to an antidilution conversion price adjustment feature. We triggered this antidilution conversion price adjustment feature when we granted options to purchase our common stock beyond the number of options that were authorized under our 1997 Plan at the time we commenced our Series D preferred stock offering in May 2000. The conversion feature provided that if, during the period between May 12, 2000 (the commitment date for our Series D preferred stock offering) and the earlier of the closing of an initial public offering or January 31, 2001, we had granted more than an aggregate of 3,331,978 options to purchase our common stock, then the conversion price of our Series D preferred stock would be adjusted downward from its original conversion price of $10.625 per share. As of the end of January 2001, we had granted an aggregate of 3,591,458 options to purchase shares of our common stock in excess of the 3,331,978 options permitted. As a result we were required to issue an additional 790,342 shares of common stock upon the conversion of the Series D preferred stock. These shares were in addition to the 419,700 additional shares of common stock that we were required to issue upon conversion of the Series D preferred stock as of December 31, 2000. As a result, we recorded a deemed dividend for the year ended December 31, 2001 based on the fair value of the common stock. We also recorded at the commitment date of the Series D preferred stock offering $11.2 million related to the preferred stock sold and a charge to interest expense of $1.8 million for the beneficial conversion feature embedded in convertible subordinated notes that were previously converted. In 2002, we had no issued and outstanding preferred stock, and in 2002 we did not record any deemed dividends related to preferred stock.

*Stock-based compensation.* In connection with the grant of stock options to employees and non-employees, we recorded deferred stock-based compensation as a component of stockholders' equity. Deferred stock-based compensation for options granted to employees is the difference between the fair value of our common stock on the date such options were granted and their exercise price. For stock options granted to non-employees, the fair value of the options, estimated using the Black-Scholes valuation model, is initially recorded on the date of grant. As the non-employee options become exercisable, we revalue the remaining unvested options, with the change in fair value from period to period represented as a change in the deferred compensation charge. This stock-based compensation is amortized as charges to operations over the vesting periods of the options. For the years ended December 31, 2002 and 2001, we recorded amortization of deferred compensation of $16.0 million and $22.2 million, respectively. Additionally, we recorded expenses of $2.0 million for the year ended December 31, 2002, related to options granted to non-employees.

We accelerated the vesting of options to several employees in connection with severance packages. This acceleration was accounted for as a charge to the consolidated statements of operations. The charge for the years ended December 31, 2002 and 2001 were recorded as $2.2 million and $0.2 million, respectively. The charge is equal to the intrinsic value difference between the exercise price of the accelerated options and the fair value of the common stock on the date of acceleration.

**Comparison of Years Ended December 31, 2001 and 2000:**

*Revenues.* Revenues for the year ended December 31, 2001 increased to $46.4 million as compared to $6.7 million for the year ended December 31, 2000. Increases in revenues in fiscal 2001 over fiscal 2000 were driven by increases to the U.S. orthodontic channel as we commercialized the Invisalign product. For the year ended December 31, 2001, revenues of $45.0 million were derived from the sale of Invisalign compared to revenues of $5.4 million for the year ended December 31, 2000. The balance of our revenues for year ended December 31, 2001 and 2000 represented sales of dental impression machines, other products and training.

*Cost of revenues.* Cost of revenues includes the compensation of staff involved in production, the cost of materials and packaging used in production and shipping, together with an allocation of the cost of facilities and depreciation on the capital equipment used in the production process. Cost of revenues for the year ended December 31, 2001 increased to $46.8 million as compared to $20.3 million for the year ended December 31, 2000. Cost of revenues for the years ended December 31, 2001 and 2000 includes $10.6 and $11.2 million,

respectively, of unabsorbed manufacturing costs due to an increase in our manufacturing capacity in 2001 and 2000. For the third and fourth quarters of fiscal 2001, we achieved positive gross margins mainly due to efficiencies achieved in manufacturing as well as reducing over capacity in many areas. Our gross loss is affected by changes in manufacturing volume, manufacturing capacity and changes in our pricing policies.

*Sales and marketing.* Sales and marketing expenses include sales force compensation together with the expense of professional marketing—principally, conducting training workshops and market surveys, advertising and attending orthodontic trade shows. Sales and marketing expenses for the year ended December 31, 2001 increased to $51.9 million as compared to $40.7 million for the year ended December 31, 2000. This increase resulted primarily from increases in headcount and related expenses of approximately $4.6 million, expenses relating to increased direct mailings of $1.4 million and expenses related to the expansion of our international sales and marketing offices of $5.7 million. Partially offsetting the increase was a $2.4 million decrease in advertising expenses.

*General and administrative.* General and administrative expenses include costs for the compensation of administrative personnel, outside consulting services, facilities, legal expenses and general corporate expenses. General and administrative expenses for the year ended December 31, 2001 increased to $30.8 million as compared to $17.5 million for the year ended December 31, 2000, primarily due to increased headcount and related expenses.

*Research and development*. Research and development expenses include the cost for the compensation of staff, the costs associated with software engineering, the costs of designing, developing and testing our products and the conduct of both clinical and post-marketing trials. Research and development is expensed as incurred. Research and development expenses for the year ended December 31, 2001 increased to $15.6 million as compared to $9.4 million for the year ended December 31, 2000. This increase resulted primarily from increases in headcount and related expenses of approximately $3.3 million.

*Litigation settlement expenses*. In February 2001 Align was named in a class action lawsuit filed on behalf of all licensed dentists (excluding orthodontists) in the U.S. The complaint alleged that Align's policy of selling Invisalign exclusively to orthodontists violated the U.S. antitrust laws. Without admitting any wrongdoing, we entered into a Stipulation and Agreement of Settlement with the plaintiffs to settle the lawsuit. The total legal and other settlement costs that Align has agreed to pay are approximately $0.4 million in legal fees. In November 2001, the Court approved the Stipulation and Agreement of Settlement.

*Other income (expense), net.* Other income was $1.7 million for the year ended December 31, 2001 as compared to expense of $7.6 million for the year ended December 31, 2000. The interest income in fiscal 2001 was generated from higher average cash and cash equivalents balance and investments in short-term and long-term securities in fiscal 2001, which included the proceeds from our initial public offering completed in January 2001. Partially offsetting the interest income was a non-cash interest expense of $1.8 million, recorded in January 2001, related to the beneficial conversion feature embedded in convertible subordinated notes. The other expense balance of $7.6 million as of December 31, 2000 was primarily the result of non-cash interest expense related to the beneficial conversion feature of a bridge loan financing.

*Dividend related to beneficial conversion feature of preferred stock.* In 2000 we issued 9,535,052 shares of Series D preferred stock which were subject to an antidilution conversion price adjustment feature. We triggered this antidilution conversion price adjustment feature when we granted options to purchase our common stock beyond the number of options that were authorized under our 1997 Plan at the time we commenced our Series D preferred stock offering in May 2000. The conversion feature provided that if, during the period between May 12, 2000 (the commitment date for our Series D preferred stock offering) and the earlier of the closing of an initial public offering or January 31, 2001, we had granted more than an aggregate of 3,331,978 options to purchase our common stock, then the conversion price of our Series D preferred stock would be

adjusted downward from its original conversion price of $10.625 per share. As of the end of January 2001, we had granted an aggregate of 3,591,458 options to purchase shares of our common stock in excess of the 3,331,978 options permitted. As a result, we were required to issue an additional 790,342 shares of common stock upon the conversion of the Series D preferred stock. These shares were in addition to the 419,700 additional shares of common stock that we were required to issue upon conversion of the Series D preferred stock as of December 31, 2000. As a result, we recorded a deemed dividend for the year ended December 31, 2001 based on the fair value of the common stock. We also recorded at the commitment date of the Series D preferred stock offering $11.2 million related to the preferred stock sold and a charge to interest expense of $1.8 million for the beneficial conversion feature embedded in convertible subordinated notes that were previously converted.

*Stock based compensation*. In connection with the grant of stock options to employees and non-employees, we recorded deferred stock-based compensation as a component of stockholders' equity (deficit). Deferred stock-based compensation for options granted to employees is the difference between the fair value of our common stock on the date such options were granted and their exercise price. For stock options granted to non-employees, the fair value of the options, estimated using the Black-Scholes valuation model, is initially recorded on the date of grant. As the non-employee options become exercisable, we revalue the remaining unvested options, with the change in fair value from period to period represented as a change in the deferred compensation charge. This stock-based compensation is amortized as charges to operations over the vesting periods of the options. We recorded amortization of deferred compensation of $22.2 million for the year ended December 31, 2001 and $13.4 million for the year ended December 31, 2000.

**Income Taxes**

We have incurred immaterial amounts of income tax expense to date since we have not been profitable in either our domestic or international operations. As of December 31, 2002, we have aggregate federal and state net operating loss carryforwards of $270.5 million. As of December 31, 2002 we have recorded a full valuation allowance for our existing net deferred tax assets due to uncertainties regarding their realization. We have aggregate federal and state research tax credit carryforwards of $5.2 million as of December 31, 2002. The federal research credit carryforwards expire beginning in the year 2017, if not utilized. The state research credit carryforward does not expire. The federal and state net operating loss carryforwards expire beginning in the year 2017 for federal and 2005 for state purposes, if not utilized. Utilization of the federal net operating losses and credit carryforwards may be limited by the change of ownership provisions contained in Section 382 of the Internal Revenue Code.

**Liquidity and Capital Resources**

Historically, we have funded our operations with the proceeds from the sale of our common and preferred stock, equipment leases and bridge loans. As of December 31, 2002, we had $35.6 million of cash and cash equivalents, marketable securities of $2.7 million and an accumulated deficit of $274.2 million. In addition, we had $3.3 million of restricted cash.

Net cash used in operating activities totaled $40.4 million and $77.9 million for the years ended December 31, 2002 and 2001, respectively. In each of these periods, net cash used by operating activities consisted primarily of operating losses and increases in accounts receivable balances, partially offset by increases in depreciation and amortization, and amortization of deferred stock-based compensation.

Net cash provided by investing activities totaled $1.5 million for the year ended December 31, 2002 and net cash used in investing activities totaled $2.0 million for the year ended December 31, 2001. For the year ended December 31, 2002, net cash provided by investing activities consisted primarily of maturities of marketable securities, which was partially offset by purchases of property and equipment. For the year ended December 31, 2001, net cash used in investing activities consisted primarily of proceeds from the sales and maturities of marketable securities and a decrease in restricted cash, partially offset by purchases of marketable securities and purchases of property and equipment.

Net cash provided by financing activities was $23.9 million and $127.5 million for the year ended December 31, 2002 and 2001, respectively. For the year ended December 31, 2002, net cash provided by financing activities consisted primarily of proceeds from the issuance of common stock. In November 2002, we completed a private placement of 9,578,944 shares common stock to a group of investors led by existing shareholders, raising $18.1 million, net of issuance costs. In December 2002, we obtained an accounts receivable-based revolving line of credit of up to $10.0 million and a $5.0 million equipment-based term loan. Accessing the accounts receivable based revolving line of credit is restricted based on qualifying accounts receivable and compliance with customary loan covenants. The $10.0 million revolving line of credit is based on domestic accounts receivable accrues interest at a rate of 1.75% above prime, and the $5.0 million equipment-based term loan accrues interest at 2.25% above prime. As of December 31, 2002 the Company had not used any of the $10.0 million revolving line of credit and had drawn down the $5.0 million from the equipment-based term loan.

For the year ended December 31, 2001, net cash provided by financing activities consisted primarily of proceeds from the issuance of common stock. In January 2001, we completed our initial public offering of 10 million shares of common stock. In March 2001, the underwriters exercised an overallotment option for 628,706 shares. Net proceeds to us were approximately $126.0 million.

We expect that our operating expenses will increase with an overall increase in the level of our business activity, including increased sales and the related costs of products sold, our consumer advertising campaign and dental professional marketing efforts, continuing efforts to automate our manufacturing processes, increases in the size of our sales force and dental professional training staff, continued international sales and marketing efforts, and development and improvements to our product. In addition, we may use cash to fund acquisitions of complementary businesses or technologies. Our capital requirements depend on market acceptance of our products and our ability to market, sell and support our products on a worldwide basis. We believe that our current cash and cash equivalents, short-term and long-term investment balances will be sufficient to fund our operations for at least the next 12 months. If we are unable to generate adequate operating cash flows, we may need to seek additional sources of capital through equity or debt financing, collaborative or other arrangements with other companies, bank financing and other sources in order to realize our objectives and to continue our operations. There can be no assurance that we will be able to obtain additional debt or equity financing on terms acceptable to us, or at all. If adequate funds are not available, we could be required to delay establishing a national brand, building manufacturing infrastructure and developing our product and process technology, or to reduce our expenditures in general. Accordingly, the failure to obtain sufficient funds on acceptable terms when needed could have a material adverse effect on our business, results of operations and financial condition.

**Critical Accounting Policies**

Management’s discussion and analysis of our financial condition and results of operations is based upon our 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 our management to make estimates and judgments that affect the reported amounts of assets and liabilities, revenue 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, accounts receivable, legal contingencies and income taxes. We use authoritative pronouncements, historical experience and other assumptions as the basis for making estimates. Actual results could differ from those estimates.

We believe the following critical accounting policies affect our more significant judgments and estimates used in the preparation of our consolidated financial statements.

*Revenue Recognition*

Revenue from the sale of Invisalign and ancillary products is recognized upon product shipment, provided no significant obligations remain, transfer of title has occurred, and collection of the receivables is deemed

probable. The costs of producing the ClinCheck™ treatment plan, which are incurred prior to the production of Aligners, are deferred and recognized as related revenues are earned, i.e. upon shipment of the Aligners. Align offers its dental professionals an opportunity to purchase case refinement in advance at a discount. The advance purchase price is non-refundable once Aligners are shipped and is deferred until the earlier of shipment of the case refinement or case expiration. In cases where the dental professional does not purchase the case refinements in advance, case refinement revenues are recognized when the new Aligners are shipped.

Revenue from the sale of Invisalign and ancillary products is recognized upon product shipment, provided no significant obligations remain, transfer of title has occurred, and collection of the receivables is deemed probable. Beginning July 2002, Clincheck™ fees are no longer received up-front, but are billed together with the Aligner fees at the time the Aligners are shipped and are recognized at that time. We offer our dental professionals an opportunity to purchase case refinement in advance at a discount. The advance purchase price is non-refundable once Aligners are shipped and are deferred until either upon shipment of the case refinement or upon case expiration. In cases where the dental professional does not purchase the case refinements in advance, case refinement revenues are recognized when the new Aligners are shipped. The costs of producing the ClinCheck™ treatment plan, which are incurred prior to the production of Aligners, are deferred and recognized as related revenues are earned. Ancillary product sales and services consist primarily of training.

Service revenues earned under agreements with third parties for training of dental professionals and staff for Invisalign are recorded as the services are performed. Charges to third parties are based on negotiated rates which are intended to approximate a mark-up on our anticipated costs.

We estimate and record a provision for amounts of estimated losses on sales, if any, in the period such sales occur.

*Warranty Expense*

We accrue for estimated warranty costs upon shipment of products. Actual warranty costs incurred have not materially differed from those accrued. Our warranty policy is effective for shipped products which are considered defective or fail to meet the product specifications. Provisions for discounts and rebates to customers are provided for in the same period that the related product sales are recorded based upon historical discounts and rebates.

*Allowance for Doubtful Accounts*

We maintain allowances for doubtful accounts for estimated losses resulting from the inability of our customers to make payments. We periodically review these estimated allowances, including an analysis of the customers' payment history and information regarding the customers' creditworthiness known to us. If the financial condition of any of our customers were to deteriorate, resulting in their inability to make payments, an additional allowance may be required.

*Accounting for long-lived assets*

We assess the impairment of long-lived assets periodically in accordance with the provisions of SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." An impairment review is performed whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Factors considered important which could trigger an impairment review include, but are not limited to, significant underperformance relative to expected historical or projected future operating results, significant changes in the manner of use of the acquired assets or the strategy for the overall business, significant negative industry or economic trends, a significant decline in the stock price for a sustained period, and the market capitalization relative to net book value.

*Legal contingencies*

We are currently involved in certain legal proceedings as discussed in Note 5 of our consolidated financial statements. Because of uncertainties related to both the potential amount and range of loss from pending litigation, management is unable to make a reasonable estimate of the liability that could result if there is an unfavorable outcome in these legal proceedings. As additional information becomes available, we will assess the potential liability related to this pending litigation and revise our estimates accordingly. Revisions of our estimates of such potential liability could materially impact our results of operations and financial condition.

*Deferred Tax Valuation Allowance*

We have established a valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized. Deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities using the enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

**Recent Accounting Pronouncements**

In April 2002, the Financial Accounting Standards Board ("FASB") issued SFAS No. 145, "Rescission of FASB Statement No. 4, 44, and 64, Amendment of FASB Statement No. 13, and Technical Corrections" ("SFAS No. 145") which eliminates inconsistencies between the required accounting for sale-leaseback transactions and the required accounting for certain lease modifications that have economic effects that are similar to sale-leaseback transactions. SFAS No. 145 also amends other existing authoritative pronouncements to make various technical corrections, clarify meanings, or describe their applicability under changed conditions. The provisions of SFAS No. 145 are effective for fiscal years beginning after May 15, 2002 and for transactions occurring after May 15, 2002. Align does not expect SFAS No. 145 to have a material impact on its consolidated financial position or on its consolidated results of operations.

In June 2002, the FASB issued SFAS No. 146, "Accounting for Exit or Disposal Activities" ("SFAS No. 146") which addresses the recognition, measurement, and reporting of costs that are associated with exit and disposal activities, including restructuring activities that are currently accounted for pursuant to the guidance that the EITF has set forth in EITF Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)". SFAS No. 146 is effective for exit or disposal activities that are initiated after December 31, 2002. The adoption of SFAS No. 146 did not have a material impact on Align's consolidated financial statements.

In November 2002, the FASB issued FASB Interpretation No. 45 ("FIN 45"), "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others." FIN 45 requires that a liability be recorded in the guarantor's balance sheet upon issuance of a guarantee. In addition, FIN 45 requires disclosures about the guarantees that an entity has issued, including a reconciliation of changes in the entity's product warranty liabilities. The initial recognition and initial measurement provisions of FIN 45 are applicable on a prospective basis to guarantees issued or modified after December 31, 2002, irrespective of the guarantor's fiscal year-end. The disclosure requirements of FIN 45 are effective for financial statements for interim or annual periods ending after December 15, 2002. In accordance with the provisions of FIN 45, Align has adopted the disclosure requirements. The adoption of FIN 45 did not have a material impact on Align's consolidated financial position and its consolidated statements of operations.

In November 2002, the Emerging Issues Task Force ("EITF") reached consensus on EITF 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables", which addresses how to account for arrangements that may involve the delivery or performance of multiple products, services, and/or rights to use assets. The final consensus of EITF 00-21 will be applicable to agreements entered into in fiscal periods beginning after June 15, 2003, with early adoption permitted. Additionally, companies will be permitted to apply

the consensus guidance to all existing arrangements as the cumulative effect of a change in accounting principle in accordance with APB Opinion No. 20, “Accounting Changes.” Align is currently evaluating the impact of EITF 00-21 on its consolidated financial position and its consolidated results of operations.

In December 2002, the FASB issued SFAS No. 148, “Accounting for Stock-Based Compensation Transition and Disclosure an amendment of FASB Statement No. 123.” SFAS No. 148 provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. SFAS No. 148 also requires prominent disclosures of the pro forma effect of using the fair value method of accounting for stock-based employee compensation in both annual and interim financial statements. The transition and annual disclosure requirements of SFAS No. 148 are effective for fiscal years ending after December 15, 2002. The interim disclosure requirements are effective for interim periods beginning after December 15, 2002. In accordance with the provisions of SFAS No. 148, Align has adopted the disclosure requirements. The adoption of SFAS No. 148 did not have a material impact on its consolidated financial position or on its consolidated results of operations.

In January 2003, the FASB issued FASB Interpretation No. 46 (“FIN 46”), “Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51.” FIN 46 requires certain variable interest entities to be consolidated by the primary beneficiary of the entity if the equity investors in the entity do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. FIN 46 is effective immediately for all new variable interest entities created or acquired after January 31, 2003. For variable interest entities created or acquired prior to February 1, 2003, the provisions of FIN 46 must be applied for the first interim or annual period beginning after June 15, 2003. The Company does not expect the adoption of FIN 46 to have a material impact on its consolidated financial statements.

## RISK FACTORS

*The statements contained below and elsewhere in this report on Form 10-K that are not purely historical are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 and Section 21E of the Securities Exchange Act of 1934, including, without limitation, statements regarding our expectations, hopes, beliefs, anticipations, commitments, intentions and strategies regarding the future. Actual results could differ from those projected in any forward-looking statements for the reasons, among others, detailed below. The fact that some of the risk factors may be the same or similar to our past filings means only that the risks are present in multiple periods. We believe that many of the risks detailed here are part of doing business in the industry in which we compete and will likely be present in all periods reported. The fact that certain risks are characteristic to the industry does not lessen the significance of the risk. The forward-looking statements are made as of the date of this Annual Report on Form 10-K, and we assume no obligation to update the forward-looking statements or to update the reasons why actual results could differ from those projected in the forward-looking statements.*

**Since we have a history of losses and negative operating cash flows, and because we expect our operating losses to continue throughout all or a portion of fiscal 2003, we may not achieve or maintain profitability in the future.**

We have incurred significant operating losses, negative operating cash flows and have not yet achieved profitability. From inception through July 2000, we spent significant funds on organizational and start-up activities, recruiting key managers and employees, developing Invisalign and developing our manufacturing and customer support resources. We also spent significant funds on clinical trials and training programs to train dental professionals in the use of Invisalign.

Since July 2000 we have continued to incur significant operating expenses to:

- develop new software and increase the automation of our manufacturing processes;
- execute our consumer advertising campaign and dental professional marketing efforts;
- increase the size of our sales force and dental professional training staff;
- execute clinical research and education plans;
- develop technological improvements to our products;
- continue our international sales and marketing efforts; and
- undertake quality assurance and improvement initiatives.

As a result, we will need to increase our revenue significantly, while controlling our expenses, to achieve profitability. It is possible that we will not achieve profitability in the near future, if at all, and even if we do achieve profitability, we may not sustain or increase profitability in the future.

**We may be unable to raise additional capital if it should be necessary, which could harm our ability to compete.**

We have incurred significant operating losses and negative operating cash flows since inception and have not yet achieved profitability. As of December 31, 2002, we had an accumulated deficit of approximately $274.2 million.

We expect to expend significant capital to continue to build our national brand, expand our dental professional channels, automate our manufacturing processes and develop both product and process technology. In November 2002, we completed a private placement of common stock to a group of investors led by existing

shareholders, raising $18.1 million, net of issuance costs. In December 2002, we secured an accounts receivable-based revolving line of credit of up to $10.0 million and a equipment-based term loan of $5.0 million, which was accessed in December 2002. As of March 26, 2003, we had not utilized the accounts receivable-based revolving line of credit. Accessing the accounts receivable based-revolving line of credit is restricted based on qualifying accounts receivable and compliance with customary loan covenants. There can be no assurance that such financing will be adequate for us to avoid reducing operating expenses by, including but not limited to, reducing planned capital expenditures relating to enhancing our manufacturing process and reducing worldwide staff.

**We have a limited operating history and expect our future financial results to fluctuate significantly, which may cause our stock price to decline.**

We were incorporated in April 1997 and began sales of Invisalign in July 1999. Thus, we have a limited operating history, which makes an evaluation of our future prospects and your investment in our stock difficult. In addition, we expect our future quarterly and annual operating results to fluctuate as we increase our commercial sales. These fluctuations could cause our stock price to decline. Some of the factors that could cause our operating results to fluctuate include:

- changes in the timing of product orders;
- unanticipated delays in production caused by insufficient capacity, any disruptions in the manufacturing process or the introduction of new production processes;
- inaccurate forecasting of revenue, production and other operating costs; and
- the development and marketing of competitive products by potential competitors.

To respond to these and other factors, we may need to make business decisions that could adversely affect our operating results. Most of our expenses, such as employee compensation and lease payment obligations, are relatively fixed in the short term. Moreover, our expense levels are based, in part, on our expectations regarding future revenue levels. As a result, if our revenue for a particular period falls below our expectations, we may be unable to adjust spending quickly enough to offset any unexpected shortfall in revenue growth or any decrease in revenue levels.

Due to these and other factors, we believe that quarter-to-quarter comparisons of our operating results may not be meaningful. You should not rely on our results for any one quarter as an indication of our future performance.

**We have limited product offerings, and if demand for Invisalign declines or fails to develop as we expect, our revenue will decline.**

We expect that revenue from the sale of Invisalign will continue to account for a substantial portion of our total revenue. Continued and widespread market acceptance of Invisalign is critical to our future success. Invisalign may not achieve market acceptance at the rate at which we expect, or at all, which could reduce our revenue and results of operations.

**If dental professionals do not adopt Invisalign in sufficient numbers or as rapidly as we anticipate, our operating results will be harmed.**

As of December 31, 2002, approximately 8,500 of the worldwide dental professionals we have trained had submitted one or more cases to us. Our success depends upon increasing acceptance of Invisalign by dental professionals. Invisalign requires dental professionals and their staff to undergo special training and learn to interact with patients in new ways. In addition, because Invisalign has only been in clinical testing since July 1997 and commercially available only since July 1999, dental professionals may be reluctant to adopt it until

more historical clinical results are available. Also, increasing adoption by dental professionals will depend on factors such as the capability, safety, efficacy, ease of use, price, quality and reliability of our products and our provision of effective sales support, training and service. In the future, unanticipated poor clinical performance of Invisalign could result in significant adverse publicity and, consequently, reduced acceptance by dental professionals. If Invisalign does not achieve growing acceptance in the orthodontic and dental communities, our operating results will be harmed.

**If consumers do not adopt Invisalign in sufficient numbers or as rapidly as we anticipate, our operating results will be harmed.**

Invisalign represents a significant change from traditional orthodontic treatment, and patients may be reluctant to accept it or may not find it preferable to conventional treatment. In addition, patients may not comply with recommended treatment guidelines for Invisalign, which could compromise the effectiveness of their treatment. We have generally received positive feedback from both dental professionals and patients regarding Invisalign as both an alternative to braces and as a clinical method for treatment of malocclusion, but a number of dental professionals believe that Invisalign is appropriate for only a limited percentage of their patients. Our success will depend upon the acceptance of Invisalign by the substantially larger number of dental professionals and potential patients to which we are now actively marketing. We have had a limited number of complaints from patients and prospective patients generally related to shipping delays and minor manufacturing irregularities. Market acceptance will depend in part upon the recommendations of dental professionals, as well as other factors including effectiveness, safety, reliability, improved treatment aesthetics and greater comfort and hygiene compared to conventional orthodontic products. Furthermore, consumers may not respond to our direct marketing campaigns or we may be unsuccessful in reaching our target audience. Adoption by consumers may also be impacted by general macroeconomic conditions, levels of consumer confidence and consumer spending, all of which could be affected by unstable global economic, political or other conditions. If consumers prove unwilling to adopt Invisalign as rapidly as we anticipate or in the volume that we anticipate, our operating results will be harmed.

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

Currently, two of our key production steps are performed in operations located outside of the U.S. At our facility in Costa Rica, technicians use a sophisticated, internally developed computer-modeling program to prepare electronic treatment plans, which are transmitted electronically back to the U.S. These electronic files form the basis of our ClinCheck™ product and are used to manufacture Aligner molds. A third party manufacturer in Mexico fabricates Aligners and ships the completed products to our customers. Our costs associated with these operations are denominated in Costa Rican colons, Mexican pesos and U.S. dollars.

In July 2002, we announced a plan to streamline worldwide operations. The plan included closing our facilities in Pakistan and the U.A.E. We transitioned the operations performed at these facilities to the United States and Costa Rica. For the period ending December 31, 2002, we recorded severance charges of $2.3 million, facility closure charges of $0.9 million, a loss on disposal of fixed assets of $1.1 million and an impairment charge of $0.9 million related to the land in Pakistan. The land was written down to a zero value to reflect its fair value as estimated by management. Approximately $0.1 million of accrued charges related to professional fees were included in accrued liabilities as of December 31, 2002. We discontinued operations at our Pakistan and U.A.E. facilities in October and December 2002, respectively. we concluded the remainder of indirect operational activities related to the Costa Rica transition in January 2003. We will cease non-operational closing activities in Pakistan when the land is disposed of at that location and in the U.A.E., when the necessary statutory filings have been completed.

Our reliance on international operations exposes us to risks and uncertainties that may affect our business or results of operation, including:

- political, social and economic instability;

- acts of terrorism and acts of war, particularly in light of the terrorist attacks of September 11, 2001;
- difficulties in staffing and managing international operations;
- controlling quality of manufacture;
- interruptions and limitations in telecommunication services;
- product or material transportation delays or disruption;
- burdens of complying with a wide variety of local country and regional laws;
- trade restrictions and changes in tariffs;
- import and export license requirements and restrictions;
- fluctuations in currency exchange rates; and
- potential adverse tax consequences.

If any of these risks materialize in the future, our operating results may be harmed.

**Our success depends in part on our proprietary technology and if we are unable to successfully enforce our intellectual property rights, our competitive position may be harmed.**

Our success will depend in part on our ability to maintain existing intellectual property and to obtain and maintain further intellectual property protection for our products, both in the U.S. and in other countries. Our inability to do so could harm our competitive position. We believe our intellectual property position represents a substantial business advantage. As of December 31, 2002, we had 29 issued U.S. patents, 20 issued foreign patents, 69 pending U.S. patent applications, and numerous pending foreign patent applications.

We intend to rely on our portfolio of issued and pending patent applications in the U.S. and in other countries to protect a large part of our intellectual property and our competitive position. However, our currently pending or future patent filings may not issue as patents. Additionally, any patents issued to us may be challenged, invalidated, held unenforceable, circumvented, or may not be sufficiently broad to prevent third parties from producing competing products similar in design to our products. In addition, any protection afforded by foreign patents may be more limited than that provided under U.S. patents and intellectual property laws. We also rely on protection of our copyrights, trade secrets, know-how and proprietary information. We generally enter into confidentiality agreements with our employees, consultants and our collaborative partners upon commencement of a relationship with us. However, these agreements may not provide meaningful protection against the unauthorized use or disclosure of our trade secrets or other confidential information, and adequate remedies may not exist if unauthorized use or disclosure were to occur. Our inability to maintain the proprietary nature of our technology through patents, copyrights or trade secrets would impair our competitive advantages and could have a material adverse effect on our operating results, financial condition and future growth prospects. In particular, a failure of our proprietary rights might allow competitors to copy our technology, which could adversely affect pricing and market share.

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

Extensive litigation over patents and other intellectual property rights is common in the medical device industry. We have been sued for infringement of another party’s patent in the past and, while that action has been dismissed, we may be the subject of patent or other litigation in the future.

In January 2003, Ormco Corporation filed suit against Align Technology, Inc., in the United States District Court for the Central District, Orange County Division, asserting infringement of U.S. Patent Nos. 5,447,432,

5,683,243 and 6,244,861. The complaint seeks unspecified monetary damages and injunctive relief. In February 2003, Align answered the complaint and asserted counterclaims seeking a declaration by the Court of invalidity and non-infringement of the asserted patents. In addition, Align counterclaimed for infringement of its U.S. Patent No. 6,398,548, seeking unspecified monetary damages and injunctive relief. Ormco filed a reply to Align's counterclaims on March 10, 2003 and asserted counterclaims against Align seeking a declaration by the Court of invalidity and non-infringement of U.S. Patent No. 6, 398, 548. Align's response to Ormco's counterclaims is due in early April 2003. No trial or other dates have yet been set by the Court.

Three years ago, Ormco filed suit against Align asserting infringement of U.S. Patent Nos. 5,447,432 and 5,683,243. In June 2000, the parties entered into a Stipulation of Dismissal with Ormco. Ormco agreed for a period of at least two years not to pursue litigation with respect to these patents, except as set forth below. Further, Ormco agreed that it would not bring any patent action against Align for at least a period of one year with respect to any as yet unissued patents. If Ormco were to bring such an action concerning as yet unissued patents after one year, the Stipulation of Dismissal would allow Ormco to include in such an action claims involving U.S. Patent Nos. 5,447,432 and 5,683,243. In August 2001, Ormco notified Align of the issuance of U.S. Patent No. 6,244,861 and offered a license for this patent. Align did not take a license to this patent. Five months after Ormco's notification, it filed the lawsuit that is currently pending.

The claims in U.S. Patent Nos. 5,447,432 and 5,683,243 relate to methods and systems for forming and manufacturing custom orthodontic appliances. The relevant claims are limited to computerized methods and algorithms for determining the final positioning of a patient's teeth based upon a derived or ideal dental archform of the patient. The claims in U.S. Patent No. 6,244,861 are more generic claims relating to the methods and systems for forming and manufacturing custom orthodontic appliances. Based on the disclosure in the patent, however, the relevant claims also appear to be limited to computerized methods and algorithms for determining the final positioning of a patient's teeth based upon a derived or ideal dental archform of the patient. The treatment plan simulation developed in Align's facilities determines the final positioning of a patient's teeth but is not based on a derived or ideal dental archform of the patient.

The claims in Align's U.S. Patent No. 6,398,548 relate to methods and systems for incrementally moving teeth using a series of appliances designed to be placed successively on the patient's teeth.

Align strongly believes that Ormco's claims of infringement lack merit and that Align's counterclaim of infringement will be successful. However, the outcome of a lawsuit is inherently unpredictable. Should Align's technology be found to infringe any one of Ormco's asserted patents, Align would have to seek a license from Ormco, which license might not be available on commercially reasonable terms or at all. In that event, Align could be subject to damages or an injunction which could materially adversely affect its business.

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

**We currently rely on third parties to provide key inputs to our manufacturing process, and if our access to these inputs is diminished, our business may be harmed.**

We currently outsource key portions of our manufacturing process. We rely on a third party manufacturer in Mexico to fabricate Aligners and to ship the completed product to customers. As a result, if this third party manufacturer fails to deliver its components or if we lose its services, we may be unable to deliver our products in a timely manner and our business may be harmed. Finding a substitute manufacturer may be expensive, time-consuming or impossible.

In addition, we are highly dependent on manufacturers of specialized scanning equipment, rapid prototyping machines, resin and other advanced materials. We maintain single supply relationships for many of these machines and materials technologies. Our growth may exceed the capacity of one or more of these manufacturers to produce the needed equipment and materials in sufficient quantities to support our growth. In the event of delivery delays or shortages of these items, our business and growth prospects may be harmed.

**We have experienced rapid growth, and our failure to manage this growth could harm our business.**

We have expanded rapidly since we commenced commercial sales in 1999. Our headcount increased from approximately 50 employees as of September 30, 1999 to approximately 608 employees as of December 31, 2002. This expansion will continue to place significant demands on our management and other resources and will require us to continue to develop and improve our operational, financial and other internal controls, both in the U.S. and internationally. In particular, rapid growth increases the challenges involved in a number of areas, including recruiting and retaining sufficient skilled personnel, providing adequate training and supervision to maintain our high quality standards, and preserving our culture and values. Also, recent reductions in our workforce, although designed to not affect service levels and demand generation, may adversely affect these areas of our business. Our inability to effectively manage this level of growth could harm our business.

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

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

**We experience competition from manufacturers of traditional braces and expect aggressive competition in the future.**

Currently, our Invisalign product competes directly against a product called Red, White and Blue, which is manufactured and distributed by Ormco, a subsidiary of Sybron Dental Specialities. In addition, manufacturers of traditional braces, such as 3M Company, Sybron Dental Specialities and Dentsply International, Inc. have substantially greater financial resources and manufacturing and marketing experience than we do and may, in the future, attempt to develop an orthodontic system similar to ours. Large consumer product companies may also enter the orthodontic supply market. Furthermore, we may face competition in the future from new companies that may introduce new technologies. We may be unable to compete with these competitors and one or more of these competitors may render our technology obsolete or economically unattractive. If we are unable to compete effectively with existing products or respond effectively to any products developed by our competitors, our business could be harmed.

**Complying with the Food and Drug Administration (FDA) and other regulations is an expensive and time-consuming process, and any failure to comply could result in substantial penalties.**

Our products are medical devices and are subject to extensive regulation in the U.S. and internationally. FDA regulations are wide ranging and govern, among other things:

- product design, development, manufacture and testing;
- product labeling;
- product storage;
- pre-market clearance or approval;
- advertising and promotion; and
- product sales and distribution.

Noncompliance with applicable regulatory requirements can result in enforcement action which may include recalling products, ceasing product marketing, and paying significant fines and penalties. One or more of these enforcement actions could limit product sales, delay product shipment and adversely affect our profitability.

In the U.S., we must comply with facility registration and product listing requirements of the FDA and adhere to applicable Quality System regulations. The FDA enforces its Quality System regulations through periodic unannounced inspections, which we have yet to undergo. If we or any third party manufacturer of our products do not conform to applicable Quality System regulations, we may be required to find alternative manufacturers, which could be a long and costly process.

Before we can sell a new medical device in the U.S., we must obtain FDA clearance or approval, which can be a lengthy and time-consuming process. Even though the devices we market have obtained the necessary clearances from the FDA through the pre-market notification provisions of Section 510(k) of the federal Food, Drug, and Cosmetic Act, we may be unable to maintain the necessary clearances in the future. Furthermore, we may be unable to obtain the necessary clearances for new devices that we market in the future. Our inability to maintain or obtain regulatory clearances or approvals could materially harm our business.

**If the security of our customer and patient information is compromised, patient care could suffer, we could be liable for related damages, and our reputation could be impaired.**

We retain confidential customer and patient information in our processing centers. Therefore, it is critical that our facilities and infrastructure remain secure and that our facilities and infrastructure are perceived by the marketplace and our customers to be secure. Despite the implementation of security measures, our infrastructure may be vulnerable to physical break-ins, computer viruses, programming errors, attacks by third parties or similar disruptive problems. If we fail to meet our clients' expectations, we could be liable for damages and our reputation could be impaired. In addition, patient care could suffer and we could be liable if our systems fail to deliver correct information in a timely manner. Our insurance may not protect us from this risk.

**If compliance with government regulations of healthcare becomes costly and difficult for our customers or for us, we may not be able to grow our business.**

Participants in the healthcare industry are subject to extensive and frequently changing regulations under numerous laws administered by governmental entities at the federal, state and local levels, some of which are, and others of which may be, applicable to our business. Furthermore, our healthcare service provider, payor and plan customers are also subject to a wide variety of laws and regulations that could affect the nature and scope of their relationships with us.

The healthcare market itself is highly regulated and subject to changing political, economic and regulatory influences. Regulations implemented pursuant to HIPAA may require us to make unplanned enhancements of software applications or services, result in delays or cancellations of orders, or result in the revocation of endorsement of our products and services by healthcare participants. The affect of HIPAA on our business is difficult to predict, and there can be no assurance that we will adequately address the business risks created by HIPAA and its implementation or that we will be able to take advantage of any resulting business opportunities.

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

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

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

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

**We face risks related to our international sales, including the need to obtain necessary foreign regulatory clearance or approvals.**

Sales of our products outside the U.S. are subject to foreign regulatory requirements that vary widely from country to country. The time required to obtain clearances or approvals required by other countries may be longer than that required for FDA clearance or approval, and requirements for such approvals may differ from FDA requirements. We may be unable to obtain regulatory approvals in one or more of the other countries in which we do business or in which we may do business in the future. We may also incur significant costs in attempting to obtain and maintain foreign regulatory approvals. If we experience delays in receipt of approvals to market our products outside of the U.S., or if we fail to receive these approvals, we may be unable to market our products or enhancements in international markets in a timely manner, if at all. We currently sell our product in Europe, the United Kingdom, Mexico, Brazil, Australia and Hong Kong, and may expand into other countries from time to time. We do not know whether orthodontists, dentists and consumers outside our domestic market will adopt Invisalign in sufficient numbers or as rapidly as we anticipate.

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

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

**In fiscal 2002, the market price for our common stock has declined significantly and was highly volatile.**

In fiscal 2002, the trading price of our common stock declined, was highly volatile and could be subject to wide price fluctuations in response to various factors, many of which are beyond our control, including:

- quarterly variations in our results of operations and liquidity;
- changes in recommendations by the investment community or in their estimates of our revenues or operating results;
- speculation in the press or investment community concerning our business and results of operations;
- strategic actions by our competitors, such as product announcements or acquisitions;
- announcements of technological innovations or new products by us, our customers or competitors; and
- general market conditions.

In addition, the stock market in general, and the market for technology and medical device companies in particular, have experienced extreme price and volume fluctuations that have often been unrelated to or disproportionate to the operating performance of those companies. These broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance. In the past, following periods of volatility in the market price of a company's securities, class action litigation has often been brought against the issuing company. If a securities class action suit is filed against us in the future, we would incur substantial legal fees, and our management's attention and resources would be diverted from operating our business in order to respond to the litigation.

**Concentrations of ownership and agreements among our existing executive officers, directors and principal stockholders may prevent other stockholders from influencing significant corporate transactions.**

The interests of our management could conflict with those of our other stockholders. As of December 31, 2002, our executive officers, directors and principal stockholders beneficially owned an aggregate of approximately 60.2% of our outstanding common stock. These stockholders, if acting together, would be able to influence significantly all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. This could have the effect of delaying or preventing a change of control of us, which in turn could reduce the market price of our stock.

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

### Quantitative Disclosures

We are exposed to market risks inherent in our operations, primarily related to interest rate risk and currency risk. These risks arise from transactions and operations entered into in the normal course of business. We do not use derivatives to alter the interest characteristics of our marketable securities or our debt instruments. We have no holdings of derivative or commodity instruments.

*Interest Rate Risk*. We are subject to interest rate risks on cash and cash equivalents, available-for-sale marketable securities, existing long-term debts and any future financing requirements. Interest rate risks related to marketable securities are managed by monitoring maturities in our marketable securities portfolio. Our long-term debt at December 31, 2002 consists of outstanding balances on lease obligations of $1.0 million and a $5.0 million equipment-based term loan.

The fair value of our investment portfolio or related income would not be significantly impacted by changes in interest rates since the marketable securities maturities do not exceed fiscal year 2003 and the interest rates are primarily fixed. Our capital lease obligations of $1.0 million at December 31, 2002 carry fixed interest rates of 6.53% and 11.15% per annum, with principal payments due in 60 and 48 monthly installments, respectively, beginning in 2000.

In December 2002, we obtained a $5.0 million equipment-based term loan which accrues interest at a rate of 2.25% above prime. As of December 31, 2002 we had drawn down $5.0 million from the equipment-based term loan. Principal payments are due in 36 monthly installments beginning in January 2003.

The following table presents the future principal cash flows or amounts and related weighted average interest rates expected by year for our existing cash and cash equivalents, marketable securities and long-term debt instruments:

| | Expected Maturity Date (as of December 31, 2002) | | | | | | |
|---|---|---|---|---|---|---|---|
| | 2003 | 2004 | 2005 | 2006 | 2007 | Total | Fair Value |
| | (in thousands) | | | | | | |
| **ASSETS:** | | | | | | | |
| Cash and cash equivalents | $ 35,552 | $ — | $ — | $ — | $ — | $ 35,552 | $ 35,552 |
| Short-term marketable securities | 2,693 | — | — | — | — | 2,693 | 2,693 |
| Weighted average interest rate | 5.54% | — | — | — | — | | |
| **LIABILITIES:** | | | | | | | |
| Equipment-based term loan | $ 1,667 | $ 1,667 | $ 1,666 | $ — | $ — | $ 5,000 | $ 5,000 |
| Fixed rate debt lease obligation | 516 | 320 | 184 | — | — | 1,020 | 1,020 |
| Weighted average interest rate | 8.30% | 6.5% | 6.5% | — | — | | |

### Qualitative Disclosures

*Interest Rate Risk*. Our primary interest rate risk exposures relate to:

- A decrease in the value of available-for-sale securities if market interest rates increase;
- Our ability to pay long-term debts at maturity; and
- The impact of interest rate movements on our ability to obtain adequate financing to fund future operations.

We have the ability to hold at least a portion of the fixed income investments until maturity. As a result, would not expect our operating results or cash flows to be affected to any significant degree by a sudden change in market interest rates on our short- and long-term marketable securities portfolio.

We manage interest rate risk on our outstanding long-term debts through the use of fixed rate debt. Management evaluates our financial position on an ongoing basis.

*Currency Rate Risk*. Our primary currency rate risk exposures relate to:

- Our decentralized or outsourced operations, whereby approximately $18.2 million of our expenses are related to operations outside the United States, denominated in currencies other than the U.S. dollar.

We do not hedge any balance sheet exposures or intercompany balances against future movements in foreign exchange rates. The exposure related to currency rate movements would not likely have a material impact on future net income or cash flows for the foreseeable future.

**ITEM 8. CONSOLIDATED FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.**

**Quarterly Results of Operations**

| | Three Months Ended(1) | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 2002 | | | | 2001 | | | |
| | Dec. 31 | Sep. 30 | June 30 | March 31 | Dec. 31 | Sep. 30 | June 30 | March 31 |
| | (in thousands, except per share data) (unaudited) | | | | | | | |
| Revenues | $ 22,426 | $ 18,573 | $ 17,255 | $ 17,141 | $ 12,300 | $ 12,912 | $ 13,483 | $ 7,689 |
| Gross profit (loss) | 10,595 | 7,693 | 6,481 | 4,636 | 2,118 | 1,647 | (347) | (3,865) |
| Operating loss | (13,711) | (16,873) | (18,745) | (18,908) | (20,931) | (23,155) | (23,643) | (31,465) |
| Net loss | (13,913) | (16,890) | (18,816) | (18,502) | (20,719) | (22,503) | (22,294) | (31,958) |
| Net loss available to common stockholders | $ (13,913) | $ (16,890) | $ (18,816) | $ (18,502) | $ (20,719) | $ (22,503) | $ (22,294) | $ (43,149) |
| Net loss per share available to common stockholders, basic and diluted | $ (0.27) | $ (0.36) | $ (0.40) | $ (0.40) | $ (0.45) | $ (0.50) | $ (0.50) | $ (1.29) |
| Shares used in computing per share amounts, basic and diluted | 51,796 | 46,934 | 46,576 | 46,152 | 45,660 | 45,035 | 44,518 | 33,574 |

(1) Certain reclassifications of prior period amounts have been made to conform to current year presentation.

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

## CONSOLIDATED REPORT OF INDEPENDENT ACCOUNTANTS

To the Stockholders and Board of Directors of Align Technology, Inc. and subsidiaries:

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Align Technology, Inc. and its subsidiaries at December 31, 2002 and 2001, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2002 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the index appearing under item 15(a)2 presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PRICEWATERHOUSECOOPERS LLP

San Jose, California
February 7, 2003

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS**

**(in thousands, except per share data)**

| | December 31, 2002 | December 31, 2001 |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 35,552 | $ 50,550 |
| Restricted cash | 3,261 | 723 |
| Marketable securities, short-term | 2,693 | 12,494 |
| Accounts receivable, net of allowance for doubtful accounts of $2,111 and $1,882 at December 31, 2002 and 2001, respectively | 16,766 | 11,556 |
| Inventories, net | 1,533 | 1,549 |
| Deferred costs | 1,139 | 714 |
| Prepaid expenses | 2,352 | 3,029 |
| Other current assets | 2,536 | 968 |
| Total current assets | 65,832 | 81,583 |
| Property and equipment, net | 25,078 | 32,021 |
| Marketable securities, long-term | — | 2,627 |
| Other assets | 1,946 | 1,987 |
| Total assets | $ 92,856 | $ 118,218 |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | |
| Current liabilities: | | |
| Accounts payable | $ 1,974 | $ 4,376 |
| Accrued liabilities | 12,112 | 11,426 |
| Deferred revenue | 2,130 | 1,551 |
| Current portion of equipment-based term loan | 1,667 | — |
| Current portion of capital lease obligations | 516 | 483 |
| Total current liabilities | 18,399 | 17,836 |
| Equipment-based term loan, net of current portion | 3,333 | — |
| Capital lease obligations, net of current portion | 504 | 980 |
| Total liabilities | 22,236 | 18,816 |
| Commitments and contingencies (Note 5) | | |
| Stockholders' equity: | | |
| Preferred stock: $0.0001 par value; Authorized: 5,000 shares at December 2002 and 2001; Issued and Outstanding: no shares at December 31, 2002 and 2001 | — | — |
| Common stock: $0.0001 par value; Authorized: 200,000 shares at December 31, 2002 and 2001; Issued: 57,740 and 47,771 shares at December 31, 2002 and 2001, respectively; Outstanding: 57,700 and 47,771 shares at December 31, 2002 and 2001, respectively | 6 | 5 |
| Additional paid-in capital | 364,691 | 355,055 |
| Deferred stock-based compensation | (19,005) | (48,324) |
| Notes receivable from stockholders | (892) | (1,484) |
| Accumulated other comprehensive income | 17 | 226 |
| Accumulated deficit | (274,197) | (206,076) |
| Total stockholders' equity | 70,620 | 99,402 |
| Total liabilities and stockholders' equity | $ 92,856 | $ 118,218 |

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

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF OPERATIONS**

**(in thousands, except per share data)**

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2002 | 2001 | 2000 |
| Revenues: | | | |
| Invisalign | $ 69,387 | $ 44,955 | $ 5,436 |
| Ancillary products and other services | 6,008 | 1,429 | 1,305 |
| Total revenues | 75,395 | 46,384 | 6,741 |
| Cost of revenues: | | | |
| Invisalign | 38,088 | 45,040 | 19,031 |
| Ancillary products and other services | 7,902 | 1,791 | 1,220 |
| Total cost of revenues | 45,990 | 46,831 | 20,251 |
| Gross profit (loss) | 29,405 | (447) | (13,510) |
| Operating expenses: | | | |
| Sales and marketing | 45,313 | 51,929 | 40,704 |
| General and administrative | 39,265 | 30,774 | 17,549 |
| Research and development | 13,064 | 15,644 | 9,352 |
| Litigation settlement | — | 400 | — |
| Total operating expenses | 97,642 | 98,747 | 67,605 |
| Loss from operations | (68,237) | (99,194) | (81,115) |
| Interest income | 979 | 4,261 | 2,306 |
| Interest expense | (162) | (1,999) | (9,807) |
| Other expense | (701) | (532) | (132) |
| Net loss before provision for income taxes | (68,121) | (97,464) | (88,748) |
| Provision for income taxes | — | 10 | — |
| Net loss | (68,121) | (97,474) | (88,748) |
| Dividend related to beneficial conversion feature of preferred stock | — | (11,191) | (53,516) |
| Net loss available to common stockholders | $ (68,121) | $ (108,665) | $ (142,264) |
| Net loss per share available to common stockholders, basic and diluted | $ (1.42) | $ (2.57) | $ (25.64) |
| Shares used in computing net loss per share available to common stockholders, basic and diluted | 47,878 | 42,247 | 5,548 |

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

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)**

**For the years ended December 31, 2002, 2001 and 2000**

**(in thousands)**

| | Common Stock | | Additional Paid-In Capital | Deferred Stock-Based Compensation | Notes Receivable from Stockholders | Accumulated Other Comprehensive Income | Accumulated Deficit | Total |
|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | | | | | | |
| Balance at December 31, 1999 | 5,644 | $ 1 | $ 2,219 | $ (1,780) | $ — | $ — | $ (19,854) | $ (19,414) |
| Net loss | — | — | — | — | — | — | (88,748) | (88,748) |
| Net change in unrealized gain from available-for-sale securities | — | — | — | — | — | 73 | — | 73 |
| Comprehensive loss | | | | | | | | (88,675) |
| Issuance of common stock upon exercise of stock options | 4,121 | — | 2,828 | — | (1,814) | — | — | 1,014 |
| Repurchase of common stock | (143) | — | (48) | — | — | — | — | (48) |
| Deferred stock compensation, net of cancellations | — | — | 91,752 | (91,752) | — | — | — | — |
| Amortization of deferred stock compensation | — | — | — | 13,372 | — | — | — | 13,372 |
| Charge for accelerated vesting of employee stock options | — | — | 429 | — | — | — | — | 429 |
| Beneficial conversion feature embedded in convertible subordinated notes | — | — | 8,648 | — | — | — | — | 8,648 |
| Beneficial conversion feature embedded in preferred stock sold | — | — | 53,516 | — | — | — | — | 53,516 |
| Deemed dividend on preferred stock | — | — | (53,516) | — | — | — | — | (53,516) |
| Balance at December 31, 2000 | 9,622 | 1 | 105,828 | (80,160) | (1,814) | 73 | (108,602) | (84,674) |
| Net loss | — | — | — | — | — | — | (97,474) | (97,474) |
| Net change in unrealized gain from available-for-sale securities | — | — | — | — | — | 153 | — | 153 |
| Comprehensive loss | | | | | | | | (97,321) |
| Issuance of common stock to preferred stockholders upon conversion | 26,998 | 3 | 128,870 | — | — | — | — | 128,873 |
| Sale of common stock upon the completion of initial public offering, net of issuance costs of $12,200 | 10,629 | 1 | 125,976 | — | — | — | — | 125,977 |
| Issuance of common stock upon exercise of stock options | 260 | — | 184 | — | — | — | — | 184 |
| Issuance of common stock relating to employee stock purchase plan | 39 | — | 245 | — | — | — | — | 245 |
| Issuance of common stock upon the conversion and the exercise of warrants | 529 | — | 1,818 | — | — | — | — | 1,818 |
| Repurchase of common stock | (306) | — | (266) | — | 213 | — | — | (53) |
| Cancellations, net of deferred stock compensation | — | — | (9,627) | 9,627 | — | — | — | — |
| Charge for accelerated vesting of employee stock options | — | — | 224 | — | — | — | — | 224 |
| Payments on stockholders notes receivable | — | — | — | — | 287 | — | — | 287 |
| Interest accrued on stockholders notes receivable | — | — | — | — | (170) | — | — | (170) |
| Amortization of deferred stock compensation | — | — | — | 22,209 | — | — | — | 22,209 |
| Beneficial conversion feature embedded in convertible subordinated notes | — | — | 1,803 | — | — | — | — | 1,803 |
| Beneficial conversion feature embedded in preferred stock sold | — | — | 11,191 | — | — | — | — | 11,191 |
| Deemed dividend on preferred stock | — | — | (11,191) | — | — | — | — | (11,191) |
| Balance at December 31, 2001 | 47,771 | 5 | 355,055 | (48,324) | (1,484) | 226 | (206,076) | 99,402 |
| Net loss | — | — | — | — | — | — | (68,121) | (68,121) |
| Net change in unrealized gain from available-for-sale securities | — | — | — | — | — | (209) | — | (209) |
| Comprehensive loss | | | | | | | | (68,330) |
| Sale of common stock upon the completion of private stock offering, net of issuance costs of $54 | 9,579 | 1 | 18,145 | — | — | — | — | 18,146 |
| Issuance of common stock relating to employee stock purchase plan | 163 | — | 480 | — | — | — | — | 480 |
| Issuance of common stock upon exercise of stock options | 670 | — | 625 | — | (3) | — | — | 622 |
| Repurchase of common stock contributed to the treasury | (40) | — | (170) | — | — | — | — | (170) |
| Repurchase of common stock | (443) | — | (410) | — | 263 | — | — | (147) |
| Payments on stockholder notes receivable | — | — | — | — | 401 | — | — | 401 |
| Interest accrued on stockholder notes receivable | — | — | — | — | (69) | — | — | (69) |
| Cancellations, net of deferred stock compensation | — | — | (13,289) | 12,735 | — | — | — | (554) |
| Amortization of deferred stock compensation | — | — | — | 16,584 | — | — | — | 16,584 |
| Charge for compensation expense on non-employee stock options | — | — | 2,010 | — | — | — | — | 2,010 |
| Charge for accelerated vesting of employee stock options | — | — | 2,245 | — | — | — | — | 2,245 |
| Balance at December 31, 2002 | 57,700 | $ 6 | $ 364,691 | $ (19,005) | $ (892) | $ 17 | $ (274,197) | $ 70,620 |

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

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**
**(in thousands)**

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2002 | 2001 | 2000 |
| CASH FLOWS FROM OPERATING ACTIVITIES: | | | |
| Net loss | $ (68,121) | $ (97,474) | $ (88,748) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | | |
| Depreciation and amortization | 13,051 | 7,592 | 2,513 |
| Amortization of deferred stock-based compensation | 16,030 | 22,209 | 13,372 |
| Compensation expense for accelerated vesting of stock options | 2,245 | 224 | 429 |
| Stock-based compensation | 2,010 | — | — |
| Loss on retirement, disposal and impairment of fixed assets | 2,052 | 35 | 98 |
| Realized loss on marketable securities | — | — | 10 |
| Provision for doubtful accounts | 229 | 1,388 | 461 |
| Amortization of capitalized financing costs and debt discount | — | — | 834 |
| Non-cash interest income on notes receivable from stockholders | (69) | (170) | (23) |
| Non-cash interest expense on convertible subordinated note | — | 1,803 | 8,648 |
| Non-cash accretion on marketable securities | 98 | (1,174) | — |
| Provision for excess and obsolete inventory | (86) | 555 | — |
| Changes in operating assets and liabilities: | | | |
| Accounts receivable | (5,439) | (8,479) | (4,612) |
| Deferred costs | (425) | 1,717 | (2,431) |
| Inventories | 102 | (80) | (1,658) |
| Other current assets | (891) | (1,886) | (1,425) |
| Accounts payable | (2,450) | (450) | 4,401 |
| Accrued liabilities | 686 | (2,866) | 7,100 |
| Deferred revenue | 579 | (799) | 2,231 |
| Net cash used in operating activities | (40,399) | (77,855) | (58,800) |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | | |
| Purchase of property and equipment | (8,112) | (19,175) | (13,571) |
| Restricted cash | (2,538) | 15,263 | (15,646) |
| Purchase of marketable securities | (1,972) | (72,219) | (19,645) |
| Maturities of marketable securities | 14,093 | 54,412 | 1,250 |
| Proceeds from sale of marketable securities | — | 19,898 | 7,827 |
| Other assets | 41 | (139) | (1,848) |
| Net cash provided by (used in) investing activities | 1,512 | (1,960) | (41,633) |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | | |
| Proceeds from issuance of common stock | 19,248 | 138,606 | 1,037 |
| Proceeds from issuance of convertible preferred stock, net of issuance costs | — | — | 83,085 |
| Proceeds from payment on stockholders' notes receivable | 401 | 287 | — |
| Repurchase of common stock | (317) | (53) | (48) |
| Proceeds from convertible subordinated notes | — | — | 14,000 |
| Payments for incurred IPO costs | — | (10,853) | (1,327) |
| Proceeds from draw down of line of credit | 5,000 | — | 5,000 |
| Repayment of line of credit | — | — | (5,000) |
| Payments on capital lease obligations | (443) | (450) | (318) |
| Net cash provided by financing activities | 23,889 | 127,537 | 96,429 |
| Net increase (decrease) in cash and cash equivalents | (14,998) | 47,722 | (4,004) |
| Cash and cash equivalents, beginning of year | 50,550 | 2,828 | 6,832 |
| Cash and cash equivalents, end of year | $ 35,552 | $ 50,550 | $ 2,828 |

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

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Note 1 Organization**

*Formation and business of the Company*

Align Technology, Inc., (the "Company") was incorporated in April 1997 and is engaged in the development, manufacturing and marketing of Invisalign, used for treating malocclusion, or the misalignment of teeth. Invisalign uses a series of clear plastic "Aligners" to move the patients' teeth in small increments from their original state to a final treated state. The Company exited the development stage in July 2000.

The Company expects to expend significant capital to continue to build its national brand, expand its dental professional channel, automate its manufacturing processes and develop both product and process technology. In November 2002, the Company completed a private placement of common stock to a group of investors led by existing shareholders, raising approximately $18,146,000, net of issuance costs. In December 2002, the Company secured an accounts receivable-based revolving line of credit of up to $10,000,000 and an equipment-based term loan of $5,000,000, which was accessed in December 2002. As of March 26, 2003, the Company had not utilized the accounts-receivable based revolving line of credit. Accessing the accounts receivable-based revolving line of credit is restricted based on qualifying accounts receivable and compliance with certain loan covenants. Management believes that current cash and cash equivalents and marketable securities balances will be sufficient to fund operations for at least the next twelve months. However, there can be no assurance that such financing will be adequate for the Company to avoid reducing operating expenses by, including but not limited to, reducing planned capital expenditures relating to enhancing the Company's manufacturing process and reducing worldwide staff.

**Note 2 Summary of Significant Accounting Policies**

*Basis of consolidation*

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany transactions have been eliminated in consolidation.

*Use of estimates*

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires our management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ materially and adversely from those estimates.

*Reclassification of certain expenses*

In 2002, the Company made the decision to reclassify certain costs and expenses within the consolidated statements of operations. These reclassifications do not change net loss. The nature of the change centers around the classification of order administration expenses, bank processing fees and information technology costs between cost categories. The Company has historically expensed these costs in general and administrative expenses and other expense in the consolidated statements of operations. Current and future presentation of these expenses will be to allocate them to the functions utilizing the services. The effect of these reclassifications for all periods presented increased cost of revenues by an equivalent reduction in operating and other expenses.

*Fair value of financial instruments*

The carrying amounts of the Company's cash and cash equivalents, accounts receivable, accounts payable and other current liabilities approximate the fair value. The carrying value of marketable securities approximates

their fair value as determined by market quotes. Based on borrowing rates currently available to the Company for debt with similar terms, the carrying value of its debt obligations approximates fair value.

*Cash and cash equivalents*

Cash equivalents are stated at cost, which approximates market value. The Company considers all highly liquid debt instruments purchased with an original maturity of three months or less to be cash equivalents. The Company invests primarily in money market funds and commercial paper, accordingly, these investments are subject to minimal credit and market risks.

*Restricted cash*

The Company's restricted cash as of December 31, 2002 is primarily comprised of $3,000,000, representing the minimum deposit requirement in connection with the Company's revolving line of credit and equipment loan facility with Comerica Bank (see note 7). The Company's restricted cash as of December 31, 2001 is primarily comprised of $723,000 for security deposits on customer credit card transactions and leases of administrative offices.

*Short- and long-term marketable securities*

Marketable securities are classified as available-for-sale and are carried at fair value. Marketable securities classified as current assets have scheduled maturities of less than one year, while marketable securities classified as non-current assets have scheduled maturities of more than one year. Unrealized holding gains or losses on such securities are included in accumulated other comprehensive income in stockholders' equity. Realized gains and losses on sales of all such securities are reported in earnings and computed using the specific identification cost method. Realized gains or losses and charges for other-than-temporary declines in value, if any, on available-for-sale securities are reported in other income or expense as incurred. The Company periodically evaluates these investments for other-than-temporary impairment.

*Certain risks and uncertainties*

The Company's operating results depend to a significant extent on the Company's ability to market and develop its products. The life cycles of the Company's products are difficult to estimate due in part to the effect of future product enhancements and competition. The inability of the Company to successfully develop and market its products as a result of competition or other factors would have a material adverse effect on the Company's business, financial condition and results of operations.

Financial instruments which potentially expose the Company to concentrations of credit risk consist primarily of cash equivalents and accounts receivable. The Company invests excess cash primarily in money market funds of major financial institutions, commercial paper and notes. The Company provides credit to customers in the normal course of business. Collateral is not required for accounts receivable, but ongoing evaluations of customers' credit worthiness are performed. The Company maintains reserves for potential credit losses and such losses have been within management's expectations. No individual customer accounted for 10% or more of the Company's accounts receivable at December 31, 2002 and 2001, or net revenues in fiscal 2002, 2001 and 2000.

In the United States of America, the Food and Drug Administration ("FDA") regulates the design, manufacture, distribution, preclinical and clinical study, clearance and approval of medical devices. Products

developed by the Company may require approvals or clearances from the FDA or other international regulatory agencies prior to commercialized sales. There can be no assurance that the Company's products will receive any of the required approvals or clearances. If the Company was denied approval or clearance or such approval was delayed, it may have a material adverse impact on the Company.

The Company has manufacturing operations located outside the United States of America. The Company currently relies on its manufacturing facilities in Costa Rica to create virtual treatment plans with the assistance of sophisticated software. In addition, the Company relies on third party manufacturers in Mexico to fabricate Aligners and to ship the completed product to the Company's customers. The Company's reliance on international operations exposes it to related risks and uncertainties, including; difficulties in staffing and managing international operations; controlling quality of manufacture; political, social and economic instability; interruptions and limitations in telecommunication services; product and/or material transportation delays or disruption; trade restrictions and changes in tariffs; import and export license requirements and restrictions; fluctuations in currency exchange rates; and potential adverse tax consequences. If any of these risks materialize, the Company's international manufacturing operations, as well as its operating results, may be harmed.

The Company receives certain of its components from sole suppliers. Additionally, the Company relies on a limited number of hardware manufacturers. The inability of any supplier or manufacturer to fulfill supply requirements of the Company could materially impact future operating results.

*Inventories*

Inventories are stated at the lower of cost or market. Cost is computed on a first-in, first-out basis. The Company records provisions to write down its inventory and related purchase commitments for estimated obsolescence or unmarketable inventory equal to the difference between the cost of the inventory and the estimated market value based upon assumptions about the future demand and market conditions. If actual future demand or market conditions are less favorable than the Company estimates, additional inventory provisions may be required.

*Property and equipment*

Property and equipment are stated at historical cost less accumulated depreciation and amortization. Depreciation and amortization are computed using the straight-line method over the estimated useful lives of the assets, which are: 3 years for computer software and hardware and 5 years for plant equipment, furniture, fixtures and equipment. Amortization of leasehold improvements is computed using the straight-line method over the estimated useful lives of the assets, or the remaining lease term, whichever is shorter. Upon sale or retirement, the asset's cost and related accumulated depreciation are removed from the accounts and any related gain or loss is reflected in operations. Maintenance and repairs are charged to operations as incurred.

*Development costs for internal use software and web-site development*

Website development and related costs consist of external and internal costs incurred to purchase and implement the website software and significant enhancements used in the Company's business. Costs incurred in the development of application and infrastructure of the website are capitalized and amortized over the estimated useful life of the website. During fiscal 2002, the Company re-engineered its website, and previously capitalized costs of $392,000 were written off. Website development costs of $103,000 and $495,000 had been capitalized as of December 31, 2002 and 2001, respectively. Amortization of website development costs commenced upon launch of the website. Accumulated amortization as of December 31, 2002 and 2001 amounted to $40,000 and $201,000, respectively.

Internal and external costs of designing, creating and maintaining website content, graphics and user interface on the web site are expensed as incurred.

There was other software developed for internal use and capitalized as of December 31, 2002 and 2001 in the amount of $1,124,000 and $544,000, respectively. Accumulated amortization as of December 31, 2002 and 2001 amounted to $192,000 and $37,000, respectively.

*Impairment of long-lived assets*

The Company identifies and records impairment losses on long-lived assets used in operations when events and circumstances indicate that the assets may not be recoverable. Recoverability is measured by comparison of the assets carrying amount to future net undiscounted cash flows the assets are expected to generate. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value, as measured by the discounted future cash flows.

*Product Warranty*

The Company generally warrants its products for a specific period of time against material defects. The Company provides for the estimated future costs of warranty obligations in costs of goods sold when the related revenue is recognized. The accrued warranty costs represents the best estimate at the time of sale of the total costs that the Company expects to incur to repair or replace product which fails while still under warranty. The amount of accrued estimated warranty costs are primarily based on historical experience as to product failures as well as current information on repair costs. On a quarterly basis, the Company reviews the accrued balances and updates the historical warranty cost trends. Actual warranty costs incurred have not materially differed from those accrued.

Aligners are subject to the Invisalign product warranty, which covers defects in materials and workmanship. Our materials and workmanship warranty is in force until the Invisalign case in completed. In the event the Aligners fall within the scope of the Invisalign product warranty, we will replace the Aligners at our expense. Our warranty is contingent upon proper use of the Aligners for the purposes for which they are intended. If a patient chooses not to wear the Aligners, and as a result, requests additional Invisalign treatment, the dental professional pays for the additional expense. The Invisalign product warranty does not provide any assurances regarding the outcome of treatment using Invisalign.

The following table reflects the change in the Company's warranty accrual during the year ended December 31, 2002.

| | (in thousands) |
|---|---|
| Warranty accrual, December 31, 2001 | $ 870 |
| Charged to costs and expenses | 614 |
| Actual warranty expenditures | (970) |
| Warranty accrual, December 31, 2002 | $ 514 |

*Revenue Recognition*

Revenue from the sale of Invisalign and ancillary products is recognized upon product shipment, provided no significant obligations remain, transfer of title has occurred, and collection of the receivables is deemed probable. The costs of producing the ClinCheck™ treatment plan, which are incurred prior to the production of

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Aligners, are deferred and recognized as related revenues are earned, i.e. upon shipment of the Aligners. The Company offers its dental professionals an opportunity to purchase case refinement in advance at a discount. The advance purchase price is non-refundable once Aligners are shipped and is deferred until the earlier of shipment of the case refinement or case expiration. In cases where the dental professional does not purchase the case refinements in advance, case refinement revenues are recognized when the new Aligners are shipped.

Service revenues earned under agreements with third parties for training of dental professionals and staff for Invisalign are recorded as the services are performed. Charges to third parties are based on negotiated rates which are intended to approximate a mark-up on anticipated costs.

The Company estimates and records a provision for amounts of estimated losses on sales, if any, in the period such sales occur.

*Research and development*

Research and development costs are expensed as incurred.

*Advertising costs*

The cost of advertising and media is expensed as incurred. For the years ended December 31, 2002, 2001 and 2000 advertising costs totaled $5,993,000, $17,466,000 and $20,804,000, respectively.

*Foreign currency*

The Company uses the U.S. dollar as its functional currency. Foreign currency assets and liabilities are re-measured into U.S. dollars at current exchange rates. Revenues and expenses are re-measured at average exchange rates in effect during each period. Gains or losses from foreign currency re-measurement are included in other income/expense.

*Income taxes*

Income taxes are recorded under the liability method, under which deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized.

*Stock-based compensation*

The Company accounts for stock-based employee compensation arrangements in accordance with provisions of Accounting Principles Board Opinion No. 25, "*Accounting for Stock Issued to Employees*" ("APB 25") and complies with the disclosure provisions of Statement of Financial Accounting Standards No. 123, "*Accounting for Stock-Based Compensation*" ("SFAS 123").

Under APB 25, compensation expense for grants to employees is based on the difference, if any, on the date of the grant, between the fair value of the Company's stock and the option's exercise price. SFAS 123 defines a "fair value" based method of accounting for an employee stock option or similar equity investment.

During the year ended December 31, 2002, the Company adopted Statement of Financial Accounting Standards No. 148, "Accounting for Stock-Based Compensation, Transition and Disclosure an Amendment of

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

FASB Statement No. 123." The Company accounts for stock-based employee compensation using the intrinsic value method under APB 25 and related interpretations and complies with the disclosure provisions of SFAS 123. The following table illustrates the effect on net loss and net loss per common share if the Company had applied the fair value recognition provisions of SFAS 123 to stock-based employee compensation:

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2002 | 2001 | 2000 |
| | (in thousands, except per share amounts) | | |
| Net loss, as reported | $ (68,121) | $ (108,665) | $ (142,264) |
| Add: Total stock-based employee compensation expense included in reported net earnings | 18,784 | 22,571 | 11,252 |
| Deduct: Total stock-based employee compensation determined under fair value based method for all awards | (29,350) | (28,271) | (11,351) |
| Pro forma net loss | $ (78,687) | $ (114,365) | $ (142,363) |
| Basic and diluted net loss per common share: | | | |
| As reported | $ (1.42) | $ (2.57) | $ (25.64) |
| Pro forma | $ (1.64) | $ (2.71) | $ (25.66) |

Such pro forma disclosure may not be representative of future compensation cost because options vest over several years and additional grants are anticipated to be made each year.

The value of options granted to employees is estimated on the date of grant using the minimum value method for shares issued prior to January 25, 2001, the date of the IPO, and using the Black-Scholes option valuation model subsequent to the IPO with the following weighted assumptions:

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2002 | 2001 | 2000 |
| Risk-free interest rate | 3.03% | 4.36% | 5.17–6.71% |
| Expected life | 5 years | 5 years | 5 years |
| Expected dividends | — | — | — |
| Volatility | 119.8% | 117% | N/A |

The Company accounts for equity instruments issued to non-employees in accordance with the provisions of SFAS 123 and Emerging Issues Task Force Issue No. 96-18, "*Accounting for Equity Instruments that are Issued to Other Than Employees, or in Conjunction with Selling Goods and Services*," and Financial Accounting Standards Board Interpretation No. 28, "*Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plan*" ("FIN 28").

*Segments*

The Company reports segment data based on the management approach which designates the internal reporting that is used by management for making operating decisions and assessing performance as the source of the Company's reportable operating segments. During all periods presented, the Company operated in a single business segment. No single country, other than the United States of America, accounted for 10% or more of assets or 10% or more of revenues in fiscal 2002, 2001 and 2000.

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

*Comprehensive Income*

Comprehensive income, as defined, includes all changes in equity (net assets) during a period from non-owner sources. Net loss and other comprehensive loss, including unrealized gains and losses on investments, are reported, net of their related tax effect, to arrive at comprehensive loss.

*Net loss per share*

Basic and diluted net loss per share is computed by dividing the net loss available to common stockholders for the period by the weighted average number of shares of common stock outstanding during the period, less the weighted average number of shares of common stock that are subject to repurchase. The calculation of diluted net loss per share excludes potential common stock if the effect would be anti-dilutive. Potential common stock consists of common stock subject to repurchase, incremental common shares issuable upon the exercise of stock options, warrants and shares issuable upon conversion of the preferred stock.

The following is a reconciliation of the numerator (net loss available to common stockholders) and the denominator (number of shares) used in the basic and diluted net loss per share calculations (in thousands, except per share data):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2002 | 2001 | 2000 |
| Net loss available to common stockholders | $ (68,121) | $ (108,665) | $ (142,264) |
| Basic and diluted: | | | |
| Weighted-average common shares outstanding | 49,112 | 45,189 | 6,861 |
| Less: Weighted-average shares subject to repurchase | 1,234 | 2,942 | 1,313 |
| Weighted-average shares used in basic and diluted net loss per share | 47,878 | 42,247 | 5,548 |
| Net loss per share available to common stockholders | $ (1.42) | $ (2.57) | $ (25.64) |

The following table sets forth potential shares of common stock that are not included in the diluted net loss per share available to common stockholders because to do so would be anti-dilutive for the years indicated (in thousands):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2002 | 2001 | 2000 |
| Preferred stock (as if converted) | — | — | 26,209 |
| Options to purchase common stock | 7,670 | 5,489 | 2,862 |
| Common stock subject to repurchase | 637 | 1,969 | 3,608 |
| Warrants | — | — | 646 |
| | 8,307 | 7,458 | 33,325 |

*Recent Accounting Pronouncements*

In April 2002, the Financial Accounting Standards Board (“FASB”) issued SFAS No. 145, “Rescission of FASB Statement No. 4, 44, and 64, Amendment of FASB Statement No. 13, and Technical Corrections” (“SFAS No. 145”) which eliminates inconsistencies between the required accounting for sale-leaseback transactions and the required accounting for certain lease modifications that have economic effects that are similar to sale-

leaseback transactions. SFAS No. 145 also amends other existing authoritative pronouncements to make various technical corrections, clarify meanings, or describe their applicability under changed conditions. The provisions of SFAS No. 145 are effective for fiscal years beginning after May 15, 2002 and for transactions occurring after May 15, 2002. The Company does not expect SFAS No. 145 to have a material impact on the Company's consolidated financial position or on its consolidated results of operations.

In June 2002, the FASB issued SFAS No. 146, "Accounting for Exit or Disposal Activities" ("SFAS No. 146") which addresses the recognition, measurement, and reporting of costs that are associated with exit and disposal activities, including restructuring activities that are currently accounted for pursuant to the guidance that the EITF has set forth in EITF Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)". SFAS No. 146 is effective for exit or disposal activities that are initiated after December 31, 2002. The adoption of SFAS No. 146 did not have a material impact on the Company's consolidated financial statements.

In November 2002, the FASB issued FASB Interpretation No. 45 ("FIN 45"), "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others." FIN 45 requires that a liability be recorded in the guarantor's balance sheet upon issuance of a guarantee. In addition, FIN 45 requires disclosures about the guarantees that an entity has issued, including a reconciliation of changes in the entity's product warranty liabilities. The initial recognition and initial measurement provisions of FIN 45 are applicable on a prospective basis to guarantees issued or modified after December 31, 2002, irrespective of the guarantor's fiscal year-end. The disclosure requirements of FIN 45 are effective for financial statements for interim or annual periods ending after December 15, 2002. In accordance with the provisions of FIN 45, the Company has adopted the disclosure requirements. The adoption of FIN 45 did not have a material impact on the Company's consolidated financial position or on its consolidated statements of operations.

In November 2002, the Emerging Issues Task Force ("EITF") reached consensus on EITF 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables", which addresses how to account for arrangements that may involve the delivery or performance of multiple products, services, and/or rights to use assets. The final consensus of EITF 00-21 will be applicable to agreements entered into in fiscal periods beginning after June 15, 2003, with early adoption permitted. Additionally, companies will be permitted to apply the consensus guidance to all existing arrangements as the cumulative effect of a change in accounting principle in accordance with APB Opinion No. 20, "Accounting Changes." The Company is currently evaluating the impact of EITF 00-21 on its consolidated financial position and its consolidated results of operations.

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation Transition and Disclosure an amendment of FASB Statement No. 123." SFAS No. 148 provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. SFAS No. 148 also requires prominent disclosures of the pro forma effect of using the fair value method of accounting for stock-based employee compensation in both annual and interim financial statements. The transition and annual disclosure requirements of SFAS No. 148 are effective for fiscal years ending after December 15, 2002. The interim disclosure requirements are effective for interim periods beginning after December 15, 2002. In accordance with the provisions of SFAS No. 148, the Company has adopted the disclosure requirements. The adoption of SFAS No. 148 did not have a material impact on the Company's consolidated financial position or on its consolidated results of operations.

In January 2003, the FASB issued FASB Interpretation No. 46 ("FIN 46"), "Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51." FIN 46 requires certain variable interest entities to be

consolidated by the primary beneficiary of the entity if the equity investors in the entity do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. FIN 46 is effective immediately for all new variable interest entities created or acquired after January 31, 2003. For variable interest entities created or acquired prior to February 1, 2003, the provisions of FIN 46 must be applied for the first interim or annual period beginning after June 15, 2003. The Company does not expect the adoption of FIN 46 to have a material impact on its consolidated financial statements.

**Note 3 Short- and long-term marketable securities**

The amortized cost and fair value of available-for-sale securities at December 31, 2002 are as follows (in thousands):

| | Amortized Cost | Unrealized Gain | Fair Value | Maturity Date |
|---|---|---|---|---|
| **Short-term marketable securities** | | | | |
| Corporate notes | $ 2,676 | $ 17 | $ 2,693 | March 2003 |

The amortized cost and fair value of available-for-sale securities at December 31, 2001 are as follows (in thousands):

| | Amortized Cost | Unrealized Gain | Fair Value | Maturity Date |
|---|---|---|---|---|
| **Short-term marketable securities** | | | | |
| U.S. government agencies and asset-backed securities | $ 5,999 | $ 68 | $ 6,067 | June 2002 |
| Medium term notes | 2,903 | 72 | 2,975 | July 2002 |
| Corporate notes | 3,415 | 37 | 3,452 | March–December 2002 |
| | $ 12,317 | $ 177 | $ 12,494 | |
| **Long-term marketable securities** | | | | |
| Corporate notes | $ 2,578 | $ 49 | $ 2,627 | March 2003 |

**Note 4 Balance Sheet Components**

Inventories consist of the following (in thousands):

| | December 31, 2002 | December 31, 2001 |
|---|---|---|
| Raw materials | $ 931 | $ 1,122 |
| Work in progress | 285 | 182 |
| Finished goods | 317 | 245 |
| | $ 1,533 | $ 1,549 |

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Property and equipment consist of the following (in thousands):

| | December 31, | |
|---|---|---|
| | 2002 | 2001 |
| Clinical and manufacturing equipment | $ 24,662 | $ 20,277 |
| Computer hardware | 7,130 | 7,267 |
| Computer software | 3,350 | 3,561 |
| Furniture and fixtures | 3,813 | 3,471 |
| Land | — | 458 |
| Leasehold improvements | 5,321 | 4,134 |
| Construction in progress | 191 | 3,470 |
| | 44,467 | 42,638 |
| Less: Accumulated depreciation and amortization | (19,389) | (10,617) |
| | $ 25,078 | $ 32,021 |

During fiscal 2002, the Company recorded an impairment charge for the land in Pakistan of $0.9 million (See note 6).

Property and equipment includes approximately $2,223,000 of assets under capital leases at December 31, 2002 and 2001. Accumulated amortization of assets under capital leases totaled approximately $1,264,000 and $749,000 at December 31, 2002 and 2001, respectively.

Depreciation expense and amortization was $13,051,000, $7,592,000 and $2,513,000 for the years ended December 31, 2002, 2001 and 2000, respectively.

Accrued liabilities consist of the following (in thousands):

| | December 31, | |
|---|---|---|
| | 2002 | 2001 |
| Accrued marketing expenses | $ 1,828 | $ 1,830 |
| Accrued payroll and benefits | 4,231 | 3,621 |
| Provision for estimated losses on sales | 1,086 | 1 |
| Sales and franchise taxes | 1,055 | 570 |
| Other | 3,912 | 5,404 |
| | $ 12,112 | $ 11,426 |

**Note 5 Commitments and Contingencies**

*Operating leases*

In June 2000, the Company entered into a non-cancelable operating lease to lease a manufacturing facility in Santa Clara, California. The lease term is for five years, commencing July 1, 2000. The Company paid $1,175,000 security deposit upon execution of the lease.

In July 2000, the Company entered into an agreement to sublease additional office space in Santa Clara, California. The lease term began on July 14, 2000 and expired on August 14, 2002. A security deposit of $184,448 was paid by the Company upon execution of the lease.

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

In August 2001, the Company entered into an agreement to sublease additional office space in Santa Clara, California. The lease term began on October 1, 2001 and expired on September 30, 2002. The Company exercised a renewal option on this lease that extended the term to June 30, 2005.

Total rent expense was $4,355,000, $3,349,000 and $2,146,000 for the years ended December 31, 2002, 2001 and 2000, respectively. The terms of the facility lease provide for rental payments on a graduated scale. The Company recognizes rent expense on a straight-line basis over the lease period, and has accrued for rent expense incurred but not paid.

The future minimum lease payments under operating leases as of December 31, 2002 are $3,390,000, $3,439,000, $2,065,000, $405,000 and $0 for the years ended December 31, 2003, 2004, 2005, 2006 and 2007 and thereafter, respectively.

*Capitalized lease obligations*

In February 2000, the Company leased a stereolithography apparatus from Leasing Technologies International, Inc. (“LTI”) under a master lease agreement entered into between the Company and LTI in August 1999. Under the terms of the lease, the value of the leased equipment is $729,000 at a borrowing rate of 11.154% per annum. The term of the lease is for 48 months with a bargain purchase option at the end of the lease to purchase the equipment at 15% of the purchase price.

In May and August 2000, the Company leased two stereolithography machines from 3D Capital Corporation (“3D”) under a Master Lease Agreement entered into in March 2000 for a total value of $1,479,000 at a borrowing rate of 6.533% per annum for a period of 60 months. In July 2001 this lease was assigned to DeLage Landen.

Future minimum payments under capital lease obligations are as follows (in thousands):

| Year Ended December 31, | |
|---|---|
| 2003 | $ 578 |
| 2004 | 348 |
| 2005 | 187 |
| 2006 | — |
| Minimum lease payments | 1,113 |
| Less: Amount representing interest | (93) |
| Present value of minimum lease payments | 1,020 |
| Amount due within one year | (516) |
| Amount due after one year | $ 504 |

*Contingencies*

In January 2003, Ormco Corporation filed suit against the Company, in the United States District Court for the Central District, Orange County Division, asserting infringement of U.S. Patent Nos. 5,447,432, 5,683,243 and 6,244,861. The complaint seeks unspecified monetary damages and injunctive relief. In February 2003, the Company answered the complaint and asserted counterclaims seeking a declaration by the Court of invalidity and non-infringement of the asserted patents. In addition, the Company counterclaimed for infringement of its U.S.

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Patent No. 6,398,548, seeking unspecified monetary damages and injunctive relief. Ormco filed a reply to the Company's counterclaims on March 10, 2003 and asserted counterclaims against Align seeking a declaration by the Court of invalidity and non-infringement of U.S. Patent No. 6, 398, 548. The Company's response to Ormco's counterclaims is due in early April 2003. No trial or other dates have yet been set by the Court.

Three years ago, Ormco filed suit against the Company asserting infringement of U.S. Patent Nos. 5,447,432 and 5,683,243. In June 2000, the parties entered into a Stipulation of Dismissal with Ormco. Ormco agreed for a period of at least two years not to pursue litigation with respect to these patents, except as set forth below. Further, Ormco agreed that it would not bring any patent action against the Company for at least a period of one year with respect to any as yet unissued patents. If Ormco were to bring such an action concerning as yet unissued patents after one year, the Stipulation of Dismissal would allow Ormco to include in such an action claims involving U.S. Patent Nos. 5,447,432 and 5,683,243. In August 2001, Ormco notified the Company of the issuance of U.S. Patent No. 6,244,861 and offered a license for this patent. The Company did not take a license to this patent. Five months after Ormco's notification, it filed the lawsuit that is currently pending.

The claims in U.S. Patent Nos. 5,447,432 and 5,683,243 relate to methods and systems for forming and manufacturing custom orthodontic appliances. The relevant claims are limited to computerized methods and algorithms for determining the final positioning of a patient's teeth based upon a derived or ideal dental archform of the patient. The claims in U.S. Patent No. 6,244,861 are more generic claims relating to the methods and systems for forming and manufacturing custom orthodontic appliances. Based on the disclosure in the patent, however, the relevant claims also appear to be limited to computerized methods and algorithms for determining the final positioning of a patient's teeth based upon a derived or ideal dental archform of the patient. The treatment plan simulation developed in the Company's facilities determines the final positioning of a patient's teeth but is not based on a derived or ideal dental archform of the patient.

The claims in the Company's U.S. Patent No. 6,398,548 relate to methods and systems for incrementally moving teeth using a series of appliances designed to be placed successively on the patient's teeth.

The Company strongly believes that Ormco's claims of infringement lack merit and that the Company's counterclaim of infringement will be successful. However, the outcome of a lawsuit is inherently unpredictable. Should the Company's technology be found to infringe any one of Ormco's asserted patents, the Company would have to seek a license from Ormco, which license might not be available on commercially reasonable terms or at all. In that event, the Company could be subject to damages or an injunction which could materially adversely affect its business.

On May 1, 2002, GW Com, Inc. filed a complaint in Santa Clara Superior Court against the Company and James Lindsey, the owner of the premises located at 851 Martin Avenue, Santa Clara, California. The Company was a party with GW Com to a sub-sublease for such premises, the term of which expired on August 14, 2002. In early 2001, the Company engaged in negotiations with GW Com to amend the sub-sublease to add additional space and to extend the term through November 30, 2004. The proposed amendment, however, required the consent of the owner of the subject property, Mr. Lindsey. The Company withdrew from the negotiations of the amendment, after, among other things, Mr. Lindsey's consent could not be obtained. GW Com's complaint alleged breach of contract against the Company and breach of contract and intentional interference with contract against Mr. Lindsey. In the complaint, GW Com sought damages of more than $4 million. In February 2002 the Company entered into a written settlement agreement pursuant to which GW Com paid the Company an aggregate of $188,000 and Mr. Lindsey paid the Company an aggregate of $10,000.

On April 9, 2002, the Company exercised its right to terminate an Exclusive Marketing Agreement dated October 18, 2001 with Discus Dental Impressions, Inc. pursuant to the express terms of the Agreement and the

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Company issued a press release reporting this termination. On or about May 14, 2002, the Company received a demand for arbitration submitted by Discus Dental with the American Arbitration Association in San Jose, California. In its arbitration demand, Discus Dental seeks damages of approximately $30 million, including commissions and bonus payments it claims it would have received under the Agreement as well as other expenses, attorneys' fees and injunctive relief to prevent the Company from selling Invisalign to dentists in the U.S. and Canada. However, prior to terminating the Agreement, the Company conducted a thorough review of the Agreement and each party's performance thereunder. Based upon that review of the factual and legal issues, the Company denies all claims made by Discus Dental in its demand and contend that such claims are entirely without merit. In addition, on or about June 13, 2002 the Company submitted a counter-claim against Discus Dental in the arbitration seeking damages of approximately $40 million arising out of our claims for misrepresentation, breach of confidentiality provisions and unfair competition, among others. The three arbitrators have been selected, and the parties are exchanging and reviewing documents in response to document demands. The matter is currently set for arbitration on August 18, 2003.

In February 2001, the Company was named in a class action lawsuit filed on behalf of all licensed dentists (excluding orthodontists) in the U.S. The complaint alleged that the Company's policy of selling Invisalign exclusively to orthodontists violated the U.S. antitrust laws. Without admitting any wrongdoing, the company entered into a Stipulation and Agreement of Settlement with the plaintiffs to settle the lawsuit. The total legal and other settlement costs that the Company has agreed to pay are approximately $400,000 in legal fees. In November 2001, the Court approved the Stipulation and Agreement of Settlement. Pursuant to the settlement, the Company trained and certified approximately 5,000 in fiscal 2002, and have undertaken to certify 5,000 general practitioner dentists each year over the next three years.

The Company is subject to claims and assessments from time to time in the ordinary course of business. Management does not believe that any such matters, individually or in the aggregate, will have a material adverse effect on the Company's financial condition, results of operations or cash flows.

**Note 6 Restructuring and Land and Impairment**

In July 2002, the Company announced a plan to streamline worldwide operations. The plan included closing the Company's facilities in Pakistan and the U.A.E. The Company transitioned operations performed at these facilities to the United States and Costa Rica. For the period ending December 31, 2002, the Company recorded severance charges of $2.3 million, facility closure charges of $0.9 million, a loss on disposal of fixed assets of $1.1 million and an impairment charge of $0.9 million related to the land in Pakistan. The land was written down to a zero value to reflect its fair value as estimated by management. Approximately $0.1 million of accrued charges related to professional fees were included in accrued liabilities as of December 31, 2002. We discontinued operations at our facilities in Pakistan and the U.A.E. in October and December 2002, respectively. We concluded the remainder of our indirect operational activities related to the Costa Rica transition in January 2003. The Company will cease non-operational closing activities in Pakistan when the land is disposed of at that location and in the U.A.E. when the necessary statutory filings have been completed.

**Note 7 Credit Facilities**

In December 2002, the Company obtained a $10.0 million revolving line of credit based on domestic accounts receivable which accrues interest at a rate of 1.75% above prime and a $5.0 million equipment-based term loan which accrues interest at a rate of 2.25% above prime. As of December 31, 2002 the Company had not drawn down the revolving line of credit and had drawn down $5.0 million from the equipment-based term loan. Accessing the accounts receivable based revolving line of credit is restricted based on qualifying accounts receivable and compliance with certain loan covenants. Principal payments are due in 36 monthly installments beginning in January 2003. Annual principal payments of $1.7 million are due for each of the years 2003 through 2005.

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**Note 8 Stockholders Equity**

*Preferred Stock*

As of December 31, 2002, the Company has authorized 5,000,000 shares of preferred stock, $0.0001 par value, none of which was issued and outstanding. The Company's Board of Directors is authorized to determine the designation, powers, preferences and rights of preferred stock.

*Common Stock*

The holders of common stock are entitled to receive dividends whenever funds are legally available and when declared by the Board of Directors, subject to the prior rights of holders of all classes of stock having priority rights as to dividends. The Company has not declared or paid and dividends as of December 31, 2002.

On January 4, 2001, the Company's Board of Directors approved a 2 for 1 stock split. All common and preferred stock and per share amounts for all periods presented in the accompanying consolidated financial statements have been restated to reflect the stock split.

In January 2001, the Company completed an initial public offering or IPO, of 10 million shares of common stock at $13.00 per share. In March 2001, the underwriters exercised an over allotment option for 628,706 shares. Net proceeds to the Company were approximately $125,976,000.

In November 2002, the Company completed a private placement of 9,578,944 shares of common stock to a group of institutional investors led by existing shareholders, at $1.90 per share. Net proceeds to the Company were approximately $18,146,000.

*Restricted stock purchase agreement*

The Company has sold shares of its common stock to founders of the Company under agreements which provide for repurchase of the stock by the Company at the stock's original purchase price upon termination of employment. The Company's right to repurchase lapses at any time prior to the earlier of: (i) three years from date of agreement; (ii) the closing of an "Asset Transfer" or an "Acquisition"; or (iii) the voluntary liquidation, dissolution, or winding up of the Company. The Company has also sold shares of its common stock to employees, directors and consultants under the terms of the 1997 Equity Incentive Plan that includes an early exercise feature. The Company's right to repurchase under those terms lapses over the vesting period of the underlying option exercised. At December 31, 2002 and 2001, 636,809 and 1,969,488 shares of common stock, respectively, were subject to repurchase.

*1997 Equity Incentive Plan*

In April 1997, the Company adopted the 1997 Equity Incentive Plan (the "1997 Plan") under which the Board of Directors may issue incentive and non-qualified stock options to employees, directors and consultants. The Company has reserved 9,709,092 shares of common stock for issuance under the Plan. The Board of Directors has the authority to determine to whom options will be granted, the number of shares, the term and exercise price. Options are to be granted at an exercise price not less than fair market value for incentive stock options or 85% of fair market value for non-qualified stock options. For individuals holding more than 10% of the voting rights of all classes of stock, the exercise price of incentive stock options will not be less than 110% of fair market value. Options become exercisable and vest on a cumulative basis at the discretion of the Board of Directors but at a rate not less than 20% per year over five years from the date of grant and generally vest at a

rate of 25% on the first anniversary and 1/48th each month thereafter. The term of the options is no longer than five years for incentive stock options for which the grantee owns greater than 10% of the voting power of all classes of stock and no longer than ten years for all other options.

*Executive Grants*

In January 2001 the Company granted options ("Executive Grants") to purchase 1,000,000 shares, at an exercise price of $15.00 per share, to each of the Company's then Chief Executive Officer and President. The options were granted outside of the 1997 Plan and prior to the 2001 Stock Incentive Plan (the "2001 Plan") becoming effective and represent options for an aggregate of 2,000,000 shares of common stock in addition to the shares of common stock reserved for issuance under the 2001 Plan. The Executive Grant was approved by the stockholders in January 2001.

*2001 Stock Incentive Plan*

On January 4, 2001, the Board of Directors adopted the 2001 Plan, which will terminate no later than 2011, provides for the granting of incentive stock options, non statutory stock options and restricted stock purchase frights and stock bonuses to employees, and consultants. As of December 31, 2002, a total of 10,388,436 shares of common stock have been authorized for issuance under the 2001 Plan. The 2001 Plan was approved by the Stockholders prior to the IPO.

Activity under the 1997 Plan, the Executive Grants and the 2001 Plan are set forth below (in thousands, except per share data):

| | | Options Outstanding | | |
|---|---|---|---|---|
| | Shares Available for Grant | Shares | Weighted Average Exercise Price | Aggregate Price |
| Balances at December 31, 1999 | 1,422 | 1,285 | $ 0.15 | $ 193 |
| Increase in pool | 5,600 | — | — | — |
| Options granted | (5,890) | 5,890 | 0.86 | 5,044 |
| Options exercised | — | (4,121) | 0.69 | (2,828) |
| Options cancelled | 192 | (192) | 0.33 | (64) |
| Balances at December 31, 2000 | 1,324 | 2,862 | 0.82 | 2,345 |
| Increase in pool | 10,000 | — | — | — |
| Options granted | (3,423) | 3,423 | 11.11 | 38,038 |
| Options exercised | — | (260) | 0.71 | (184) |
| Stock repurchased | 306 | — | 0.87 | — |
| Options cancelled | 536 | (536) | 1.88 | (1,006) |
| Balances at December 31, 2001 | 8,743 | 5,489 | 7.14 | $ 39,193 |
| Increase in pool | 2,388 | — | — | — |
| Options granted | (4,150) | 4,150 | 4.22 | 17,513 |
| Options exercised | — | (670) | 0.93 | (622) |
| Stock repurchased | 443 | — | 0.96 | — |
| Options cancelled | 1,299 | (1,299) | 4.54 | (5,902) |
| Balances at December 31, 2002 | 8,723 | 7,670 | $ 6.54 | $ 50,182 |

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The options outstanding and currently exercisable by exercise price at December 31, 2002 are as follows (in thousands, except per share data):

| | Options Outstanding | | | Vested | |
|---|---|---|---|---|---|
| Range of Exercise Prices | Number Outstanding and Exercisable | Weighted-Average Remaining Contractual Life (Years) | Weighted Average Exercise Price | Number of Shares | Weighted Average Exercise Price |
| $ 0.01 – 1.50 | 1,375 | 7.4 | $ 0.79 | 1,277 | $ 0.78 |
| 1.51 – 3.00 | 980 | 9.5 | 2.28 | 79 | 2.13 |
| 3.01 – 4.50 | 954 | 9.3 | 4.05 | 292 | 4.26 |
| 4.51 – 6.00 | 2,014 | 9.1 | 5.09 | 190 | 5.29 |
| 6.01 – 7.50 | 161 | 8.3 | 6.61 | 69 | 6.61 |
| 7.51 – 9.00 | 109 | 6.8 | 8.21 | 53 | 8.15 |
| 9.01 – 10.50 | 72 | 8.4 | 9.93 | 43 | 9.89 |
| 12.01 – 13.50 | 5 | 8.1 | 13.06 | 2 | 13.06 |
| $13.51 – 15.00 | 2,000 | 8.0 | $ 15.00 | 958 | $ 15.00 |
| | 7,670 | | | 2,964 | |

The weighted average per share fair values of options granted during the years ended December 31, 2002, 2001 and 2000 were $3.50, $9.25 and, $16.878, respectively.

*Employee Stock Purchase Plan*

On January 4, 2001, the Board of Directors adopted the Employee Stock Purchase Plan, authorizing the issuance of 1,500,000 shares of common stock pursuant to purchase rights granted to United States employees. The Employee Stock Purchase Plan is intended to qualify as an employee stock purchase plan within the meaning of Section 423 of the Internal Revenue Code of 1986, as amended. The Employee Stock Purchase Plan was approved by the Stockholders prior to the Initial Public Offering.

The Employee Stock Purchase Plan permits eligible employees to purchase common stock at a discount through payroll deductions during defined offering periods. The price at which stock is purchased under the Purchase Plan is equal to 85% of the fair market value of the common stock on the first day of the offering period or 85% of the fair market value on the subsequent designated purchase dates, whichever is lower. The initial offering period commenced on January 25, 2001.

Under the Employee Stock Purchase Plan, the Company sold approximately 163,000 and 39,000 shares of common stock during the years ended December 31, 2002 and 2001, respectively. The fair value of the employees' purchase rights was estimated using the Black-Scholes option pricing model with the following assumptions:

| | Year Ended December 31, | |
|---|---|---|
| | 2002 | 2001 |
| Risk free interest rate | 3.03 | 3.47 |
| Expected life | .05 years | .05 years |
| Expected volatility | 119.8% | 117.0% |

**ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

*Stock-based compensation*

The Company records deferred stock-based compensation for the excess of the deemed fair market value over the exercise price at the date of grant related to options granted to employees. The Company has recorded deferred stock-based compensation of $0, $3,530,000 and $87,687,000 related to options issued to employees to purchase common stock issued in fiscal 2002, 2001 and 2000, respectively. During fiscal 2002, 2001, and 2000, the Company reversed $12,419,000, $12,673,000 and $0, respectively, of unrecognized deferred compensation relating to employees that have terminated employment with the Company. The compensation expense is being recognized over the option vesting period of four years using the straight-line method. For the years ended December 31, 2002, 2001, and 2000, the Company recorded amortization of stock-based compensation of $16,539,000, $22,347,000 and $11,252,000, respectively, in connection with options granted to employees.

For options granted to consultants, the Company determines the fair value of the options using the Black-Scholes pricing model. The Company has recorded deferred stock-based compensation expense/(reversals of expense) of $(316,000), $(484,000) and $4,065,000 for the years ended December 31, 2002, 2001 and 2000, respectively, for options issued to non-employees in fiscal 2001 and 2000. The compensation expense is being recognized over the option vesting period of four years, using the method presented by FIN 28. For the years ended December 31, 2002, 2001 and 2000, the Company recorded amortization of stock-based compensation expense/(reversals of expense) of $45,000, $(138,000) and $2,120,000, respectively, in connection with options granted to consultants.

The Company recorded stock-based compensation expense of $2,010,000 related to stock options granted to non-employees in fiscal 2002.

The Company accelerated the vesting of options to several employees in connection with related severance packages. The acceleration was accounted for in accordance with FIN 44 as a one-time charge to the statement of operations. The charges for December 31, 2002 and 2001 were $2,245,000 and $224,000, respectively. The charge was equal to the intrinsic value difference between the exercise price of the accelerated options and the fair value of the common stock on the date of acceleration.

Stock based compensation has been recorded as follows (in thousands):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2002 | 2001 | 2000 |
| Cost of revenues | $ 3,399 | $ 4,602 | $ 2,939 |
| Sales and marketing | 3,002 | 3,920 | 2,357 |
| General and administrative | 10,663 | 9,763 | 5,774 |
| Research and development | 3,221 | 4,148 | 2,731 |
| | $ 20,285 | $ 22,433 | $ 13,801 |

ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

**Note 9 Income Taxes**

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets are presented below (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2002 | 2001 |
| Deferred tax assets (liabilities): | | |
| Start-up costs | $ (129) | $ (383) |
| Net operating loss carryforwards | 74,872 | 59,220 |
| Research and development credit | 4,642 | 3,128 |
| Other | 3,680 | 545 |
| Deferred tax assets | 83,065 | 62,510 |
| Less: Valuation allowance | (83,065) | (62,510) |
| Net deferred tax asset | $ — | $ — |

Based on the available objective evidence, management believes it is more likely than not that the net deferred tax assets will not be fully realizable. Accordingly, the Company has provided a full valuation allowance against its net deferred tax assets at December 31, 2002.

Reconciliation of the statutory federal income tax to the Company's effective tax:

| | Year Ended December 31, | |
|---|---|---|
| | 2002 | 2001 |
| Tax at federal statutory rate | (34.00)% | (34.00)% |
| State, net of federal benefit | (6.00) | (3.00) |
| Deferred taxes not recognized | 18.62 | 30.00 |
| Amortization of stock-based compensation | 11.92 | 6.00 |
| Other | 9.46 | 1.00 |
| | 0.00 % | 0.00 % |

As of December 31, 2002, the Company had a net operating loss carryforward of approximately $181.9 million for federal purposes and $88.6 million for state tax purposes. If not utilized, these carryforwards will begin to expire beginning in 2017 for federal purposes and 2005 for state purposes.

The Company has research credit carryforwards of approximately $3.3 million and $1.9 million for federal and state income tax purposes, respectively. If not utilized, the federal carryforward will expire in various amounts beginning in 2017. The California credit can be carried forward indefinitely.

The Tax Reform Act of 1986 limits the use of net operating loss and tax credit carryforwards in certain situations where changes occur in the stock ownership of a company. In the event the Company has had a change in ownership, utilization of the carryforwards could be restricted.

ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

**Note 10 Supplemental Cash Flow Information**

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

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2002 | 2001 | 2000 |
| Taxes paid | $ 231 | $ 100 | $ 1 |
| Interest paid | $ 143 | $ 150 | $ 382 |
| Non-cash investing and financing activities: | | | |
| Note receivable for preferred stock | $ — | $ — | $ 75 |
| (Repurchase) issuance of note receivable for common stock | $ (260) | $ (213) | $ 1,791 |
| Fixed assets acquired under capital lease | $ — | $ 13 | $ 2,209 |
| Fixed assets acquired with accounts payable or accrued liabilities | $ 48 | $ 640 | $ 5,257 |
| Accrual for IPO costs | $ — | $ 20 | $ 557 |
| (Conversion) issuance of warrants in conjunction with line of credit financing | $ — | $ (1,818) | $ 776 |
| Deferred stock-based compensation | $ 13,289 | $ 9,627 | $ 91,752 |
| Conversion of convertible subordinated notes into convertible preferred stock | $ — | $ 128,873 | $ 14,000 |

**Note 11 Employee Benefit Plan**

In January 1999, the Company adopted a defined contribution retirement plan under Section 401(k) of the Internal Revenue Code. This plan covers substantially all employees who meet minimum age and service requirements and allows participants to defer a portion of their annual compensation on a pre-tax basis. Company contributions to the plan may be made at the discretion of the Board of Directors. There have been no contributions by the Company since the inception of the plan.

**Note 12 Related Party Transactions**

*Loan to Officer*

In April 2002, the Company issued a loan in the amount of $200,000 at a note of 9.5% per annum to a former officer of the Company, who at the time the loan was made was the Company's Chairman of the Board. The note is secured by common stock of the Company. Interest is payable annually, principal is due on June 3, 2004.

*Employee Notes Receivable*

In connection with the exercise of certain stock options granted under the Company's stock option plan, the Company has received promissory notes equal to the total exercise price of these stock options. These notes are full recourse promissory notes, which bear interest at 9.5% per annum, and accrued interest is payable annually on the anniversary of the issuance date of the note. During 2002, the original due date of the notes were extended by 18 months. The notes are collateralized by the shares of common stock held by employees. Promissory notes for the exercise of certain stock options totaling $892,000 and $1,484,000 were outstanding as of December 31, 2002 and 2001, respectively. These notes are classified as a reduction of stockholders' equity (deficit).

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.**

Not applicable.

**PART III**

Certain information required by Part III is omitted from this Form 10-K because we intend to file a definitive Proxy Statement pursuant to Regulation 14A (the "Proxy Statement") not later than 120 days after the end of the fiscal year covered by this Form 10-K, and certain information to be included therein is incorporated herein by reference.

**ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT.**

The information required by this Item concerning our directors is incorporated by reference to the Proxy Statement under the section captioned "Election of Directors." The information required by this item concerning our executive officers is set forth in Part I, Item 4A–"Executive Officers of the Registrant" of this Report on Form 10-K. The information required by this item concerning compliance with Section 16(a) of the Exchange Act is incorporated by reference to the section entitled "Section 16(a) Beneficial Ownership Reporting Compliance" contained in the Proxy Statement.

**ITEM 11. EXECUTIVE COMPENSATION.**

The information required by this Item is incorporated by reference to the Proxy Statement under the section captioned "Executive Compensation."

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS.**

The information required by this Item regarding security ownership of certain beneficial owners is incorporated by reference to the Proxy Statement under the section captioned "Security Ownership of Certain Beneficial Owners and Management."

*Equity Compensation Plan Information*

The following table provides information as of December 31, 2002 about our common stock that may be issued upon the exercise of options and rights granted to employees, consultants or members of our Board of Directors under all existing equity compensation plans including the 1997 Equity Incentive Plan, the Employee Stock Purchase Plan, the 2001 Stock Incentive Plan, each as amended, and certain individual arrangements.

| Plan category | Number of securities to be issued upon exercise of outstanding options, warrants and rights (a) | Weighted average exercise price of outstanding options, warrants and rights (b) | Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c) |
|---|---|---|---|
| Equity compensation plans approved by security holders | 7,670,000(1)(2) | $ 6.54 | 10,022,000(3) |
| Equity compensation plans not approved by security holders | — | — | — |
| Total | 7,670,000 | $ 6.54 | 10,022,000 |

(1) This number reflects the number of securities to be issued upon exercise of outstanding options under the 2001 Stock Incentive Plan and arrangements outside of this Plan between Align Technology, Inc. and each

of two former employees. In January 2001, all outstanding options under the 1997 Equity Incentive Plan were subsumed under the 2001 Stock Incentive Plan. Currently there are no options outstanding under the 1997 Equity Incentive Plan.

(2) We are unable to ascertain with specificity the number of securities to be issued upon exercise of outstanding rights under the Employee Stock Purchase Plan or the weighted average exercise price of outstanding rights under the Employee Stock Purchase Plan.

(3) This number reflects securities available for future issuance under the 2001 Stock Incentive Plan and the Employee Stock Purchase Plan. In January 2001, all of the options available for issuance under the 1997 Equity Incentive Plan were subsumed under the 2001 Stock Incentive Plan. Currently there are no options available for issuance under the 1997 Equity Incentive Plan. Additionally, no options are available for issuance under any arrangement between Align Technology, Inc. and any individual. The 2001 Stock Incentive Plan provides that the number of shares of our Common Stock reserved for issuance thereunder will automatically increase on the first trading day of January in each calendar year by an amount equal to five percent (5%) of the total number of shares of Common Stock outstanding on the last trading day in December of the immediately preceding calendar year, with this annual increase not to exceed three million (3,000,000) shares. The Employee Stock Purchase Plan provides that the number of shares of our Common Stock reserved for issuance thereunder will automatically increase on the first trading day of January in each calendar year by an amount equal to three percent (3%) of the total number of shares of Common Stock outstanding on the last trading day in December of the immediately preceding calendar year, with this annual increase not to exceed one million five hundred thousand (1,500,000) shares.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.**

The information required by this Item is incorporated by reference to the Proxy Statement under the section captioned “Certain Relationships and Related Transactions.”

**ITEM 14. CONTROLS AND PROCEDURES.**

(a) *Evaluation of disclosure controls and procedures*.

Within the 90 days prior to the filing of this Annual Report on Form 10-K (the “Evaluation Date”), we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-14(c) and 15d-14(c) under the Exchange Act). Based upon that evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures are effective to ensure that material information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms. It should be noted, however, that the design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote.

(b) *Changes in internal controls.*

Subsequent to the Evaluation Date, there have been no significant changes in our internal controls or in other factors that could significantly affect these controls subsequent to the date of their last evaluation.

## PART IV

### ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K.

(a)

1. Financial Statements

The following documents are filed as part of this Annual Report on Form 10-K:



2. The following financial statement schedule is filed as part of this Annual Report on Form 10-K:

Schedule II—Valuation and Qualifying Accounts and Reserves

All other schedules have been omitted as they are not required, not applicable, or the required information is otherwise included.

3. Exhibits

Exhibits submitted with the Annual Report on Form 10-K as filed with the Securities and Exchange Commission and those incorporated by reference to other filings are listed on the Exhibit Index.

## SCHEDULE II: VALUATION AND QUALIFYING ACCOUNTS AND RESERVES

| | Balance at Beginning of Period | Additions (reductions) to Costs and Expenses | Write-offs | Reclasses from Other Accounts | Balance at End of Period |
|---|---|---|---|---|---|
| | | | (in thousands) | | |
| Allowance for doubtful accounts: | | | | | |
| Year ended December 31, 2000 | $ 33 | $ 461 | $ — | $ — | $ 494 |
| Year ended December 31, 2001 | 494 | 1,399 | (24) | 13 | 1,882 |
| Year ended December 31, 2002 | 1,882 | 1,068 | (821) | (18) | 2,111 |
| Valuation allowance for deferred taxes: | | | | | |
| Year ended December 31, 2000 | 7,269 | 25,254 | — | — | 32,523 |
| Year ended December 31, 2001 | 32,523 | 29,987 | — | — | 62,510 |
| Year ended December 31, 2002 | 62,510 | 20,555 | — | — | 83,065 |
| Allowance for excess and obsolete inventory and abandoned product: | | | | | |
| Year ended December 31, 2000(1) | — | — | — | — | — |
| Year ended December 31, 2001 | — | 555 | — | — | 555 |
| Year ended December 31, 2002 | 555 | 51 | (107) | (30) | 469 |

(1) The Company did not have significant inventory during the year ended December 31, 2000 and accordingly, there is no related reserve.

## EXHIBIT INDEX

| Exhibit Number | Description of Document |
|---|---|
| 3.1* | Amended and Restated Certificate of Incorporation of registrant. |
| 3.2* | Amended and Restated Bylaws of registrant. |
| 4.1* | Form of Specimen Common Stock Certificate. |
| 4.2(1) | Stock Purchase Agreement, dated November 26, 2002, by and between certain investors and registrant. |
| 10.1* | Amended and Restated Investors' Rights Agreement, among registrant and certain of its stockholders, dated September 16, 2000. |
| 10.2 | Reserved. |
| 10.3 | Reserved. |
| 10.4* | Lease Agreement by and between James Lindsey and registrant, dated June 20, 2000, for office space located at 881 Martin Avenue, Santa Clara, CA. |
| 10.5 | Reserved. |
| 10.6 | Reserved. |
| 10.7* | Shelter Services Agreement between registrant and ELAMEX, S.A. de C.V. dated February 16, 2000. |
| 10.7.1 | Amendment dated June 3, 2002 to Shelter Services Agreement by ELAMEX, S.A. DE C.V. and registrant. |
| 10.8 | Reserved. |
| 10.9 | Reserved. |
| 10.10 | Reserved. |
| 10.11 | Reserved. |
| 10.12 | Reserved. |
| 10.13*† | Registrant's 2001 Stock Incentive Plan. |
| 10.14*† | Registrant's Employee Stock Purchase Plan. |
| 10.15* | Form of Indemnification Agreement by and between registrant and its Board of Directors. |
| 10.16^(2) | Exclusive Marketing Agreement, dated October 18, 2001, by and between Discus Dental Impressions, Inc. and registrant. |
| 10.17 | Reserved. |
| 10.18(3) | Agreement to confirm consulting and board duties, dated February 26, 2002, between Kelsey Wirth and registrant. |
| 10.19(3) | Transition, Consulting and Separation Agreement, dated March 27, 2002, between Muhammad Ziaulluh Chishti and registrant. |
| 10.20†(3) | Employment Agreement dated March 27, 2002 between Thomas M. Prescott and registrant. |
| 10.21(3) | Separation Agreement dated March 28, 2002 between Ike Udechuku and registrant. |
| 10.22(4) | Employment Offer Letter dated July 10, 2002 for Roger E. George, Vice-President of Legal Affairs and General Counsel. |
| 10.23(5) | Employment Offer Letter dated July 15, 2002 for David S. Thrower, Vice-President of Global Marketing. |
| 10.24(6) | Employment Offer Letter dated August 22, 2002 for Eldon M. Bullington, Chief Financial Officer and Vice-President, Finance. |

| Exhibit Number | Description of Document |
|---|---|
| 10.25† | Form of Employment Agreement entered into by and between registrant and each of Amir Abolfathi, Eldon M. Bullington, Jon Field, Roger E. George, Len M. Hedge and David S. Thrower. |
| 10.26† | Stock Option Agreement dated January 4, 2001 by and between Kelsey Wirth and registrant. |
| 10.27† | Stock Option Agreement dated January 4, 2001 by and between Zia Chishti and registrant. |
| 10.28 | Lease Agreement dated August 30, 2001 by and between James S. Lindsey and registrant for office space located at 821 Martin Avenue, Santa Clara, CA. |
| 10.29 | Amendment to Master Professional Services Agreement dated May 20, 2002 by and between Invisible IT Inc. and registrant. |
| 10.30 | Settlement Agreement and Mutual Release dated February 6, 2003 by and among GW Com, Inc., now known as Byair, Inc., Intelecady, Inc., James S. Lindsey and registrant. |
| 10.31 | Consulting Agreement dated June 17, 2002 by and between Peter Riepenhausen and registrant. |
| 10.32† | Settlement and General Release Agreement dated October 1, 2002 by and between Stephen Bonelli and registrant. |
| 10.33 | Director Offer Letter dated March 6, 2003 for David E. Collins. |
| 10.34 | Settlement Agreement dated November 27, 2002 by and between Phillippe Mollard and registrant. |
| 10.35 | Loan and Security Agreement dated December 20, 2002 by and between Comerica Bank-California and registrant. |
| 21.1* | Subsidiaries of the registrant. |
| 23.1 | Consent of PricewaterhouseCoopers LLP, Independent Accountants. |
| 24.1 | Power of Attorney (see signature page). |
| 99.1 | Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |

* Incorporated herein by reference to the corresponding exhibit to Registrant's Form S-1, as amended, filed with the Securities and Exchange Commission on November 14, 2000 (File No. 333-49932).

† Management contract or compensatory plan or arrangement filed as an Exhibit to this form pursuant to Items 14(a) and 14(c) of Form 10-K.

^ Portions of this exhibit have been omitted pursuant to a request for confidential treatment. Such omitted confidential information has been designated by asterisks (*****) and has been filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended, pursuant to an application for confidential treatment.

(1) Incorporated by reference to Exhibit 4.1 filed with the registrant's Report on Form 8-K, filed with the Securities and Exchange Commission on November 21, 2002.

(2) Incorporated by reference to the exhibit bearing the same number filed with registrant's Annual Report on Form 10-K for the year ended December 31, 2002.

(3) Incorporated by reference to the exhibit bearing the same number filed with registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2002.

(4) Incorporated by reference to Exhibit 10.18 filed with registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2002.

(5) Incorporated by reference to Exhibit 10.19 filed with registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2002.

(6) Incorporated by reference to Exhibit 10.20 filed with registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2002.

(b) *Reports on Form 8-K*

On November 21, 2002 Align filed a Report on Form 8-K with the Securities and Exchange Commission under Item 5—Other Events—in connection with the private placement it completed in November 2002, and filed the related Stock Purchase Agreement as an exhibit to this Report on Form 8-K.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on March 27, 2003.

ALIGN TECHNOLOGY, INC.

By: /s/ THOMAS M. PRESCOTT

**Thomas M. Prescott**
**President and Chief Executive Officer**

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Thomas M. Prescott and Eldon M. Bullington, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| | | |
|---|---|---|
| /s/ THOMAS M. PRESCOTT<br>**Thomas M. Prescott** | President and Chief Executive Officer (Principal Executive Officer) | March 27, 2003 |
| /s/ ELDON M. BULLINGTON<br>**Eldon M. Bullington** | Chief Financial Officer and Vice President, Finance (Principal Financial Officer and Principal Accounting Officer) | March 27, 2003 |
| /s/ KELSEY WIRTH<br>**Kelsey Wirth** | Director | March 27, 2003 |
| /s/ BRIAN DOVEY<br>**Brian Dovey** | Director | March 27, 2003 |
| /s/ JOSEPH LACOB<br>**Joseph Lacob** | Director | March 27, 2003 |
| /s/ H. KENT BOWEN<br>**H. Kent Bowen** | Director | March 27, 2003 |

**CERTIFICATIONS**

I, Thomas M. Prescott, certify that:

1. I have reviewed this annual report on Form 10-K of Align Technology, Inc.;
2. Based on my knowledge, this annual 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 annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
   a) designed such disclosure controls and procedures 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 annual report is being prepared;
   b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
   c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
   a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: March 27, 2003

/s/ THOMAS M. PRESCOTT

**Thomas M. Prescott**
**President and Chief Executive Officer**

I, Eldon M. Bullington, certify that:

1. I have reviewed this annual report on Form 10-K of Align Technology, Inc.;
2. Based on my knowledge, this annual 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 annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
   a) designed such disclosure controls and procedures 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 annual report is being prepared;
   b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
   c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
   a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: March 27, 2003

/s/ ELDON M. BULLINGTON

**Eldon M. Bullington**
**Chief Financial Officer and**
**Vice President, Finance**

## EXHIBIT INDEX

| Exhibit Number | Description of Document |
|---|---|
| 3.1* | Amended and Restated Certificate of Incorporation of registrant. |
| 3.2* | Amended and Restated Bylaws of registrant. |
| 4.1* | Form of Specimen Common Stock Certificate. |
| 4.2(1) | Stock Purchase Agreement, dated November 26, 2002, by and between certain investors and registrant. |
| 10.1* | Amended and Restated Investors' Rights Agreement, among registrant and certain of its stockholders, dated September 16, 2000. |
| 10.2 | Reserved. |
| 10.3 | Reserved. |
| 10.4* | Lease Agreement by and between James Lindsey and registrant, dated June 20, 2000, for office space located at 881 Martin Avenue, Santa Clara, CA. |
| 10.5 | Reserved. |
| 10.6 | Reserved. |
| 10.7* | Shelter Services Agreement between registrant and ELAMEX, S.A. de C.V. dated February 16, 2000. |
| 10.7.1 | Amendment dated June 3, 2002 to Shelter Services Agreement by ELAMEX, S.A. DE C.V. and registrant. |
| 10.8 | Reserved. |
| 10.9 | Reserved. |
| 10.10 | Reserved. |
| 10.11 | Reserved. |
| 10.12 | Reserved. |
| 10.13*† | Registrant's 2001 Stock Incentive Plan. |
| 10.14*† | Registrant's Employee Stock Purchase Plan. |
| 10.15* | Form of Indemnification Agreement by and between registrant and its Board of Directors. |
| 10.16^(2) | Exclusive Marketing Agreement, dated October 18, 2001, by and between Discus Dental Impressions, Inc. and registrant. |
| 10.17 | Reserved. |
| 10.18(3) | Agreement to confirm consulting and board duties, dated February 26, 2002, between Kelsey Wirth and registrant. |
| 10.19(3) | Transition, Consulting and Separation Agreement, dated March 27, 2002, between Muhammad Ziaulluh Chishti and registrant. |
| 10.20†(3) | Employment Agreement dated March 27, 2002 between Thomas M. Prescott and registrant. |
| 10.21(3) | Separation Agreement dated March 28, 2002 between Ike Udechuku and registrant. |
| 10.22(4) | Employment Offer Letter dated July 10, 2002 for Roger E. George, Vice-President of Legal Affairs and General Counsel. |
| 10.23(5) | Employment Offer Letter dated July 15, 2002 for David S. Thrower, Vice-President of Global Marketing. |
| 10.24(6) | Employment Offer Letter dated August 22, 2002 for Eldon M. Bullington, Chief Financial Officer and Vice-President, Finance. |

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| Exhibit Number | Description of Document |
|---|---|
| 10.25† | Form of Employment Agreement entered into by and between registrant and each of Amir Abolfathi, Eldon M. Bullington, Jon Field, Roger E. George, Len M. Hedge and David S. Thrower. |
| 10.26† | Stock Option Agreement dated January 4, 2001 by and between Kelsey Wirth and registrant. |
| 10.27† | Stock Option Agreement dated January 4, 2001 by and between Zia Chishti and registrant. |
| 10.28 | Lease Agreement dated August 30, 2001 by and between James S. Lindsey and registrant for office space located at 821 Martin Avenue, Santa Clara, CA. |
| 10.29 | Amendment to Master Professional Services Agreement dated May 20, 2002 by and between Invisible IT Inc. and registrant. |
| 10.30 | Settlement Agreement and Mutual Release dated February 6, 2003 by and among GW Com, Inc., now known as Byair, Inc., Intelecady, Inc., James S. Lindsey and registrant. |
| 10.31 | Consulting Agreement dated June 17, 2002 by and between Peter Riepenhausen and registrant. |
| 10.32† | Settlement and General Release Agreement dated October 1, 2002 by and between Stephen Bonelli and registrant. |
| 10.33 | Director Offer Letter dated March 6, 2003 for David E. Collins. |
| 10.34 | Settlement Agreement dated November 27, 2002 by and between Phillippe Mollard and registrant. |
| 10.35 | Loan and Security Agreement dated December 20, 2002 by and between Comerica Bank-California and registrant. |
| 21.1* | Subsidiaries of the registrant. |
| 23.1 | Consent of PricewaterhouseCoopers LLP, Independent Accountants. |
| 24.1 | Power of Attorney (see signature page). |
| 99.1 | Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |

* Incorporated herein by reference to the corresponding exhibit to Registrant's Form S-1, as amended, filed with the Securities and Exchange Commission on November 14, 2000 (File No. 333-49932).

† Management contract or compensatory plan or arrangement filed as an Exhibit to this form pursuant to Items 14(a) and 14(c) of Form 10-K.

^ Portions of this exhibit have been omitted pursuant to a request for confidential treatment. Such omitted confidential information has been designated by asterisks (*****) and has been filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended, pursuant to an application for confidential treatment.

(1) Incorporated by reference to Exhibit 4.1 filed with the registrant's Report on Form 8-K, filed with the Securities and Exchange Commission on November 21, 2002.

(2) Incorporated by reference to the exhibit bearing the same number filed with registrant's Annual Report on Form 10-K for the year ended December 31, 2002.

(3) Incorporated by reference to the exhibit bearing the same number filed with registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2002.

(4) Incorporated by reference to Exhibit 10.18 filed with registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2002.

(5) Incorporated by reference to Exhibit 10.19 filed with registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2002.

(6) Incorporated by reference to Exhibit 10.20 filed with registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2002.

SHELTER SERVICES AGREEMENT BETWEEN

ALIGN TECHNOLOGY, INC.
AND
ELAMEX, S.A. DE C.V.

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SHELTER SERVICES AGREEMENT BETWEEN

ALIGN TECHNOLOGY, INC.
AND
ELAMEX, S.A. DE C.V.

This agreement ("Agreement") made as of this 3rd day of June, 2002 by Align Technology, Inc. Santa Clara, CA. (hereinafter ALIGN) and ELAMEX, S.A. DE C.V., a company duly incorporated in the Republic of Mexico, with principal offices in C. Juarez, Chihuahua, Mexico, (hereinafter "ELAMEX").

A. Whereas, ALIGN desires to have ELAMEX assemble products in Mexico from parts, materials and certain equipment supplied by ALIGN (the "Product"); and

B. Whereas, ELAMEX desires to perform such services and maintains status as a Maquiladora duly authorized by the Mexican Secretary of Commerce and Industrial Development, and

C. Whereas, both parties warrant and represent that they are duly authorized to execute this Agreement, and such authorization is in full force and effect.

Now, therefore, in consideration of the mutual covenants and obligations hereinafter set forth, the parties agree as follows:

1. MANUFACTURING SPACE

1.1. ELAMEX agrees to perform the Services for ALIGN at the ELAMEX facility designated as Elamex Plant No. 11 located in the Fernandez Industrial Park, in Cd. Juarez, Chihuahua, Mexico (the "Facility"), using parts, materials, production supplies, packaging material and certain equipment supplied by and belonging to ALIGN. ELAMEX shall arrange sufficient Facility and facility services ("Services") to enable it to assemble the Product. Such Facility and Services shall include as a minimum:

1.1.1. A space of 23,088 square feet for the assembly of the Product, warehousing of parts and assembled Product, offices and allocated space ("Space") as described in Exhibit "A". Share space will be reviewed time to time to adjust cost shared calculation based on percent utilization of total manufacturing space.

1.2. The Facility will have at a minimum:

1.2.1. Modern devices for the supply of heat, evaporative cooling, lighting and water;

1.2.2. Industrial electrical power; and

1.2.3. A dedicated Mexican non-toll telephone line, with extensions for the resident manager and his staff as well as normal office furnishing.

1.3. Upon request of ALIGN for additional Services, ELAMEX shall use its best efforts to provide the same in an efficient manner at a fair and reasonable cost.

2. SPACE SERVICES

2.1. ELAMEX shall supply the following services, at ALIGN's expense to the Space:

2.1.1. Utilities for heating, lighting and cooling;

2.1.2. Janitorial services, including trash and refuse removal.

2.1.3. Repair and maintenance of the Space and the Facility; and

2.1.4. Facility security.

2.2. All expenses will be charged to ALIGN with a mark up according to Exhibit B.

3. IMPORT/EXPORT SERVICES

3.1. ELAMEX shall provide all necessary administrative services to effect shipment of equipment and material to and from Mexico, using the information supplied by ALIGN. ALIGN will supply such information in a timely fashion so that ELAMEX may obtain all necessary permits. Such administrative services shall include, but not be limited to, securing Mexican import permits, preparation of required customs clearance papers, and all necessary trucking, handling, moving, and storage.

3.2. ELAMEX will provide importation of raw materials and parts from ELAMEX' warehouse in El Paso, Texas to Mexico, and exportation of assembled Product to El Paso. Align shall reimburse the cost of any south and northbound services, plus the mark-up table showing on exhibit B, for Customs.

3.3. ALIGN will provide the trailer(s) as required. ELAMEX may rent trailer(s) on behalf of ALIGN, if so instructed. ALIGN shall reimburse such cost at the actual cost plus a markup according to Exhibit B.

4. MEXICAN CUSTOMS, DUTIES, TAXES AND OTHER CHARGES

4.1. ELAMEX will be the importer of record for Mexican Customs purposes.

4.2. ELAMEX shall pay all Mexican customs tariffs, duties, bonds, and Mexican customs broker's charges, and any and all other charges, fees, levies, or assessments made pursuant to Mexican law in effect as to the importation to and exportation from Mexico of ALIGN's Product and/or equipment. ALIGN will reimburse for any expenses incurred by ELAMEX.

4.3. ALIGN will reimburse ELAMEX for its payment of the Mexican Derecho De Tramite Aduanero ("DTA") tax. The DTA tax is a tax on raw materials, tools, machinery, equipment, accessories and spare parts imported into Mexico. At present time, the DTA tax is according as in exhibit "H".

4.4. ALIGN shall pay all imposed Mexican inventory taxes as to ALIGN's Product and equipment in ELAMEX's possession at the Facility. ELAMEX shall substantiate such taxes.

5. U. S. CUSTOMS, DUTIES, TAXES AND OTHER CHARGES

5.1. ALIGN will be importer of record for U.S. Customs' purposes.

5.2. ALIGN shall pay all U.S. customs tariffs, duties, bonds, and U.S. customs broker's charges, and any and all other charges, fees, levies, or assessments made pursuant to U.S Customs Code as to the importation to and exportation from the U.S. of ALIGN's Product and/or equipment related to this Agreement.

6. PRODUCT ASSEMBLY

6.1. ELAMEX agrees to instruct its personnel to assemble the Product in accordance with the specifications provided by ALIGN. Documentation including standard operating procedures, specifications, manufacturing instructions etc. will be supplied and maintained by ALIGN. Any changes to processes, systems and/or documentation at ELAMEX that may impact ALIGN's products shall be reported to ALIGN's Management promptly. ALIGN will approve such changes before implementation into the manufacturing processes at ELAMEX.

6.2. The parties understand that the assembly process productivity and efficiency are the responsibility of ALIGN and will be administered by ALIGN through its representative. ELAMEX shall make available to ALIGN and to ALIGN's representative any support services in the areas of engineering, systems, quality assurance that ELAMEX has the resources to provide. The price ELAMEX will charge ALIGN for those services, will be communicated to ALIGN before the rendering of such services.

7. PERSONNEL SERVICES AND MANNING TABLE

7.1. ELAMEX shall assign personnel to perform the transportation, receiving, handling and storage of parts and the assembly, packaging and shipment of the Product. Such personnel shall include but shall not be limited to assembly operators, material handlers, mechanics, quality control inspectors, warehousemen, test technicians and group leaders. ELAMEX shall also assign production supervisors, superintendents and engineers to manage the assembly of the Product. ELAMEX shall provide overall project management including accounting, import/export, personnel services, quality control, and materials and production management. ELAMEX will use its best effort to insure employee continuity. The position, numbers and levels, shall be listed in a Manning Table similar to the example

attached hereto as Exhibit D. The Manning Table may be modified from time to time by mutual agreement.

7.2. Should fluctuation in ALIGN's production schedules require that the number of direct or indirect labor employees be reduced, such reduction may be realized through the application of any combination of the following procedures at ALIGN's written request:

7.2.1. ELAMEX may use its best efforts to place the excess employees in one of its other operations;

7.2.2. ALIGN can instruct ELAMEX to allow for the reduction through natural attrition; and/or

7.2.3. ALIGN may instruct ELAMEX to terminate employment of the number of excess employees through payment to them of legal severance.

7.3. The parties understand that the total number of employees assigned by ELAMEX to ALIGN according to the terms of this Agreement will at no time be less than the total number indicated on the most recently approved Manning Table, except during the ramp up period which will begin on 15, 2000 and will end on May 15, 2000.

7.4. There will be no cost to ALIGN resulting from the application of the procedures described in paragraphs 7.2.1 and 7.2.2 herein. Should ALIGN opt for the application of the procedure described in 7.2.3, ALIGN shall pay ELAMEX the full amount of any severance benefits made under Mexican law. ELAMEX will notify ALIGN in writing as to the amount of such severance in advance of any such payments.

7.5. Should ALIGN's production schedules require that the number of direct or indirect labor employees be increased, ALIGN will notify ELAMEX in writing as to the number of additional personnel it will require. Request for additional personnel shall not be in excess of 40 direct labor operator per workweek.

7.6. Exhibit D attached hereto is a description of the employee positions, the skill levels and hourly rates of the direct labor, indirect labor and overall project management. ELAMEX will not make modifications to Exhibit D without ALIGN's written approval, except as provided for in paragraph 8.1 and/or 8.2, hereinafter.

7.7. ELAMEX may require, at ALIGN's expense a medical physical examination of all applicants prior to employment and will employ only those applicants which are physically able to perform their assigned tasks.

7.8 All personnel hired by ELAMEX and assigned to ALIGN to perform assembly, supervisory and administrative services shall be paid by ELAMEX. ELAMEX shall maintain all accounting, administrative payroll taxes, and required contributions and bookkeeping records pertaining to such personnel. ELAMEX also will hire a nurse to be on the premises, as required by law. Neither ELAMEX nor any of its employees shall in any sense be considered an employee or an agent of ALIGN, nor shall ELAMEX' employees be entitled or eligible to participate in any benefit or privileges given or extended by ALIGN to its employees. ALIGN agrees not to hire any Mexican national employees during the Term of this Agreement except for plant managers, which will be on ALIGN's U. S. payroll. However ALIGN may decide to hire a Mexican National as ALIGN employee, under ALIGN US payroll. The allocation of this employee will be ALIGN Technology in Santa Clara, CA. If such employee presents a situation in which for ELAMEX represents any cost, ALIGN shall reimburse ELAMEX for any expenses that may occur.

7.7.1. After the ramp up period as defined in paragraph 7.3 hereinabove, should ELAMEX not comply for more than two consecutive weeks with the request with for additional personnel up to the maximum number of direct labor employees as provided for in paragraph 7.5 hereinabove, ALIGN may seek second source in Mexico for manufacture of the product.

7.9 For the following eighteen (18) months after termination, ALIGN convenants and agrees not to hire any of ELAMEX' active or inactive management employees without ELAMEX' written consent.

7.10 ELAMEX shall ensure that personnel including supervisors, trainers and line operators are adequately trained to perform their respective functions and understand and adhere to the requirements of Quality System as defined by FDA's Quality System Requirements and ISO 9000 Standards. ELAMEX shall maintain their ISO certification. Any observation or nonconformance cited during the course of ISO audits shall be shared with ALIGN including corrective action plans and closure. ELAMEX shall permit ALIGN or their representative to perform Quality Systems audits of ELAMEX operations that impact ALIGN's products, as required.

8. INVOICING AND OTHER CHARGES

8.1. ALIGN shall reimburse ELAMEX any and all expenses incurred by ELAMEX in accordance with the terms of this Agreement, plus additional percentage of those expenses according to the schedule on Exhibit B.

8.2. Invoices shall be submitted weekly by ELAMEX to ALIGN's representative, for review and approval. A listing of all expenses for which ELAMEX requires reimbursement shall be attached to each invoice. ALIGN agrees to pay such invoices in U. S. dollars within 30 calendar days of the date of the invoice. ALIGN further agrees to pay ELAMEX a late payment to be calculated at the annualized rate of 18%, accruable per day from the date that payment is due through the date that payment is received by ELAMEX or ELAMEX' bank. For invoicing purposes, each week shall begin on Monday at 12:00 a.m. and end on Sunday at 11:59 p.m

8.3. All payroll and non-payroll related expenditure must be approved by one of ALIGN's authorized representatives. All non-payroll expenditures will be authorized prior to their being incurred.

8.4. The persons authorized by ALIGN to approve expenditures and examples of their respective signatures are listed and attached hereto as Exhibit E.

8.5. ALIGN will reimburse and pay ELAMEX all government mandated and expenses related to any employee severance or termination in connection with any and all employees hired at ALIGN's discretion at the actual cost plus a markup according to Exhibit B.

8.6. ALIGN further agrees to reimburse and pay ELAMEX any out-of-pocket cost arising from or pursuant to ELAMEX' compliance with applicable laws, regulations, policies, rulings, directive and any other requirements (including ALIGN's written requests) concerning the environment, health and or safety requirements resulting from the use of certain materials and processes in the assembly of the Product.

8.7. If ALIGN fails to pay timely, as required by the terms of this Agreement, any of its indebtedness to ELAMEX, ALIGN hereby agrees to assign and make over to ELAMEX all of its interest in all inventory of raw materials, work-in-process, equipment and finished goods of ALIGN, while the same are on the premises of the Facility or otherwise under the control or possession of ELAMEX in order to secure all present and future indebtedness of ALIGN to ELAMEX. ALIGN must advise ELAMEX in writing, prior to the execution of this Agreement of any prior lien or interest granted on such items. In addition, ALIGN warrants and hereby represents to ELAMEX that no other entity shall be granted any interest in such items without the prior written approval of ELAMEX.

8.8. Payment shall be addressed to ELAMEX's designated mailing address in The United States of America.

9. TERM

9.1. The initial term ("Term")of this Agreement shall be for a period of six (6) months commencing on June 3, 2002 ("Commencement Date"). ALIGN shall have the option to renew this Agreement in its entirety for successive periods of six (6) months each. Renewal of this Agreement for such successive six (6) months periods shall be automatic and irrevocable, unless ELAMEX or ALIGN request that the Agreement not be renewed and such request is received by the other party at least one hundred and twenty (120) days prior to the end of the first six (6) months term or any successive term thereafter.

10. EARLY TERMINATION

10.1. Upon termination or expiration of this Agreement, and provided that ALIGN has paid or tenders at the date of termination all sums due ELAMEX hereunder, the options described in sections 10.1.1 and 10.1.2 may be exercised by ALIGN.

10.1.1. ALIGN may request and orderly shutdown of the assembly operation. Return of materials, tools, parts, equipment, and other related property of ALIGN by ELAMEX shall be completed at ALIGN's expense. Furthermore, ALIGN agrees to:

10.1.1.1. Pay all severance cost of applicable ELAMEX personnel as specified in section 10.3(ii); or

10.2. ALIGN may request that all Services and employee-related contract and obligations be transferred from ELALMEX to ALIGN's Mexican affiliate (the "Affiliate") to be incorporated by ALIGN for such purpose as follows:

10.2.1. The ELAMEX employees that occupy the positions listed on the then current Manning Table shall be transferred to the Affiliate on ALIGN's request. The costs arising therefrom, including but not limited to legal expenses and employee severance from employees not transferred, if any, shall be borne by ALIGN; and

10.3. In the event ALIGN terminates this Agreement in violation hereof before the end of the Term, or breaches this Agreement, the only damages or cost for which it shall be liable shall be liquidated damages consisting of (i) the average of the monthly administrative fee for each month until the end of the term of the Agreement or for six months, whichever is shorter, (ii) the legal severance costs as required by Mexican law, (ii) any labor and operating costs then owed to ELAMEX by ALIGN under section 8. In the event this Agreement is extended for one (1) or more terms, ALIGN's obligation to the payment of liquidated damages will be equal to the end of the then current term of 90 days which ever is shorter.

11. WARRANTIES

11.1. ELAMEX and ALIGN mutually represent, covenant and warrant as follows:

11.1.1. Neither party nor any officer, director, controlling shareholder, or employee of either party is prohibited by any agreement, contract, of other obligation from engaging in the services to be performed pursuant hereto;

11.1.2. Neither the execution of this Agreement nor compliance with the terms and conditions hereof shall constitute a breach of any statute, ordinance, law, or regulation of any governmental authority or of any instrument or document to which either party is or may be bound;

11.2. Each party shall perform all of its mutual obligations created by the terms of this Agreement in compliance with all applicable U.S. and Mexican laws and regulations. A party shall not be considered in default or breach of this Agreement, however, if it fails to perform all of their obligations created by the terms of this Agreement in compliance with all applicable U.S. and Mexican laws and regulations, because of, in connection with, or pursuant to the other party's act or failure to act.

11.3. Each party shall indemnify, defend and hold the other party harmless from and against any and all claims, lawsuits, costs, customs penalties, damages, expenses, and liabilities of whatsoever nature and kind (including, but not limited to, attorney's fees and legal assistant's fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge, judgements), as incurred, directly or indirectly related to or arising from, the breach or untruthfulness of any of the representations and warranties of this Agreement or such party's failure to comply with the terms of this Agreement or U. S. and Mexican laws and regulations applicable, including any obligation derived from Mexican labor law, IMSS law, INFONAVIT law, income tax law and State and Federal payroll tax laws and any other law or legal provision so long as the indemnified party is nor in material fault with respect thereto

12. RELATIONSHIP OF THE PARTIES

12.1. Nothing contained in this Agreement shall be construed to imply a joint venture, partnership, or principal-agent relationship between the parties, and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, expressed or implied, on behalf of the other party. Neither shall this Agreement be construed to create a right, expressed or implied, on

behalf of or for use of any parties, aside from ALIGN and ELAMEX, and ALIGN and ELAMEX shall not be obligated, separately or jointly, to any third parties by virtue of this Agreement.

13. INSURANCE

13.1. Insurance coverage of ALIGN's property that is in ELAMEX's possession will be by ELAMEX under a "Special Causes of Loss" form, subject to the terms, conditions and exclusions of ELAMEX's insurance policies. ELAMEX is to provide coverage up to an amount of $7,000,000 ( seven million 00/100 US Dollars) for the benefit of ALIGN and naming ALIGN as an additional insured. ALIGN will be responsible for the amount of the deductible. To be certain that the amount ELAMEX provides to the insurance carrier is adequate, it is incumbent upon ALIGN to notify ELAMEX immediately in writing of any need to increase or decrease insurance amounts on ALIGN replacement value of machinery, equipment and maximum value of inventories in ELAMEX's possession.. ELAMEX shall give ALIGN an opportunity to review and approve the policy, and shall provide a certificate evidencing such insurance with a provision that coverage may not be canceled without 30 days prior notice to ALIGN. This certificate will fulfill ELAMEX's obligation under this paragraph.

13.2. The parties release each other, and their respective authorized representatives, for any claim of damage to any person or to the Facility and the fixures, personal property, improvements and alternations in or to the Facility that are caused by or result from risks insured under insured against and paid for under any insurance policies carried by the parties or in force at the time any such claim arose.

14. NOTICES

14.1. All notices required to be sent to either party to this Agreement shall be in writing and sent by FedEx, DHL, UPS, e-mail or registered or certified mail, postage or delivery prepaid, return receipt requested, to the address of the other party hereto, as set forth below, or to such other addresses as may hereafter be designated in writing:

14.1.1. As to ALIGN:ALIGN TECHNOLOGY, INC.

851 Martin Avenue

Santa Clara, CA. 95050
Attn: Julie de la Fuente
Telephone:

As to ELAMEX : ELAMEX, S.A. DE C.V.
1800 Northwestern DR.
El Paso, TX. 79912
Attn.: Mr. Richard Spencer
President and CEO
Telephone: (915) 877-1111

15. FORCE MAJEURE

15.1. Anything herein to the contrary notwithstanding, ELAMEX shall not be required to perform any term, condition, or covenant in this Agreement if such performance is delayed or prevented by Force Majeure (Force Majeure) which, for purposes of this Agreement, shall mean the following: acts of God; strikes; lockouts; material or labor restrictions imposed by any governmental authorities, suspension of civil rights; floods; and any other causes not reasonably within the control of ELAMEX, which by the exercise of due diligence ELAMEX is unable, wholly or in part, to prevent or overcome and which prevent the performance by either party of the terms of this Agreement.

15.2. If a Force Majeure continues for more than thirty (30) consecutive days, ALIGN or ELAMEX may terminate this Agreement after thirty (30) consecutive days of a Force Majeure situation by providing thirty (30) days written notice to the appropriate party of such termination, provided such notice is sent while performance of this Agreement is prevented by such Force Majeure, and in that event, ELAMEX will transfer ALIGN's property to ALIGN in (closest US port of entry), Texas, at ALIGN's expense provided all Mexican customs requirements are satisfied. ALIGN's entire obligation to ELAMEX after such termination situation will be the payment of any unpaid amounts due to ELAMEX as stated in paragraph 8 due to ELAMEX plus employee severance costs

16. BAILMENT

16.1. Property delivered by ALIGN to ELAMEX under the terms if this Agreement is deemed to be bailed to ELAMEX for ALIGN's benefit. The initial property to be bailed to ELAMEX is described in a file that will be in possession with the Project Manager. All Product and other items bailed to ELAMEX shall be described in a pedimento, separate from any goods owned by any other person, entity, or organization, including ELAMEX. It shall be ELAMEX' responsibility to ensure that the bailed property is insured, which cost shall be borne by ALIGN. ALIGN may, at its option, procure its own insurance.

16.2. The bailment is a free bailment. ALIGN will provide equipment, raw materials and other items to ELAMEX free of charges, subject to the terms of this Agreement.

16.3. ALIGN agrees to deliver equipment, raw materials and other items to ELAMEX and ELMAEX agrees to accept delivery of such, in accordance with the terms described herein.

16.4. ELAMEX agrees:

16.4.1. To use the equipment, raw materials and other items exclusively to carry out activities required to manufacture the Product for the benefit of ALIGN;

16.4.2. To use such equipment, raw materials and other items in accordance with industry standards and the corresponding laws, regulations, norms, ordinances and rules in force in Mexico; and

16.4.3. That the equipment, raw materials and other items shall not be used outside the Facility, except with the prior written consent of ALIGN. ELAMEX may not use or permit the use of the equipment, raw materials and other items in any manner so as to cause ALIGN or the owner of such to lose deductions, credits or other benefits of ownership thereof.

16.5. ELAMEX shall promptly notify ALIGN of knowledge of any damage to equipment, raw materials or other items.

16.6. Upon delivery to ELAMEX, equipment will bear marks showing that ALIGN owns such. ELAMEX shall insure that equipment remains so marked throughout the term of this Agreement.

16.7. ALIGN or its designated agent shall have the right, from time to time, to inspect equipment, raw materials, Product and ELAMEX' records and books with respect to such at any reasonable time. Such inspections will be allowed during normal office hours and be requested three (3) days prior to the date of inspection,

17. JURISDICTION & DISPUTES

17.1. This Agreement is under the laws of the State of Texas.

17.2. The parties hereto expressly agree to submit themselves to the jurisdiction of the District Court for the State of Texas in and for the County of El Paso and, in the case of diversity or a federal action, to The United States District Court in El Paso, Texas. The parties hereof further agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to them .

18. MUTUAL INDEMNITY

18.1. ALIGN shall have no liability and ELAMEX shall indemnify, defend and hold harmless ALIGN and its agents and representatives against any and all claims, judgements, damages, encumbrances, liens, reasonable attorney's fees and reasonable consultant fees, as incurred, to the extent they arise from violations of law, regulations or norms related to Hazardous Substances (as hereinafter defined) at or about the Facility caused or permitted by ELAMEX, its agents, employees, contractors or invitees.

18.2. ELAMEX shall have no liability and ALIGN shall indemnify, defend and hold harmless ELAMEX and its agents and representatives against, any and all claims, judgements, damages, encumbrances, reasonable attorney's fees and reasonable consultant fees, as incurred, to the extent they arise from violations of law, regulations or norms related to Hazardous Substances (as hereinafter defined) at or about the Facility caused directly by the independent acts or omissions of ALIGN's representatives, its agents, employees, contractors or invitees.

18.3. For the purposes hereof, the term "Hazardous Substance" shall mean (i) any substance, chemical or wastes that are listed or defined as hazardous, toxic or dangerous under Mexican Federal and State Law, including ecological norms and regulations, or the Comprehensive Environmental Response Compensation and Liability Act 142 U.S.C. 9601 et seq., and (ii) radioactive materials, petroleum or hydrocarbons.

19. DEFAULT

19.1. A party may terminate this Agreement immediately upon written notice to the other, unless otherwise specified herein, upon the occurrence of any of the following events:

19.2. The commission of a beach of any undertakings, obligations or convenants contained herein and the failure to cure the breach, within thirty (30) days after written notification.

19.3. If any petition in bankruptcy has been filed by or against a party, or any order shall be issued or any resolution passed for the winding up, liquidation or dissolution of a party, or goods or property shall be taken in execution, or if a party shall cease to be a going concern, or makes an assignment for the benefit of creditors; or

19.4. Any assignment by a party hereto in violation of this Agreement of all or any portion of its rights or obligations under this Agreement to any person or entity.

20. MISCELLANEOUS

20.1. The terms and provisions contained herein constitute the entire agreement between the parties and shall supersede all previous communications, oral or written, between the parties hereto concerning the subject matter of this Agreement. No agreement of understanding varying or extending the same shall be binding upon either party hereto unless in writing and signed by a duly authorized officer or representative hereof.

20.2. Each individual executing this Agreement on behalf of a corporation represents and warrants that he is duly authorized to execute and deliver this Agreement on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation, a copy of which shall be delivered within fourteen (14)days of the execution of this Agreement.

20.3. All convenants and agreements of ELAMEX and ALIGN which, by their terms or by reasonable implication, are to be performed, in hole or in part, after the expiration or termination of this Agreement, shall survive such expiration or termination for any reason.

20.4. If, for any reason, any provision(s) of this Agreement is/are determined to be invalid or unenforceability shall not affect the remaining provisions of this Agreement.

20.5. All exhibits/schedules referenced in this Agreement may be modified, amended, or changed as approved in writing by the parties to this Agreement. Such written approval shall indicate the date said modification, amendment, or change is effective and be signed by all parties to this Agreement.

20.6. This Agreement was prepared following arm's length negotiations between the parties and is to be deemed as prepared jointly by the parties hereto. In the event of any uncertainty or ambiguity existing in this Agreement, it shall not be interpreted against either party but according to the application of general rules of construction and interpretation of contracts.

20.7. This Agreement may be executed in identical counterparts, in which event, each of said counterparts shall be deemed an original. All such counterparts taken together shall constitute one and the same instrument.

20.8. Time is of the essence of this Agreement. No failure by a party to take action on account of any default by the other party, whether in a single instance or repeatedly, shall constitute a waiver of any default or of the required performance. No expressed waiver by a party of any provision or performance hereunder or any default by the other party shall be construed as a waiver of any future provision, performance, or default.

20.9. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. No obligation or requirement contained in this Agreement may be assigned to or assumed by another entity without the express written consent of the parties hereto, except that ELAMEX may assign performance of all or part of its duties to a subsidiary without affecting any obligation of ELAMEX imposed by this Agreement.

20.10. The titles and headings contained in this Agreement are for convenience only and shall have no substantive effect. As used herein, the phrase, "this Agreement" or "the Agreement" shall be deemed to include all exhibits and schedules referenced herein. The English language version of this Agreement shall control over a Spanish version, if any, hereof.

In Witness Whereof, the parties hereto have executed this Agreement as of 3 June, 2002.

| | |
|---|---|
| Elamex, S.A. de C.V. | Align Technology. Inc. |
| By: /s/ Daniel Johnson | By: /s/ Len Hedge |
| Daniel Johnson | Len Hedge |
| Title: COO | Title: Senior Vice President |
| Date: 12 Aug, 2002 | Date: 8/12/02 |
| Witness: | Witness: |
| By: | By: |
| Date: | Date: |

Exhibit "A"

Exhibit A

Space Area / Lay Out

| | Total Area | % | Align Area |
|---|---|---|---|
| MIS Room | 294.21 | 30% | 88.26 |
| Human Resources | 266.44 | 40% | 106.58 |
| Nurse | 236.68 | 40% | 94.67 |
| Direct Labor Bathrooms Mans | 664.81 | 40% | 265.92 |
| Direct Labor Bathrooms Ladies | 1,169.91 | 40% | 467.96 |
| Cafeteria | 3,186.12 | 40% | 1,274.45 |
| Main Hall | 1,996.26 | 40% | 798.50 |
| Loading / Unloading Whse. | 3,165.54 | 20% | 633.11 |
| Maintanence Shop | 406.25 | 20% | 81.25 |
| Compressors | 501.15 | 30% | 150.35 |
| | 16,120.13 | | 3,961.05 |

| | |
|---|---|
| Production Area | 10,525 |
| SLA Room | 520 |
| Offices | 826 |
| Meeting Room and Sup. | 510 |
| ToolCrib | 461 |
| Desinfecting Room | 2,481 |
| Shipping | 1,048 |
| Receiving | 787 |
| Warehouse | 1,891 |
| Central Offices / Customs | 80 |
| | 19,127.65 |
| | ALIGN 100% |

23,088.70
Align Contract

Exhibit "A"

PLANT LAYOUT

[GRAPHIC]

Exhibit "B"

Align Technology, Inc.
Shelter - Cost plus
Invoicing

Exhibit B

Labor — Invoicing according the following mark up:

Mark Up Percentages

| Headcount | Mark Up |
|---|---|
| 31 to 50 | 31.0% |
| 51 to 75 | 28.0% |
| 76 to 100 | 26.0% |
| 101 to 125 | 24.0% |
| 126 to 150 | 22.0% |
| 151 to 175 | 20.0% |
| 176 to 200 | 18.0% |
| 201 to 250 | 16.0% |
| 251 to 500 | 15.0% |
| 500 and higher | 13.0% |

Note: Administrative cost (managers) won't be charged, it will be covered by the mark up.

Space: 23,088 square feet will be assigned to align, 23,088 ttl.sqft.

| Cost per sq. ft. | Annual | Month | | |
|---|---|---|---|---|
| | $6.25 | $ 0.52 per sqft. | $ | 12,005.7 |
| Property tax | | $0.006 per sqft. | $ | $ 138.53 |
| Insurance (sqft) | | $ 0.03 per sqft. | $ | $ 692.64 |
| Maintenance (sqft) | | $ 0.02 per sqft. | $ | $ 461.76 |
| | | Total | $ | 13,29 |

Due to expansion to meet Align demands, square feet's increase:

Customs, Freight & Utilities mark up: 5%
Utilities: Power, water & Gas.
Other Operating Expenses
Excluding: Building cost per sq. ft., Property Tax, Insurance (persqft) and building maintenance

Operating Expenses mark up according Exhibit "B", same as labor.

Exhibit "C"

SERVICES TABLE

( this exhibit is been eliminated )

Exhibit "D"

MANNING TABLE
Align Technology, Inc.

6/1/02 Exhibit D

| Job Description | Skill Level | Actual # Employees | Actual Hourly Cost | New Hourly Cost |
|---|---|---|---|---|
| Direct Labor: | | | | |
| Operator | 1 | 28 | $ 1.92 | $ 2.01 |
| Operator | 2 | 1 | $ 2.05 | $ 2.14 |
| Operator | 3 | 21 | $ 2.25 | $ 2.35 |
| Operator | 4 | 90 | $ 2.74 | $ 2.86 |
| Total Direct Labor Employee | | 140 | $ 2.24 | $ 2.34 |
| Indirect Labor: | | | | |
| Material Handler | 2 | 1 | 2.05 | 2.14 |
| Warehouseman | 3 | 1 | 2.25 | 2.35 |
| Warehouseman Lev IIII | 5 | 4 | 3.62 | 3.78 |
| Q.C. Auditor | 4 | 8 | 2.93 | 3.06 |
| Maintanance Technician | 5 | 4 | 3.83 | 4.00 |
| Group Leaders | 5 | 5 | 3.61 | 3.77 |
| Material Expediters | 5 | 1 | 3.87 | 4.04 |
| Guard | 5 | 2 | 3.61 | 3.77 |
| Q.C. Supervisor | 7 | 2 | 8.8 | 9.20 |
| Dentist (Technicians) | 5 | | | |
| Assistant Supervisor | 6 | 1 | 5.8 | 6.35 |
| Production Supervisor | 7 | 3 | 10.41 | 10.87 |
| Material Supervisor | 7 | 1 | 9.46 | 9.88 |
| Industrial Eng. / Process / SLA | 9 | 2 | 13.41 | 14.01 |
| Industrial Eng. / System | 9 | 1 | 14.48 | 15.13 |
| Industrial Eng. / Chiron | 9 | 1 | 21.84 | 22.82 |
| Shipping Supervisor | 9 | 1 | 13.41 | 14.01 |
| Production Control Sup. | 9 | 2 | 16.11 | 16.83 |
| Total Indirect Personnel | | 39 | | |
| Administrative Personnel: | | | | |
| Janitor | 2 | 3 | 2.05 | 2.14 |
| Documentation Clerk | 5 | 1 | 3.61 | 3.77 |
| Secretary | 5 | 1 | 3.61 | 3.77 |
| Custom Clerk | 6 | 1 | 7.5 | 7.84 |
| Accounting Assistant | 7 | 1 | 10.03 | 10.48 |
| Maintanance Supervisor | 6 | 1 | 6.35 | 6.64 |
| Nurse | 6 | 1 | 6.35 | 6.64 |
| Security Supervisor | 6 | 1 | 6.35 | 6.64 |
| Trainer | 6 | 1 | 6.35 | 6.64 |
| Personnel Assistance | 6 | 2 | 6.35 | 6.64 |
| Building Maintanance | 6 | 1 | 6.35 | 6.64 |
| General Supervisor | 9 | | | |
| Master Scheduler | 11 | 1 | 25.48 | 26.62 |
| Eng. and Tech. Manager | 11 | 1 | 25.48 | 26.62 |
| Total Administrative Personnel | | 16 | | |
| Total Direct | | 140 | | |
| Total Indirect | | 55 | | |

Changes on Hourly Cost Rate are base on the Government Disposition Release on the First Week of 2002. This increase is 4.5 %.

[LOGO] ALIGN [LOGO] Illegible (R)

May 13, 2002

Elamex
220 N. Kansas, Suite 566
El Paso, TX 79901
Attn: Dan Johnson

Dear Mr. Johnson,

The following employees of Align Technology, Inc are authorized to approve Elamex's expenditures.

| Name - Title | Signature |
| --- | --- |
| Tony Morefield -- Production Manager | /s/ Tony Morefield |
| Juan Guzman -- Manufacturing Process Engineer | /s/ Juan Guzman |
| Eric Steuben -- Sr. Director of Operations | /s/ Eric Steuben |

Please do not hesitate to contact me at (408) 470-1116 with any questions.

Sincerely,

/s/ Len Hedge
Len Hedge
Senior VP of Operations

Exhibit "F"

Exhibit F

THE PRODUCT

( To be provided by Align )

(Elamex will refer to the Manufacturing Documents from Align.)

Exhibit "G"

Exhibit G

Utilities Consumption (Power and Water)

| 1st. Shift No. | Power Description | Qty. | Amps | Volts | Fases | KVA's | F.P. | Installed KW | L.F. | Consuption KW |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | Light tubes workstation (4x40w) | 245 | 0.58 | 277 | 1 | 39.36 | 1 | 39.36 | 1 | 39.3 |
| 2 | Light tubes workstation (2x40w) | 118 | 0.67 | 120 | 1 | 9.49 | 1 | 9.49 | 1 | 9.49 |
| 3 | Fans (Soaping) | 6 | 3 | 115 | 1 | 2.07 | 0.9 | 1.86 | 0.6 | 1.12 |
| 4 | Light bulbs 150 w. (Soaping) | 12 | 1.18 | 127 | 1 | 1.80 | 1 | 1.80 | 1 | 1.80 |
| 5 | Biostar (Forming Area) | 47 | 6.3 | 115 | 1 | 34.05 | 1 | 34.05 | 0.8 | 27.2 |
| 6 | Autoforming Machine | 1 | 30 | 480 | 3 | 24.94 | 1 | 24.94 | 0 | 0.00 |
| 7 | Laser Machine | 7 | 20 | 115 | 1 | 16.10 | 1 | 16.10 | 0.6 | 9.66 |
| 8 | Chiron Machines | 7 | 16 | 480 | 3 | 93.11 | 0.9 | 83.80 | 0.3 | 25.1 |
| 9 | Chiron Robot (Fanuc) | 7 | 2 | 480 | 3 | 11.64 | 0.9 | 10.48 | 0.3 | 3.14 |
| 10 | Chiron Conveyor | 7 | 2 | 120 | 1 | 1.68 | 0.9 | 1.51 | 0.3 | 0.45 |
| 11 | Vacuum System | 1 | 36 | 480 | 3 | 29.93 | 0.9 | 26.94 | 0 | 0.00 |
| 12 | Dremel | 47 | 1 | 115 | 1 | 5.41 | 0.9 | 4.86 | 1 | 4.86 |
| 13 | Disecant System | 1 | 46.5 | 460 | 3 | 37.05 | 0.9 | 33.34 | 0.4 | 13.3 |
| 14 | Ovens | 2 | 23.5 | 240 | 1 | 11.28 | 0.9 | 10.15 | 0.2 | 2.03 |
| 15 | Ovens | 5 | 15.5 | 115 | 1 | 8.91 | 0.9 | 8.02 | 0.2 | 1.60 |
| 16 | Ovens | 7 | 14.3 | 220 | 1 | 22.02 | 0.9 | 19.82 | 0.2 | 3.96 |
| 17 | PCA Oven (SLA Room) | 1 | 6.3 | 115 | 1 | 0.72 | 0.9 | 0.65 | 0.3 | 0.20 |
| 18 | Washer Machine (SLA Room) | 1 | 15 | 230 | 3 | 5.98 | 0.9 | 5.38 | 0 | 0.00 |
| 19 | Water Pump (SLA Room) | 1 | 8 | 220 | 1 | 1.76 | 0.9 | 1.58 | 0 | 0.00 |
| 20 | SLA Machine 7000 | 1 | 15 | 220 | 1 | 3.30 | 0.9 | 2.97 | 0.4 | 1.19 |
| 21 | Ultrasonic Cleaner No.1 (Disinf.) | 1 | 47 | 240 | 3 | 19.54 | 0.9 | 17.58 | 0.3 | 5.27 |
| 22 | Washer Machine (Desinf. Room) | 1 | 106 | 240 | 3 | 44.06 | 0.9 | 39.66 | 0.2 | 7.93 |
| 23 | Water Pump (Desinf. Room) | 1 | 9 | 220 | 1 | 1.98 | 0.9 | 1.78 | 0.1 | 0.18 |
| 24 | Washer Machine (Desinf. Room) | 1 | 60 | 220 | 3 | 22.86 | 0.9 | 20.58 | 0 | 0.00 |
| 25 | Ultrasonic Cleaner No.2 (Disinf.) | 1 | 42.5 | 240 | 3 | 17.67 | 0.9 | 15.90 | 0 | 0.00 |
| 26 | Hannan Machine (Desinf. Room) | 1 | 7 | 220 | 3 | 2.67 | 0.9 | 2.40 | 0.2 | 0.48 |
| 27 | Belco Machine (Desinf. Room) | 1 | 40 | 220 | 1 | 8.80 | 0.9 | 7.92 | 0.2 | 1.58 |
| 28 | Zed Machine (Desinf. Room) | 1 | 25.4 | 220 | 3 | 9.68 | 0.9 | 8.71 | 0.2 | 1.74 |
| 29 | Conveyor (Shipping Room) | 1 | 9 | 115 | 1 | 1.04 | 0.9 | 0.93 | 0.2 | 0.19 |
| 30 | Light tubes warehouse (2x75 w) | 20 | 0.54 | 277 | 1 | 2.99 | 1 | 2.99 | 1 | 2.99 |
| 31 | Compressor (50 HP) | 1 | 60 | 480 | 3 | 49.88 | 0.9 | 44.89 | 0.3 | 13.4 |
| 32 | Air Handler No. 4 | 1 | 12 | 480 | 3 | 9.98 | 0.9 | 8.98 | 0.7 | 6.29 |
| 33 | Air Handler No. 5 | 1 | 12 | 480 | 3 | 9.98 | 0.9 | 8.98 | 0.7 | 6.29 |
| 34 | Air Handler No. 6 | 1 | 3.6 | 480 | 3 | 2.99 | 0.9 | 2.69 | 0.7 | 1.89 |
| 35 | Chiller No. 1 | 1 | 120 | 480 | 3 | 99.76 | 0.9 | 89.79 | 0.35 | 31.4 |
| 36 | Chiller No. 2 | 1 | 120 | 480 | 3 | 99.76 | 0.9 | 89.79 | 0.35 | 31.4 |
| 37 | Refrigeration Unit (SLA Room) | 1 | 24 | 480 | 3 | 19.95 | 0.9 | 17.96 | 0.6 | 10.7 |
| 38 | Refrigeration Unit (Prod. Area) | 1 | 24 | 480 | 3 | 19.95 | 0.9 | 17.96 | 0.4 | 7.18 |
| 39 | Refrigeration Unit (MIS Room) | 1 | 18 | 220 | 3 | 6.86 | 0.9 | 6.17 | 0.1 | 0.62 |
| 40 | Swan Coolers (Warehouse) | 1 | 18 | 480 | 3 | 14.96 | 0.9 | 13.47 | 0.2 | 2.69 |
| 41 | Light tubes bathrooms (4x40w) | 18 | 0.6 | 277 | 1 | 2.99 | 1 | 2.99 | 0.5 | 1.50 |
| 42 | Light tubes main hall (4x40w) | 25 | 0.6 | 277 | 1 | 4.16 | 1 | 4.16 | 0.7 | 2.91 |
| 43 | Light Tubes Cafeteria (4x40w) | 37 | 0.6 | 277 | 1 | 6.15 | 1 | 6.15 | 1 | 6.15 |
| 44 | Light Tubes Offices (4x40w) | 10 | 0.6 | 277 | 1 | 1.66 | 1 | 1.66 | 1 | 1.66 |
| 45 | Exterior Light 150 w | 5 | 0.54 | 277 | 1 | 0.75 | 1 | 0.75 | 0 | 0.00 |
| 46 | Exterior Light 400 w | 6 | 1.44 | 277 | 1 | 2.39 | 1 | 2.39 | 0 | 0.00 |
| | | | | | | 844.06 | | 774.34 | | 289.2 |

Exhibit "G"

Utilities Consumption (Power and Water)

| 2nd. Shift No. | Description | Qty. | Amps | Volts | Fases | KVA's | F.P. | Installed KW | L.F. | Consuption KW |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | Light tubes workstation (4x40w) | 245 | 0.6 | 277 | 1 | 40.72 | 1 | 40.72 | 1 | 40.7 |
| 2 | Light tubes workstation (2x40w) | 118 | 0.67 | 120 | 1 | 9.49 | 1 | 9.49 | 0.8 | 7.59 |
| 3 | Fans (Soaping) | 6 | 3 | 115 | 1 | 2.07 | 0.9 | 1.86 | 0.2 | 0.37 |
| 4 | Light bulbs 150 w. (Soaping) | 12 | 1.18 | 127 | 1 | 1.80 | 1 | 1.80 | 0.2 | 0.36 |
| 5 | Biostar (Forming Area) | 47 | 6.3 | 115 | 1 | 34.05 | 1 | 34.05 | 0.5 | 17.0 |
| 6 | Autoforming Machine | 1 | 30 | 480 | 3 | 24.94 | 1 | 24.94 | 0 | 0.00 |
| 7 | Laser Machine | 7 | 20 | 115 | 1 | 16.10 | 1 | 16.10 | 0.2 | 3.22 |
| 8 | Chiron Machines | 7 | 16 | 480 | 3 | 93.11 | 0.9 | 83.80 | 0.3 | 25.1 |
| 9 | Chiron Robot (Fanuc) | 7 | 2 | 480 | 3 | 11.64 | 0.9 | 10.48 | 0.42 | 4.40 |
| 10 | Chiron Conveyor | 7 | 2 | 120 | 1 | 1.68 | 0.9 | 1.51 | 0.42 | 0.64 |
| 11 | Vacuum System | 1 | 36 | 480 | 3 | 29.93 | 0.9 | 26.94 | 0 | 0.00 |
| 12 | Dremel | 47 | 1 | 115 | 1 | 5.41 | 0.9 | 4.86 | 0.3 | 1.46 |
| 13 | Disecant System | 1 | 46.5 | 460 | 3 | 37.05 | 0.9 | 33.34 | 0.4 | 13.3 |
| 14 | Ovens | 2 | 23.5 | 240 | 1 | 11.28 | 0.9 | 10.15 | 0.2 | 2.03 |
| 15 | Ovens | 5 | 15.5 | 115 | 1 | 8.91 | 0.9 | 8.02 | 0.2 | 1.60 |
| 16 | Ovens | 7 | 14.3 | 220 | 1 | 22.02 | 0.9 | 19.82 | 0.2 | 3.96 |
| 17 | PCA Oven (SLA Room) | 1 | 6.3 | 115 | 1 | 0.72 | 0.9 | 0.65 | 0.2 | 0.13 |
| 18 | Washer Machine (SLA Room) | 1 | 15 | 230 | 3 | 5.98 | 0.9 | 5.38 | 0 | 0.00 |
| 19 | Water Pump (SLA Room) | 1 | 8 | 220 | 1 | 1.76 | 0.9 | 1.58 | 0 | 0.00 |
| 20 | SLA Machine 7000 | 1 | 15 | 220 | 1 | 3.30 | 0.9 | 2.97 | 0.4 | 1.19 |
| 21 | Ultrasonic Cleaner No.1 (Disinf.) | 1 | 47 | 240 | 3 | 19.54 | 0.9 | 17.58 | 0 | 0.00 |
| 22 | Washer Machine (Desinf. Room ) | 1 | 106 | 240 | 3 | 44.06 | 0.9 | 39.66 | 0 | 0.00 |
| 23 | Water Pump (Desinf. Room) | 1 | 9 | 220 | 1 | 1.98 | 0.9 | 1.78 | 0 | 0.00 |
| 24 | Washer Machine (Desinf. Room) | 1 | 60 | 220 | 3 | 22.86 | 0.9 | 20.58 | 0 | 0.00 |
| 25 | Ultrasonic Cleaner No.2 (Disinf.) | 1 | 42.5 | 240 | 3 | 17.67 | 0.9 | 15.90 | 0 | 0.00 |
| 26 | Hannan Machine (Desinf. Room) | 1 | 7 | 220 | 3 | 2.67 | 0.9 | 2.40 | 0 | 0.00 |
| 27 | Belco Machine (Desinf. Room) | 1 | 40 | 220 | 1 | 8.80 | 0.9 | 7.92 | 0 | 0.00 |
| 28 | Zed Machine (Desinf. Room) | 1 | 25.4 | 220 | 3 | 9.68 | 0.9 | 8.71 | 0 | 0.00 |
| 29 | Conveyor (Shipping Room) | 1 | 9 | 115 | 1 | 1.04 | 0.9 | 0.93 | 0 | 0.00 |
| 30 | Light tubes warehouse (2x75 w) | 20 | 0.54 | 277 | 1 | 2.99 | 1 | 2.99 | 0.3 | 0.90 |
| 31 | Compressor (50 HP) | 1 | 60 | 480 | 3 | 49.88 | 0.9 | 44.89 | 0.8 | 35.9 |
| 32 | Air Handler No. 4 | 1 | 12 | 480 | 3 | 9.98 | 0.9 | 8.98 | 0.6 | 5.39 |
| 33 | Air Handler No. 5 | 1 | 12 | 480 | 3 | 9.98 | 0.9 | 8.98 | 0.6 | 5.39 |
| 34 | Air Handler No. 6 | 1 | 3.6 | 480 | 3 | 2.99 | 0.9 | 2.69 | 0.6 | 1.62 |
| 35 | Chiller No. 1 | 1 | 120 | 480 | 3 | 99.76 | 0.9 | 89.79 | 0.2 | 17.9 |
| 36 | Chiller No. 2 | 1 | 120 | 480 | 3 | 99.76 | 0.9 | 89.79 | 0.2 | 17.9 |
| 37 | Refrigeration Unit (SLA Room) | 1 | 24 | 480 | 3 | 19.95 | 0.9 | 17.96 | 0.4 | 7.18 |
| 38 | Refrigeration Unit (Prod. Area) | 1 | 24 | 480 | 3 | 19.95 | 0.9 | 17.96 | 0.6 | 10.7 |
| 39 | Refrigeration Unit (MIS Room ) | 1 | 18 | 220 | 3 | 6.86 | 0.9 | 6.17 | 0.05 | 0.31 |
| 40 | Swan Coolers (Warehouse) | 1 | 18 | 480 | 3 | 14.96 | 0.9 | 13.47 | 0 | 0.00 |
| 41 | Light tubes bathrooms (4x40w) | 18 | 0.6 | 277 | 1 | 2.99 | 1 | 2.99 | 0.5 | 1.50 |
| 42 | Light tubes main hall (4x40w) | 25 | 0.6 | 277 | 1 | 4.16 | 1 | 4.16 | 1 | 4.16 |
| 43 | Light Tubes Cafeteria (4x40w) | 37 | 0.6 | 277 | 1 | 6.15 | 1 | 6.15 | 0.8 | 4.92 |
| 44 | Light Tubes Offices (4x40w) | 10 | 0.6 | 277 | 1 | 1.66 | 1 | 1.66 | 0.4 | 0.66 |
| 45 | Exterior Light 150 w | 5 | 0.54 | 277 | 1 | 0.75 | 1 | 0.75 | 0.4 | 0.30 |
| 46 | Exterior Light 400 w | 6 | 1.44 | 277 | 1 | 2.39 | 1 | 2.39 | 0.4 | 0.96 |
| | | | | | | 845.42 | | 775.69 | | 239.0 |

Exhibit "G"

| Sundays No. | Description | Qty. | Amps | Volts | Fases | KVA's | F.P. | Installed KW | LF. | Consumption KW |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | Disecant Systern | 1 | 46.5 | 460 | 3 | 37.05 | 0.9 | 33.34 | 0.4 | 13.34 |
| 2 | Ovens | 2 | 23.5 | 240 | 1 | 11.28 | 0.9 | 10.15 | 0.2 | 2.03 |
| 3 | Ovens | 5 | 15.5 | 115 | 1 | 8.91 | 0.9 | 8.02 | 0.2 | 1.60 |
| 4 | Ovens | 7 | 14.3 | 220 | 1 | 22.02 | 0.9 | 19.82 | 0.2 | 3.96 |
| 5 | Compressor (50 HP) | 1 | 60 | 480 | 3 | 49.88 | 0.9 | 44.89 | 0.4 | 17.96 |
| | | | | | | 129.14 | | 116.23 | | 38.89 |

Utilities Consumption (Power and Water)

| | KW | Cost | Hrs./Day | Day/Mth | Total | Invoice Damand x .69 |
|---|---|---|---|---|---|---|
| KW | 217 | 59.42 | | | 12894.14 | 4781.006883 |
| KWH Base | 239 | 0.2968 | 1 | 20 | 1419.002843 | 57842.69735 |
| KWH Intermedia (1er turno) | 289 | 0.3645 | 10 | 20 | 21083.66318 | 26295.53786 |
| KWH Intermedia (2do turno) | 239 | 0.3645 | 5.5 | 20 | 9584.723549 | 9562.013766 |
| KWH Punta | 239 | 1.1311 | 2 | 20 | 10815.59377 | 960 |
| KWH (fin de semana) | 4 | 0.2968 | 24 | 10 | 284.928 | 4278.238668 |
| KWH (compresor y hornos) | 39 | 0.2968 | 22 | 5 | 1269.781237 | 103719.4945 |
| | | | | | 57351.83258 | 139440 |
| | | | | | 58960.77 | 0.743828848 |

| Weeks Days | Lower/Cost | Medium | Higher |
|---|---|---|---|
| Monday th. Friday | 0:00 a 6:00 | 6:00 a 20:00<br>22:00 a 24:00 | 20:00 a 22:00 |
| Saturday | 0:00 a 7:00 | 7:00 a 24:00 | |
| Sundays and Holidays | 0:00 a 19:00 | 19:00 a 24:00 | |

Water

| | No. of People | lt./day | day/mth | M3 | | |
|---|---|---|---|---|---|---|
| Align | 216 | 80 | 22 | 380.16 | 0.413595022 | |
| Washer Machine (Disinf) | | | | 539 | 0.586404978 | 40.83 lps |
| | | | | 919.16 | | |

DTA (Derecho de Tramite Aduanero) must be paid for imports of Non NAFTA goods and will be calculated as follows:

| DESCRIPTION | PERCENTAGE |
|---|---|
| Temporal equipment importation | .176% of the declared value with a $163.00 Mexican Pesos as minimum, which varies every six (6) months. |
| Definitive equipment importation | .8% to the milliard of the declared value with a $163.00 Mexican Pesos as minimum, which varies every six (6) months. |

**EXHIBIT 10.25**

**EMPLOYMENT AGREEMENT**

This AGREEMENT is entered into as of March 1, 2002, by and between _____ (the "Executive") and Align Technology, Inc., a Delaware corporation (the "Company").

1. Duties and Scope of Employment.

(a) Position. For the term of his employment under this Agreement ("Employment"), the Company agrees to employ the Executive in the position of [TITLE]. The Executive shall report to the Chief Executive Officer. The Executive accepts such employment and agrees to discharge all of the duties normally associated with said position, and to faithfully and to the best of his abilities perform such other services consistent with his position as [TITLE] as may from time to time be assigned to him by the Chief Executive Officer (the "CEO").

(b) Obligations to the Company. During the term of his Employment, the Executive shall devote his full business efforts and time to the Company. The Executive agrees not to actively engage in any other employment, occupation or consulting activity for any direct or indirect remuneration without the prior approval of the CEO, provided, however, that the Executive may, without the approval of the CEO, serve in any capacity with any civic, educational or charitable organization. The Executive may own, as a passive investor, no more than one percent (1%) of any class of the outstanding securities of any publicly traded corporation.

(c) No Conflicting Obligations. The Executive represents and warrants to the Company that he is under no obligations or commitments, whether contractual or otherwise, that are inconsistent with his obligations under this Agreement. The Executive represents and warrants that he will not use or disclose, in connection with his employment by the Company, any trade secrets or other proprietary information or intellectual property in which the Executive or any other person has any right, title or interest and that his employment by the Company as contemplated by this Agreement will not infringe or violate the rights of any other person or entity. The Executive represents and warrants to the Company that he has returned all property and confidential information belonging to any prior employers.

(d) Commencement Date. The Executive commenced full-time Employment on _____, 2002.

2. Cash and Incentive Compensation.

(a) Salary. The Company shall pay the Executive as compensation for his services a base salary at a gross annual rate of $_____, payable in accordance with the Company's standard payroll schedule. The compensation specified in this Subsection (a), together with any adjustments by the Company from time to time, is referred to in this Agreement as "Base Salary."

(b) Target Bonus. The Executive shall be eligible to participate in an annual bonus program that will provide him with an opportunity to earn a potential annual bonus equal to 30.0% of the Executive's Base Salary. The amount of the bonus shall be based upon the performance of the Executive, as set by the individual performance objectives described in this Subsection, and the Company in each calendar year, and shall be paid by no later than January 31 of the following year, contingent on the Executive remaining employed by the Company as of such date. The Executive's individual performance objectives and those of the Company's shall be set by the CEO after consultation with the Executive by no later than March 31, of each calendar year. For calendar year 2002, the Executive's bonus shall be prorated based on the number of days of such year that the Executive was employed by the Company. Any bonus awarded or paid to the Executive will be subject to the discretion of the Board.

(c) Stock Options. The Executive shall be eligible for an annual incentive stock option grant subject to the approval of the Board. The per share exercise price of the option will be equal to the per share fair market value of the common stock on the date of grant, as determined by the Board of Directors. The term of such option shall be ten (10) years, subject to earlier expiration in the event of the termination of the Executive's Employment. Such option shall be immediately exercisable, but the purchased shares shall be subject to repurchase by the Company at the exercise price in the event that the Executive's Employment terminates before he vests in the shares. The Executive shall vest in 25% of the option shares after the first twelve (12) months of continuous service and shall vest in the remaining option shares in equal monthly installments over the next three (3) years of continuous service. The grant of each such option shall be subject to the other terms and conditions set forth in the Company's 2001 Stock Incentive Plan and in the Company's standard form of stock option agreement.

3. Vacation and Executive Benefits. During the term of his Employment, the Executive shall be eligible for 17 days vacation per year, in accordance with the Company's standard policy for senior management, as it may be amended from time to time. During the term of his Employment, the Executive shall be eligible to participate in any employee benefit plans maintained by the Company for senior management, subject in each case to the generally applicable terms and conditions of the plan in question and to the determinations of any person or committee administering such plan.

4. Business Expenses. During the term of his Employment, the Executive shall be authorized to incur necessary and reasonable travel, entertainment and other business expenses in connection with his duties hereunder. The Company shall reimburse the Executive for such expenses upon presentation of an itemized account and appropriate supporting documentation, all in accordance with the Company's generally applicable policies.

5. Term of Employment.

(a) Basic Rule. The Company agrees to continue the Executive's Employment, and the Executive agrees to remain in Employment with the Company, from the commencement date set forth in Section 1(d) until the date when the Executive's Employment terminates pursuant to Subsection (b) below. The Executive's Employment with the Company shall be "at will," and either the Executive or the Company may terminate the Executive's Employment at any time, for any reason, with or without Cause. Any contrary representations which may have been made to the Executive shall be superseded by this Agreement. This Agreement shall constitute the full and complete agreement between the Executive and the Company on the "at will" nature of the Executive's Employment, which may only be changed in an express written agreement signed by the Executive and a duly authorized officer of the Company.

(b) Termination. The Company may terminate the Executive's Employment at any time and for any reason (or no reason), and with or without Cause, by giving the Executive notice in writing. The Executive may terminate his Employment by giving the Company fourteen (14) days advance notice in writing. The Executive's Employment shall terminate automatically in the event of his death or Permanent Disability. For purposes of this Agreement, "Permanent Disability" shall mean that the Executive has become so physically or mentally disabled as to be incapable of satisfactorily performing the duties under this Agreement for a period of one hundred eighty (180) consecutive calendar days.

(c) Rights Upon Termination. Except as expressly provided in Section 6, upon the termination of the Executive's Employment pursuant to this Section 5, the Executive shall only be entitled to the compensation, benefits and reimbursements described in Sections 2, 3 and 4 for the period preceding the effective date of the termination. The payments under this Agreement shall fully discharge all responsibilities of the Company to the Executive.

(d) Termination of Agreement. The termination of this Agreement shall not limit or otherwise affect any of the Executive's obligations under Section 7.

6. Termination Benefits.

(a) General Release. Any other provision of this Agreement notwithstanding, Subsections (b), (c) or (d) below shall not apply unless the Executive (i) has executed a general release in a form prescribed by the Company of all known and unknown claims that he may then have against the Company or persons affiliated with the Company, and (ii) has agreed not to prosecute any legal action or other proceeding based upon any of such claims.

(b) Termination without Cause. If, during the term of this Agreement, the Company terminates the Executive's Employment for any reason other than Cause or Permanent Disability, and not in connection with a Change of Control as addressed by Subsection (c) below, then the Company shall pay the Executive, an amount equal to: (i) the then current year's Target Bonus prorated for the number of days of Executive is employed in said year, payable in a lump sum within 30 days of the date of termination of Employment; (ii) one year's Base Salary, payable in equal installments in accordance with the Company's standard payroll schedule; and (iii) the greater of the then current year's Target Bonus or the actual prior year's bonus, payable in a lump sum on the one year anniversary of termination of Employment. The Executive's Base Salary shall be paid at the rate in effect at the time of the termination of Employment.

(c) Upon a Change of Control. In the event of the occurrence of a Change in Control while the Executive is employed by the Company:

(i) the Executive shall immediately vest in an additional number of shares under all outstanding options as if he had performed twelve (12) additional months of service; and

(ii) if within twelve (12) months following the occurrence of the Change of Control, one of the following events occurs:

(A) the Executive's employment is terminated by the Company without Cause; or

(B) the Executive resigns for Good Reason

then the Executive shall immediately vest as to all shares under all outstanding options and the Company shall pay the Executive, in a lump sum, an amount equal to: (i) the then current year's Target Bonus prorated for the number of days of Executive is employed in said year; (ii) one year's Base Salary; and (iii) the greater of the then current year's Target Bonus or the actual prior year's bonus. The Executive's Base Salary shall be paid at the rate in effect at the time of the termination of Employment.

(d) Health Insurance. If Subsection (b) or (c) above applies, and if the Executive elects to continue his health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") following the termination of his Employment, then the Company shall pay the Executive's monthly premium under COBRA until the earliest of (i) 12 months following the termination of the Executive's Employment, or (ii) the date upon which The Executive commences employment with an entity other than the Company.

(e) Definition of "Cause." For all purposes under this Agreement, "Cause" shall mean any of the following:

(i) Unauthorized use or disclosure of the confidential information or trade secrets of the Company;

(ii) Any breach of this Agreement or the Employee Proprietary Information and Inventions Agreement between the Executive and the Company;

(iii) Conviction of, or a plea of "guilty" or "no contest" to, a felony under the laws of the United States or any state thereof;

(iv) Misappropriation of the assets of the Company or any act of fraud or embezzlement by Executive, or any act of dishonesty by Executive in connection with the performance of his duties for the Company that adversely affects the business or affairs of the Company; or

(v) Intentional misconduct or the Executive's failure to satisfactorily perform his/her duties after having received written notice of such failure and at least thirty (30) days to cure such failure.

The foregoing shall not be deemed an exclusive list of all acts or omissions that the Company may consider as grounds for the termination of the Executive's Employment.

(f) Definition of "Good Reason." For all purposes under this Agreement, the Executive's resignation for "Good Reason" shall mean the Executive's resignation within ninety (90) days the occurrence of any one or more of the following events:

(i) The Executive's position, authority or responsibilities being significantly reduced;

(ii) The Executive being asked to relocate his principal place of employment such that his commuting distance from his residence prior to the Change of Control is increased by over thirty-five (35) miles;

(iii) The Executive's annual Base Salary or bonus being reduced; or

(iv) The Executive's benefits being materially reduced.

(g) Definition of "Change of Control." For all purposes under this Agreement, "Change of Control" shall mean any of the following:

(i) a sale of all or substantially all of the assets of the Company;

(ii) the acquisition of more than fifty percent (50%) of the common stock of the Company (with all classes or series thereof treated as a single class) by any person or group of persons;

(iii) a reorganization of the Company wherein the holders of common stock of the Company receive stock in another company (other than a subsidiary of the Company), a merger of the Company with another company wherein there is a fifty percent (50%) or greater change in the ownership of the common stock of the Company as a result of such merger, or any other transaction in which the Company (other than as the parent corporation) is consolidated for federal income tax purposes or is eligible to be consolidated for federal income tax purposes with another corporation; or

(iv) in the event that the common stock is traded on an established securities market, a public announcement that any person has acquired or has the right to acquire beneficial ownership of more than fifty percent (50%) of the then-outstanding common stock and for this purpose the terms "person" and "beneficial ownership" shall have the meanings provided in Section 13(d) of the Securities and Exchange Act of 1934 or related rules promulgated by the Securities and Exchange Commission, or the commencement of or public announcement of an intention to make a tender offer or exchange offer for more than fifty percent (50%) of the then outstanding Common Stock.

7. Non-Solicitation and Non-Disclosure.

(a) Non-Solicitation. During the period commencing on the date of this Agreement and continuing until the first anniversary of the date when the Executive's Employment terminated for any reason, the Executive shall not directly or indirectly, personally or through others, solicit or attempt to solicit (on the Executive's own behalf or on behalf of any other person or entity) the employment of any employee of the Company or any of the Company's affiliates.

(b) Proprietary Information. As a condition of employment, the Executive has entered into a Proprietary Information and Inventions Agreement with the Company, attached to this Agreement as Exhibit A, which is incorporated herein by reference.

8. Successors.

(a) Company's Successors. This Agreement shall be binding upon any successor (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets. For all purposes under this Agreement, the term "Company" shall include any successor to the Company's business and/or assets which becomes bound by this Agreement.

(b) Executive's Successors. This Agreement and all rights of the Executive hereunder shall inure to the benefit of, and be enforceable by, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

9. Miscellaneous Provisions.

(a) Notice. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by overnight courier, U.S. registered or certified mail, return receipt requested and postage prepaid. In the case of the Executive, mailed notices shall be addressed to him at the home address which he most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

(b) Modifications and Waivers. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by the Executive and by an authorized officer of the Company (other than the Executive). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) Whole Agreement. No other agreements, representations or understandings (whether oral or written) which are not expressly set forth in this Agreement have been made or entered into by either party with respect to the subject matter of this Agreement. This Agreement and the Proprietary Information and Inventions Agreement contain the entire understanding of the parties with respect to the subject matter hereof.

(d) Withholding Taxes. All payments made under this Agreement shall be subject to reduction to reflect taxes or other charges required to be withheld by law.

(e) Choice of Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California (except provisions governing the choice of law).

(f) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

(g) Arbitration. Each party agrees that any and all disputes which arise out of or relate to the Executive's employment, the termination of the Executive's employment, or the terms of this Agreement shall be resolved through final and binding arbitration. Such arbitration shall be in lieu of any trial before a judge and/or jury, and the Executive and Company expressly waive all rights to have such disputes resolved via trial before a judge and/or jury. Such disputes shall include, without limitation, claims for breach of contract or of the covenant of good faith and fair dealing, claims of discrimination, claims under any federal, state or local law or regulation now in existence or hereinafter enacted and as amended from time to time concerning in any way the subject of the Executive's employment with the Company or its termination. The only claims not covered by this Agreement to arbitrate disputes are: (i) claims for benefits under the unemployment insurance benefits; (ii) claims for workers' compensation benefits under any of the Company's workers' compensation insurance policy or fund; (iii) claims arising from or relating to the non-competition provisions of this Agreement; and (iv) claims concerning the validity, infringement, ownership, or enforceability of any trade secret, patent right, copyright, trademark or any other intellectual property right, and any claim pursuant to or under any existing confidential/proprietary/trade secrets information and inventions agreement(s) such as, but not limited to, the Proprietary Information and Inventions Agreement. With respect to such disputes, they shall not be subject to arbitration; rather, they will be resolved pursuant to applicable law.

Arbitration shall be conducted in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA Rules"), provided, however, that the arbitrator shall allow the discovery authorized by *California Code of Civil Procedure* section 1282, *et seq.*, or any other discovery required by applicable law in arbitration proceedings, including, but not limited to, discovery available under the applicable state and/or federal arbitration statutes. Also, to the extent that any of the AAA Rules or anything in this arbitration section conflicts with any arbitration procedures required by applicable law, the arbitration procedures required by applicable law shall govern.

Arbitration will be conducted in Santa Clara County, California or, if the Executive does not reside within 100 miles of Santa Clara County at the time the dispute arises, then the arbitration may take place in the largest metropolitan area within 50 miles of the Executive's place of residence when the dispute arises.

During the course of the arbitration, the Executive and the Company will each bear equally the arbitrator's fee and any other type of expense or cost of arbitration, unless applicable law requires otherwise, and each shall bear their own respective attorneys' fees incurred in connection with the arbitration. The arbitrator will not have authority to award attorneys' fees unless a statute or contract at issue in the dispute authorizes the award of attorneys' fees to the prevailing party. In such case, the arbitrator shall have the authority to make an award of attorneys' fees as required or permitted by the applicable statute or contract. If there is a dispute as to whether the Executive or the Company is the prevailing party in the arbitration, the arbitrator will decide this issue.

The arbitrator shall issue a written award that sets forth the essential findings of fact and conclusions of law on which the award is based. The arbitrator shall have the authority to award any relief authorized by law in connection with the asserted claims or disputes. The arbitrator's award shall be subject to correction, confirmation, or vacation, as provided by applicable law setting forth the standard of judicial review of arbitration awards. Judgment upon the arbitrator's award may be entered in any court having jurisdiction thereof.

(h) No Assignment. This Agreement and all rights and obligations of the Executive hereunder are personal to the Executive and may not be transferred or assigned by the Executive at any time. The Company may assign its rights under this Agreement to any entity that assumes the Company's obligations hereunder in connection with any sale or transfer of all or a substantial portion of the Company's assets to such entity.

(i) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, as of the day and year first above written.

[EXECUTIVE]

ALIGN TECHNOLOGY, INC.

By: Thomas M. Prescott
Title: President and CEO

**EXHIBIT A**

**PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT**

EXHIBIT 10.26

ALIGN TECHNOLOGY, INC.

NOTICE OF GRANT OF STOCK OPTION

Notice is hereby given of the following option grant (the "Option") to purchase shares of the Common Stock of Align Technology, Inc. (the "Corporation"):

Optionee: Kelsey Wirth

Grant Date: January 4, 2001

Vesting Commencement Date: January 4, 2001

Exercise Price: $ 15.00 per share*

Number of Option Shares: 1,000,000 shares*

Expiration Date: January 3, 2011

Type of Option: Non-Statutory Stock Option

Exercise Schedule: The Option shall become exercisable for twenty-five percent (25%) of the Option Shares upon Optionee's completion of one (1) year of Service measured from the Vesting Commencement Date and shall become exercisable for the balance of the Option Shares in a series of thirty-six (36) successive equal monthly installments upon Optionee's completion of each additional month of Service over the thirty-six (36) month period measured from the first anniversary of the Vesting Commencement Date. In no event shall the Option become exercisable for any additional Option Shares after Optionee's cessation of Service.

Optionee understands and agrees that the Option is granted subject to the terms and conditions of the Stock Option Agreement attached hereto as Exhibit A and agrees to be bound by those terms and conditions. The Option is subject to the approval of the Corporation's stockholders and shall terminate in the event such stockholder approval is not obtained before July 1, 2001.

- ----------

* Pre-adjusted to reflect the 2-for-1 split of the Common Stock to be effective January 5, 2001.

Employment at Will. Nothing in this Notice or in the attached Stock Option Agreement shall confer upon Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation (or any Parent or Subsidiary employing or retaining Optionee) or of Optionee, which rights are hereby expressly reserved by each, to terminate Optionee's Service at any time for any reason, with or without cause.

Definitions. All capitalized terms in this Notice shall have the meaning assigned to them in this Notice or in the attached Stock Option Agreement.

DATED: 1/24/01

ALIGN TECHNOLOGY, INC.

By: Illegible
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Title: Director

Illegible
---
0PTIONEE

Address:
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ATTACHMENTS
Exhibit A - Stock Option Agreement
Exhibit B - Prospectus

EXHIBIT A

STOCK OPTION AGREEMENT

EXHIBIT B

PROSPECTUS

COMPENSATION AGREEMENT

Agreement dated as of the day of January, 2001 by and between Kelsey Wirth ("Optionee") and Align Technology, Inc., a Delaware corporation (the "Corporation").

W I T N E S S E T H

WHEREAS, Optionee is to provide services to the Corporation, and the Corporation wishes to provide an equity incentive to Optionee to provide such services.

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree as follows:

1. On January 4, 2001 Optionee was granted an option to acquire 1,000,000/1/ shares of the Corporation's Common Stock (the "Option") under the terms and conditions set forth in the Stock Option Agreement, attached hereto as Exhibit A.

2. Corporation and Optionee acknowledge and agree that the Option is granted as compensation for services and not for any capital-raising purposes or in connection with any capital-raising activities.

3. This agreement is intended to constitute a written compensation contract within the meaning of Rule 701 of the Securities Act of 1933, as amended.

4. Nothing herein or in the Stock Option Agreement shall confer upon Optionee any right to continue in the Corporation's employ or service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation or Optionee, which rights are hereby expressly reserved by each party, to terminate Optionee's service at any time for any reason, with or without cause.

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

OPTIONEE:

Illegible

Align Technology, Inc.

By: Illegible

Title: Director

/1/ Pre-adjusted to reflect the 2-for-1 split of the Common Stock to be effective January 5, 2001.

EXHIBIT A

STOCK OPTION AGREEMENT

EXHIBIT 10.27

ALIGN TECHNOLOGY, INC.

NOTICE OF GRANT OF STOCK OPTION

Notice is hereby given of the following option grant (the "Option") to purchase shares of the Common Stock of Align Technology, Inc. (the "Corporation"):

Optionee: Zia Chishti

Grant Date: January 4, 2001

Vesting Commencement Date: January 4, 2001

Exercise Price: $ 15.00 per share*

Number of Option Shares: 1,000,000 shares*

Expiration Date: January 3, 2011

Type of Option: Non-Statutory Stock Option

Exercise Schedule: The Option shall become exercisable for twenty-five percent (25%) of the Option Shares upon Optionee's completion of one (1) year of Service measured from the Vesting Commencement Date and shall become exercisable for the balance of the Option Shares in a series of thirty-six (36) successive equal monthly installments upon Optionee's completion of each additional month of Service over the thirty-six (36) month period measured from the first anniversary of the Vesting Commencement Date. In no event shall the Option become exercisable for any additional Option Shares after Optionee's cessation of Service.

Optionee understands and agrees that the Option is granted subject to the terms and conditions of the Stock Option Agreement attached hereto as Exhibit A and agrees to be bound by those terms and conditions. The Option is subject to the approval of the Corporation's stockholders and shall terminate in the event such stockholder approval is not obtained before July 1, 2001.

- ----------

* Pre-adjusted to reflect the 2-for-1 split of the Common Stock to be effective January 5, 2001.

Employment at Will. Nothing in this Notice or in the attached Stock Option Agreement shall confer upon Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation (or any Parent or Subsidiary employing or retaining Optionee) or of Optionee, which rights are hereby expressly reserved by each, to terminate Optionee's Service at any time for any reason, with or without cause.

Definitions. All capitalized terms in this Notice shall have the meaning assigned to them in this Notice or in the attached Stock Option Agreement.

DATED: 1/24/01

ALIGN TECHNOLOGY, INC.

By: /s/ Illegible
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Title: Director

/s/ Illegible
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OPTIONEE

Address:
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ATTACHMENTS
Exhibit A - Stock Option Agreement
Exhibit B - Prospectus

EXHIBIT A

STOCK OPTION AGREEMENT

EXHIBIT B

PROSPECTUS

COMPENSATION AGREEMENT

Agreement dated as of the ---------- day of January, 2001 by and between Zia Chishti ("Optionee") and Align Technology, Inc., a Delaware corporation (the "Corporation").

W I T N E S S E T H

WHEREAS, Optionee is to provide services to the Corporation, and the Corporation wishes to provide an equity incentive to Optionee to provide such services.

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree as follows:

1. On January 4, 2001 Optionee was granted an option to acquire 1,000,000/1/ shares of the Corporation's Common Stock (the "Option") under the terms and conditions set forth in the Stock Option Agreement, attached hereto as Exhibit A.

2. Corporation and Optionee acknowledge and agree that the Option is granted as compensation for services and not for any capital-raising purposes or in connection with any capital-raising activities.

3. This agreement is intended to constitute a written compensation contract within the meaning of Rule 701 of the Securities Act of 1933, as amended.

4. Nothing herein or in the Stock Option Agreement shall confer upon Optionee any right to continue in the Corporation's employ or service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation or Optionee, which rights are hereby expressly reserved by each party, to terminate Optionee's service at any time for any reason, with or without cause.

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

OPTIONEE:

/s/ Illegible
- ----------

Align Technology, Inc.

By: /s/ Illegible
----------

Title: Director

- ----------

/1/ Pre-adjusted to reflect the 2-for-1 split of the Common Stock to be effective January 5, 2001.

EXHIBIT A

STOCK OPTION AGREEMENT

EXHIBIT 10.28

STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE--MODIFIED NET
AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION

[LOGO]

1. Basic Provisions ("Basic Provisions").

1.1 Parties: This Lease ("Lease"), dated for reference purposes only, August 30, 2001 is made by and between James S. Lindsey ("Lessor") and Align Technology, Inc. ("Leasee"), (collectively the "Parties" or individually a "Party").

1.2(a) Premises: That certain portion of the Building, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 821 Martin Avenue, located in the City of Santa Clara County of Santa Clara, State of California, with zip code 95050, as outlined on Exhibit A attached hereto ("Premises"). The "Building" is that certain building containing the Premises and generally described as (describe briefly the nature of the Building): An approximately 20,627 square foot portion of an approximately 100,369 square foot freestanding building which is part of a two building, approximately 156,282 square foot ___. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, exterior walls or utility raceways of the Building or to any other buildings in the Industrial Center. The Premises, the Building, the Common Areas, the land upon which they are located, along with other buildings and improvements thereon, are herein collectively referred to as the "Industrial Center." (Also see Paragraph 2.)

1.2(b) Parking: Eighty-two unreserved vehicle parking spaces ("Unreserved Parking Spaces"); and zero reserved vehicle parking spaces ("Reserved Parking Spaces"). (Also see Paragraph 2.6.)

1.3 Term: One years and zero months ("Original Term") commencing October 1, 2001 ("Commencement Date") and ending September 30, 2002 ("Expiration Date"). (Also see Paragraph 3.)

1.4 Early Possession: September 15, 2001 ("Early Possession Date"). (Also see Paragraphs 3.2 and 3.3.)

1.5 Base Rent: $25,783.74 per month ("Base Rent"), payable on the first day of each month commencing November 1, 2001. (Also see Paragraph 4.)

[X] If this box is checked, this Lease provides for Base Rent to be adjusted per Addendum One attached hereto.

1.6(a) Base Rent paid upon Execution: $25783.74 Base Rent for the period October 1, 2001 - October 31, 2001.

1.6(b) Lessee's Share of Common Area Operating Expenses: Thirteen and 2/10 percent (13.__) ("Lessee's Share") as determined by

[X] prorata square footage of the Premises as compared to the total square footage of the project (20.6% of the building).

1.7 Security Deposit: $ See Paragraph 74 ("Security Deposit"). (Also see Paragraph 5.)

1.8 Permitted Use: Office, administration, light assembly, research and development, testing, engineering, warehousing and related legal uses ("Permitted Use") (Also see Paragraph 6.)

1.9 Insuring Party. Lessor is the "Insuring Party." (Also see Paragraph 8.)

1.10(a) Real Estate Brokers. The following real estate broker(s) (collectively, the "Brokers") and brokerage relationships exist in this transaction and are consented to by the Parties (check applicable boxes):

[ ] ---------- represents Lessor exclusively ("Lessor's Broker");

[ ] ---------- represents Lessee exclusively ("Lessee's Broker"); or

[X] CPS represents both Lessor and Lessee ("Dual Agency"). (Also see Paragraph 15.)

1.10(b) Payment to Brokers. Upon the execution of this Lease by both Parties, Lessor shall pay to said Broker(s) jointly, or in such separate shares as they may mutually designate in writing, a fee as set forth in a separate written agreement between Lessor and said Broker(s) (or in the event there is no separate written agreement between Lessor and said Broker(s), the sum of $_____) for brokerage services rendered by said Broker(s) in connection with this transaction.

1.11 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by Not Applicable ("Guarantor"). (Also see Paragraph 37.)

1.12 Addends and Exhibits. Attached hereto is an Addendum or Addenda consisting of Paragraphs 49 through 75 and Exhibits A through A all of which constitute a part of this Lease.

2. Premises, Parking and Common Areas.

2.1 Letting. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of square footage set forth in this Lease, or that may have been used in calculating rental and/or Common Area Operating Expenses, is an approximation which Lessor and Lessee agree is reasonable and the rental and Lessee's Share (as defined in Paragraph 1.6(b)) based thereon is not subject to revision whether or not the actual square footage is more or less.

2.2 Condition. Lessor shall deliver the Premises to Lessee clean and free of debris on the Commencement Date and warrants to Lessee that the existing plumbing, electrical systems, fire sprinkler system, lighting, air conditioning and heating systems and loading doors, if any, in the Premises, other than those constructed by Lessee, shall be in good operating condition on the Commencement Date. If a non-compliance with said warranty exists as of the Commencement Date, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of a written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within thirty (30) days after the Commencement Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense.

2.3 Compliance with Covenants. Restrictions and Building Code. Lessor warrants that any improvements (other than those constructed by Lessee or at Lessee's direction) on or in the Premises which have been constructed or installed by Lessor or with Lessor's consent or at Lessor's direction shall comply with all applicable covenants or restrictions of record and applicable building codes, regulations and ordinances in effect on the Commencement Date. Lessor further warrants to Lessee that Lessor has no knowledge of any claim having been made by any governmental agency that a violation or violations of applicable building codes, regulations, or ordinances exist with regard to the Premises as of the Commencement Date. Said warranties shall not apply to any Alterations or Utility Installations (defined in Paragraph 7.3(a)) made or to be made by Lessee. If the Premises do not comply with said warranties, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee within six (6) months following the Commencement Date and setting forth with specificity the nature and extent of such non-compliance, take such action, at Lessor's expense, as may be reasonable or appropriate to rectify the non-compliance. Lessor makes no warranty that the Permitted Use in Paragraph 1.8 is permitted for the Premises under Applicable Laws (as defined in Paragraph 2.4).

2.4 Acceptance of Premises. Lessee hereby acknowledges: (a) that it has been advised by the Broker(s) to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical and fire sprinkler systems, security, environmental aspects, seismic and earthquake requirements, and compliance with the Americans with Disabilities Act and applicable zoning, municipal, county, state and federal laws, ordinances and regulations and any covenants or restrictions of record (collectively, "Applicable Laws") and the present and future suitability of the Premises for Lessee's intended use: (b) that Lessee has made such investigation as it deems necessary with reference to such matters, is satisfied with reference thereto, and assumes all responsibility therefore as the same relate to Lessee's occupancy of the Premises and/or the terms of this Lease; and (c) that neither Lessor, nor any of Lessor's agent, has made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease.

2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in this Paragraph 2 shall be of no force or effect if immediately prior to the date set forth in Paragraph 1.1 Lessee was the owner or occupant of the Premises. In such even, Lessee shall, at Lessee's sole cost and expense, correct any non-compliance of the Premises with said warranties.

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2.6 Vehicle Parking Lessee shall be entitled to use the number of Unreserved Parking Spaces and Reserved Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Vehicles other than Permitted Size Vehicles shall be parked and loaded or unloaded as directed by Lessor in the Rules and Regulations (as defined in Paragraph 40) issued by Lessor. (Also see Paragraph 2.9.)

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) If Lessee permits or allows any of the prohibited activities described in Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or low away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

(c) Lessor shall at the Commencement Date of this Lease, provide the parking facilities required by Applicable Law.

2.7 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Industrial Center and interior utility raceways within the Premises that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other lessees of the Industrial Center and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways and landscaped areas.

2.8 Common Areas - Lessee's Rights. Lessor hereby grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, customers, contractors and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor, under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Industrial Center. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 Common Areas - Rules and Regulations. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable Rules and Regulations with respect thereto in accordance with Paragraph 40. Lessee agrees to abide by and conform to all such Rules and Regulations, and to cause its employees, suppliers, shippers, customers, contractors and invites to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said rules and regulations by other lessees of the Industrial Center.

2.10 Common Areas - Changes. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, discretion of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Industrial Center to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Industrial Center, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Industrial Center as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. If an Early Possession Date is specified in Paragraph 1.4 and if Lessee totally or partially occupies the Premises after the Early Possession Date but prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early occupancy. All other terms of this Lease, however, (including but not limited to the obligations to pay Lessee's Share of Common Areas Operating Expenses and to carry the insurance

required by Paragraph 8) shall be in effect during such period. Any such early possession shall not affect nor advance the Expiration date of the Original Term.

3.3 Delay in Possession. If for any reason Lessor cannot deliver possession of the Premises to Lessee by the Early Possession Date, if one is specified in Paragraph 1.4 or if no Early Possession Date is specified; by the Commencement Date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease, or the obligations of Lessee hereunder, or extend the term hereof, but in such case, Lessee shall not, except as otherwise provided herein, be obligated to pay rent or perform any other obligation of Lessee under the terms of this Lease until Lessor delivers possession of the Premises to Lessee. If possession of the Premises is not delivered to Lessee within sixty (60) days after the Commencement Date, Lessee may, at its option, by notice in writing to Lessor within ten (10) days after the end of the said sixty (60) day period, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder; provided further, however, that if such written notice of Lessee is not received by Lessor within the said ten (10) day period, Lessee's right to cancel this Lease hereunder shall terminate and be of no further force or effect. Except as may be otherwise provided, and regardless of when the Original Term actually commences, if possession is not tendered to Lessee when required by this Lease and Lessee does not terminate this Lease, as aforesaid, the period free of the obligation to pay Base Rent, if any, that Lessee would otherwise have enjoyed shall run from the date of delivery or possession and continue for a period equal to the period during which the Lessee would have otherwise enjoyed under the terms hereof, but minus any days of delay caused by the acts, changes or omissions of Lessee.

4. Rent.

4.1 Base Rent. Lessee shall pay Base Rent and other rent or charges, as the same may be adjusted from time to time, to Lessor in Lawful money of the United States, without offset or deduction, on or before the day on which it is due under the terms of this Lease. Base Rent and all other rent and charges for any period during the term hereof which is for less that one full month shall be prorated based upon the actual number of days of the month involved. Payment of Base Rent and other charges shall be made to Lessor at its address stated herein or to such other persons or at such other addresses as Lessor may from time to time designate in writing to Lessee.

4.2 Common Area Operating Expenses. Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6(b)) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "Common Area Operating Expenses" are defined, for purposes of this Lease, as all costs incurred by Lessor relating to the ownership and operation of the Industrial Center, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition of the following:

(aa) The Common Areas, including parking areas, loading an unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators and roof.

(bb) Exterior signs and any tenant directories.

(cc) Fire detection and sprinkler systems.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas.

(iii) Trash disposal, property management and security services and the costs of any environmental inspections.

(iv) Reserves set aside for maintenance and repair of Common Areas.

(v) Real Property Taxes (as defined in Paragraph 10.2) to be paid by Lessor for the Building and the Common Areas under Paragraph 10 hereof.

(vi) The cost of the premiums for the insurance policies maintained by Lessor under Paragraph 8 hereof.

(vii) Any deductible portion of an insured loss concerning the Building of the Common Areas.

(viii) Any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Building or to any other building in the Industrial Center or to the operation, repair and maintenance thereof, shall be allocated entirely to the Building or to such other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Industrial Center.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities to provide those services unless the Industrial Center already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or

some of them.

(d) Lessee's Share of Common Area Operating Expenses shall be payable by Lessee within ten (10) days after a reasonably detailed statement of actual expenses is presented to Lessee by Lessor. At Lessor's option, however, an amount may be estimated by Lessor from time to time of Lessee's Share of annual Common Area Operating Expenses and the same shall be payable monthly or quarterly, as Lessor shall designate, during each 12-month period of the Lease term, on the same day as the Base Rent is due hereunder. Lessor shall deliver to Lessee within sixty (60) days after the expiration of each calendar year a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses incurred during the preceding year. If Lessee's payments under this Paragraph 4.2(d) during said preceding year exceed Lessee's Share as indicated on said statement. Lessee shall be credited the amount of such over-

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payment against Lessee's Share of Common Area Operating Expenses next becoming due. If Lessee's payments under this Paragraph 4.2(d) during said preceding year were less than Lessee's Share as indicated on said statement. Lessee shall pay to Lessor the amount of the deficiency within ten (10) days after delivery by Lessor to Lessee of said statement.

5. Security Deposit. Lessee shall deposit with Lessor upon Lessee's execution hereof the Security Deposit set forth in Paragraph 1.7 as security for Lessee's faithful performance of Lessee's obligations under this Lease. If Lessee fails to pay Base Rent or other rent or charges due hereunder, or otherwise Defaults under this Lease (as declined in Paragraph 13.1), Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, cost, expense, loss or damage (including attorneys' fees) which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of said Security Deposit, Lessee shall within ten (10) days after written request therefore deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. Any time the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor as an addition to the Security Deposit so that the total amount of the Security Deposit shall at all times bear the same proportion to the then current Base Rent as the initial Security Deposit bears to the initial Base Rent set forth in Paragraph 1.5 Lessor shall not be required to keep all or any part of the Security Deposit separate from its general accounts. Lessor shall, at the expiration or earlier termination of the term hereof and after Lessee has vacation the Premises, return to Lessee (or, at Lessor's option, to the last assignee, if any, of Lessee's interest herein), that portion of the Security Deposit not used or applied by Lessor. Unless otherwise expressly agreed in writing by Lessor, no part of the Security Deposit shall be considered to he held in trust, to bear interest or other increment for its use, or to be prepayment for any monies to be paid by Lessee under this Lease.

6. Use

6.1 Permitted Use.

(a) Lessee shall use and occupy the Premises only for the Permitted Use set Forth in paragraph 1.8 or any other legal use which is reasonably comparable thereto, and for no other purpose, Lessee shall not use or permit the use of the premises in a manner that is unlawful, creates waste or nuisance, or that disturbs owners and/or occupants of, or causes damage to the Premises or neighboring premises or properties.

(b) Lessor hereby agrees to not unreasonably withhold or delay its consent to any written request by Lessee. Lessee's assignees or subtenants, and by prospective assignees and subtenants of Lessee, its assignees and subtenants, for a modification of said Permitted Use, so long as the same will not impair the structural integrity of the improvements on the Premises or in the Building of the mechanical or electrical systems therein, does not conflict with uses by other lessees, is not significantly more burdensome to the Premises of the Building and the improvements thereon, and is otherwise permissible pursuant to this Paragraph 6. if Lessor elects to withhold such consent, Lessor shall within five (5) business days after such request give a written notification of same, which notice shall include an explanation of Lessor's reasonable objections to the change in use.

6.2 Hazardous Substances

(a) Reportable Uses Require Consent. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature quantity and/or intensify of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment of the premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products or by-products thereof. Lessee shall not engage in any activity in or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Lessor and compliance in a timely manner (at Lessee's sole cost and expense) with all Applicable Requirements (as defined in Paragraph 6.3). "Reportable Use" shall mean (i) the installation of use of any above or below ground storage tank (ii) the generation, possession, storage, use, transportation or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and (iii) the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Laws required that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may, without Lessor's prior consent, but upon notice to Lessor and in compliance with all Applicable Requirements, use any ordinary and customary materials reasonably required to be used by Lessee in the normal course of the Permitted Use, so long as such use is not a Reportable Use and does not expose the premises or neighboring properties to any meaningful risk of contamination or damage of expose Lessor to any liability therefor. In addition, Lessor may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by Lessee upon Lessee's giving Lessor such additional assurance as Lessor, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefor, including but not limited to the installation (and, or Lessor's option, removal on or before Lease expiration

or earlier termination) or reasonably protective modifications to the Premises (such as concrete uneasements) and/or the deposit of an additional Security Deposit under Paragraph 5 hereof.

(b) Duty to inform Lessor. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises of the Building, other than as previously consented to by Lessor, Lessee shall immediately give Lessor written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance including but not limited to all such documents as may be involved in any Reportable Use involving the Premises. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

(c) Indemnification. Lessee shall indemnify, protect, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee or by anyone under Lessee's control. Lessee's obligations under this Paragraph 6.2 (c) shall include, but not limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

6.3 Lessee's Compliance with Requirements, Lessee shall, at Lessee's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable Requirements," which term is used in this Lease to mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill, or release of any Hazardous Substance), now in effect or which may hereafter come into effect. Lessee shall, within five (5) days after receipt of Lessor's written request, provide Lessor with copies of all documents and information, including but not limited to permits, registrations, manifests, applications, reports and certificates, evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Lessee of the Premises to comply with any Applicable Requirements.

6.4 Inspection; Compliance with Law, Lessor, Lessor's agents, employees, contractors any designated representatives, and the holders of any mortgages, deeds of trust or ground leases on the Premises ("Lenders") shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease and all Applicable Requirements (as defined in Paragraph 6.3), and Lessor shall be entitled, to employ experts and/or consultants in connection therewith to advise Lessor with respect to Lessee's activities, including but not limited to Lessee's installation, operation, use, monitoring, maintenance or removal of any Hazardous Substance on of from the Premises. This costs and expenses of any such inspections shall be paid by the party requesting same, unless a Default or Breach of this Lease by Lessee or a violation of Applicable Requirements or a contamination, caused or materially contributed to by Lessee, is found to exist or to be imminent, or unless the inspection, is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination. In such case, Lessee shall upon request reimburse Lessor or Lessor's Lender, as the case may be, for the costs and expenses of such inspections.

7. Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations.

7.1 Lessee's Obligations.

(a) Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance with Covenants, Restrictions and Building Code), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition and repair (whether or not such portion of the Premises required a repair, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises). Including, without limited the generally of the foregoing, all equipment or facilities specifically serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire hose connections if within the premises, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights, but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2 below. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the

Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) Lessee shall, at Lessee's sole cost and expense, procure and maintain a contract, with copies to Lessor, in customary form and substance for and with a contractor specializing and experienced in the inspection, maintenance and service of the heating, air conditioning, and ventilation system for the Premises. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain the contract for the healing, air conditioning and ventilating systems, and if Lessor so elects, Lessee shall reimburse Lessor upon, demand, for the cost thereof.

(c) If Lessee fails to perform Lessee's obligations under the Paragraph 7.1, Lessor may enter into the Premises after ten (10) days prior written notice to Lessee (except in case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, in accordance with Paragraph 13.2 below.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance with Covenants, Restrictions and Building Code), 4.2 (Common Area Operating Expenses) 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2 shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior root, fire sprinkler and /or standpipe and hose (if located in the Common Areas) or other automatic fire extinguishing system including fire alarm and/or smoke

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detection systems and equipment, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, lances, signs, and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Building, Industrial Center or Common Areas in good order, condition and repair.

7.3 Utility installations, Trade Fixtures, Alterations.

(a) Definitions; Consent Required, The term "Utility installations" is used in this Lease to refer to all Lease to refer to all air lines, power panels, electrical distribution, security, fire protection systems, communications systems, lighting fixtures, heating, ventilating and air conditioning equipment, plumbing, and fencing in or about the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment which can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements on the Premises which are provided by Lessor under the terms of this Lease, other than Utility Installations or Trade Fixtures. "Lessee Owned Alterations and/or Utility Installations" are defied as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a). Lessee shall not make nor cause to be made any Alterations or Utility Installations in, on, under or about the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without Lessor's consent but upon notice to Lessor, so long as they are not visible from outside of the Premises, do not involve puncturing, relocating or removing the roof or any existing walls, or changing or interfering with the fire sprinkler or fire detection systems and the cumulative cost thereof during the term of this Lease as extended does not exceed $2,500.00.

(b) Consent. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. All consents given by Lessor, whether by virtue of Paragraph 7.3(a) or by subsequent specific consent, shall be deemed conditioned upon: (i) Lessee's acquiring all applicable permits required by governmental authorities; (ii) the furnishing of copies of such permits together with a copy of the plans and specifications for the Alteration or Utility Installation to Lessor prior to commencement of the work thereon; and (iii) the compliance by Lessee with all conditions of said permits in a prompt and expeditious manner. Any Alterations or Utility Installations by Lessee during the term of Lease shall be done in a good and workmanlike manner, with good and sufficient materials, and be in compliance with all Applicable Requirements. Lessee shall promptly upon completion thereof furnish Lessor with as-built plans and specifications therefore, Lessor may, (but without obligation to do so) condition its consent to any requested Alteration or Utility Installation that costs $2,500.00 or more upon Lessee's providing Lessor with a lien and completion bond in an amount equal to one and one-half times the estimated cost of such Alteration or Utility Installation.

(c) Lien Protection. Lessee shall pay when due all claim for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by Law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense, defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises. If Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to one and one-half times the amount of such contested lien claim or demand, indemnifying Lessor against liability for the same as required by law for the holding of the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessors' attorneys' fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

7.4 Ownership, Removal, Surrender, and Restoration.

(a) Ownership. Subject to Lessor's right to require their removal and to cause Lessee to become the owner thereof as hereinafter provided in this Paragraph 7.4, all Alterations and Utility Installations made to the Premises by Lessee shall be the property of and owned by Lessee, but considered as part of the Premises, Lessor may, at any time and his option, elect in writing to lessee to be the owner of all or any specified part of the lessee owned Alterations and Utility Installations. Unless otherwise instructed per Subparagraph 7.4(b) hereof, all Lessee-Owned Alterations and Utility Installations, shall, at the expiration or earlier termination of this Lease, become the property of Lessor and remain upon the Premises and be surrendered with the Premises by Lessee.

(b) Removal, Unless otherwise agreed in writing, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or earlier termination of this Lease, notwithstanding that their installation may have been consented to the Lessor. Lessor may require the removal at any time of all or any part of any Alterations or Utility

Installations made without the required consent of Lessor.

(c) Surrender/Restoration, Lessee shall surrender the Premises by the end of the last day of the Lease term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by good maintenance practice or by Lessee performing all of its obligations under this Lease. Except as otherwise agreed or specified herein, the Premises, as surrendered shall include the Alterations and Utility Installations. The obligation of Lessee shall include the repair of any damage occasioned by the Installation, maintenance or removal of Lessee's Trade Fixtures, furnishing, equipment, and Lessee-Owned Alterations and Utility Installations, as well as the removal of any storage tank installed by or for Lessee, and the removal, replacement, or remediation of any soil, material or ground water contaminated by Lessee, all as may then be required by Applicable Requirements and/or good practice. Lessee's Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee subject to its obligation to repair and restore the Premises per this Lease.

8. Insurance; Indemnity.

8.1 Payment of Premiums. The cost of the premiums for the insurance policies maintained by Lessor under this Paragraph 8 shall be a Common Area Operating Expense pursuant to Paragraph 4.2 hereof. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Commencement Date or Expiration Date.

8.2 Liability Insurance.

(a) Carried by Lessee. Lessee shall obtain and keep in force during the term of this Lease a Commercial General Liability Policy of Insurance protecting Lessee, Lessor and any Lender(s) whose names have been provided to Lessee in writing (as additional insureds) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such Insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $ 1,000,000 per occurrence with an "Additional Insured-Managers or Lessors of Premises" endorsement and contain the "Amendment of the Pollution Exclusion" endorsement for damage caused by heat, smoke of fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "Insured Contract" for the performance of Lessee's Indemnity obligations under this Lease. The limits of said Insurance required by this Lease or as carried by Lessee shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance to be carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) Carried by Lessor. Lessor shall also maintain liability insurance described in Paragraph 8.2 (a) above, in addition to an not in lieu of, the insurance required to be maintained by Lessee, Lessee shall not be named as an additional insured therein.

8.3 Property Insurance-Building, Improvements and Rental Value

(a) Building and Improvements. Lessor shall obtain and keep in force during the term of this Lease a policy or policies in the name of Lessor, with loss payable to Lessor and to any Lender(s), insuring against loss or damage to the Premises. Such insurance shall be for full replacement cost, as the same shall exist from time to time, or the amount required by any Lender(s), but in no event more than the commercially reasonable and available insurable value thereof it, reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost. Lessee-Owned Alterations and Utility Installations, Trade Fixtures and Lessee's personal property shall be insured by Lessee pursuant to Paragraph 8.4. If the coverage is available and commercially appropriate, Lessor's policy or policies shall insure against all risks of direct physical loss or damage (except the perils of floods and/or earthquake unless required by the Lender), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Building required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as a result of then covered loss, but not including plate glass insurance. Said policy or policies shall also contain an agreed valuation provision in lieu of any co-insurance clause, waiver of subrogation, and initiation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located.

(b) Rental Value. Lessor shall also obtain and keep in force during the term of this Lease a policy or policies in the name of Lessor, with loss payable to Lessor and any Lender(s), insuring the loss of the full rental and other charges payable by all lessees of the Building to Lessor for one year (including all Real Property Taxes, Insurance Costs, all Common Area Operating Expenses and any scheduled rental increases). Said Insurance may provide that in the event the Lease is terminated by reason of an insured loss, the period of indemnity for such coverage shall be extended beyond the date of the completion of repairs or replacement of the Premises, to provide for one full year's loss of rental revenues from the date of any such loss. Said insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, and the amount of coverage shall be adjusted annually to reflect the projected rental income. Real Property Taxes, Insurance Premium Costs and other expenses, if any, otherwise payable, for the next 12-month period. Common Area Operating Expenses shall include any deductible amount in the event of such loss.

(c) Adjacent Premises. Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Industrial Center if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) Lessee's Improvements. Since Lessor is the Insuring Party. Lessor shall not be required to insure Lessee-Owned Alterations and Utility installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 Lessee's Property Insurance. Subject to the requirements of Paragraph 8.5 Lessee at its cost shall either by separate policy or, at Lessor's option, by endorsement to a policy already carried, maintain insurance coverage on all of Lessee's personal property, Trade Fixtures and Lessee-Owned Alterations and Utility Installations in, on, or about the Premises similar in coverage to that carried by Lessor as the Insuring Party under Paragraph 8.3 (a). Such Insurance shall be full replacement cost coverage with a deductible not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property and the restoration of Trade Fixtures and Lessee-Owned Alterations and Utility Installations. Upon request from Lessor, Lessee shall provide Lessor with written evidence that such insurance in force.

8.5 Insurance Policies. Insurance required hereunder shall be in companies duly licensed to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B+, V, or such other rating as may be required by a Lender, as set forth in the most current issue of "Best's Insurance Guide". Lessee shall not do or permit to be done anything which shall invalidate the Insurance policies referred to in.

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this Paragraph 8. Lessee shall cause to be delivered to Lessor, within seven (7) days after the earlier of the Early Possession Date of the Commencement Date, certified copies of, or certificates evidencing the existence and amounts of, the insurance required under Paragraph 8.2(a) and 8.4. No such policy shall be cancelable or subject to modification except after thirty (30) days' prior written notice to Lessor. Lessee shall at least thirty (30) days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages (whether in contract or in lost) against the other, for loss or damage to their properly arising out of or incident to the points required to be insured against under Paragraph 8. The effect of such releases and waivers of the right to cover damages shall not be insured by the amount of insurance carried or required, or by any deductibles applicable thereto. Lessor and Lessee agree to have their respective insurance companies issuing properly damage insurance waive any right to subrogation that such companies may have against Lessor or Lessee, as this case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's negligence and/or breach of express warranties, Lessee shall indemnify, protect, defend and hold harmless the Premises. Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, loss of permits, attorneys' and consultants fees, expenses and/or liabilities arising out of, involving, or in connection with, the occupancy of the Promises by Lessee, the conduct of Lessee's business, any act, emission or neglect of Lessen, its agents, contractors, employees or invitees, and out of any Default or Breach by Lessee in the performance in a timely manner of any obligation on Lessee's part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Lessor) litigated and/or reduced to judgment. In case any action or proceeding be brought against Lessor by reason of any of the foregoing matters, Lessee upon notice from Lessor shall defend the same at Lessors expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate will Lessee in such defense. Lessor need not have first paid any such claim in order to be so indemnified.

8.8 Exemption of Lessor from Liability. Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessor, Lessee's employees, contractors, invitees, customers, or any other person in or about the Promises, whether such damage or injury is caused by of results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said injury or damage results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Lessor shall not be liable for any damages arising from any act or neglect of any other losses of Lessor not from the failure by Lessor to enforce the provisions of any other lease in the Industrial Center. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

9. Damage or Destruction.

9.1 Definitions.

(a) "Premises Partial Damage" shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility installations, the repair cost of which damage or destruction is less than fifty percent (50%) of the then Replacement Cost (as defined in Paragraph 9.1(d) of the Premises (excluding Lessee-Owned Alterations and Utility Installations and Trade Fixtures) immediately prior to such damage or destruction.

(b) "Premises Total Destruction" shall mean damage or destruction to the Promises, other than Lessee-Owned Alterations and Utility installations, the repair cost of which damage or destruction is fifty percent (50%) or more of the then Replacement Cost of the Premises (excluding Lessor-Owned Alterations and Utility Installations and Trade Fixtures) immediately prior to such damage or destruction, in addition, damage or destruction to the Building other than Lessee-Owned Alterations and Utility Installations and Trade Fixtures of any lessees of the Building, the cost of which damage or destruction is fifty percent (50%) or more of the then Replacement Cost (excluding Lessee-Owned Alterations and Utility Installations and Trade Fixtures of any lessees of the Building) of the Building shall, at the option of Lessees, be deemed to be Premises Total Destruction.

(c) "Insured Loss" shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a) irrespective of any deductible amounts or overage limits involved.

(d) "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of applicable building codes, ordinances or laws, and without deduction for depreciation.

(e) "Hazardous Substance Conditions" shall man the occurrence or discovery of a condition involving the presence of or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises.

9.2 Premises Partial Damage - Insured Loss. If Premises Partial Damage that is an insured Loss Occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessor's) Trade Fixtures or Lessee-Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect. In the event, however, that there is a shortage of insurance proceeds and such shortage is due to the fact that, by reason of the unique nature of the improvements in the Premises, full replacement cost insurance coverage was not commercially reasonable and available. Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within ten (10) days following receipt of written notice of such shortage and request therefore. If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, Lessor shall complete them as soon as reasonably possible and this Lessee shall remain in full force and effect. If Lessor does not receive such funds or assurance within said period. Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect. If Lessor does not receive such funds or assurance within such ten (10) day period, and if Lessor does not so elect to restore and repair, than this Lease shall terminate sixty (60) days following the occurrence of the damage of destruction. Unless otherwise agreed, Lessee shall in no event have any right to reimbursement from Lessor for any funds contributed by Lessee to repair any such damage or destruction, Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3 rather then Paragraph 9.2. notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If Premises Partial Damage that is not an insured Loss occurs, unless caused by a negligent or without act of Lessee (in which event Lessee shall make the repairs at Lessee's expenses and this Lessor shall continue in full force and effect). Lessor may at Lessor's option, either (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee written thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage of Lessor's desire to terminate this Lease as of the date sixty (60) days following the date of such notice. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease. Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage totally at Lessee's expense and without reimbursement from Lessor. Lessee shall provide Lessor with the required funds or satisfactory assurance thereof within thirty (30) days following such commitment from Lessor. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the funds or assurance thereof with in the times specialized above, this Lease shall terminate as of the date specified in Lessor's notice of termination.

9.4 Total Destruction. Notwithstanding any other provision hereof, If Premises Total Destruction occurs (including any destruction required by any authorized public authority), this Lease shall terminate sixty (60) days following the date of such Premises Total Destruction, whether not the damage or destruction is an insured Loss or was caused by a negligent or willful act of Lessee. In the event, however, that the damage or destruction was caused by Lessee, Lessor shall have the right to recover Lessor's damages from Lessee except as released and waived in Paragraph 9.7.

9.5 Damage Near End of Term, If at any time during the last six (6) months of the term of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an insured Loss, Lessor may, at Lessor's option, terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within thirty (30) days after the date of occurrence such damage. Provided, however, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by (a) exercising such option, and (b) providing Lesser any shortage in insurance proceeds ( or adequate assurance thereof ) needed to make the repairs on or before the earlier of (i) the date which is ten (10) days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds. Lessor shall, at Lessor's expense repair such damage as soon as reasonably possible and this Lease shall continue in full force and affect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate as of the date set forth in the first sentence of this Paragraph 9.5.

9.6 Abatement of Rent; Lessee's Remedies.

(a) In the event of (i) Premises Partial Damage or (ii) Hazardous Substance Condition for which Lessee is not legally responsible, the Base Rent, Common Area Operating Expenses and other charges. If any, payable by Lessee hereunder for the period during which such damage or condition, its repair, remediation or restoration continues, shall be abated in proportion to the degree to which Lessee's use of Premises is impaired, but not in excess of proceeds from insurance required to be carried under Paragraph 8.3(b). Except for abatement of Base Rent, Common Area Operating Expenses and other charges, if any, as aforesaid, all other obligations of Lessee hereunder shall be performed by Lessee, and Lessee shall have no claim against Lessor for any damage suffered

by reason of any such damage, destruction, repair, remediation or restoration.

(b) If Lessor shall be obligated to repair or restore the Premises under the provisions of this Paragraph 9 and shall not commence, in a substantial and meaningful way, the repair or restoration of the Premises within ninety (90) days after such obligation shall accrue. Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lender of which Lessee has actual notice of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Lessee gives such notice to Lessor and such Lenders and such repair or restoration is not commenced within thirty (30) days after receipt of such notice, this Lease shall terminate as of the date specified in said notice. If Lessor or a Lender commences the repair or restoration of the Premises within thirty (30) days after the receipt of such notice, this Lease shall continue in full force and effect. "Commence" as used in this Paragraph 9.6 shall be mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever occurs first.

9.7. Hazardous Substance Condition. If an Hazardous Substance Condition occurs, unless Lessee is legally responsible therefore (in which case Lessee shall make the investigation and remediation thereof required by Applicable Requirements and this Lease shall continue in full force and effect, but subject.

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to Lessor's rights under Paragraph 6.2 (c) and Paragraph 13), Lessor may at Lessor's option either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition of Lessor's desire to terminate this Lease as of the date sixty (60) days following the date of such notice. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease. Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the excess costs of (a) investigation and remediation of such Hazardous Substance Condition to the extent required by Applicable Requirements, over (b) an amount equal to twelve (12) times the then monthly Base Rent of $100,000, whichever is greater. Lessee shall provide Lessor with the funds required of Lessee or satisfactory assurance thereof within thirty (30) days following said commitment by Lessee. In such event this Lease shall continue in full force and effect and Lessor shall proceed to make such investigation and remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time period specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination.

9.8 Termination - Advance Payments. Upon termination of this Lease pursuant to this Paragraph 9, Lessor shall return to Lessee any advance payment made by Lessee to Lessor and so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor under the terms of this Lease.

9.9 Waiver of Statues. Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises and the Building with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent it is inconsistent herewith.

10. Real Property Taxes.

10.1 Payment of Taxes. Lessor shall pay the Real Property Taxes, as defined in Paragraph 10.2, applicable to the Industrial Center and except as otherwise provided in Paragraph 10.3, any such amounts shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.2 Real Property Tax Definition. As used herein, the term "Real Property Taxes" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed upon the industrial Center by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage, or other improvement district thereof, levied against any legal or equitable interest of Lessor in the industrial Center or any portion thereof. Lessor's right to rent or other income therefrom, and/or Lessor's business of leasing the Premises. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring, or changes in Applicable Law taking effect, during the term of this Lease, including but not limited to a change in the ownership of the Industrial Center or in the improvements thereon the execution of this Lease, or any modification, amendment or transfer thereof, and whether or not contemplated by the Parties. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.3 Additional improvements. Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Industrial Center by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.1 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase to Real Property Taxes II assessed solely by reason of Allocations. Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request.

10.4 Joint Assessment. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 Lessee's Property Taxes. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises or stored within the Industrial center. When possible, Lessee shall cause its Lessee-Owned Alterations and Utility Installations. Trade Fixtures, furnishings, equipment and all other personal property so be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities. Lessee shall pay directly for all utilities and services supplied to the Premises, including but not limited to electricity, telephone, security,

gas and cleaning of the Premises, together with any taxes thereon. If any such utilities or services are not separately metered to the Premises or separately billed to the Premises. Lessee shall pay to Lessor a reasonable proportion to be determined by Lessor of all such charges jointly metered or billed with other premises in the Building. In the manner and within the time periods set forth in Paragraph 4.2(d).

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or otherwise transfer or encumber (collective, "assign") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent given under and subject to the terms of Paragraph 36

(b) A change in the control of Lessee shall constitute an assignment requiring Lessor's consent. The transfer, on a cumulative basis, of twenty-five percent (25%) or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, refinancing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee, as hereinafter defined, by an amount equal to or greater than twenty-five percent (25%) of such Net Worth of Lessee as it was represented to Lessor at the time of full execution and delivery of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions consulting such reduction, at whichever time said Net Worth of Lessee was or is greater, shall be considered an assignment of this Lease by Lessee to which Lessor may reasonably withhold its consent "Net Worth of Lessee" for purposes of this Lease shall be the net worth of Lessee (excluding any Guarantors) established under generally accepted accounting principles consistently applied.

(d) An assignment or subletting of Lessee's interest in this Lease without Lessor's specific prior written consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1, or a non-curable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unconsented to assignment or subletting as a non-curable Breach. Lessor shall have the right to either: (i) terminate this Lease, or (ii) upon thirty, (30) days' written notice ("Lessor's Notice"). Increase the monthly Base Rent for the Premises to the greater of the then fair market rental value of the Premises, as reasonably determined by Lessor, or one hundred ten percent (110%) of the Base Rent then in effect. Pending determination of the new law market rental value, if disputed by Lessee, Lessee shall pay the amount set forth in Lessor's Notice, with any overpayment credited against the next installment(s) of Base Rent coming due, and any underpayment for the period retroactively to the effective date of the adjustment being due and payable immediately upon the determination thereof. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to the then fair market value as reasonably determined by Lessor (without the Lease being considered an encumbrance or any deduction for depreciation or obsolescence, and considering the Premises at its highest and best use and in good condition) or one hundred ten percent (110%) of the price previously in effect, (ii) any index-oriented rental or price adjustment formulas contained in this Lease shall be adjusted to require that the base index be determined with reference to the index applicable to the time of such adjustment, and (iii) any fixed rental adjustments scheduled during the remainder of the Lease term shall be increased in the same ratio as the new rental basis to the Base Rent in effect immediately prior to the adjustment specified in Lessor's Notice.

(e) Lessee's remedy for any breach for any breach of this Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, any assignment or subletting shall not (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease. (ii) release Lessee of any obligations hereunder, nor (iii) alter the primary liability of Lessee for the payment of Base Rent and other sums due Lessor hereunder or for the performance of any other obligations to be performed by Lessee under this lease.

(b) Lessor may accept any rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of any rent for performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for the Default or Breach by Lessee of any of the terms, covenants or conditions of this Lease.

(c) The consent of Lessor to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting by Lessee or to any subsequent or successive assignment or subletting by the assignee or sublessee. However, Lessor may consent to subsequent sublettings and assignments of the sublease or any amendments or modifications thereto without notifying Lessee or anyone else liable under this Lease or the sublease and without obtaining their consent, and such action shall not relieve such persons from liability under this Lease of the sublease.

(d) In the event of any Default or Breach of Lessee's obligation under this Lease, Lessor may proceed directly against Lessee, any Guarantors or anyone

else responsible for the performance of the Lessee's obligations under this Lease, including any sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or as reasonable consideration for Lessor's considering and processing the request for consent. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested by Lessor.

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed, for the benefit of Lessor, to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other then such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented in writing.

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12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all rentals and income arising from any sublease of all or a portion of the Premises heretofore or hereafter made by Lessee, and Lessor may collect such rent and income and apply same toward Lesser's obligations under this Lease; provided however, that until a Breach (as defined in Paragraph 13.1) shall occur in the performance of Lessee's obligations under this Lease. Lessee may, except as otherwise provided in this Lease, receive, collect and enjoy the rents accruing under such sublease. Lessor shall not, by reason of the foregoing provision or any other assignment of such sublease to Lessor, nor by reason of the collection of the rents from a sublessee, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of lessee's obligations to such sublessee under such Sublease. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor the rents and other charges due and to become due under the sublease. Sublessee shall rely upon any such statement and request from Lessor and shall pay such rents and other charges to Lessor without any obligation or right to inquire as to whether such Breach exists and notwithstanding any notice from or claim from Lessee to the contrary. Lessee shall have no right or claim against such sublessee, or, until the Breach has been cured, against Lessor, for any such rents and other charges so paid by said sublessee to Lessor.

(b) In the event of a Breach by Lessee in the performance of its obligations under this Lease, Lessor, at its option and without any obligation to do so, may require any sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any other prior defaults or breaches of such sublessor under such sublease.

(c) Any matter or thing requiring the consent of the sublessor under a sublease shall also require the consent of Lessor herein.

(d) No sublessee under a sublease approved by Lessor shall further assignor sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and _____ from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 Default; Breach. Lessor and Lessee agree that if an attorney is consulted by Lessor in connection with a Lessee Default or Breach (as hereinafter defined), $350,000 is a reasonable minimum sum per such occurence for legal services and costs in the preparation and service of a notice of Default, and that Lessor may include the cost of such services and costs in said notice as rent due and payable to cure said default. A "Default" by lessee is defined as a failure by Lessee to observe, comply with or perform any of the terms, covenants, conditions or rules applicable to Lessee under this Lease. A "Breach" by Lessee is defined as the occurrence of any one or more of the following Defaults, and, where a grace period for cure after notice is specified herein, the failure by Lessee to cure such Default prior to the expiration of the applicable grace period, and shall entitle Lessor to pursue the remedies set forth in Paragraphs 13.2 and/or 13.3:

(a) the vacating of the Premises without the intention to reoccupy same, or the abandonment of the premises.

(b) Except as expressly otherwise provided in this Lease, the failure by Lessee to make any payment of Base Rent, Lessee's Share of Common Area Operating Expenses, or any other monetary payment required to be made by Lessee hereunder as and when due, the failure by Lessee to provide Lessor with reasonable evidence of insurance or surely bond required under this Lease, or the failure of lessee to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) days following written notice thereof by or on behalf of Lessor to Lessee.

(c) Except as expressly otherwise provided in this Lease, the failure by Lessee to provide Lessor with reasonable written evidence (in duly executed original form, if applicable) of (i) compliance with Applicable requirements per Paragraph 6.3, (ii) the inspection, maintenance and service contracts required under Paragraph 7.1 (b), (iii) the rescission of an unauthorized assignment or subletting per Paragraph 12.1 (iv) a Tenancy Statement per Paragraphs 16 or 37, (v) the subordination or non-subordination of this Lease per Paragraph 30, (vi) the guaranty of the performance of Lessee's obligations under this Lease if required under Paragraphs 1.11 and 37, (vii) the execution of any document requested under Paragraph 42 (easements), or (viii) any other documentation or information which Lessor may reasonably require to Lessee under the forms of this lease, where any such failure continues for a period of ten (10) days following written notice by or on behalf of Lessor to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or

provisions of this Lease, or of the rules adopted under Paragraph 40 hereof that are to be observed, complied with or performed by Lessee, other than those described in Subparagraphs 13.1(a), (b) or (c), above, where such default continues for a period of thirty (30) days after written notice thereof by or on behalf of Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach of this Lease by Lessee if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(e) The occurrence of any of the following events: (i) the making of Lessee of any general arrangement or assignment for the benefit of the creditors; (ii) Lessee's becoming a "debtor" as defined in 11 U.S. Code Section 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this Subparagraph 13.1(a) is contrary to any applicable law, such provision shall be of no force or effect, and shall not affect the validity of the remaining provisions.

(f) The discovery by Lessor that any financial statement of Lessee or of any Guarantor, given to Lessor by Lessee or any Guarantor, was materially false.

(g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory breach basis, and Lessee's failure, within sixty (60) days following written notice by or on behalf of Lessor to Lessee of any such event, to provide Lessor with written alternative assurances of security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any affirmative duty or obligation of Lessee under this Lease, within ten (10) days after written notice to Lessee (or in case of an emergency, without notice). Lessor may at its option (but without obligation to do so), perform such duty or obligation on Lessee's behalf, Including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee to Lessor upon invoice therefor, if any check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its own option, may require all future payments to be made under this Lease by Lessee to be made only by cashier's check. In the event of a Breach of this Lease by Lessee (as defined in Paragraph 13.1), with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach, Lessor may:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent for the which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to cost of recovering possession of the Premises, expenses of _____. Including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco or the Federal Reserve Bank District in which the Premises are located at the time of award plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Default or Breach of this Lease shall not waive Lessor's right to recover damages under this Paragraph 13.2. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein; or Lessor may reserve of unlawful detainer. Lessor shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein; or Lessor may reserve the right to recover all or any part thereof in a separate suit for such rent and/or damages. If a notice and grace period required under Subparagraph 13.1(b), (c) or (d) was not previously given, a notice to pay rent or quit or to perform or quit, as the case may be, given to Lessee under any statue authorizing the forfeiture of leases for unlawful detainer shall also constitute the applicable notice for grace period purposes required by Subparagraph 13.1(b), (c) or (d). In such case, the applicable grace period under the unlawful detainer statue shall run concurrently after the one such statutory notice, and the failure of Lessee to cure the Default within the greater of the two (2) such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statue.

(b) Continue the Lease and Lessee's right to possession in effect (in California under California Civil Code Section 1951, 4) after Lessee's Breach and recover the rent as it becomes due, provided Lessee has the right to sublet or assign, subject only to reasonable limitations. Lessor and Lessee agree that the limitations on assignment and subletting in this Lease are reasonable. Acts of maintenance or preservation, efforts to ____ the Promises, or the appointment of a receiver to protect the Lessor's interest under this Lease, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state wherein the Premises are located. /1/

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(d) The expiration of termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture in Event of Breach. Any agreement by Lessor for free or abated rent or other charges applicable to the Premises, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions" shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms covenants and conditions of this Lease to be performed or observed by Lessee during the term hereof as the same may be extended. Upon the occurrence of a Breach (as defined in Paragraph 13.1) of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, and recoverable by Lessor, as additional rent due under this Lease, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which _____ the operation of this Paragraph 13.3 shall not be deemed a waiver by Lessor of the provisions of this Paragraph 13.3 unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by the terms of any ground lease, mortgage or deed of trust covering the Premises. Accordingly, if any installment of rent or other sum due from Lessee shall not be received by Lessor or Lessor's designee within ten (10) days after such amount shall be due, than, without any requirement for notice to Lessee, Lessee shall pay to Lessor a late charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, not prevent Lessor from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding Paragraph 4.1 or any other provision of this Lease to the contrary, Base Rent shall, at Lessor's option become due and payable quarterly in advance.

13.5 Breach by Lessor. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph 13.5, a reasonable time shall in no event be less than thirty (30) days after receipt by Lessor, and by any Lender(s) whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days after such notice are reasonably required for its performance, than Lessor shall not be in breach of this Lease if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes little or possession, whichever first occurs. If more than ten percent (10%) of the floor area of the Premises, or more than twenty-five percent (25%) of the portion of the Common Areas designated for Lessee's parking, is taken by condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the Premises. No reduction of Base Rent shall occur if the condemnation does not apply to any portion of the Premises. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution of value of the leasehold or Lessee's relocation expenses and/or Lessee's Trade Fixtures. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall to the extent of its net severance damages received, over and above Lessee's Share of the legal and other expenses incurred by Lessor in the condemnation matter, repair any damage to the Premises caused by such condemnation authority. Lessor shall be responsible for the payment of any amount in excess of such net severance damages required to complete such repair.

15. Brokers' Fees.

15.1 Procuring Cause. The Broker(s) named in Paragraph 1.10 is/are the procuring cause of this Lease.

15.4 Representations and Warranties. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker

or finder other than as named in Paragraph 1.10(a) in connection with the negotiation of this Lease and/or the consummation of the transaction contemplated hereby, and that no broker or other person, firm or entity other than said named Broker(s) is entitled to any commission of finder's fee in connection with said transaction. Lessee and Lessor do each hereby agree to indemnity, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, and/or attorneys' fees reasonably incurred with respect thereto.

16. Tenancy and Financial Statements.

16.1 Tenancy Statement. Each Party (as "Responding Party") shall within ten (10) days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in a form similar to the then most current "Tenancy Statement" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

16.2 Financial Statement. If Lessor desires to finance, refinance, or sell the Premises or the Building, or any part thereof. Lessee and all Guarantors shall deliver to any potential lender or purchaser designated by Lessor such financial statements of Lessee and such Guarantors as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past three (3) years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Lessor's Liability. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the ___ ____ to the Premises. In the event of a transfer of Lessor's title or interest in the Premises or in this Lease. Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor at the time of such transfer or assignment. Except as provided in Paragraph 15.3 upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Interest on Past-Due Obligations. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor within then (10) days following the date on which it was due, shall bear interest from the date due at the prime rate charged by the largest state chartered bank in the state in which the Premises are located plus four percent (4%) per annum, but not exceeding the maximum rate allowed by law, in addition to the potential late charge provided for in Paragraph 13.4.

20. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

21. Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease are deemed to be rent.

22. No Prior or other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made and is relying solely upon. its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party. Each Broker shall be an intended third party beneficiary of the provisions of this Paragraph 22.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission during normal business hours, and shall be deemed sufficiently given if served in a manner specified in this paragraph 23. the addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notice purposes. Either Party may by written notice to the other specify a different address for notice purpose, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for the purpose of mailing or delivering notices to Lessee. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate by written notice to Lessee.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day

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delivery shall be deemed given twenty-four (24) hours after delivery of the same to the United States Postal Services or _____. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon telephone or facsimile confirmation of receipt of the transmission thereof, provided a copy is also delivered via delivery or mail. If notice is received on a Saturday or a Sunday or a legal holiday, it shall be deemed received on the next business day.

24. Waivers. No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof Lessee shall be deemed a waiver of any other term covenant or condition hereof, or any subsequent Default or Breach by Lessee of the same or any other term, covenant or condition hereof. Lessor's consent to or approval of, any such act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. Regardless of Lessor's knowledge of a Default or Breach at the time of accepting rent, the acceptance of rent by Lessor shall not be waiver of any Default or Breach by Lessee of any provision hereof. Any payment given Lessor by Lessee may be accepted by Lessor on account of money or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. Recording. Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of the Lease for recording purposes. The Party requesting recordation shall be responsible for payment of any fees or taxes applicable thereto.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease, in the event that Lessee holds over in violation of this Paragraph 26 then the Base Rent payable from and after the time of the expiration or earlier termination of this Lease shall be increased to two hundred percent (200%) of the Base Rent applicable during the month immediately preceding such expiration or earlier termination. Nothing contained herein shall be construed as a consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies: law or in equity.

28. Covenants and Conditions. All provisions of this Leases to be observed or performed by Lessee are both covenants and conditions.

29. Binding Effect: Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Promises are located. Any litigation between the Parties hereto concerning this Lease shall be _____ in the country in which the Premises are located.

30. Subordination; Attornment; Non-Disturbance.

30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively "Security Device", now or hereafter placed by Lessor upon the real property of which the Premises are a part, to any and all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof. Lessee agrees that the Lenders holding any such Security Device shall have no duty, liability or obligation to perform any of the obligations of Lessor under this Lease, but that in the event of Lessor's default with respect to any such obligation. Lessee will give any Lender whose name and address have been furnished Lessee in writing for such purpose notice of Lessor's default pursuant to Paragraph 13.5. If any Lender shall elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device and shall give written notice thereof to Lessee, this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 Attornment. Subject to the non-disturbance provisions of Paragraph 30.3, Lessee agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisitions of ownership. (ii) be subject to any offsets of defenses which Lessee might have against any prior lessor, or (iii) be bound by prepayment of more than one month's rent.

30.3 Non-Disturbance. With respect to Security Devices _____ into by Lessor after execution of this lease, Lessee's subordination of this Lease shall be subject to receiving assurance (a "non-disturbance agreement") from the Lender that Lessee's possession and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any such subordination or non-subordination, attornment and/or non-disturbances agreement as is provided for herein.

32. Lessor's Access: Showing Premises; Repairs, Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises or to the Building, as Lessor may reasonably deem necessary. Lessor may at any time place on or about the Premises or Building any ordinary "For Sale" signs and Lessor may at any time during the last one hundred eighty (180) days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All such activities of Lessor shall be without abatement of rent or liability to Lessee.

33. Auctions, Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Lessor's prior written consent. Notwithstanding anything to the contrary in this Lease, Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to grant such consent.

34. Signs. Lessee shall not place any sign upon the exterior of the Premises or the Building, except that Lessee may, with Lessor's prior written consent, install (but not on the root) such signs as are reasonably required to advertise Lessee's own business so long as such signs are in a location designated by Lessor and comply with Applicable Requirements and the signage criteria established for the industrial Center by Lessor. The installation of any sign on the Premises by or for Lessee shall be subject to the provisions of Paragraph 7 (Maintenance, Repairs, Utility installations, Trade fixtures and Alterations). Unless otherwise expressly agreed herein, Lessor reserves all rights to the use of the root of the Building, and the right to install advertising signs on the Building, including the root, which do not unreasonably interfere with the conduct of Lessee's business: Lessor shall be entitled to all revenues from such advertising signs.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, as a termination hereof by Lessor for Breach by Lessor, shall automatically terminate any sublease or lessor estate in the Promises provided, however. Lessor shall, in the event of any such surrender, termination or cancellation, have the option to continue any one or all of any existing sub_____, Lessor's failure within ten (10) days following any such event to make a written election to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such even constitute the termination of such interest.

36. Consents

(a) Except for paragraph 33 hereof (Auctions) or as otherwise provided herein, wherever in this Lease the consent of a party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent pertaining to this Lease or the Premises, including but not limited to consents to an assignment a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee to Lessor upon receipt of an invoice and supporting documentation therefore. In addition to the deposit described in Paragraph 12.2(a). Lessor may, as a condition so considering any such request by Lessee, require that Lessee deposit with Lessor an amount of money (in addition to the security Deposit held under Paragraph 5) reasonably calculated by Lessor to represent the cost Lessor will incur in considering and responding to Lessee's request. Any unused portion of said deposit shall be refunded to Lessee without interest. Lessor's consent to any act, assignment of this Lease subletting of the Premises by Lessee shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be damned a waiver of any then existing Default or Breach, except as may be otherwise specially stated in writing by Lessor at the time of such consent.

(b) All conditions to Lessor's consent authorized by this Lease are acknowledged by Lessee as being reasonable. The failure to specify herein any particular condition to Lessor's consent shall not preclude the impositions by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given.

37. Guarantor.

37.1 Form of Guaranty, if there are to be any Guarantors of this Lease per Paragraph 1.11, the form of the guaranty to be executed by each such Guarantor shall be in the form most recently published by the American Industrial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this lease, including but not limited to the obligation to provide the Tenancy Statement and information required in Paragraph 1_.

37.2 Additional Obligations of Guarantors. It shall constitute a Default of the Lessee under this Lease if any such Guarantor fails or refuses, upon reasonable request by Lessor to give: (a) evidence of the due execution of the guaranty called for by this Lease, including the authority of the Guarantor (and of the party signing on Guarantor's behalf) to obligate such Guarantor on said guaranty, and resolution of its board of directors authorizing the making of such guaranty, together with a certificate of incumbency showing the signatures of the persons authorized to sign on its behalf. (b) current financial statements of Guarantor as may from time to time be requested by Lessor, (c) a Tenancy Statement, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Upon payment by Lessee of the rent for the Premises and the performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet

possession of the Premises for the entire form hereof subject to all of the provisions of this Lease.

Initials: /s/ Illegible
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/s/ Illegible
---

39. Options

39.1 Definition. As used in this Lease, the word "Option" has the following meaning: (a) the right to extend the term of this Lease or to renew this Lease or to extend or renew any Lease that Lessee has on other property of Lessor; (b) the right of first refusal to lease the Premises or the right of first offer to lease the Premises or the right of first refusal to lease other property of Lessor or the right of first offer to lease other property of Lessor; (c) the right to purchase the Premises, or the right of first refusal to purchase the Premises, or the right of first offer to purchase the Premises, or the right to purchase other property of Lessor, or the right of first refusal to purchase other property of Lessor, or the right of first offer to purchase other property of Lessor.

39.2 Options Personal to Original Lessee. Each Option granted to Lessee in this Lease is personal to the original Lessee named in Paragraph 1._ hereof, and cannot be voluntarily or involuntarily assigned or exercised by any person or entity other than said original Lessee while the original Lessee is in full and actual possession of the Premises and without the intention of thereafter assigning or subletting. The Options, if any, herein granted to Lessee are not assignable, either as a part of an assignment of this Lease or separately or apart therefrom, and no Option may be separated from this Lease in any manner, by reservation or otherwise.

39.3 Multiple Options. In the event that Lessee has any multiple Options to extend or renew this Lease, a later option cannot be exercised unless the prior Options to extend or renew this Lease have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option notwithstanding any provision in the grant of Option to the contrary: (i) during the period commencing with the giving of any notice of Default under Paragraph 13.1 and continuing until the noticed Default is cured, or (ii) during the period of time any monetary obligation due Lessor from Lessee is unpaid (without regard to whether notice thereof is given Lessee), or (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessor has given to Lessee three (3) or more notices of separate Defaults under Paragraph 13.1 during the twelve (12) month period immediately preceding the exercise of the Option, whether or not the Defaults are cured.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a)

(c) All rights of Lessee under the provisions of an Option shall terminate and be of no further force or effect; notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and during the term of this Lease, (i) Lessee fails to pay to Lessor a monetary obligation of Lessee for a period of thirty (30) days after such obligation becomes due (without any necessity of Lessor to give notice thereof to Lessee), or (ii) Lessor gives to Lessee three (3) or more notices of separate Defaults under Paragraph 13.1 during any twelve (12) month period, whether or not the Defaults are cured, or (iii) If Lessee commits a Breach of this Lease.

40. Rules and Regulations. Lessee agrees that it will abide by, and keep and observe all reasonable rules and regulations ("Rules and Regulations") which Lessor may make from time to time for the management, safety, care and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the industrial Center and their invitees.

41. Security Measures. Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. Reservations. Lessor reserves the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights of way, utility race, ways, and dedications, that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights of way, utility raceways, dedications, maps and restrictions do not reasonably interfere with the use of Promises by Lessor. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement, rights, dedication, map or restrictions.

43. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

44. Authority. If either Party hereto is a corporation, trust, or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on this behalf. If Lessee is a corporation, trust or partnership. Lessee shall, within thirty (30) days after request by Lessor, deliver to Lessor evidence satisfactory to Lessor of such authority.

45. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. Offer. Preparation of this Lease by either Lessor or Lessee or Lessor's agent and submission of same to Lessee or Lessor shall not be deemed an offer to lease. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. Amendments. This Lease may be modified only in writing, signed by the parties in interest at the time of the modification. The Parties shall amend this Lease from time to time to reflect any adjustments that are made to the Base Rent or other rent payable under this Lease. As long as they do not materially change Lessee's obligations hereunder. Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by an institutional insurance company or pension plan Lender in connection with the obtaining of normal financing or refinancing of the property of which the Premises are a part.

48. Multiple Parties. Except as otherwise expressly provided herein, if more than one person or entity is named herein as either Lessor or Lessee, the obligations of such multiple parties shall be the joint and several responsibility of all persons or entities named herein as such Lessor or Lessee.

Initials: /s/ Illegible
---

/s/ Illegible
---

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED. THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

IF THIS LEASE HAS BEEN FILLED IN, IT HAS BEEN PREPARED FOR YOUR ATTORNEY'S REVIEW AND APPROVAL. FURTHER, EXPERTS SHOULD BE CONSULTED TO EVALUATE THE CONDITION OF THE PROPERTY FOR THE POSSIBLE PRESENCE OF ASBESTOS, UNDERGROUND STORAGE TANKS OR HAZARDOUS SUBSTANCES. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY THE REAL ESTATE BROKERS OR THEIR CONTRACTORS, AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES; THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE. IF THE SUBJECT PROPERTY IS IN A STATE OTHER THAN CALIFORNIA. AN ATTORNEY FROM THE STATE WHERE THE PROPERTY IS LOCATED SHOULD BE CONSULTED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

| | |
|---|---|
| Executed at: | Executed at: Align Technology |
| on: | on: 9/6/01 |
| By LESSOR: | By LESSEE: |
| James S Lindsey | Align Technology, Inc. |
| By: /s/ James S Lindsey | By: /s/ CHRISTIAN SKIELLER |
| Name Printed: James S Lindsey | Name Printed: CHRISTIAN SKIELLER |
| Title: | Title: V. P. Operations |
| By: | By: /s/ Zia Chishti |
| Name Printed: | Name Printed: Zia Chishti |
| Title: | Title: CEO |
| Address: 18 Cypress Avenue<br>Kentfield, CA 94904 | Address: |
| Telephone: (415) 453-2583 | Telephone: (408) 470-1291 |
| Facsimile: (415) 453-8465 | Facsimile: (408) 904-5530 |
| BROKER: | BROKER: |
| Executed at: | Executed at: |
| on: | on: |
| By: | By: |
| Name Printed: | Name Printed: |
| Title: | Title: |
| Address: | Address: |
| Telephone: ( ) | Telephone: ( ) |
| Facsimile: ( ) | Facsimile: ( ) |

NOTE: These forms are often modified to meet changing requirements of law and needs of the Industry. Always write or call to make sure you are utilizing the most current form: AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION, 700 South Flower Street, Suite 600, Los Angeles, CA 90017. (213) 687-8777.

EXHIBIT "A"

[GRAPHIC]

20,627+/- square feet
821 Martin Avenue
Santa Clara

Addendum to
Standard Industrial/Commercial Multi-Tenant Lease -- Modified Net
between
James S. Lindsey
and
Align Technology, Inc.

This Addendum is entered into this August 30, 2001, by and between James S. Lindsey ("Lessor") and Align Technology, Inc. ("Lessee") for Premises located at 821 Martin Avenue, Santa Clara, CA 95050.

This Addendum supplements the Standard Industrial/Commercial Multi-Tenant Lease -- Modified Net ("Agreement"), and all "Section" references are to the numbered paragraphs of the relevant portions of the Agreement.

49. Rent. Base rent to be paid as provided in Section 4.1 shall be as follows:

| Month | Base Rent per month | |
|---|---|---|
| October 1, 2001 thru September 30, 2002 | $25,783.74 | |
| October 1, 2002 thru September 30, 2003 | $26,815.10 | $1.30 per sq. ft.* |
| October 1, 2003 thru September 30, 2004 | $27,846.45 | $1.35 per sq. ft.* |
| October 1, 2004 thru June 30, 2005 | $28,877.80 | $1.40 per sq. ft.* |

* Subject to Lessee's exercise of the option to renew.

50. Notwithstanding paragraph 4.2(a), Lessee shall engage and pay for its own separate trash service.

51. Lessee shall not embark upon any new penetrations of the roof membrane without specific written approval by Lessor.

52. Notwithstanding paragraph 4.2(a) (vii), if an insured loss occurs within Lessee's demised premises, then Lessee shall pay the entire insurance deductible amount, not to exceed $5000.00. In case of glass breakage upon the premises from vandalism, Lessee shall pay for the costs of replacement in excess of what is available from insurance.

53. Notwithstanding anything contained in the Lease, Lessor shall be responsible to make repairs to the roof membrane at its sole expense and not to be passed through as an expense to Lessee for the initial Term and Extension Period.

54. Paragraph 13.1 (b) is to be deleted and the following language substituted:

13.1 (b)(i) The failure by Lessee to make any payment of Base Rent, Lessee's Share of Common Area Operation Expenses, or any other monetary payment required to be made by Lessee hereunder as and when due.

13.1 (b)(ii) Except as expressly otherwise provided in this Lease, the failure of Lessee to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) days following written notice thereof by or on behalf of Lessor to Lessee.

55. Paragraphs 15.2, 15.3, and 31 of the Lease are hereby deleted.

56. DISCLOSURE: One of the principals of the Premises is a licensed California real estate agent acting as an agent in this transaction.

57. At the end of Paragraph 6.2 (c), add "The foregoing indemnity does not apply to any Hazardous Substance or other material which is present in, on or about the Premises or the Property as of the Commencement Date or such Hazardous Substance or material which migrates to or under the Premises or the Property from outside the Property or Premises during the term of this Lease, unless due to release by Tenant or its employees, agents, contractors and invitees. Lessor hereby releases Tenant from any liability to Lessor for any such contamination or release which existed as of the Commencement Date or was caused by someone other than Tenant, its employees, agents, contractors or invitees."

58. Notwithstanding Paragraph 7.1 (a), Lessee shall not be responsible for a repair if Lessee can show that the repair is required exclusively because of a prior use.

59. The consents required of Lessor in Paragraphs 12.1 (a) and (b) shall not be unreasonably withheld by Lessor.

60. Paragraph 12.2 (e) line 4, the phrase "or ten percent (10%) of the monthly Base Rent applicable to the portion of the Premises which is the subject of the proposed assignment or sublease, whichever is greater" is deleted.

61. Paragraph 12.2 (g) shall be deleted.

62. Paragraph 12.2 (h) shall be deleted and the following language substituted: Lessor, as a condition to giving its consent to any assignment or subletting, may require that Lessee pay to Lessor fifty percent (50%) of sublease profits after subleasing commissions. In addition, if Lessee proposes to sublease or assign seventy percent (70%) or more of the building, then Lessor, by written notice given to Lessee prior to the effective date of the assignment or the Commencement Date of the Sublease, may cancel this Lease.

63. Paragraph 16.2 shall be modified to the effect that Lessor shall only require Lessee to furnish a financial statement once in any twelve- (12)- month period.

64. OPTION TO RENEW. Lessee shall have one (1) option to renew the lease term to extend the initial lease term to be coterminous with Lessee's existing lease for 881 Martin Avenue. Lessee shall exercise this option by providing written notice to Lessor no later than ninety (90) days prior to the Termination Date. Base Rent for the extended term shall be equal to $1.30 per square foot, per month on a triple net basis, with $0.05 annual increases every year thereafter.

65. Add the following language to the beginning of paragraph 3.1: "Lessee shall have access to the premises 24 hours per day, 7 days a week".

66. Section 8.8. Insert at the beginning of Section 8.8: "Except to the extent caused by the willful misconduct of Lessor or persons under Lessor's control."

67. Section 40.0 Insert as the last sentence: "To the extent that there is a conflict between the terms of this Lease and the Rules and Regulation, the terms of this Lease shall control."

68. CAPITAL EXPENDITURES. If any repairs or replacements of existing buildings, equipment or facilities (i.e., HVAC components, roof membrane, parking lot) are required during the term, or any improvements are required to comply with laws enacted after the commencement date, and such repairs, replacements and/or improvements constitute capital expenditures under generally accepted accounting principles, the cost of such repair, replacement or improvements will be fully amortized over the useful life of the item and only the monthly amortized cost of any such item will be included in operating expenses monthly. Lessee shall only be responsible for maintenance and repair costs to the HVAC system, not to exceed Four Thousand and 00/100ths Dollars ($4,000.00) per year. The provisions of this section shall apply to the initial Term of the Lease and to any Extension Period. If, during any year, less than Four Thousand and 00/100ths Dollars ($4,000.00) is paid by Lessee, then the difference shall be accumulated to Lessee's liability under this paragraph. If, during any year, HVAC repair and maintenance costs exceed Lessee's liability under this paragraph, the difference may be recaptured in the following year, to the extent that Lessee's liability is less than Four Thousand and 00/100ths Dollars ($4,000.00).

69. Notwithstanding anything to the contrary contained in Sections 6.4 or 32 or elsewhere in this Lease, except in case of emergency, neither Lessor nor any parties under Lessor's control shall not enter onto the Premises unless (i) Lessor has given Lessee at least 24 hours' prior notice (ii) Lessor has complied and shall comply with Lessee's security requirement (which Lessor acknowledges will be extensive, due to the extremely sensitive and confidential nature of Lessee's business), which nay include but are not limited to the requirement that a representative of Lessee accompany Lessor or the parties under Lessor's control when in certain parts of the premises.

70. The terms of Article 12 of this Lease and Articles 59 through 62 of this Addendum also shall not apple to any assignment or other transfer to an entity which controls, is controlled by or is under common control with Lessee or any successor to Lessee or which succeeds, to substantially all of Lessee's assets and business by merger, consolidation, reorganization or purchase.

71. ALTERATIONS BY LESSEE. Lessor agrees to grant to Lessee, at Lessee's expense, the right to make such non-structural alterations to the Premises as are necessary for the conduct of Lessee's business. Prior to the commencement of any work, written consent from Lessor must be obtained, but Lessor agrees not to unreasonably withhold such consent.

72. Section 4.2(a)(iv). The phrase "Reasonable amounts of" shall be inserted before the text of Section 4.2(a)(iv).

73. Section 7.4(c). The following sentence shall be inserted after the first sentence of Section 7.4(c): "Notwithstanding the foregoing, if this Lease is terminated due to damage pursuant to the terms of Article 9, Lessee shall not be required to repair any damage to the Premises due to casualty upon surrender of the Premises to Lessor."

74. Lessee has deposited a security deposit of One Million One Hundred Seventy-five Thousand and 0O/100ths Dollars ($1,175,000.00) with Lessor as security for the lease of the premises at 881 Martin Ave (the "881 Martin Deposit"). Upon the happening of any event which would entitle Lessor to use or apply monies from a security deposit pursuant to paragraph 5 of this lease, Lessor will be entitled to use, apply, or retain funds from the 881 Martin Deposit and thereafter require Lessee to restore the 881 Martin Deposit pursuant to Paragraph 5 of this lease.

75. PROPERTY CONDITION/TENANT IMPROVEMENTS. Lessor shall provide and pay for the following improvements prior to the Commencement Date:

1) Repair/replace damaged light fixtures and bulbs
2) Repair/replace damaged and/or stained ceiling tiles
3) Repair/replace damaged and/or stained window coverings/blinds
4) Repair/align all ceiling tile grid.

In Witness Whereof, Align Technology, Inc., and Lessor have executed this Addendum to the Agreement as of the date first written above.

LESSOR:

By: /s/ James S. Lindsey
---
James S. Lindsey

Date: 9-10-01

LESSEE: Align Technology, Inc.

By: /s/ CHRISTIAN SKIELLER
---
Name: CHRISTIAN SKIELLER

Title: V. P. Operations

Date: 9-6-01

By: /s/ Zia Chishti
---
Name: Zia Chishti

Title: CEO

Date: 9/10/01

CONSULT YOUR PROFESSIONAL ADVISORS: THIS DOCUMENT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY, TAX ACCOUNTANT, GEOLOGIST OR OTHER PROFESSIONAL ADVISOR FOR APPROVAL FROM THE STANDPOINT OF PROTECTION OF YOUR INTERESTS AND RIGHTS. NO REPRESENTATION OR RECOMMENDATION IS MADE BY CPS THE COMMERCIAL PROPERTY SERVICES COMPANY, OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS DOCUMENT OR THE TRANSACTION RELATING THERETO. ADDRESS THESE QUESTIONS TO YOUR ATTORNEY AND/OR OTHER PROFESSIONAL ADVISORS.

[LOGO OF INVISIBLE IT]

# AMENDMENT
## COMPREHENSIVE IT INFRASTRUCTURE SUPPORT SERVICES IN COSTA RICA

This Amendment is made pursuant to the Master Professional Services Agreement, dated May 20, 2002, by and between Invisible IT Inc. ("INVISIBLE IT") and Align Technology, Inc. ("ALIGN").

A. DESCRIPTION OF SERVICES AND SPECIFICATIONS

i. INVISIBLE IT shall provide support for computer and network hardware, software, operation and maintenance and related operational services at ALIGN's Costa Rica facility. There will intensive initial effort for three months to bring the Costa Rica IT operation to stability. This effort is documented in Attachment A, "Invisible IT Action Plan to Operate IT for Align Costa Rica." At the conclusion of the first 3 months, INVISIBLE IT will operate the IT department in a "steady state" environment. Support shall be provided as needed during normal business hours with critical component support provided after hours 7 days per week, 24 hours per day basis.

ii. The primary purpose of support consists of the physical care and maintenance of ALIGN's desktops, servers, disk arrays and network equipment located within the Costa Rica facility and data center operations including but not limited to disk data backups, firmware and software upgrades, and other mutually agreed-upon operational support activities. Physical care and maintenance shall include the repair or replacement and scheduled upgrades (e.g. processors, memory, disks, etc.) of hardware and/or other components furnished by ALIGN.

iii. This agreement covers the support and maintenance of the following ALIGN Information Technology (IT) infrastructure components.

- Network
  - Internet Connectivity
  - LAN
  - WAN Connectivity
- Web Infrastructure
  - Bandwidth
  - Operations
- Desktop Support & Architecture
  - Standardization
- Services
  - Email
  - File storage
  - Naming Services (DNS, ADS, etc.)
  - Backups
  - Imaging
- Security
  - Desktop
  - Servers
  - Network (LAN, WAN & web)
- Help desk
  - Triage & dispatch
- Telephony
  - PBX & stations

- Voice mail
- Telco/circuits
- Customer service queues - call center

. MIS computers/infrastructure
- HW & OS

. Monitoring & Reports
- Real-time metrics
- Network
- Server data
- Failures & downtime

. Status Reporting
- INVISIBLE IT shall provide written reports to ALIGN weekly that summarize IT projects in both Costa Rica and Santa Clara.

. INVISIBLE IT will develop a Managed Hardware Operation (MHO). MHO is the proactive management of parts and components required for the efficient operation of ALIGN's Costa Rica facility. INVISIBLE IT will develop, maintain and manage an inventory list of recommended spare parts and accessories to be kept on hand in the facility. INVISIBLE IT will assist in the procurement of or act as a vendor for the purchase of equipment as recommended and needed for the Data Center operation.

. Similar to the Managed Hardware Operation, on an ongoing basis INVISIBLE IT will recommend to ALIGN improvements that will result in enhanced reliability and productivity of the ALIGN facility and IT infrastructure.

iv. The IT Support service of hardware does not include:

(a) Purchase of equipment of any nature. ALIGN is responsible for the cost related to purchase equipment and accessories under this support agreement.
(b) Software maintenance will be provided by ALIGN.
(c) Special projects except those that are mutually agreed and can be accomplished within the Level of Service stipulated below.
(d) Major upgrade or plant retrofitting.
(e) Facility moves.
(f) Diagnosing and repairing application issues.
(g) Support of software development or testing environments.
(h) Hardware repairs - utilize hardware vendor maintenance agreements.
(i) Support for cell phones.

B. LEVEL OF SERVICE.

INVISIBLE IT will provide skills and experience in the following areas. Initial service to be provided will be equivalent to or exceed service levels and content of those provided by ALIGN internal IT services. INVISIBLE IT will manage the definition and migration to standard supported services in all the following areas:

1) PC Desktop Admin (Includes standard Microsoft productivity applications, specifically Office, Word, Excel, Visio & etc.)
2) Peripherals (pda's, blackberry's, etc. as approved by ALIGN and INVISIBLE IT)
3) Printers and Print Servers
4) Desktop Admin
5) Remote User support (migration to standard configurations)
6) LAN Admin
7) WAN Admin

[LOGO OF INVISIBLE IT]

8) Windows and Unix Server Admin
9) Production Servers
10) Security (Desktop, Server, Network)
11) Asset and license management (migration)

C. RESPONSE TIME.

INVISIBLE IT will provide best efforts to respond to emergency service requests from valid ALIGN members employees or alarms from hardware failures by having personnel on site at the ALIGN Costa Rica facility to begin repair within one (1) hour of request/alarm between the standard production hours of 7 AM and 7 PM daily and within no more than two (2) hours for requests/alarms received during other hours.

D. TERM.

This Schedule, services and fees are to be in effect beginning November 11, 2002 through February 10, 2003. Services and fees described herein are subject to quarterly review by both parties to determine if adjustments are appropriate and to amend this schedule if appropriate. Any such amendment shall be by mutual written consent only.

E. HIRING OF FORMER ALIGN EMPLOYEES.

This Schedule modifies the mutual "no-hire" clause in the Agreement for those employees that became INVISIBLE IT employees as part of the outsourcing transition agreement. INVISIBLE IT grants ALIGN an option to rehire said employees without any liability to INVISIBLE IT in the event that the Agreement is terminated, for any reason.

F. PAYMENT AND DELIVERY.

The services provided under this schedule are fixed fee to be remitted as follows:

(i) INVISIBLE IT shall provide the services listed above for a fixed monthly fee of $100,000 for the first 3 months. Within 60 days of executing this amendment, INVISIBLE IT and ALIGN will agree on an ongoing monthly fee to manage the ALIGN Costa Rica IT environment as specified above. INVISIBLE IT will utilize the first two months to validate what resources will be required to achieve a "steady state" IT environment in Costa Rica.

(ii) The first month's payment of $100,000 to INVISIBLE IT is due upon signature date of the contract. ALIGN will remit to INVISIBLE IT monthly fees of $100,000 in advance of each subsequent month's service (i.e. December 11, 2002 and January 11, 2003).

ALIGN agrees to reimburse INVISIBLE IT for all travel related expenses incurred by INVISIBLE IT employees when required to travel in support of providing the above services. Travel to/from Costa Rica and living expenses in Costa Rica by INVISIBLE IT staff during the initial 90 day period will be the responsibility of INVISIBLE IT. INVISIBLE IT must obtain written approval from ALIGN for any additional travel on ALIGN's behalf.

ALIGN agrees to reimburse INVISIBLE IT for incidental expenses incurred in the normal course of business (e.g. obtaining replacement part at nearby electronics store, etc.), provided that ALIGN views the expenses as reasonable.

Amendment

[LOGO OF INVISIBLE IT]

G. SERVICE GUARANTEE AND DISENGAGEMENT POLICY.

INVISIBLE IT will adhere to all service levels agreed to by both parties. If ALIGN is dissatisfied with the service provided by INVISIBLE IT, the agreement may be terminated with 30 days written notice.

During this time, INVISIBLE IT will provide uninterrupted service and guarantee a smooth transition of the IT Department back to ALIGN or another third party designate. INVISIBLE IT will provide ALIGN all relevant documentation and will assist in the recruitment of new staff if requested.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year first written above.

| ALIGN TECHNOLOGY, INC. | INVISIBLE IT, INC. |
|---|---|
| /s/ Jon Fjeld | /s/ Chris Moore |
| By (Sign) | By (Sign) |
| Jon Fjeld, Ph.D. | Chris Moore |
| Vice President of Technology | Chief Executive Officer |
| 11/7/02 | 11/2/02 |
| Date | Date |
| | EIN: 01-0670993 |

Amendment

[LOGO OF INVISIBLE IT]

ATTACHMENT A
INVISIBLE IT ACTION PLAN TO OPERATE IT FOR
ALIGN COSTA RICA

The following action plan outlines Invisible IT's approach to managing Align Technology's IT infrastructure in Costa Rica. Based on our initial assessment, we believe that the transition involves three phases lasting approximately 3 months: Phase I should be completed in approximately 30 days from agreed upon start date; Phase II should be completed within approximately 60 days; Phase III should be completed in about 90 days. After we perform the on site assessment in Costa Rica, Invisible IT may determine that the timing will need to be adjusted.

PHASE I:

Place Expert IIT and other personnel to execute plan in Costa Rica

1. Resolve internal network speeds
2. Resolve case transfer speeds (install transfer servers)
3. Phone System
    a. Install Call Manager
    b. Configure and install Cisco IP phones
4. Implement ADS
5. Evaluate existing staff
6. Recruit local staff
7. Stabilize critical systems
8. Establish Costa Rica/Santa Clara IT management reporting

PHASE II:

1. Email - Migrate to Exchange 2000
2. Back-ups
    a. Install, configure and implement
    b. High level of urgency (very complex)
3. Implement Infonet WAN link for voice
4. Rationalize LAN
    a. Software version
    b. Hardware configuration
    c. VLAN configuration
    d. QoS
5. Implement monitoring
6. Hire local staff
7. Evaluate and make recommendation regarding storage requirements
8. Evaluate cable and data center infrastructure

PHASE III:

1. Telecom/networking optimization
    a. Determine adequate number of PRI lines for growing office
    b. Assess current agreements with RACSA
    c. Packet shaper analysis - traffic prioritization

Amendment

[LOGO OF INVISIBLE IT]

2. Desktop level set
    a. Standardization for resilient desktop environment
    b. Establish standard for efficient means of installing and maintaining identical machines - install RIS
3. Establish Help Desk for Costa Rica
    a. Bi-lingual required
    b. Implement trouble ticketing system
4. Implement redundancy of video/data networking between CR and SC -- Infonet
5. Establish Call Center functionality
6. Complete hiring of local team
    a. Continued evaluation of existing staff
7. Evaluate available equipment (computers, networking gear, etc.)
    a. Identify and procure spares
8. Establish local remote access capabilities - VPN
9. Identify satellite back-up options - moving case data
10. Record asset management information with help of Finance
11. Confirm agreements with vendors for maintenance, service, etc. Document.
    a. HP/Compaq
    b. Microsoft
    c. Cisco
    d. Infonet
    e. RACSA
    f. Checkpoint firewall (Nokia appliance)
    g. Other - VARs, Storage, etc.
12. Procurement - Ensure efficiency; save money

Amendment

[LOGO OF INVISIBLE IT]

SCHEDULE A-1
BASIC IT INFRASTRUCTURE SUPPORT SERVICES

This Schedule is made pursuant to the Master Professional Services Agreement (the "Agreement"), dated 5/20/02, by and between Invisible IT Inc. ("INVISIBLE IT") and Align Technology, Inc. ("ALIGN").

A. DESCRIPTION OF SERVICES AND SPECIFICATIONS

i. INVISIBLE IT shall provide support for computer and network hardware, software, operation and maintenance and related operational services at ALIGN's 851 Martin Avenue campus facility. Support shall be provided as needed during normal business hours with critical component support via pager on a 7 days per week, 24 hours per day basis.

ii. The primary purpose of support consists of the physical care and maintenance of ALIGN's desktops, servers, disk arrays and network equipment located within the Martin Avenue campus and data center operations including but not limited to disk data backups, firmware and software upgrades, and other mutually agreed-upon operational support activities. Physical care and maintenance shall include the repair or replacement and scheduled upgrades (e.g. processors, memory, disks, etc.) of hardware and/or other components furnished by ALIGN.

iii. This agreement covers the support and maintenance of the following ALIGN information technology (IT) infrastructure components.

- Network
  - Internet Connectivity
  - LAN (Santa Clara)
  - WAN Connectivity (up to routers in remote sites)
- Web Infrastructure
  - Hosting (Web servers)
  - Bandwidth
  - Operations
- Desktop Support & Architecture
  - Santa Clara (all)
  - World wide (if standard)
- Services
  - Email
  - File storage
  - DNS
  - Backups (Santa Clara & remote)
  - Database
  - Imagining
- Security
  - Desktop
  - Servers
  - Network (LAN, WAN & web)
- Help desk
  - Triage & dispatch

[LOGO OF INVISIBLE IT]

- Telephony
  - PBX & stations
  - Voice mail
  - Customer service queues
  - Telco/circuits
  - VoIP
- Mfg & JDE computers/infrastructure
  - HW & OS
  - Worldwide (if standard)
- Monitoring & Reports
  - Real-time metrics
  - Network
  - Server data
  - Failures & downtime
  - Application (minimal go, no-go monitors)

INVISIBLE IT shall provide written reports to ALIGN that documents any and all equipment replaced and/or repaired by INVISIBLE IT.

In addition, the IT Support team will develop a Managed Hardware Operation when resources permit. MHO is the proactive management of parts and components required for the efficient operation of ALIGN's Martin Avenue campus. INVISIBLE IT will develop, maintain and manage an inventory list of recommended spare parts and accessories to be kept on hand in the facility. INVISIBLE IT will assist in the procurement of or act as a vendor for the purchase of equipment as recommended and needed for the Data Center operation.

Similar to the Managed Hardware Operation, through the use of excess resources, INVISIBLE IT will recommend to ALIGN improvements that will result in enhanced reliability and productivity of the ALIGN facility and IT infrastructure.

iv. The IT Support service of hardware does not include:

(a) Purchase of equipment of any nature. ALIGN is responsible for the cost related to purchase equipment and accessories under this support agreement.
(b) Software maintenance will be provided by ALIGN.
(c) Special projects except those that are mutually agreed and can be accomplished within the Level of Service stipulated below.
(d) Major upgrade or plant retrofitting.

B. LEVEL OF SERVICE.

INVISIBLE IT will provide a leveraged staff that will cover then following skill areas and experience levels. Initial service to be provided will be equivalent to or exceed service levels and content of those provided by ALIGN internal IT services. INVISIBLE IT will manage the definition and migration to standard supported services in all the following areas:

1) Account Mgr
2) PC Desktop Admin (Includes all standard productivity applications e.g. Word, Excel, Visio & etc.
3) Peripherals (pda's, blackberry's, cell phones, etc.)
4) Printers and Print Servers
5) Desktop Admin (Phone)
6) Remote User support (migration to standard configurations)

[LOGO OF INVISIBLE IT]

7) LAN Admin
8) WAN Admin
9) NT Server Admin (+Unix)
10) Production Unix Servers
11) Security (Desktop, Server, Network)
12) DBA
13) Asset and license management (migration)

C. RESPONSE TIME.

INVISIBLE IT will respond to emergency service requests from valid Align Technology members employees or alarms from hardware failures by having personnel on site at the ALIGN Santa Clara, CA campus to begin repair within one (1) hour of request/alarm between the hours of 7 AM and 7 PM daily and within no more than two (2) hours for requests/alarms received during other hours.

D. TERM.

This Schedule, services and fees are to be in effect beginning May, 2002, through May 31, 2003. Services and fees described herein are subject to quarterly review by both parties to determine if adjustments are appropriate and to amend this schedule if appropriate.

E. HIRING OF FORMER ALIGN EMPLOYEES.

This Schedule modifies the mutual "no-hire" clause in the Agreement for those employees that became INVISIBLE IT employees as part of the outsourcing transition agreement. INVISIBLE IT grants ALIGN an option to rehire said employees without any liability to INVISIBLE IT in the event that the Agreement is terminated, for any reason.

F. PAYMENT AND DELIVERY.

The services provided under this schedule are fixed fee to be remitted as follows:

(i) INVISIBLE IT shall provide the services listed above for a fixed monthly fee of $175,000 per month.
(ii) At the signing of this Schedule, ALIGN will remit to INVISIBLE IT an initial deposit of $175,000 (one month's fee).
(iii) The first month's payment of $175,000 is due upon signature date of the contract, will be remitted by ALIGN to INVISIBLE IT in advance of services rendered and such payment will be credited against the final month's service.

ALIGN agrees to reimburse INVISIBLE IT for all travel related expenses incurred by INVISIBLE IT employees when required to travel in support of providing the above services. INVISIBLE IT must obtain written approval from ALIGN prior to any travel on ALIGN's behalf.

This Schedule shall be attached to and incorporated into the Agreement, and is subject to all the terms and conditions of the Agreement.

[LOGO OF INVISIBLE IT]

IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year first written above.

| ALIGN TECHNOLOGY, INC. | INVISIBLE IT, INC. |
|---|---|
| /s/ Jon Fjeld | /s/ Donald C. "Smokey" Wallace |
| By (Sign) | By (Sign) |
| Jon Fjeld Ph.D. | Donald C. "Smokey" Wallace |
| Sr. Vice President of Engineering | Sr. Vice President |
| 5/20/02 | 5/20/02 |
| Date | Date |
| | EIN: 01-0670993 |

[LOGO OF INVISIBLE IT]

MASTER PROFESSIONAL SERVICES AGREEMENT
INIVISIBLE IT, INC.

This Master Software Professional Services Agreement (the "Agreement") is made and entered into as of May 20, 2002 (the "Effective Date"), by and between INVISIBLE IT, INC., a Delaware corporation ("INVISIBLE IT"), and ALIGN TECHNOLOGY, INC., a Delaware corporation ("ALIGN").

In consideration of the covenants and conditions hereinafter set forth, ALIGN and INVISIBLE IT agree as follows:

1. Services. INVISIBLE IT shall perform services to be assigned to ALIGN as per Section 4 of this Agreement that are described on the Schedules as may be attached hereto from time to time by mutual written agreement of the parties (the "WORK") in accordance with the terms and conditions of this Agreement, and on the price, delivery dates and specifications described in the applicable Schedule for the WORK. The Schedules shall be in the form attached hereto and shall be signed by both parties, consecutively numbered (i.e., Schedule A-1, A-2, A-3, etc.), and attached to this Agreement. INVISIBLE IT is not obligated to perform any WORK hereunder and ALIGN has not contracted for any WORK unless and until a Schedule is executed by both parties and attached hereto.

2. Payment. ALIGN shall pay INVISIBLE IT for the WORK as described on the applicable Schedule for such WORK. For fixed fee WORK ALIGN agrees to remit payment in advance of the performance of such WORK or on other terms agreeable to both parties. For hourly WORK, VISIBLE IT agrees to submit to ALIGN, invoices with a brief description of the WORK performed, total time expended and amounts due to INVISIBLE IT on bi-weekly intervals and ALIGN agrees to remit payment to INVISIBLE IT within thirty (30) days of receipt of a INVISIBLE IT invoice for hourly WORK.

3. Non-Disclosure. Each party expressly undertakes to retain in confidence all information and know-how transmitted by the disclosing party to the receiving party and that has been designated as proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential ("Confidential Information"), and the receiving party will make no use of such information and know-how except under the terms and during the existence of this Agreement. Each party's obligation under this Section 3 with respect to any particular information shall extend to the earlier of such time as such information is publicly available through no fault of the receiving party for five (5) year following termination of this Agreement. INVISIBLE IT certifies that it will comply with all applicable provisions of Insurance Portability and Accountability Act (HIPAA).

4. Ownership of WORK; Assignment of Rights to ALIGN.

(a) ALIGN agrees that all systems, programs, INVISIBLE IT specifications and other materials and hardware, and all intellectual property incorporated therein (collectively referred to as "INVISIBLE IT Information") owned by INVISIBLE IT or licensed to INVISIBLE IT by third parties prior to the execution of this Agreement and used in conjunction with the Services for ALIGN shall continue to belong to INVISIBLE IT or their third party licensors. To the extent that such INVISIBLE IT Information is incorporated into any work product or deliverable developed by INVISIBLE IT hereunder, INVISIBLE IT hereby grants to ALIGN a perpetual, irrevocable, nonexclusive worldwide royalty-free right to use, execute, reproduce, display, perform, distribute, modify, and prepare derivative works (collectively, "Distribute") and have Distributed, to and by third parties, such INVISIBLE IT Information in conjunction with such work product or deliverable, and modified version thereof.

(b) INVISIBLE IT retains the rights of ownership of any system administration utilities developed for ALIGN to be used or granted to any other INVISIBLE IT client or customer provided they: (i) do

not divulge any Confidential Information of ALIGN; and (ii) will not be granted or issued or used by any direct competitor of ALIGN (listed on Schedule B hereto and includes any orthodontic or dental companies, as updated from time to time by mutual written consent) during the term of this Agreement. Such system administration utilities be considered INVISIBLE IT Information and licensed to ALIGN as set forth in Section 4(a).

(c) If INVISIBLE IT agrees in writing as to a particular deliverable for WORK for ALIGN, then such WORK shall be deemed specially ordered and commissioned by ALIGN and may be incorporated in existing ALIGN works as a compilation or collective work. In that case, INVISIBLE IT agrees that all copyrights in the WORK shall be owned by ALIGN and the WORK shall be a "work made for hire" for copyright purposes (the "ASSIGNED WORK").

(d) INVISIBLE IT hereby assigns to ALIGN, its successors and assigns, all rights, title and interest in and to the ASSIGNED WORK including, without limitation, the following:

(i) any U.S. copyrights that INVISIBLE IT may possess or acquire in the ASSIGNED WORK and all copyrights and equivalent rights in the ASSIGNED WORK throughout the world, including all renewals and extensions of such rights that may be secured under the laws now or hereafter in force and effect in the United States of America or in any other country or countries;

(ii) all rights in and to any inventions, ideas, designs, concepts, techniques, discoveries, or improvements, whether or not patentable, embodied in the ASSIGNED WORK or developed in the course of INVISIBLE IT's creation of the ASSIGNED WORK, including but not limited to all trade secrets, utility and design patent rights and equivalent rights in and to such inventions and designs throughout the world regardless of whether or not legal protection for the ASSIGNED WORK is sought;

(iii) any documents, magnetically or optically encoded media, or other materials created by INVISIBLE IT as part of the ASSIGNED WORK under this Agreement; and

(iv) the right to sue for infringements which may occur before the date of this Agreement, and to collect and retain damages from any such infringements from the ASSIGNED WORK.

(e) At ALIGN's expense, INVISIBLE IT shall execute and deliver such instruments and take such other action as may be requested by ALIGN to perfect or protect ALIGN's rights in the ASSIGNED WORK and to carry out the assignments contemplated in subparagraph (b) of this section. In this regard, INVISIBLE IT agrees to cooperate with ALIGN in the filing and prosecution of any copyright or patent applications that ALIGN may elect to file on the ASSIGNED WORK or inventions and designs relating to the ASSIGNED WORK. ALIGN acknowledges that INVISIBLE IT has taken no action to assist in the registration of the copyrights or the ASSIGNED WORK and will do so only as and when requested by ALIGN.

5. INVISIBLE IT Warranties. INVISIBLE IT warrants as follows:

(a) To the best of its knowledge, the ASSIGNED WORK as delivered to ALIGN does not infringe any copyright, patent, trade secret, or other proprietary right held by any third party;

(b) The ASSIGNED WORK will meet the specifications listed in the applicable Schedule;

(c) The ASSIGNED WORK will be created by employees of INVISIBLE IT within the scope of their employment and under obligation to assign inventions to INVISIBLE IT, or by independent contractors under written obligations to assign all rights in the ASSIGNED WORK to INVISIBLE IT;

(d) The services provided by INVISIBLE IT shall be performed in a professional manner and shall be of a high grade, nature, and quality; and

(e) To the best of its knowledge, the WORK and the ASSIGNED WORK performed by INVISIBLE IT under this Agreement will be in compliance with all applicable U.S. laws and regulations.

(f) No other warranty or representation, either express or implied, is included or intended in INVISIBLE IT proposals, agreements or reports.

(g) Disclaimer of Warranties. INVISIBLE IT HEREBY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALIGN SHALL HAVE SOLE RESPONSIBILITY FOR THE TESTING, QUALITY ASSURANCE, AND USE OF ALL WORK, ALL DELIVERABLES, IF ANY, AND ALL OTHER WORK PRODUCT PROVIDED UNDER THIS AGREEMENT.

(h) Limitation of Liability. IN NO EVENT SHALL INVISIBLE IT OR ALIGN BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT OR IN TORT OR OTHERWISE (INCLUDING WITHOUT LIMITATION NEGLIGENCE OR OTHER LIABILITY). INVISIBLE IT'S LIABILITY FOR DAMAGES RESULTING FROM ANY BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE ARISING FROM ITS SERVICES IN CONNECTION HEREWITH SHALL NOT EXCEED, AND ARE EXPRESSLY LIMITED TO, THE LESSER OF (i) THE AMOUNT OF COVERAGE, IF ANY, PROVIDED BY THE INSURANCE COVERAGE EXTENDED BY INVISIBLE IT TO ALIGN AS AN ADDITIONALLY INSURED AND (ii) THE AGGREGATE AMOUNT PAID BY ALIGN UNDER THIS AGREEMENT. ALIGN'S LIABILITY FOR DAMAGES RESULTING FROM ANY BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE ARISING UNDER THIS AGREEMENT SHALL NOT EXCEED (i) FOR BREACHES OF PAYMENT OBLIGATIONS, THE ACTUAL AMOUNT OWED BY ALIGN PLUS ANY REASONABLE INTEREST ON LATE PAYMENTS OR (ii) FOR BREACHES OF OTHER OBLIGATIONS, AN AMOUNT NO GREATER THAN THE TOTAL AMOUNT PAID BY ALIGN UNDER THIS AGREEMENT OR THE THE AMOUNT OF COVERAGE, IF ANY, PROVIDED BY THE INSURANCE COVERAGE EXTENDED BY INVISIBLE IT TO ALIGN AS AN ADDITIONALLY INSURED, WHICHEVER IS LESS.

IN NO EVENT WILL ANY PARTICULAR CLAIM EXCEED THE LIMITS OF INVISIBLE IT'S INSURANCE AND IN NO EVENT WILL THE CUMULATIVE LIABILITY FOR ALL CLAIMS EXCEED THE LIMITS OF INVISIBLE IT'S INSURANCE LIMIT.

6. Indemnity.

6.1 INVISIBLE IT.

INVISIBLE IT agrees to indemnify, pay the defense costs of, and hold ALIGN and its successors, officers, directors and employees harmless from any and all actions, causes of action, claims, demands, costs, liabilities, expenses and damages (including attorneys' fees) arising out of, or in conjunction with (i) any claim for bodily injury, death, or property damage to the extent caused by INVISIBLE IT in connection with the WORK, (ii) any claim that the WORK infringes any copyright, patent, trade secret, trademark, or other legal right of any third party, or (iii) any other claim that, if true, would constitute a breach of INVISIBLE IT's warranties set forth in Section 5 above (collectively, INVISIBLE IT Claims").

6.2 ALIGN.

ALIGN agrees to indemnify, pay the defense costs of, and hold INVISIBLE IT and its successors, officers, directors and employees harmless from any and all actions, causes of action, claims, demands, costs, liabilities, expenses and damages (including attorneys' fees) arising out of, or in conjunction with (i) any claim for bodily injury, death, or property damage to the extent caused by ALIGN in connection with this Agreement, or (ii) any claim that the ALIGN-contributed intellectual property to the WORK infringes any copyright, patent, trade secret, trademark, or other legal right of any third party (collectively "ALIGN Claims").

6.3 Process.

(a) If any action shall be brought against ALIGN or INVISIBLE IT for a INVISIBLE IT Claim or a ALIGN Claim, respectively, the indemnified party shall promptly notify the indemnifying party in writing, specifying the nature of the action and the total monetary amount sought or other such relief as is sought therein. The indemnified party shall cooperate with the indemnifying party at the indemnifying party's expense in all reasonable respects in connection with the defense of any such action. The indemnifying party may upon written notice thereof to the indemnified party undertake to conduct all proceedings or negotiations in connection therewith, assume the defense thereof, and if it so undertakes, it shall also undertake all other required steps or proceedings to settle or defend any such action, including the employment of counsel which shall be satisfactory to the indemnified party, and payment of all expenses. The indemnified party shall have the right to employ separate counsel and participate in the defense thereof. The indemnifying party shall reimburse the indemnified party upon demand for any payments made or loss suffered by it at any time after the date hereof, based upon the judgment of any court of competent jurisdiction or pursuant to a bona fide compromise or settlement of claims, demands, or actions, in respect to any damages to which the foregoing relates.

(b) If any WORK OR ASSIGNED WORK furnished hereunder is in any action held to constitute an infringement and its use is enjoined, INVISIBLE IT shall immediately and at its expense:

(i) procure for ALIGN the right to continue use, sale, and marketing of the WORK or the ASSIGNED WORK; or

(ii) replace or modify the WORK or the ASSIGNED WORK with a version of the WORK or the ASSIGNED WORK that is non-infringing.

If (i) or (ii) are not available to INVISIBLE IT, INVISIBLE IT shall refund to ALIGN all amounts paid to INVISIBLE IT by ALIGN hereunder for the particular WORK and/or for the particular ASSIGNED WORK.

6.4 Survival.

The foregoing indemnity provision of this Section 6 shall survive any termination or expiration of this Agreement for a period of three (3) years.

7. Termination.

(a) This Agreement shall commence as of the Effective Date and shall remain in force in perpetuity unless earlier terminated as set forth in Section 7(b).

(b) Termination for Cause. Either party may suspend performance and/or terminate (A) this Agreement or (B) a particular Schedule under this Agreement immediately upon written notice at any time if:

(i) The other party is in material breach of any material warranty, term, condition or covenant of this Agreement, other than those contained in Section 3, and fails to cure that breach within thirty (30) days after written notice thereof; or

(ii) The other party is in material breach of Section 3.

(c) ALIGN shall have the right to cancel any Schedule pursuant to the terms of such Schedule. Such terms may include cancellation fees, as the parties may agree, for a termination without cause. In the event ALIGN cancels a Schedule, ALIGN will provide INVISIBLE IT written notice of such cancellation. Upon receipt of such notice, INVISIBLE IT will discontinue all work thereunder. Except in cases of cancellation for cause as specified in Section 7(b) of this Agreement, ALIGN will pay for all work performed by INVISIBLE IT up until the date of receipt of the cancellation notice and cancellation fees, if any, specified in such Schedule. In the event of cancellation of a Schedule, upon request by ALIGN, INVISIBLE IT agrees to turn over to ALIGN all Assigned Work with respect to such Schedule within ten (10) days of payment of all outstanding amounts.

(d) In the event of termination or expiration of this Agreement for any reason, Sections 3, 4, 5, 6 (as specified 6.4), 9, and 10 shall survive termination.

8. Notices.

All notices and requests in connection with this Agreement shall be deemed given as of the day they are received either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed as follows:

NOTICES TO INVISIBLE IT:

INVISIBLE IT, INC.
850 Center Drive
Palo Alto, CA 94301
Attn: Christopher W Moore, CEO & President

Copy to:
John Sellers
Venture Law Group
2775 Sand Hill Road
Menlo Park, CA 94025
(650) 854-4488 Fax:(650) 233-8386

NOTICES TO ALIGN:

ALIGN TECHNOLOGY, INC.
851 Martin Avenue
Santa Clara, CA 95050
Attn: Stephen J. Bonelli, CFO & VP Finance

or to such other address as the party to receive the notice or request so designates by written notice to the other.

9. Arbitration.

(a) Except for injunctive relief sought pursuant to Section 3(c), all disputes arising out of or in connection with this Agreement, including any questions regarding its existence, validity, breach or termination, shall be finally settled by binding arbitration under the CPR Non-Administered Arbitration Rules ("Rules") of the CPR Institute for Dispute Resolution ("CPR") by a sole arbitrator in accordance with said Rules. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. Section 1-16.

(b) Both parties shall agree on a sole arbitrator within 30 days. Should the two parties fail, within the above time-limit, to reach agreement on the arbitrator, the arbitrator shall be appointed by CPR under the applicable Rules ("Appointing Authority"). If there are two or more defendants, any nomination of an arbitrator by or on behalf of such defendants must be by joint agreement between them. If such defendants fail, within the time-limit fixed by the Appointing Authority, to agree on such joint nomination, the proceedings against each of them must be separated. The arbitrator must have sufficient experience in the software industry and in international business transactions.

(c) Notwithstanding the Rules, the parties (i) shall submit their dispute to the arbitrator within 2 months following their decision that they could not resolve their dispute, (ii) each party shall have no more than 2 days to present its case and (iii) the arbitrator shall be instructed to render its decision within 30 days following the conclusion of each party's presentation.

(d) The arbitrator shall specify the basis for its decision. The arbitrator shall not award any punitive damages. The decision of the arbitrator shall be considered as a final and binding resolution of the

dispute, shall not be subject to appeal and may be entered as a judgment in any court of competent jurisdiction.

(e) The seat of arbitration shall be Santa Clara, California. The procedural law of this place shall apply where the Rules are silent, however no jury trial shall be allowed in the arbitration proceedings and discovery shall be limited as set forth in the Rules.

(f) The whole arbitration procedure shall be executed pursuant to a strict non disclosure agreement signed by the parties and the arbitrators agreeing to conduct such proceedings and maintaining in confidence all confidential information or trade secrets disclosed or produced in the course thereof. All press releases or public statements regarding the status of such proceedings shall be prepared jointly and only by the parties.

10. Miscellaneous.

(a) INVISIBLE IT is an independent contractor for ALIGN, and nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership, or a joint venture between the parties.

(b) In the event taxes are required to be withheld on payments made hereunder by any U.S. (state or federal) or foreign government, ALIGN may deduct such taxes from the amount owed INVISIBLE IT and pay them to the appropriate taxing authority. ALIGN shall in turn promptly secure and deliver to INVISIBLE IT an official receipt for any taxes withheld. ALIGN will use reasonable efforts to minimize such taxes to the extent permissible under applicable law.

(c) This Agreement shall be construed and controlled by the laws of the State of California, Northern District. The federal and state courts within the State of California, Northern District, shall have exclusive jurisdiction to adjudicate any dispute arising with this Agreement and INVISIBLE IT hereby consents to such jurisdiction. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees.

(d) This Agreement does not constitute an offer by ALIGN and it shall not be effective until signed by both parties. This Agreement constitutes the entire agreement between the parties with respect to the WORK and all other subject matter hereof and merges all prior and contemporaneous communications. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of INVISIBLE IT and ALIGN by their respective duly authorized representatives. Any Schedules attached to this Agreement must be signed on behalf of INVISIBLE IT and ALIGN by their respective duly authorized representatives. Schedules shall not act to amend this Agreement. The terms and conditions of this Agreement shall take precedence over any conflicting terms and conditions in any Schedule; provided, however, to the extent the terms and conditions of a particular Schedule so conflict with the terms and conditions of this Agreement, the terms and conditions of the Schedule shall take precedence only with respect to the Services under that Schedule.

(e) This Agreement may be assigned by ALIGN or by INVISIBLE IT with mutual prior written approval. Except as otherwise provided, this Agreement shall be binding upon and inure to the benefit of the parties' successors and lawful assigns.

(f) ALIGN and INVISIBLE IT mutually agree that they will use reasonable commercial efforts to not recruit and hire employees of the other party, assigned to work under this Agreement during their assignment under the applicable Schedule of this Agreement. Should either party solicit and hire an employee form the other, The hiring party shall pay a one-time, liquidated damage fee equal to fifty-five percent (55%) of such employee's offered annual salary. Each party agrees to pay any such employment fee within ten (10) days following the employee's commencement of employment.

(g) A service charge of one percent (1%) per month or the highest rate allowed by law shall apply to all overdue amounts owed to Supplier. ALIGN acknowledges that unpaid invoices may result in the interruption of services provided.

[LOGO OF INVISIBLE IT]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date written above.

| ALIGN TECHNOLOGY, INC. | INVISIBLE IT, INC. |
| --- | --- |
| /s/ Jon Fjeld | /s/ Donald C. "Smokey" Wallace |
| By (Sign) | By (Sign) |
| Jon Fjeld Ph.D. | Donald C. "Smokey" Wallace |
| Vice President of Technology | Sr. Vice President |
| 5/20/02 | 5/20/02 |
| Date | Date |
| | EIN: 01-0670993 |

[LOGO OF INVISIBLE IT]

SCHEDULE B
(LIST OF DIRECT COMPETITORS OF ALIGN)

If blank, and initialed then none at this time. _____ALIGN _____INVISIBLE IT

Any orthodontic and/or dental company

EXHIBIT 10.30

# SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is made and entered into as of February 6, 2003, by and among GW Com, Inc., now known as Byair, Inc. ("GW"), Intelecady, Inc. ("Intelecady"), James S. Lindsey ("Lindsey"), and Align Technology, Inc. ("Align").

## I. RECITALS

1. On May 1, 2002, GW filed a complaint (the "Complaint") against Lindsey and Align thereby initiating an action (the "Action") in the Santa Clara County Superior Court numbered Case No. CV 807489.

2. On August 1, 2002, Lindsey filed a cross-complaint (the "Cross-Complaint") in the Action against GW and Intelecady.

3. The Action arose out of a dispute between the parties relating to a Lease (the "Lease") dated October 4, 1999 between Lindsey as Lessor and Golfpro International, Inc. ("Golfpro") as Lessee for approximately 50,000 square feet of space at 851 Martin Avenue, Santa Clara, California (the "Leased Premises"); a sublease (the "Sublease") dated April 17, 2000 between Golfpro as Sublessor and GW as Sublessee for the Leased Premises; a Consent to Sublease (the "Consent") dated on or about April 20, 2000 by and among Golfpro, GW, and Lindsey; a Sub-Sublease (the "Sub-Sublease") dated July 27, 2000 between GW as Sub-Sublessor and Align as Sub-Sublessee for a portion of the Leased Premises; a proposed amendment (the "November Amendment") to the Sub-Sublease dated November 1, 2000 between GW and Align for an additional portion of the Leased Premises; a proposed amendment (the "February Amendment") to the Sub-Sublease dated February 2001 between GW and Align for an additional portion of the Leased Premises. On September 18, 2001, the United States Bankruptcy Court for the Northern District of California approved Golfpro's Chapter 11 Plan of Reorganization including Golfpro's assignment of its rights under the Lease, Sublease, and Consent to Intelecady and Intelecady's assumption of the rights and obligations under such agreements (the "Golfpro Assignment").

4. GW holds in an account the sum of $188,000.00 earmarked for Align and representing a cash security deposit paid by Align to GW pursuant to the Sub-Sublease (the "Cash Security Deposit") which Align asserts must be returned to Align pursuant to Civil Code section 1950.7.

5. Lindsey has asserted claims against GW and Intelecady of approximately S94,000.00 in connection with alterations to the Leased Premises that he asserts were undertaken without his prior written consent.

6. Align and Lindsey contend that each has incurred attorneys' fees and costs in excess of $125,000 in connection with the Action.

7. Align filed a motion under Code of Civil Procedure section 1030 in the Action to secure recovery of the attorneys' fees and costs incurred by Align in connection with the Action and Lindsey contends that he was in the process of preparing a similar motion under Code of Civil Procedure section 1030 at the time of this Agreement.

8. The parties desire to resolve all claims and disputes related to the Action, the Leased Premises, the Lease (except as set forth herein), the Sublease, the Consent, the Sub-Sublease, the November Amendment, and the February Amendment.

## II. AGREEMENT

For good and valuable consideration, the parties agree as follows:

1. The Recitals are incorporated herein and made a part of this Agreement.

2. Intelecady hereby represents that Golfpro has assigned to it all of Golfpro's rights under the Lease and the Sublease and that Intelecady is the exclusive owner of any and all claims that Golfpro ever had under or relating to the Lease, the Leased Premises, the Sublease, the Consent, the Sub-Sublease, the November Amendment, or the February Amendment and that its releases herein are effective to release Golfpro's claims to the same extent as they release Intelecady's claims.

3. Intelecady and GW hereby represent that GW has assigned to Intelecady all of GW's rights under the Lease and the Sublease and that Intelecady is the exclusive owner of any and all claims that GW ever had under or relating to the Lease, the Leased Premises, the Sublease, the Consent, the Sub-Sublease, the November Amendment, or the February Amendment and that Intelecady's releases herein are effective to release GW's claims to the same extent as they release Intelecady's claims.

4. GW hereby represents that it is now known as Byair, Inc., and GW has the authority to bind Byair, Inc. to the terms of this Agreement.

5. No later than 5:00 p.m., on Monday, February 10, 2003, GW shall pay to Align the sum of $188,000 by wire transfer to Align or in the form of Cashier's Check delivered to the attention of Roger George at Align's offices at 821 Martin Avenue, Santa Clara, California, as and for a return of the Cash Security Deposit.

6. Concurrent with the execution of this Agreement, the parties hereto will execute and cause to be filed a Request for Dismissal of the action in its entirely with prejudice in the form attached hereto as Exhibit A.

7. Except as to the obligations created by this Agreement, GW for itself and for its current and former employees, members, partners, stockholders, directors, officers, parents, subsidiaries, predecessors, affiliates, successors, assigns, agents and attorneys, hereby does absolutely discharge and release Lindsey and his current and former employees, members, partners, stockholders, directors, officers, parents, subsidiaries, predecessors, affiliates, successors, assigns, agents and attorneys, and Align and its current and former employees, members, partners, stockholders, directors, officers, parents, subsidiaries, predecessors, affiliates, successors, assigns, agents and attorneys, from any and all liabilities, causes of action and claims which do or may exist, whether known or unknown, suspected or unsuspected, including but not limited to claims arising out of or in any way related to the Action, the Golfpro Assignment, the Leased Premises, the Lease, the Sublease, the Consent, the Sub-Sublease, the November Amendment, and the February Amendment (the "GW Released Matters").

8. Except as to the obligations created by this Agreement, Intelecady for itself and for its current and former employees, members, partners, stockholders, directors, officers, parents, subsidiaries, predecessors, affiliates, successors, assigns, agents and attorneys, hereby does absolutely discharge and release Lindsey and his current and former employees, members, partners, stockholders, directors, officers, parents, subsidiaries, predecessors, affiliates, successors, assigns, agents and attorneys, and Align and its current and former employees, members, partners, stockholders, directors, officers, parents, subsidiaries, predecessors, affiliates, successors, assigns, agents and attorneys, from any and all liabilities, causes of action and claims which do or may exist, whether known or unknown, suspected or unsuspected, including but not limited to claims arising out of or in any way related to the Action, the Golfpro Assignment, the Leased Premises, the Lease, the Sublease, the Consent, the Sub-Sublease, the November Amendment, and the February Amendment (the "Intelecady Released Matters").

9. Except as to the obligations created by this Agreement and except as provided in paragraph 11 herein, Lindsey for himself and for his current and former employees, members, partners, stockholders, directors, officers, parents, subsidiaries, predecessors, affiliates, successors, assigns, agents and attorneys, hereby does absolutely discharge and release GW and its current and former employees, members, partners, stockholders, directors, officers, parents, subsidiaries, predecessors, affiliates, successors, assigns, agents and attorneys, and Intelecady and its current and former employees, members, partners, stockholders, directors, officers, parents, subsidiaries, predecessors, affiliates, successors, assigns, agents and attorneys, from any and all liabilities, causes of action and claims which do or may exist, whether known or unknown, suspected or unsuspected, including but not limited to claims arising out of or in any way related to the Action, the Golfpro Assignment, the Leased Premises, the Lease, the Sublease, the Consent, the Sub-Sublease, the November Amendment, and the February Amendment (the "Lindsey Released Matters").

10. Except as to the obligations created by this Agreement, Align for itself and for its current and former employees, members, partners, stockholders, directors, officers, parents, subsidiaries, predecessors, affiliates, successors, assigns, agents and attorneys, hereby does absolutely discharge and release GW and its current and former employees, members, partners, stockholders, directors, officers, parents, subsidiaries, predecessors, affiliates, successors,

assigns, agents and attorneys, and Intelecady and its current and former employees, members, partners, stockholders, directors, officers, parents, subsidiaries, predecessors, affiliates, successors, assigns, agents and attorneys, from any and all liabilities, causes of action and claims which do or may exist, whether known or unknown, suspected or unsuspected, including but not limited to claims arising out of or in any way related to the Action, the Golfpro Assignment, the Leased Premises, the Lease, the Sublease, the Consent, the Sub-Sublease, the November Amendment, and the February Amendment (the "Align Released Matters").

11. Notwithstanding anything to the contrary in this Agreement, Lindsey is not by this Agreement releasing his claims against Intelecady or GW for breach of the Lease, the Sublease, or the Consent. Lindsey is hereby, however, releasing Intelecady and GW from any claim that either or both are responsible for the costs of removing from the Leased Premises alterations made to that portion of the Leased Premises subject to the Align Sub-Sublease, including the demising wall between such premises and the remaining Leased Premises, and thereafter restoring such premises. Lindsey, GW, and Intelecady are concurrently entering into another agreement entitled the "Lease Termination Agreement" regarding the Lease, the Sublease, and the Consent and containing releases thereto.

12. Each of the parties to this Agreement warrants that it has not assigned, conveyed, granted, transferred, or otherwise disposed of any of the claims released by such party pursuant to this Agreement.

13. Each party to this Agreement covenants and agrees that neither it nor its current and former employees, members, partners, stockholders, directors, officers, parents, subsidiaries, predecessors, affiliates, successors, assigns, agents and attorneys will hereafter commence, maintain or prosecute any action at law or otherwise, or assert any claim or charge against any other party or such other partys' current and former employees, members, partners, stockholders, directors, officers, parents, subsidiaries, predecessors, affiliates, successors, assigns, agents and attorneys for damages or loss of any kind or amount arising out of each party's Released Matters.

14. Each party to this Agreement acknowledges that it may hereafter discover facts different from or in addition to those now known or believed to be true regarding the subject matter of the above and agree that this Agreement shall remain in full force and effect, notwithstanding the existence of any such different or additional facts. Each party to this Agreement acknowledges that it has been informed by its counsel of the provisions of Section 1542 of the Civil Code, and each party hereby waives any and all rights which it have or may have under the provisions of Section 1542 of the Civil Code as now worded and as hereafter amended, which section presently reads as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO ANY CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Each party waives and relinquishes any right or benefit which it has or may have under any similar provision of the statutory or nonstatutory law of any jurisdiction. Each party acknowledges that it is aware that it or its respective attorneys and/or agents may hereafter discover facts in addition to or different from those which it now knows or believes to exist with respect to the subject matter of this Agreement, but that it is its intention hereby to fully, finally and forever to settle and release all of its claims, disputes and differences, known or unknown, suspected or unsuspected, which now exist or may exist hereafter against each other party and such other party's current and former employees, members, partners, stockholders, directors, officers, successors, assigns, agents and attorneys, relating to the Released Matters, except as provided for herein. This Release shall be and remain in effect as a full and complete release as to the Released Matters notwithstanding the discovery or existence of any such additional or different facts.

15. Each party to this Agreement shall execute whatever documents may be necessary and appropriate to carry out the intent and purpose of this Agreement.

16. Nothing in this Agreement shall affect any party's right to conduct or respond to discovery as to any matter in connection with any lawsuit or proceeding.

17. This Agreement is for the sole purpose of settling the Released Matters and it is expressly understood and agreed that this Agreement does not constitute or evidence any admission of any party of any liability or the truth of any of the Released Matters. Accordingly, nothing in this Agreement shall be construed as an admission of liability or wrongdoing on the part of any of the parties hereto.

18. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective representatives, heirs, predecessors, affiliates, successors and assigns.

19. In the event that any of the terms of this Agreement are found to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

20. This Agreement may be executed in any number of separate counterparts, all of which, when taken together, shall constitute one and the same instrument, admissible into evidence, notwithstanding the fact that all parties did not sign the same counterpart. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of a manually executed counterpart hereof. Any party delivering an executed counterpart of this Agreement by telefacsimile shall also deliver a manually executed counterpart hereof, but the failure to deliver a manually executed counterpart hereof shall not affect the validity, enforceability, and binding effect of this Agreement.

21. The parties acknowledge that they have entered into this Agreement in reliance on their own independent investigation and analysis of the facts underlying the subject matter of the Agreement, and that, in executing this Agreement, no representations, warranties or promises of any kind have been made directly or indirectly to induce them to execute this Agreement other

than those that are expressly set forth herein, and that they have not relied on any representations, warranties or promises of any kind other than those that are expressly set forth herein.

22. The parties acknowledge to each other that each was advised and represented by independent legal counsel of each party's own choice throughout all of the negotiations which preceded the execution of this Agreement and that each such party has executed this Agreement after being so advised or receiving such advice. The parties acknowledge that each party has executed this Agreement without reliance upon any promise or representation of any person or persons acting for or on behalf of the other, except as expressly set forth in this Agreement. Each party further acknowledges that such party and such party's counsel has had an adequate opportunity to make whatever investigation or inquiry it may deem necessary or desirable in connection with the subject matter of this Agreement prior to the execution of this Agreement. Each party and such party's attorney has read and approved the language of this Agreement. Each party further acknowledges that this Agreement is the product of negotiation and preparation by and between each party and each party's attorneys, expressly waives the provisions of Civil Code section 1654, and acknowledges and agrees that this Agreement shall not be deemed prepared or drafted by one party or the other.

23. This is an integrated agreement and supercedes all prior representations and agreements, if any, between the parties to this Agreement and their legal counsel relating to the subject matter hereof. This Agreement when executed contains the entire and only understanding between the parties regarding the subject matter hereof. It may not be altered, amended or extinguished, nor may any rights hereunder be waived, except by a writing which expressly refers to this Agreement and is signed subsequent to the execution of this Agreement by the parties to this Agreement. No course of dealing between the parties, no usage of trade, and no parol or extrinsic evidence of any nature shall be used or be relevant to supplement, explain, or modify any term or provision of this Agreement or any supplement or amendment hereto.

24. The parties agree that each shall bear its own costs including attorneys' fees in connection with the Action and the negotiation and preparation of this Agreement.

25. The prevailing party (the "Prevailing Party") in any litigation, arbitration, bankruptcy proceeding, or other formal or informal resolution (collectively, a "Proceeding") of any claims brought by any party to this Agreement against any other party to this Agreement based upon, arising from, or in any way related to this Agreement or the transactions contemplated herein, including without limitation contract claims, tort claims, breach of duty claims, and all other common law or statutory claims (collectively, the "Claims"), shall be entitled to recover from such other party all its reasonable fees and costs incurred in connection with the Proceeding, including without limitation all its reasonable attorneys' fees and costs, whether incurred by in-house counsel or outside counsel and its reasonable expert witness fees and costs (collectively, the "Fees and Costs"). The Prevailing Party shall also be entitled to recover from such other party all its Fees and Costs incurred in enforcing the judgment or award giving rise to the Prevailing Party's status as the Prevailing Party.

26. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California without regard to principles of conflicts of law. Each party hereto hereby submits to the exclusive jurisdiction of the state and Federal courts located in the County of Santa Clara, State of California.

27. Each signatory to this Agreement warrants and represents that he/she is the lawful agent of the entity for whom he/she executes this Agreement and that he/she has full authority to bind its principal as to the matters set forth herein.

The parties have read the foregoing and understand it and agree to the terms set forth above.

SIGNATURES ON NEXT PAGE

Dated: Feb 6, 2003

GW COM, INC.
a Delaware Corporation,

By: /s/ Raymond Chin
---
Its: CEO

Dated: 2/06/03

INTELECADY, INC.
a California Corporation,

By: /s/ Ron Davies
---
Its: PRESIDENT & CEO

Dated: 2/6/03

ALIGN TECHNOLOGY, INC.
a Delaware Corporation,

By: /s/ Illegible
---
Its: Vice President, Legal Affairs
& General Counsel

Dated: 2/6/03

/s/ James S. Lindsey
---
James S. Lindsey

APPROVED AS TO FORM:

GRANT, GENOVESE & BARATTA, LLP

/s/ Rogers E. George
---
By: Rogers E. George
Attorneys for Intelecady, Inc. and GW Com, Inc.

APPROVED AS TO FORM:

REHON & ROBERTS
A Professional Corporation

/s/ Lisa Roberts
---
By: Lisa C. Roberts
Attorneys for James S. Lindsey

BROBECK, PHLEGER & HARRISON, LLP

/s/ William W. Huckins
---
By: William W. Huckins
Attorneys for Align Technology, Inc.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): TELEPHONE NO. FOR COURT USE ONLY
Gordon G. May (Bar # 167112) (949) 660-1600
Grant, Genovese & Baratta, LLP FAX NO.:
2030 Main Street, Suite 1600 (949) 660-6060
Irvine, California 92614

ATTORNEY FOR (Name) GW Com, Inc., Plaintiff/Cross-Defendant, and Intelecady, Inc. Cross-Defendant

Insert name of court and name of judicial district and branch court, if any:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

PLAINTIFF/PETITIONER: GW Com, Inc., a Delaware Corporation

DEFENDANT/RESPONDENT: James S. Lindsey and Align Technology, Inc., a Delaware Corporation

REQUEST FOR DISMISSAL — CASE NUMBER:

[ ] Personal Injury, Property Damage, or Wrongful Death
[ ] Motor Vehicle [ ] Other
[ ] Family Law — CV 807489
[ ] Eminent Domain
[X] Other (specify): Civil

-- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. --

1. TO THE CLERK: Please dismiss this action as follows:
a. (1) [X] With prejudice (2) [ ] Without prejudice

b. (1) [ ] Complaint (2) [ ] Petition
(3) [ ] Cross-complaint filed by (name): on (date):
(4) [ ] Cross-complaint filed by (name): on (date):
(5) [X] Entire action of all parties and all causes of action
(6) [ ] Other (specify):*

Date: February 6. 2003

Gordon G. May (SIGNATURE)
(TYPE OR PRINT NAME OF [X] ATTORNEY [ ] PARTY WITHOUT ATTORNEY)

Attorney or party without attorney for:
[X] Plaintiff/Petitioner [ ] Defendant/Respondent
[ ] Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. TO THE CLERK: Consent to the above dismissal is hereby given.**
SEE ATTACHMENT A
Date:

(TYPE OR PRINT NAME OF [ ] ATTORNEY [ ] PARTY WITHOUT ATTORNEY) (SIGNATURE)

Attorney or party without attorney for:
[ ] Plaintiff/Petitioner [ ] Defendant/Respondent
[ ] Cross-complainant

** If a cross-complaint--or Response (Family Law) seeking affirmative relief-- is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j)

(To be completed by clerk)

3. [ ] Dismissal entered as requested on (date):
4 [ ] Dismissal entered on (date): as to only (name):
5. [ ] Dismissal not entered as requested for the following reasons (specify):

6. [ ] a. Attorney or party without attorney notified on (date):
b. Attorney or party without attorney not notified.
Filing party failed to provide
[ ] a copy to conform [ ] means to return conformed copy

Date: Clerk, by , Deputy

EXHIBIT A

ATTACHMENT A

TO THE CLERK: Consent to the attached dismissal with prejudice of Santa Clara County Case Number CV807489 as to the entire action, including all parties and all causes of action, is hereby given.

GRANT, GENOVESE & BARATTA, LLP

By:
---
Gordon G. May
Attorneys for Plaintiff and Cross-Defendant GW Com, Inc. and Cross-Defendant Intelecady, Inc.

BROBECK, PHLEGER & HARRISON, LLP

By:
---
William W. Huckins
Attorneys for Defendant Align Technology, Inc.

REHON & ROBERTS, APC

By:
---
Lisa C. Roberts
Attorneys for Defendant and Cross-Complainant James S. Lindsey

EXHIBIT 10.31

[LOGO] ALIGN [LOGO] Illegible (R)

June 17, 2002

Peter Riepenhausen
Chairman, Europe

Dear Peter:

I am very pleased that you have agreed to assume the new assignment for Align Technology that we recently discussed. This letter is to outline the key responsibilities and duties of your new role as an Advisor to the Company and confirm the terms and conditions of our agreement with respect to this role.

As an Advisor to the Company, you will assist us in European market strategy development and cultivating and retaining key customers in Europe. Your role as an Advisor will commence on September 1, 2002. In the interim, you will continue in your role as Chairman, Europe.

In the coming weeks, I will rely upon you to develop and implement strategies for keeping Country Managers and other key personnel fully engaged and focused on mission critical activities and business objectives and assure the complete transfer of all banking accounts, country entity board responsibilities, and business and personnel files to the appropriate individuals in Santa Clara or Europe.

As an Advisor to the Company, you will be subject to the Company's standard consulting agreement. The consulting agreement is attached.

In your advisory role, you will be required to be available, upon reasonable notice, both via telephone and in person, one to three days per month for a period of one year, commencing on September 1, 2002 and ending August 31, 2003. Your remuneration will be US$5,000.00 per month. In the event we engage your services after August 31, 2003, you will be remunerated on a per diem basis, at a mutually agreed rate.

As long as you remain an employee or consultant of the Company, we will allow your May 2000, September 2000, November 2000, and September 2001 option grants to continue vesting until May 2003, September 2003, November 2003, and September 2004, respectively, at which times they will become fully vested. Your September 2001 option grant will become a Non-Qualified Option (NSO) when your employment status changes.

In addition, subject to the approval of the Board of Directors at the June 27, 2002 Board Meeting, Align Technology will grant you a stock issuance of 50,000 shares of Align

Technology common stock which shall be subject to the right of repurchase by the Company until vested. The stock shall vest as to 50% (25,000) of the shares after one year and 12.5% (6,250) of the shares at the end of each quarter thereafter, for full vesting after two years. The purchase price of the stock will be determined when the stock issuance is approved by the Board of Directors.

The above commitments are contingent upon the execution of the Consulting Agreement and your agreement to certain conditions and the release of specific claims or causes of action against the Company. A Release of Claims agreement is also attached for your review.

Align has been well served by your vision, strategic insights and contributions to global growth. I know the Company will continue to benefit from your input and advice while you serve as an advisor and I appreciate your willingness to assume this assignment.

Sincerely,

Thomas M. Prescott
President and Chief Executive Officer

Attachments: Consulting Agreement
Release of Claims Agreement

Attachment A

CONSULTANT PROPRIETARY INFORMATION
NONDISCLOSURE AGREEMENT

June 17, 2002

Align Technology, Inc.
881 Martin Avenue
Santa Clara, CA 95050

Ladies and Gentlemen:

The following contains all of the terms of my Consulting Agreement (the "Agreement") with Align Technology, Inc., a Delaware corporation (the "Company," which term includes the Company's subsidiaries), and supersedes all other understandings, oral or written, between us:

1. The amount of time I will spend as a consultant to the Company, the nature of the services provided (the "Services") and my compensation are set forth on Exhibit A hereto.

2. I recognize that it is the express intention of the parties to this Agreement that I work as an independent contractor, and not an employee, agent, joint venturer, or partner of the Company. Nothing in this Agreement shall be interpreted or construed as creating or establishing an employment relationship between the Company and myself.

3. I recognize that I will have no authority to act on or enter into any contract or understanding, incur any liability or make any representation on behalf of the Company without first obtaining specific written instructions from an authorized officer of the Company.

4. I recognize that I am solely responsible for all taxes, withholdings, and other similar statutory obligations, including, but not limited to, workers' compensation insurance. I agree to defend, indemnify and hold the Company harmless from any and all claims made by an entity on account of an alleged failure by me to satisfy any such tax or withholding obligation.

5. I will supply any tools and equipment necessary to perform the Services.

6. Should I, in my sole discretion, deem it necessary to employ assistants to aid me in the performance of the Services, I agree that the Company will not direct, supervise, or control in any way such assistants in their performance of Services. I further agree that such assistants are employed solely by me, and that I alone am responsible for providing workers' compensation insurance for my employees, for paying the salaries and wages of my employees, and for ensuring that all required tax withholdings are made. I further represent and warrant that I maintain workers' compensation insurance coverage for my employees and acknowledge that I alone have responsibility for such coverage.

7. I recognize that the Company is engaged in a continuous program of research, development and production respecting its business. The Company possesses or has rights to information that has been created, discovered, developed or otherwise become known to the Company (including information developed by, discovered by or created by me which arises out of my consulting relationship with the Company) which has commercial value in its business ("Proprietary Information"). For example, Proprietary Information includes, but is not limited to, software programs, other computer programs and copyrightable material, technical drawings, product ideas, trade secrets, concepts for resolving software development issues, data and know- how, inventions (whether patentable or not), improvements, marketing plans and customer lists.

8. I understand that my consulting relationship creates a relationship of confidence and trust between me and the Company with respect to any (i) Proprietary Information or (ii) confidential information applicable to the business of any customer of the Company or other entity with which the Company does business and which I learn in connection with my consulting relationship. At all times, both during my consulting relationship with the Company and after its termination, I will keep in confidence and trust all such information, and I will not use or disclose any such information without the written consent of the Company, except as may be necessary in the ordinary course of performing my duties to the Company. This obligation shall end whenever such information enters the public domain and is no longer confidential or proprietary through no improper action or inaction by me.

9. In addition, I hereby agree:

(a) All Proprietary Information shall be the sole property of the Company and its assigns, and the Company and its assigns shall be the sole owner of all patents, copyrights and other rights in connection therewith. I hereby assign to the Company any rights I may have or acquire in such Proprietary Information. At all times, both during my services as a consultant with the Company and after its termination, I will keep in confidence and trust all Proprietary Information, and I will not use or disclose any Proprietary Information or anything relating to it without the written consent of the Company, except as may be necessary in the ordinary course of performing my duties to the Company.

(b) All documents or other media, records, apparatus, equipment and other physical property whether or not pertaining to Proprietary Information, furnished to me by the Company or produced by me or others in connection with my consulting relationship shall be and remain the sole property of the Company. I shall return and deliver all such property of the Company immediately as and when requested by the Company. I shall return and deliver all such property (including any copies thereof) upon request and, even without any request, upon termination of my consulting.

(c) During my consulting relationship, I will not engage in any business activity which creates a conflict of interest in relation to the subject matter of my consulting for Align Technology.

(d) I will promptly disclose to the Company all improvements, inventions, works of authorship, trade secrets, computer programs, designs, formulas, mask works, ideas, processes, techniques, know-how and data, whether or not patentable ("Inventions") which relate

to the subject matter of my consulting and which are conceived, developed or learned by me, either alone or jointly with others, during the term of my consulting relationship.

(e) During the term of my consulting, I will not solicit any employee of the Company to leave the Company for any reason or to devote less than all of any such employee's efforts to the affairs of the Company.

(f) All Inventions which I conceive, develop or learn (in whole or in part, either alone or jointly with others) in connection with performance of my consulting for the Company or which use the Company's Proprietary Information shall be the sole property of the Company and its assigns (and to the extent permitted by law shall be works made for hire). The Company and its assigns shall be the sole owner of all trade secret rights, patents, copyrights and other rights anywhere in the world in connection therewith, and I hereby assign to the Company any rights I may have or acquire in such Inventions.

(g) With regard to Inventions described in (f) above, I will assist the Company or its assigns in every proper way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights or other rights on the Inventions in any and all countries, and to that end I will execute all appropriate documents. This obligation shall continue beyond the termination of my consulting relationship, but the Company shall then compensate me at a reasonable rate for time spent. If the Company is unable for any reason whatsoever to secure my signature to any such document (including renewals, extensions, continuations, divisions or continuations in part), I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents, as my agents and attorneys-in-fact to act for and in my behalf and instead of me, but only for the purpose of executing and filing any such documents and doing all other lawfully permitted acts to accomplish the foregoing with the same legal force and effect as if done by me.

(h) For purposes of clarifying paragraphs 9 and 10(f) above, I agree that I will not include or publish any findings, observations, opinions or other information concerning the Company or any of its products, services or business practices in any research report or any scientific, medical or other journal, whether or not the Company is mentioned by name or such information places the Company in a favorable light, and whether or not such information is made available privately or commercially, in hard copy or electronic form, without the express prior written consent of the Company's President or CEO.

(i) As a matter of record I attach hereto (as Exhibit B) a list of existing inventions or improvements relevant to the subject matter of my consulting relationship with the Company which have been made or conceived or first reduced to practice by me alone, or jointly with others, prior to my services as a consultant to the Company that I desire to remove from the operation of this Agreement, and I covenant that such list is complete.

(j) I represent that execution of this Agreement, my consulting relationship with the Company and my performance of my proposed duties to the Company in the development of its business will not violate any obligations I may have to any person or entity, including the obligation to keep confidential any proprietary information of that person or entity. I have not entered into any agreement in conflict with this one.

10. This Agreement shall be effective as of the first day of my consulting relationship with the Company and shall benefit the Company, its successors and assigns.

11. This Agreement may be terminated by either the Company or myself at any time by giving five (5) days' written notice of termination. Such notice may be given at any time for any reason, with or without cause. Termination of this Agreement will not affect the obligations of either party arising out of events or circumstances occurring prior to such termination.

12. This Agreement shall not be assignable by either the Company or myself without the express written consent of the other party.

13. I agree that any dispute in the meaning, effect or validity of this Agreement shall be resolved in accordance with the laws of the State of California without regard to the conflict of laws provisions thereof. I further agree that if one or more provisions of this Agreement are held to be illegal or unenforceable under applicable California law, such illegal or unenforceable portion(s) shall be limited or excluded from this Agreement to the minimum extent required so that this Agreement shall otherwise remain in full force and effect and enforceable in accordance with its terms.

14. I agree that the covenants and obligations contained in this Agreement relate to special, unique and extraordinary matters and that a violation of any of such covenants or obligations may cause the Company irreparable injury for which adequate remedy at law will not be available; and, therefore, that upon any such breach of any such covenant or obligation, or any threat thereof, the Company shall be entitled to the immediate remedy of a temporary restraining order, preliminary injunction or such other form of injunctive or equitable relief in addition to whatever remedies they might have at law. Furthermore, I agree to indemnify the Company against, and shall reimburse the Company for, and in respect of any and all claims, demands, losses, cost, expenses, obligations, liabilities, damages, remedies and penalties, including interest, penalties and reasonable attorneys' fees and expenses that the Company shall incur or suffer and which arise from, are attributable to, by reason of or in connection with any breach or inaccuracy of or any failure to perform or comply will any of my agreements or covenants contained in this Agreement.

Accepted and Agreed to:

/s/ PETER RIEPENHAUSEN
---
Consultant Signature

PETER RIEPENHAUSEN
Print Name

Align Technology, Inc.

ALT KOENIGSTR. 17
Print Address

By: /s/ Thomas M. Prescott
---
Title: President & CEO

61462 KOENIGSTEIN, GERMANY
City, State, ZIP

SSN or Tax ID ###-##-####

EXHIBIT A

1. Duties and Responsibilities:
   Among other duties, you will assist us in European market strategy development and cultivating and retaining key customers in Europe. Your role as an Advisor will commence on September 1, 2002. In the interim, you will continue in your role as Chairman, Europe.

   Align will rely upon you to develop and implement strategies for keeping Country Managers and other key personnel fully engaged and focused on mission critical activities and business objectives and assure the complete transfer of all banking accounts, country entity board responsibilities, and business and personnel files to the appropriate individuals in Santa Clara or Europe.

2. Compensation:
   US $5,000/month from September 1, 2002 through August 31, 2003.

3. Expense Reimbursement
   The company will reimburse for reasonable business expenses. All travel expenses must be pre-approved in advance.

EXHIBIT B

Align Technology, Inc.
881 Martin Avenue
Santa Clara, CA 95050

Ladies and Gentlemen:

1. The following is a list of existing inventions or improvements relevant to the subject matter of my consulting with Align Technology, Inc. (the "Company") that I desire to expressly clarify are not the subject of the Consulting Agreement.

[X] No inventions or improvements

Additional sheets attached
- ----

See below:
- ----

2. I propose to bring to my consulting the following materials and documents of a third party:

[X] No materials or documents

See below:
- ----

GENERAL RELEASE OF ALL CLAIMS
(Exception - California - Attachment B)

On behalf of myself, my heirs, executors, administrators and assigns, I hereby make the following agreements and acknowledgements in exchange for Benefits to be received by me as described in the Consultant Proprietary Information Nondisclosure Agreement ("Attachment A") and the June 17, 2002 letter (the "Letter") received by me from the Company and signed by Thomas Prescott, President & CEO, Align Technology, Inc.

1. I acknowledge that:

a. I have received all wages earned by and owed to me by Align Technology, Inc. ("Align"), as of the date this release is signed, except wages that will be earned by me as Chairman, Europe, from the date this release is signed, through September 1, 2002, and any benefits proposed under Attachment A and the Letter; and

b. I understand that in order to receive the benefits provided by Attachment A and the Letter, I must sign and return this General Release to Align, no later than forty-five (45) calendar days after I have received this General Release.

2. I agree that I fully and forever waive, release, acquit and discharge Align Technology, Inc. and any and all past, current and future parent, subsidiary and affiliated companies, predecessors and successors thereto (together the "Company"), as well as the Company's officers, directors, agents, employees, affiliates, representatives, shareholders and assigns, from any and all claims, actions, charges, complaints, grievances and causes of action of whatever nature, whether now known or unknown, which exist or may in the future exist arising from or relating to events, acts or omissions prior to the Effective Date of this General Release; my recruitment and hiring by the Company, my employment with the Company and the termination thereof, including but not limited to: claims for bonuses, or for severance; claims of breach of contract, breach of the covenant of good faith and fair dealing, wrongful termination, violation of public policy, fraud, intentional or negligent misrepresentation, defamation, personal injury, infliction of emotional distress, and claims under Title VII of the 1964 Civil Rights Act, the Equal Pay Act of 1963, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Civil Rights Act of 1866, the Employee Retirement Income Security Act of 1974, the Worker Adjustment Retraining and Notification Act, the Family Medical Leave Act, the Worker Adjustment Retraining and Notification Act, the California Government Code, the California Labor Code, and any other local, state and federal laws and regulations relating to employment, except any claim I may have for:

a. unemployment or any state disability insurance benefits pursuant to the terms of applicable state law;

b. workers' compensation insurance benefits under the terms of any worker's compensation insurance policy or fund of the Company;

c. to continue participation in certain of the Company's group benefit plans pursuant to the terms and conditions of the federal law known as COBRA;

d. to any benefit entitlements vested as the date of my separation, pursuant to written terms of any Company employee benefit plan; and

e. to any stock and stock options pursuant to the terms of existing stock option, stock purchase, and/or stock issuance agreement(s) and any addenda or waivers thereto, between me and the Company, as modified by the Letter.

f. to indemnification and hold harmless protection with respect to my action as an officer of the Company, whether contained in a contract for my benefit, the Certificate of Incorporation or By-Laws equivalent of the Company or under statutory provisions that provide for such indemnification and hold harmless protection or pursuant to Directors and Officers Insurance maintained by the Company for such purpose (pursuant to which I will continue to be covered to the extent that the Company continues in effect any such insurance).

3. I understand and agree that if, hereafter, I discover facts different from or in addition to those which I now know or believe to be true, that the waivers and releases of this General Release shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery of such facts. The Company also agrees that if, hereafter, it discovers facts different from or in addition to those which it now knows or believes to be true, that the waivers and releases of this General Release shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery of such facts. I agree that I fully and forever waive any and all rights and benefits conferred upon me by the provisions of Section 1542 of the Civil Code of the State of California, which states as follows (parentheticals added):

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

4. The Company agrees that it fully and forever waives, releases, acquits and discharges me from any and all claims, actions, charges, complaints, grievances and causes of action of whatever nature, whether now known or unknown, which exist or may in the future exist arising from or relating to events, acts or omissions prior to the Effective Date of this General Release.

5. I agree that neither the fact nor any aspect of this General Release is intended, or should be construed at any time, to be an admission of liability or wrongdoing by either myself or by the Company.

6. I agree that I will not make any negative or disparaging statements or comments, either as fact or as opinion, about the Company, including but not limited to its employees, officers, directors, shareholders, vendors, products or services, business, technologies, market position, performance and other similar information concerning the Company.

7. I agree that if any provision, or portion of a provision, of this General Release is, for any reason, held to be unenforceable, that such unenforceability will not affect any other

provision, or portion of a provision, and this General Release shall be construed as if such unenforceable provision or portion had never been contained herein.

8. I understand that, even if I did not sign this General Release, I would still be bound by confidential/proprietary/trade secret information, non-disclosure and inventions assignment agreement(s) signed by me in connection with my employment with the Company, or by a predecessor or successor of Align, pursuant to the terms of such agreement(s).

9. I understand that if I want to elect COBRA Benefits, after September 1, 2002, I must timely complete and return to Align the Election Form-COBRA for me and my eligible dependents. I further understand that I must promptly pay the COBRA premiums due in order to continue health benefit plan coverages for me and my dependents.

10. I understand that I may have forty-five (45) days after receipt of this General Release within which I may review and consider, and should discuss with an attorney of my own choosing, and decide whether or not to sign this General Release. I also understand that, for the period of seven (7) days after I sign this General Release, I may revoke it by delivering a written notification of my revocation, no later than the seventh day, to:

Human Resources
Align Technology, Inc.
881 Martin Avenue
Santa Clara, CA 95050
Facsimile: (408) 470-1022

The Effective Date of this General Release will be the eighth day after I have signed it, provided that I have delivered it to Align and I have not revoked it during the seven days after I signed it. I understand that I should return my signed General Release to Align at the address above.

11. I understand that I may disclose such facts and information, to my spouse and to my attorneys, accountants or tax advisors to whom and only to the extent that disclosure is necessary to effect the purposes for which I have consulted such attorneys, accountants or tax advisors. I agree that in connection with any disclosure permitted hereunder, I shall cause such my spouse, attorneys, accountants or tax advisors to whom disclosure has been made, to agree to comply with this requirement of confidentiality and nondisclosure (this "Requirement"), and in the event any such third party breaches this Requirement, such breach shall be deemed to have been committed by me. I agree that, in the event of any breach of this Requirement, I shall immediately return to Align the Benefits received by me, no later than twenty (20) days after service of written demand by Align. I acknowledge that, in the event of any breach of this Requirement, the stock issuance of 50,000 shares referred to in the Letter will immediately be rendered null and void. I further agree that if I fail to timely return such Benefits as demanded by Align, the prevailing party in any legal action brought by me or by Align in connection with such failure and/or any alleged breach of the Requirement shall be entitled to recover their attorneys fees and costs from the non-prevailing party, in addition to any other remedies available under applicable law.

12. I agree and understand that this General Release contains the entire agreement between the Company and me with respect to any matters referred to herein, and that it supersedes any and all previous oral or written agreements except those referenced in 2.d., 2.e., and 8., above.

I HAVE READ THIS GENERAL RELEASE; I UNDERSTAND IT AND KNOW THAT I AM GIVING UP IMPORTANT RIGHTS; I AM AWARE OF MY RIGHT TO CONSULT WITH AN ATTORNEY OF MY OWN CHOOSING BEFORE SIGNING IT AND I HAVE BEEN ENCOURAGED TO CONSULT WITH SUCH AN ATTORNEY; AND I SIGN IT VOLUNTARILY:

(DATE & SIGN):

Signed: Aug 4, 2002

Employee's Signature:

/s/ Peter Riepenhausen

---

Employee's Name (Printed): Peter Riepenhausen

# SETTLEMENT & GENERAL RELEASE AGREEMENT

This Settlement and General Release Agreement ("Agreement") is made by and between Stephen Bonelli ("Bonelli") and Align Technology, Inc. ("Align"). Bonelli and Align will hereinafter be referred to as the "Parties."

## R E C I T A L S

WHEREAS, Bonelli was for a time employed by Align until his employment terminated on September 30, 2002 (the "Termination Date");

WHEREAS, Bonelli and Align (together "the Parties") wish permanently to resolve all disputes that exist or may exist between them in the future arising out of Bonelli's employment with Align and the termination thereof;

NOW, THEREFORE, for and in consideration of the promises and undertakings described below, the Parties agree as follows:

## A G R E E M E N T S

A. ALIGN.

1. Payment. Within five (5) business days after the Effective Date of this Agreement (as defined in Section 8 below), Align shall deliver to Bonelli a check made payable to "Stephen Bonelli" in the gross amount of TWO HUNDRED THOUSAND DOLLARS ($200,000), less applicable deductions and withholdings, for which a 2002 Form W-2 shall be issued to Bonelli.

2. COBRA Continuation. If Bonelli is eligible and timely elects to continue medical coverage for himself and his eligible dependents under COBRA, Align will pay, on Bonelli's behalf, the premiums to continue this group health insurance, including coverage for Bonelli's eligible dependents; provided, however, that Align will pay such premiums only for the coverage for which Bonelli and his eligible dependents were enrolled immediately prior to the Termination Date. Align shall pay the premiums for such coverage until the earlier of (a) September 30, 2003; (b) the effective date of Bonelli's coverage by a health plan of a subsequent employer; or (c) the date Bonelli is no longer eligible for COBRA coverage. For the balance of the period that Bonelli is entitled to coverage under COBRA, he shall be entitled to maintain coverage for himself and his eligible dependents at his own expense.

3. Vesting Acceleration. Align will accelerate the vesting of Bonelli's restricted shares so that on the Effective Date, Bonelli will be vested in the same number of shares Bonelli would have vested in had he remained in service through the one year anniversary of the Termination Date (209,166).

B. BONELLI.

1. Final Pay. Bonelli represents and warrants that he has received and reviewed his final paycheck and that he has been paid all salary, wages and the like earned by him and owed to him by Align, including, but not limited to, all accrued but unused vacation as well as any reimbursable business expenses. Bonelli further acknowledges and agrees that he is not entitled to any additional payments from Align except as set forth in this Agreement.

2. Consultation/Assistance. Bonelli agrees that for the three (3) month period following the Termination Date, he will make himself available to consult with and assist Align as Align may reasonably request from time to time.

3. General Release. Bonelli hereby fully and forever releases, waives, discharges and promises not to sue or otherwise institute or cause to be instituted any legal or administrative proceedings against Align or any of its current and former officers, directors, attorneys, shareholders, predecessor, successor, affiliated or related companies, agents, employees and assignees thereof (collectively, the "Company"), with respect to any and all liabilities, claims, demands, contracts, debts, obligations and causes of action of any nature, kind, and description, whether in law, equity or otherwise, whether or not now known or ascertained, which currently do or may exist, including without limitation any matter, cause or claim arising out of or related to facts or events occurring prior to the Effective Date of this Agreement, and/or arising from and relating to Bonelli's employment with Align or the termination therefrom, including, but not limited to any claims for unpaid wages, severance, benefits, penalties, breach of contract, breach of the covenant of good faith and fair dealing, infliction of emotional distress, misrepresentation, claims under Title VII of the Civil Rights Act, under the Age Discrimination in Employment Act, under the California Fair Employment and Housing Act, under the California Labor Code, under the Employment Retirement Income and Security Act and under any other statutory or common law claims relating to employment or the termination thereof, except any claims Bonelli may have for:

a. unemployment insurance benefits pursuant to the terms of applicable law;

b. workers' compensation insurance benefits pursuant to Division 4 of the California Labor Code, under the terms of any workers' compensation insurance policy or fund of Align;

c. continued participation in certain of Align's group benefit plans on a temporary basis pursuant to the federal law known as COBRA.

4. Waiver - Civil Code Section 1542. Bonelli understands and agrees that Section B.3., above, applies to claims, known and presently unknown by Bonelli; and that this means that if, hereafter, Bonelli discovers facts different from or in addition to those which Bonelli now knows or believes to be true, that the releases, waivers, discharge and promise not to sue or otherwise institute legal action shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery of such fact. Accordingly, Bonelli hereby agrees that he fully and forever waives any and all rights and benefits conferred upon his by the provisions of Section 1542 of the Civil Code of the State of California which states as follows (parentheticals added):

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

5. Confidentiality & Non-Disclosure. Bonelli hereby agrees that he will not, without compulsion of legal process, disclose to any third party any of the terms of this Agreement, including the amount referred to herein, either by specific dollar amounts or by number of "figures" or otherwise, nor shall he disclose that the fact of the payment of said dollar amount, except that he may disclose such information to his spouse and he may disclose such information to his attorneys and accountants to whom, and only to the extent, disclosure is necessary to effect the purposes for which Bonelli has consulted such attorneys and accountants. Bonelli agrees that in connection with any disclosure permitted hereunder, Bonelli shall cause such third party to whom disclosure has been made, including his spouse, to agree to comply with this covenant of confidentiality and non-disclosure, and in the event such third party breaches this covenant of confidentiality and non-disclosure, such breach shall be deemed to have been committed by Bonelli.

6. COBRA Continuation. Bonelli hereby agrees that he will notify Align's human resources department when he becomes eligible for medical coverage with a subsequent employer or otherwise.

7. No Other Pending Claims. Bonelli hereby represents and warrants that he has neither filed nor served any claim, demand, suit or legal proceeding against the Company.

8. No Prior Assignments. Bonelli hereby represents and warrants that he has not assigned or transferred, or purported to assign or transfer, to any third person or entity any claim, right, liability, demand, obligation, expense, action or causes of action being waived or released pursuant to this Agreement.

9. Material Inducements. Bonelli hereby agrees and acknowledges that the releases, waivers and promises contained in this Agreement, including the promises of confidentiality and nondisclosure, are material inducements for the consideration described in Section A., above.

10. Agreement Inures to Align. Bonelli hereby agrees and understands that this Agreement shall bind him, and his heirs, executors, administrators and agents thereof and that it inures to the benefit of Align and its current and former officers, directors, attorneys, shareholders, predecessors, successors, affiliated or related companies, agents, employees and assignees thereof.

11. Proprietary Information. Bonelli hereby acknowledges and agrees that (a) he is bound by, and has continuing obligations under, the Proprietary Information and Inventions Agreement ("PIIA") signed by him on November 10, 2000; (b) he has returned to Align all items of property paid for and/or provided by Align for his use during employment with Align including, but not limited to, any laptops, computer and office equipment, software programs, cell phones, pagers, access cards and keys, credit and calling cards; and (c) he has returned to Align all documents (electronic and paper) created and received by him during his employment with Align, and he has not retained any such documents, except he may keep his personal copies of (i) documents evidencing his hire, compensation, benefits and termination (including this Agreement); (ii) any materials distributed generally to stockholders of the Company, and (iii) his copy of the PIIA. The PIIA is incorporated herein by this reference.

12. Non-Disparagement. Bonelli agrees not to make any derogatory statements about the Company and/or the Company's officers, directors, employees, investors, stockholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations an Assigns. Align agrees not to make any derogatory statements about Bonelli.

C. ALIGN AND BONELLI.

1. Restricted Shares. The Parties agree that if Bonelli executes this Agreement and it becomes effective pursuant to Section 8 below, on the Effective Date, Bonelli will be vested in 209,166 of the restricted shares of Align Technology Inc. common stock held by him. At that time, Align will repurchase the 23,491 shares of Align Technology Inc. common stock that have not vested as of the Effective Date by issuing a check payable to Stephen Bonelli in the amount of $25,017.92 .

2. Attorneys Fees and Expenses. Each party to this Agreement shall bear their own respective attorneys' fees and expenses related to the negotiation of this Agreement, and each agrees to hold the other harmless from the payment of all such attorneys' fees and expenses.

3. No Admission. Nothing contained in this Agreement shall constitute, be construed or be treated as an admission of liability or wrongdoing by Bonelli, by Align, or by any current or former employee, officer or director of Align.

4. Governing Law. California law shall govern the construction, interpretation and enforcement of this Agreement.

5. Severability. If any provision, or portion thereof, of this Agreement shall for any reason be held to be invalid or unenforceable or to be contrary to public policy or any law, then the remainder of the Agreement shall not be affected thereby.

6. Arbitration of Disputes Arising from Agreement. Any and all disputes that arise out or relate to this Agreement or any of the subjects hereof shall be resolved through final and binding arbitration. Binding arbitration will be conducted in Santa Clara County in accordance with California Code of Civil Procedure section 1282, et seq., and the rules and regulations of the American Arbitration Association then in effect for resolution of commercial disputes. Each of the Parties understands and agrees that arbitration shall be instead of any civil litigation, each waives its right to a jury trial, and each understands and agrees that the arbitrator's decision shall be final and binding to the fullest extent permitted by law and enforceable by any court having jurisdiction thereof. Each of the Parties will bear their own respective attorneys' fees and will equally share the cost of arbitration, although the arbitrator may award the prevailing party his/its reasonable attorneys' fees and costs of arbitration except that such fees and costs may not be recovered by Align that result from Align's defense against any claim by Bonelli challenging the waiver, release and discharge of rights under the Age Discrimination Employment Act.

7. Counterpart Signatures. Bonelli and Align hereby acknowledge that this Agreement may be executed in counterpart originals with like effect as if executed in a single original document.

8. Time to Consider; Revocation Period; Effective Date. Bonelli understands that he may have up to twenty-one (21) days after receipt of this Agreement within which he may review and consider, and should discuss with an attorney of his own choosing, and decide whether or not to sign this Agreement. Bonelli also understands that, for the period of seven (7) days after the date he signs this Agreement, he may revoke the release of his claims under the Age Discrimination in Employment Act ("ADEA"), in which case this Agreement shall remain effective and enforceable in all other respects but the payment in Section A.1. will be reduced by 40%. Bonelli understands that if he wishes to revoke his release of claims under the ADEA, he must deliver written notice of revocation, no later than the seventh day after she signs this General Release, to:

Align Technology, Inc.
Attn. Human Resources
821 Martin Ave.
Santa Clara, CA 95050
Facsimile: (408) 470-1207

Bonelli further understands that the Effective Date of this General Release will be the eighth day after both of the Parties have signed it and it has been delivered to Align. Bonelli understands that he should deliver his signed General Release to Align via the address, above.

9. Results of Negotiation; Knowing and Voluntary Execution. The Parties hereby acknowledge that this Agreement is the result of negotiation between them, that each were represented by an attorney of their own choosing in deciding whether or not to sign this Agreement and that each has read and understands the foregoing Agreement and that each affixes their respective signature to this Agreement knowingly, voluntarily and without coercion.

10. Entire Agreement; Modification. The Parties hereby acknowledge and agree that except for any pre-existing stock, stock option and/or purchase agreement(s) between Bonelli and Align, and any amendments and waivers thereto, no promises or representations were or are made which do not

appear written in this Agreement. The Parties agree that this Agreement contains the entire agreement by Bonelli and Align, and that neither is relying on any representation or promise that does not appear in this Agreement. The Parties further agree that the benefits provided in this Agreement fully satisfy any obligations Align may have to provide any severance or other benefits to Bonelli under that certain employment offer letter by and between Bonelli and Align dated November 6, 2000. This Agreement may be changed only by another written agreement signed by Bonelli and the Chief Executive Officer of Align.

11. Enforcement Costs. If an action is brought by either party for breach of any provision of this Agreement, the non-breaching party shall be entitled to recover all reasonable attorneys' fees and costs in defending or bringing such an action.

Date: October 1, 2002 /s/ Stephen Bonelli
---
Stephen Bonelli

Align Technology Inc.:

Date: September 30, 2002 By: /s/ Thomas M. Prescott
---
Thomas M. Prescott
President & CEO

EXHIBIT 10.33

[LETTERHEAD OF ALIGN TECHNOLOGY, INC.]

March 6, 2003

Via Express Delivery And Facsimile (802-457-9477 & 775-833-2836)

Mr. David E. Collins
13 Mountain Avenue
Woodstock, VT 05091

PMB #224
774 Mays Blvd., # 10
Incline Village, NV 89451

Re: Offer to join the Board of Directors

Dear Dave:

On behalf of Align Technology, Inc. (the "Company"), I am extremely pleased to invite you to become a member of the Company's Board of Directors (the "Board"). We believe that your skills, expertise and knowledge will prove very helpful to the Company's progress.

In connection with your service as a director, we will recommend to the Board that you be granted a stock option entitling you to purchase up to 75,000 shares of the Company's Common Stock. We will recommend that the shares become vested as follows: 25% of the option shall vest on the 12 month anniversary of the commencement of your service as a director, and the remaining 75% shall vest in 36 equal monthly installments. In addition, the option will fully accelerate upon the occurrence of a Change in Control of the Company (as that term is defined in the Company's 2001 Stock Incentive Plan (the "Plan")). Each option granted to you will be subject to the terms and conditions of the Plan and the stock option agreement evidencing the option. The exercise price per share will be equal to the fair market value of the Company's common stock on the date of grant, as determined by the Board.

In addition, you will be entitled to receive cash compensation in accordance with Schedule A attached hereto. You will be reimbursed for reasonable expenses incurred by you in connection with your services to the Company in accordance with the Company's established policies.

The Board currently meets once every two months at our offices in Santa Clara. The various committees of the Board to which you may be appointed also meet frequently. It is our expectation that you will participate in those meetings in person to the extent possible. We also ask that you make yourself available to participate in various telephonic meetings from time to time.

Please note that this offer is contingent upon your qualification as an independent director under applicable NASDAQ rules. Also, please note that this offer and any rights to purchase shares of the Company's capital stock referenced in this offer letter are contingent upon approval of the Board and the Company's stockholders.

Your service on the Board of Directors will be in accordance with, and subject to, the Company's Bylaws and the Certificate of Incorporation, as such may be amended from time to time. In accepting this offer, you are representing to us that (i) you do not know of any conflict that would restrict you from becoming a director of the Company and (ii) you will not provide the Company with any documents, records or other confidential information belonging to any other parties.

This offer is considered confidential information and we trust that you will treat it as such. If you wish to accept this offer, please sign below and return the fully executed letter to us. You should keep one copy of this letter for your own records. This letter sets forth the terms of your service with the Company and supersedes any prior representations or agreements, whether written or oral. This letter may not be modified or amended except by a written agreement, signed by an officer of the Company and by you.

We are looking forward to having you join us at the Company. We believe that your enthusiasm and past experience will be an asset to the Company and that you will have a positive impact on the organization. If you have any questions, please call me at (408) 470-1112.

Sincerely,

Align Technology, Inc.

/s/ Thomas M. Prescott
---
Thomas M. Prescott

Accepted and agreed to this

6th day of March, 2003

/s/ David E. Collins
- ---
David E. Collins

ALIGN TECHNOLOGY
INDEPENDENT BOARD MEMBER
PROFORMA ANNUAL FEE SCHEDULE - SCHEDULE A

| ACTIVITY | FEE PER EVENT | PROJECTED ANNUAL FEE |
|---|---|---|
| Monthly Board Retainer | $ 2,000.00 | $ 24,000.00 |
| Face to Face Board of Director Meetings (5 per year) | $ 1,500.00 | $ 7,500.00 |
| Telephonic Board of Director Meetings (4 per year) | $ 750.00 | $ 3,000.00 |
| Face to Face Audit Committee Meetings (5 per year) | $ 1,000.00 | $ 5,000.00 |
| Telephonic Audit Committee Meetings (4 per year) | $ 500.00 | $ 2,000.00 |
| Other Committee Assignments Approximately (4 per year) | $ 1,000.00 | $ 4,000.00 |
| Proforma Annual Director Compensation | | $ 45,500.00 |

Note : All customary out of pocket expenses related to meeting attendance will be reimbursed.

**EXHIBIT 10.34**

***Draft – Confidential***
***Translation for information purposes only***
***The binding text must be signed in French***

**SETTLEMENT AGREEMENT**

**BETWEEN THE UNDERSIGNED:**

Align Technology registered with the Registry of Commerce and Companies of Paris under number 434.581.278, having its registered office at 29, rue Jean-Jacques Rousseau in Paris (75001), France, and represented by Mr. Jeremy Mosley, *Président*, duly authorized,

Hereafter "***the Company***"

**ON THE ONE HAND**

**AND:**

Mr. Philippe Mollard residing at 86, quai de Jemmapes in Paris (75010) – France,

Hereafter "***the Employee,***"

**ON THE OTHER HAND**

**WHEREAS:**

1. The Employee joined the Company effective on February 1, 2001 in the capacity of Operation Director as an Executive *(Cadre)* and subject to the National Collective Bargaining Agreement for trading on dental product.

2. As of the beginning of 2002, the Company experienced substantial economic difficulties, as the result of the long-term decline in the market for dental prosthesis. These difficulties, incidentally, were aggravated during all the long of the year 2002.

3. It was under these circumstances that on September 16, 2002 the Employee was convened to a pre-dismissal meeting held on September 25, 2002.

   By registered letter with acknowledgment of receipt dated October 14, 2002, the Employee was terminated for the following economic grounds:

   *"(…) it has been now several years that our Company is facing important economic difficulties. These difficulties are the consequence of the recession of the business our Company belongs, i.e.: dental prosthesis.*

   *As a result of this situation, the Group has been facing net losses, which were equal to $37.3 million (around €37.3 million) for the first six months of 2002, including $18.5 million for the first quarter of 2002 and $18.8 million for the second one.*

   *Currently, our business is in the red and this situation also concerns the French company where you work: it had serious declining cases submissions and revenue through out the fiscal year 2001 and the last half of fiscal year 2002.*

   *Our Company booked revenues, for the first eight months of this year, were equal only to 15% of the total operating expenses, which means that operating expenses are six times higher than revenues, and case submissions are only 1/3 of the total revised target for the year to date. As a result, we are in a very critical economic situation.*

   *Because of these difficulties, and because of the pronounced fall off of the French company revenues, we are obliged to proceed to a reorganization under jeopardy of our business and Company in the short term.*

   *In this conditions, we have to suppress your job of Operations Director which is no longer justified with respect of the new organization needed by the situation described above."*

4. By letter with acknowledge of receipt, date November 7, 2002, the Employee immediately notified the Company that he disputed the motive for his termination, and that he considered this termination wrongful, absent of any real and serious cause, and severely damagingly to his professional image.

The Employee stated that he believed he had suffered professional, moral and material prejudice he deems reparable by the payment of an indemnity in the total amount of one hundred thousand euro (€100,000).

5. For its part, the Company believes that the Employee's termination is justified to the extent that the economic difficulties it has encountered are manifestly exhibited.

In this respect, the Company announced that the pursuit of contractual relations with the Employee had become impossible given, in particular, the elimination of his position as Operations Direction and the absence of any available position that would permit the reassignment of the Employee within the Align group.

Finally, the Company disputed the totality of grievances evoked by the Employee and the excessive amount of the indemnity the latter is seeking in compensation for the prejudice he believes he has suffered.

6 Nevertheless, the Parties, desiring to settle amicably the dispute arising from the Employee's termination, have decided, after each seeking separate counsel, to make reciprocal concessions and have agreed, in application of Articles 2044 to 2058 of the French Civil Code, to settle the litigation that opposes them through a transaction.

The Employee furthermore confirms that his consent for this agreement was given in an entirely free and enlightened manner.

**IT IS HEREBY AGREED AS FOLLOWS:**

**ARTICLE 1:**

1.1 The Employee acknowledges receipt of his termination letter on October 15, 2002.

1.2 The Employee acknowledges that, according to his dismissal letter provisions, his 6-month notice period has commenced only on November 1, 2002 and that the Company has decided to release him from the completion of his notice period effective on the said date. Consequently, and according to French Labor law, the effective date of the breach of the Employee's employment contract will April 30, 2003. On this date, the Company will deliver to the Employee his work certificate (*Certificat de Travail*).

1.3 During the course of the notice period of the Employee, and for practical reasons and follow up of the files, the Company could solicit and/or ask him, punctually, to come in its premises, what the Employee specifically accepts. In the event the Company requests the Employee to come in its premises, a 5-days notice period should be respected.

As a consequence, the Employee hereby promises to remain contactable by the Company during his notice period and to communicate to it any new phone and/or mail details.

**ARTICLE 2:**

The Employee shall receive, within ten days of signature at the latest of this agreement, his ASSEDIC certificate, a summary of his salary as well as the outstanding balance of any accounts, including the following items:

- A dismissal conventional indemnity in the total of one thousand three hundred and ninety-two euro (€1,392);
- An indemnity in compensation of notice period in the total gross amount of eighty-three thousand five hundred and thirty-four euros and zero four cents (€283,534.04);
- An indemnity in compensation of outstanding paid vacation days in the total gross amount of twenty-five thousand nine hundred and nineteen euros and twenty three cents (€25,919.23).

The compensation used as a base for calculating the various indemnities mentioned above is the average of salary, commission and bonuses paid to the Employee over the course of the past twelve months, to which the Employee hereby expressly acknowledges.

The sums described above, except the dismissal indemnity, shall be paid to Employee after deduction of the employee portion of social charges and CSG-CRDS.

**ARTICLE 3:**

3.1 To put an end to all litigation relating to the execution or termination of his employment contract, and in reparation of each of the different prejudices evoked by the Employee, as a one-time lump-sum payment of all sums, of any kind whatsoever, including those that may have been overlooked, the Company agrees to:

- transfer, upon the signature of the present Settlement agreement, the title of the car provided to the Employee for the purposes of his functions. The net accounting value of the car is equal to twenty seven thousand nine hundred and five euros (€27,905);
- pay the Employee a settlement indemnity, in the definitive lump-sum amount of forty-four thousand euro (€44,000) before deduction of CSG-CRDS applicable to this indemnity and to the net accounting value of the car, in conformance with applicable law.

Consequently, the Employee recognizes that he will receive a net settlement indemnity in the amount of thirty eight thousand three hundred and sixty euro and seventy-eight cents (€38,360.78).

3.2 It is understood that this payment is designed to remedy the damage to career and reputation claimed by the Employee, provided however that it shall not under any circumstances constitute an acknowledgment by the Company that termination of his employment contract was unlawful.

3.3 This settlement indemnity, one-time and definitive in nature, net of CSG-CRDS, shall be paid to the Employee upon signature of this agreement and in the form of a Company cheque.

The car's different documents will be delivered to the Employee upon the signature of this agreement. Reciprocally the Employee promises to do, without delay, all the formalities issued by the car transfer on his proper name, namely regarding insurance.

IN SETTLEMENT

**ARTICLE 4:**

The Employee shall return to the Company, upon the signature of this agreement, all documents or materials belonging to the latter that may be in his possession.

**ARTICLE 5:**

The Employee hereby acknowledges holding stock purchase options attributed to him as part of the Align Technology, Inc. 2001 Options Incentive Plan. With regard to them, the Employee will refer to the term and conditions of the said Plan.

The Employee will receive a letter from the Company's Stock Options administrator with highlights of his possibilities as regards the exercising of his options under the above mentioned Plan.

**ARTICLE 6:**

6.1 The Employee hereby promises not to harm the interests of the Company or companies within the Align group, nor to divulge any information, whether of a written or oral nature, to which he has had access in the course of his relations with the Company and with the Company's customers, the disclosure of which could cause any prejudice to the Company, unless legally bound to do so, nor to publicly release such information. In the

event of the Employee's failure to comply, the Company reserves the right to pursue all necessary legal means to safeguard its interests.

6.2 Reciprocally, the Company promises not to harm the interests of the Employee.

**ARTICLE 7:**

7.1 Subject to the payment of the sums mentioned above, the Employee hereby waives the reemployment priority and all right to any legal pursuit or action of any kind whatsoever relating to the execution or termination of employment contract, against the Company or any and all companies within the Align group.

The Company and the Employee recognize that the Employee occupied the mandate *(Mandat social)* of *Président* of the Company from February 1, 2001 to October 16, 2002. Therefore, subject to the payment of the sums mentioned above, the Employee hereby also waives all right to any legal pursuit or action of any kind whatsoever relating to the execution or termination of his mandate against the Company or any and all companies within the Align group. However, the Company acknowledges that the Employee reserves the rights under his mandate to defend his interest in the case of any legal or fiscal challenge or pursuit that may arise and which relates to his mandate.

7.2 The Employee hereby acknowledges having been satisfied of all his rights relating to the execution and termination of his mandate and employment contract.

Specifically, he hereby acknowledges having received all sum that may be owing him for any reason whatsoever by the Company, including, but not limited to, any sums for his mandate, salary, salary bonuses, reimbursement of professional expenses, paid vacation indemnities, severance indemnities, indemnities for non-compliance with proper termination procedures, indemnity for termination without justification and damages on any kind.

7.3 Reciprocally, the Company waives all rights to legal pursuit or action against the Employee related to the execution or termination of his mandate and employment contract.

**ARTICLE 8:**

8.1 The Parties promise not to reveal the terms of this accord, unless legally bound to do so. Each of them shall refrain, more generally, from making any public comment relating to this separation or of a nature to harm the reputation or image of the other party.

8.2 Each of the Parties to this agreement shall assume on its own behalf the social or fiscal consequences of this settlement.

**ARTICLE 9:**

This agreement constitutes a transaction as defined by Articles 1124 and 2044 and sub. of the French Civil Code and in particular as defined by Article 2052, which provides that:

*"Transaction shall have, between the parties, the authority of a legal judgment of last resort. They shall not be challenged for reasons of legal error nor for inequity."*

Each Party acknowledges having enough time to consider the provisions of this agreement. The Employee acknowledges that the definitive and irrevocable character of this transaction was brought to his attention.

Executed in two originals, one for each of Parties,
In Paris, on November 27, 2002

| | |
|---|---|
| For ALIGN TECHNOLOGY<br>Mr. Jeremy Mosley<br>*President* | The Employee<br>Mr. Philippe Mollard |

Initial each page and sign the last page with the handwritten comment:
*"Good for transaction, waiver of all legal pursuit or action."*

EXHIBIT 10.35

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Loan And Security Agreement

Align Technology, Inc.

AND

Comerica Bank - California

December 20, 2002

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Parties:

| | |
|---|---|
| Comerica Bank | "Comerica" |
| Align Technology, Inc. | "Borrower" |

Counsel:

Cooley Godward LLP, counsel to Comerica
Wilson Sonsini Goodrich & Rosati, counsel to Borrower

TAB DOCUMENT

All documents are dated as of December 20, 2002 unless otherwise noted.

1. Loan and Security Agreement by and between Align Technology, Inc., a Delaware corporation ("Borrower") and Comerica Bank-California ("Comerica").

   A. Exhibits to Loan Agreement:

| | |
|---|---|
| Exhibit A | Definitions |
| Exhibit B | Collateral Description Attachment |
| Exhibit C | Form of Loan Payment/Advance Telephone Request |
| Exhibit D | Form of Borrowing Base Certificate |
| Exhibit E | Form of Compliance Certificate |

2. Disclosure Letter.

   A. Schedules to Disclosure Letter:

| | |
|---|---|
| Exhibit A | Permitted Indebtedness (Existing Indebtedness of Borrower or Subsidiaries) |
| Exhibit A | Permitted Investments (Subsidiaries of Borrower) |
| Exhibit A | Permitted Investments (Existing Investments of Borrower or Subsidiaries) |
| Exhibit A | Permitted Liens (Existing Liens of Borrower or Subsidiaries) |
| Schedule 5.4 | 5% Revenue Generating Inbound Licenses |
| Schedule 5.5 | Prior and Other Names of Borrower |
| Schedule 5.6 | Litigation |
| Schedule 5.12 | Inbound Licenses |
| Schedule 5.13 | Borrower Deposit and Investment Accounts |
| Schedule 7.10 | Collateral Locations |

3. UCC-1 Financing Statement wherein Borrower is debtor and Comerica is secured party filed December 23, 2002 with the Delaware Secretary of State UCC Division, file number 30020803.

4. Compliance Certificate.

5. Agreement to Provide Insurance.

6. Evidence of Insurance dated as of December 18, 2002.

7. Itemization of Amount Financed - Equipment Loan.

8. Itemization of Amount Financed - Revolver.

9. Automatic Debit Authorization - 0189209236 - 18.

10. Automatic Debit Authorization - 0189209236 - 67.

11. Loan Payment/Advance Telephone Request.

12. Lockbox Agreement dated as of November 22, 2002.

13. Officer's Certificate.

    Exhibit A  Amended and Restated Certificate of Incorporation
    Exhibit B  Bylaws of Borrower
    Exhibit C  Resolutions

14. Certificate of Good Standing issued by the Delaware Secretary of State on December 17, 2002.

15. Certificate of Status Foreign Corporation issued by the California Secretary of State on December 17, 2002.

16. Tax Good Standing Letter issued by the California Franchise Tax Board on December 17, 2002.

# LOAN AND SECURITY AGREEMENT

between

Align Technology, Inc.

and

Comerica Bank - California

December 20, 2002

This Loan And Security Agreement (as amended, modified or supplemented from time to time, this "Agreement") is entered into as of December 20, 2002, by and between Comerica Bank-California ("Bank") and Align Technology, Inc., a Delaware corporation ("Borrower").

RECITALS

Borrower wishes to obtain credit from time to time from Bank, and Bank desires to extend credit to Borrower. This Agreement sets forth the terms on which Bank will advance credit to Borrower, and Borrower will repay the amounts owing to Bank.

AGREEMENT

The parties agree as follows:

1. Definitions And Construction.

1.1 Definitions. As used in this Agreement, the following terms shall have the definitions set forth on Exhibit A.

1.2 Accounting Terms. All accounting terms not specifically defined on Exhibit A shall be construed in accordance with GAAP and all calculations shall be made in accordance with GAAP. The term "financial statements" shall include the accompanying notes and schedules.

2. Loans And Terms Of Payment.

2.1 Credit Extensions. Borrower promises to pay to Bank, in lawful money of the United States of America, the aggregate unpaid principal amount of all Credit Extensions made by Bank to Borrower, together with interest on the unpaid principal amount of such Credit Extensions at rates in accordance with the terms hereof.

(a) Revolving Advances.

(i) Subject to and upon the terms and conditions of this Agreement, Bank, agrees to make advances (each a "Revolving Advance" and collectively, the "Revolving Advances") to Borrower, subject to Section 2.1(a)(ii), in an aggregate outstanding amount not to exceed the lesser of (A) the Committed Revolving Line or (B) the Borrowing Base, minus, in each case, the aggregate face amount of all Letters of Credit. Amounts borrowed pursuant to this Section 2.1 (a) may be repaid and reborrowed at any time prior to the earlier to occur of (i) the Revolving Maturity Date, at which time all Revolving Advances under this Section 2.1 (a) shall be immediately due and payable or (ii) the termination of Bank's obligation to advance money pursuant to Section 9.1(b).

(ii) Whenever Borrower desires a Revolving Advance, Borrower shall notify Bank (which notice shall be irrevocable) by facsimile transmission or telephone to he received no later than 3:00 p.m. Eastern Standard Time, on the Business Day that the Revolving Advance is to be made. Each such notification shall be promptly confirmed by a

Payment/Advance Form in substantially the form of Exhibit C. The notice shall be signed by a Responsible Officer or his or her designee. Bank is authorized to make Revolving Advances under this Agreement, based upon instructions received from a Responsible Officer or a designee of a Responsible Officer, or without instructions if in Bank's discretion such Revolving Advances are necessary to meet Obligations which have become due and remain unpaid. Bank shall be entitled to rely on any telephonic notice given by a person who Bank reasonably believes to be a Responsible Officer or a designee thereof, and Borrower shall indemnify and hold Bank harmless for any damages or loss suffered by Bank as a result of such reliance. Bank will credit the amount of Revolving Advances made under this Section 2.1(a) to Borrower's deposit account maintained with Bank.

(iii) Borrower shall use Revolving Advances solely for working capital and general corporate purposes.

(b) Letter of Credit Usage. Subject to the availability under the Committed Revolving Line and in reliance on the representations and warranties of Borrower set forth herein, at any time and from time to time from the date hereof through the Business Day immediately prior to the Revolving Maturity Date, Bank shall issue for the account of Borrower such standby or commercial letters of credit (each, a "Letter of Credit" and collectively, "Letters of Credit") in an aggregate face amount not to exceed the least of (i) the Committed Revolving Line minus the sum of (a) the aggregate principal amount of the outstanding Revolving Advances at the time of issuance of such Letter of Credit plus (b) the aggregate face amount of all outstanding Letters of Credit at the time of issuance of such Letters of Credit, (ii) the Borrowing Base minus the sum of (a) the aggregate principal amount of the outstanding Revolving Advances at the time of issuance of such Letter of Credit plus (b) the aggregate face amount of all outstanding Letters of Credit at the time of issuance of such Letter of Credit and (iii) One Million Dollars ($1,000,000). The request for such Letters of Credit shall be made by delivering to Bank a duly executed letter of credit application on Bank's standard form. All Letters of Credit shall be in form and substance acceptable to Bank in its sole discretion and shall be subject to the terms and conditions of Bank's form application and letter of credit agreement (the "Application"). Borrower will pay any standard issuance and other fees that Bank notifies Borrower will be charged for issuing and processing Letters of Credit for Borrower. On any drawn but unreimbursed Letter of Credit, the unreimbursed amount shall be deemed a Revolving Advance under Section 2.1(a). No Letter of Credit shall have an expiration date which is later than the Revolving Maturity Date unless Borrower shall deposit with Bank cash collateral in an amount equal to or greater than one hundred five percent (105%) of the undrawn face amount of all such outstanding Letters of Credit.

(i) The obligation of Borrower to reimburse Bank for drawings made under Letters of Credit shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, the Application, and such Letters of Credit, under all circumstances whatsoever. Borrower shall indemnify, defend, protect, and hold Bank harmless from any loss, cost, expense or liability, including, without limitation, reasonable attorneys' fees, arising out of or in connection with any Letters of Credit, except for losses, costs, expenses or liabilities caused by Bank's gross negligence or willful misconduct.

(c) Equipment Advances.

(i) Bank agrees to make an advance ("Equipment Advance") to Borrower, in an aggregate outstanding amount not to exceed the Equipment Line. The Equipment Advance shall not exceed (i) for new equipment with invoices dated from September 20, 2002 through the Closing Date, one hundred percent (100%) of the invoice amount, less taxes, freight, installation and other soft costs, (ii) for equipment with invoices dated June 1, 2002 through September 20, 2002, one hundred percent (100%) of the invoice amount, less taxes, freight, installation and other soft costs, discounted for the number of months that such invoices are dated prior to September 20, 2002, and (iii) for equipment purchased prior to June 1, 2002, ninety percent (90%) of the forced sale value of such equipment as determined by an appraiser approved by Bank. All such equipment invoices shall be approved by Bank.

(ii) Borrower shall provide notice to Bank of the requested Equipment Advance in substantially in the form of the Payment/Advance Form attached hereto as Exhibit C. The notice shall be signed by a Responsible Officer or his or her designee and include a copy of the invoice for any Equipment to be financed, and shall include the serial numbers of such equipment.

2.2 Overadvances. If, at any time, (a) the aggregate amount of the outstanding Revolving Advances exceeds the amounts permitted to be borrowed under Section 2.1(a)(i); or (b) the aggregate amount of the outstanding Equipment Advances exceeds the Equipment Line, Borrower shall immediately pay to Bank, in cash, the amount of such excess.

2.3 Principal Repayments.

(a) Revolving Loans. All Revolving Advances shall be due and payable on the Revolving Maturity Date.

(b) Equipment Advances. The Equipment Advance shall be due and payable in thirty-six (36) equal monthly installments of principal, beginning on January 1, 2003 and continuing on the first day of each month thereafter through the Equipment Maturity Date, at which time all amounts due in, connection with Equipment Advances made under Section 2.1(c), along with accrued but unpaid interest thereon, shall be immediately due and payable.

2.4 Interest Rates, Payments, and Calculations.

(a) Interest Rates.

(i) Revolving Advances. Except as set forth in Section 2.4(b), the Revolving Advances shall bear interest, on the outstanding daily balance thereof, at a rate equal to One and Three Quarters of One Percent (1.75%) above the Prime Rate.

(ii) Equipment Advances. Except as set forth in Section 2.4(b), the Equipment Advances shall bear interest, on the outstanding daily balance thereof, at a rate equal to Two and One Quarter of One Percent (2.25%) above the Prime Rate.

(b) Late Fee; Default Rate. If any payment is not made within ten (10) days after the date such payment is due, Borrower shall pay Bank a late fee equal to the lesser of (i) five percent (5%) of the amount of such unpaid amount or (ii) the maximum amount permitted to be charged under applicable law. All Obligations shall bear interest, from and after the occurrence and during the continuance of an Event of Default, at a rate, equal to five (5) percentage points above the interest rate applicable immediately prior to the occurrence of the Event of Default.

(c) Payments. Interest on Revolving Advances and Equipment Advances hereunder shall be due and payable in arrears on the first day of each month during the term hereof. Bank may, at its option, charge such interest, all Bank Expenses, and all Periodic Payments against any of Borrower's deposit accounts or against the Committed Revolving Line, in which case those amounts shall thereafter accrue interest at the rate then applicable hereunder. Any interest not paid when due shall be compounded by becoming a part of the Obligations, and such interest shall thereafter accrue interest at the rate then applicable hereunder.

(d) Computation. In the event the Prime Rate is changed from time to time hereafter, the applicable rate of interest hereunder shall be increased or decreased, effective as of the day the Prime Rate is changed, by an amount equal to such change in the Prime Rate. All interest chargeable under the Loan Documents shall be computed on the basis of a 360 day year for the actual number of days elapsed.

2.5 Crediting Payments. Prior to the occurrence of an Event of Default, Bank shall credit a wire transfer of funds, check or other item of payment to such deposit account or Obligation as Borrower specifies. After the occurrence and during the continuance of an Event of Default, the receipt by Bank of any wire transfer of funds, check, or other item of payment shall be immediately applied to conditionally reduce Obligations, but shall not be considered a payment on account unless such payment is of immediately available federal funds or unless and until such check or other item of payment is honored when presented for payment. Notwithstanding anything to the contrary contained herein, any wire transfer or payment received by Bank after 12:00 noon Pacific Standard Time shall be deemed to have been received by Bank as of the opening of business on the immediately following Business Day. Whenever any payment to Bank under the Loan Documents would otherwise be due (except by reason of acceleration) on a date that is not a Business Day, such payment shall instead be due on the next Business Day, and additional fees or interest, as the case may be, shall accrue and be payable for the period of such extension.

2.6 Fees. Borrower shall pay to Bank the following:

(a) Revolving Commitment Fee. On the Closing Date, a Revolving Commitment Fee equal to Fifty Thousand Dollars ($50,000).

(b) Revolving Facility Fee. A Revolving Facility Fee equal to Twenty Five Thousand Dollars ($25,000) per year, payable quarterly in advance, which amount, once paid, is not refundable;

(c) Equipment Commitment Fee. On the Closing Date, an Equipment Commitment Fee equal to Twenty-Five Thousand Dollars ($25,000).

(d) Bank Expenses. On the Closing Date, all Bank Expenses incurred through the Closing Date, including reasonable attorneys' fees and expenses and, after the Closing Date, all Bank Expenses, including reasonable attorneys' fees and expenses, as and when they become due.

2.7 Term. This Agreement shall become effective on the Closing Date and, subject to Section 12.7, shall continue in full force and effect for a term ending on the Equipment Maturity Date.

2.8 Prepayment; Reduction of Committed Revolving Line. Upon two (2) Business Days prior written notice to Bank, Borrower may prepay the Credit Extensions in whole or in part without premium or penalty. Any partial prepayment must be in a principal amount of at least Fifty Thousand Dollars ($50,000) or an integral multiple of Ten Thousand Dollars ($10,000) in excess thereof. Upon two (2) Business Days prior written notice to Bank, Borrower may reduce or terminate the Committed Revolving Line to an amount not less than the then outstanding principal amount of all Revolving Advances; provided, that any partial reduction shall be in amount not less than Fifty Thousand Dollars ($50,000) or an integral multiple of Ten Thousand Dollars ($10,000) in excess thereof. Once reduced in accordance with this section, the Committed Revolving Line may not be increased.

3. Conditions Of Loans.

3.1 Conditions Precedent to Initial Credit Extension. The obligation of Bank to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, the following:

(a) this Agreement;

(b) an officer's certificate of Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Agreement;

(c) a financing statement (Form UCC- 1);

(d) an agreement to provide insurance;

(e) a lockbox agreement in form and substance satisfactory to Bank;

(f) evidence of insurance, satisfactory to Bank, showing Bank as loss payee;

(g) payment of the fees and Bank Expenses then due specified in Section 2.6;

(h) an audit of the Collateral, including the Accounts, the results of which shall be satisfactory to Bank;

(i) an appraisal of the Collateral, the results of which shall be satisfactory to Bank;

(j) current financial statement in accordance with Section 6.2;

(k) control agreements with respect to those deposit accounts and securities accounts set forth in the Disclosure Letter; provided, however, Bank may, in its discretion, make Credit Extensions if all such control agreements are not in place on the Closing Date, but it shall be an Event of Default hereunder if all control agreements are not in place within forty-five (45) days of the Closing Date; and

(l) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

3.2 Conditions Precedent to All Credit Extensions. The obligation of Bank to make each Credit Extension, including the initial Credit Extension, is further subject to the following conditions:

(a) timely receipt by Bank of the Payment/Advance Form as provided in Section 2.1(a)(iii) and Section 2.1(b)(ii); and

(b) the representations and warranties contained in Section 5 shall be true and correct in all material respects on and as of the date of such Payment/Advance Form and on the effective date of each Credit Extension as though made at and as of each such date, and no Event of Default shall have occurred and be continuing, or would exist after giving effect to such Credit Extension (provided, however, that those representations and warranties expressly referring to another date shall be true and correct in all material respects as of such date). The making of each Credit Extension shall be deemed to be a representation and warranty by Borrower on the date of such Credit Extension as to the accuracy of the facts referred to in this Section 3.2.

4. Creation Of Security Interest.

4.1 Grant of Security Interest. Borrower grants and pledges to Bank a continuing security interest in all presently existing and hereafter acquired or arising Collateral to secure prompt repayment of any and all Obligations and to secure prompt performance by Borrower of each of its covenants and duties under the Loan Documents. Except as set forth in the Disclosure Letter, and subject to Permitted Liens, such security interest constitutes a valid, first priority security interest in the presently existing Collateral, and will constitute a valid, first priority security interest in later-acquired Collateral. Notwithstanding any termination, Bank's Lien on the Collateral shall remain in effect for so long as any Obligations are outstanding.

4.2 Delivery of Additional Documentation Required. Borrower shall from time to time execute and deliver to Bank, at the request of Bank, all Negotiable Collateral, all financing statements and other documents that Bank may reasonably request, in form satisfactory to Bank, to perfect and continue perfected Bank's security interests in the Collateral and in order to fully consummate all of the transactions contemplated under the Loan Documents.

5. Representations And Warranties.

Borrower represents and warrants as follows:

5.1 Due Organization and Qualification. Borrower and each Subsidiary is a corporation duly existing under the laws of its jurisdiction of incorporation and qualified and licensed to do business in any state in which the conduct of its business or its ownership of property requires that it be so qualified, except where the failure to do so could not reasonably be expected to cause a Material Adverse Effect.

5.2 Due Authorization; No Conflict. The execution, delivery, and performance of the Loan Documents are within Borrower's corporate powers, have been duly authorized by all necessary corporate actions on the part of Borrower, and are not in conflict with nor constitute a breach of any provision contained in Borrower's Certificate of Incorporation or Bylaws, nor will they constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement by which it is bound, which default could reasonably be expected to have a Material Adverse Effect.

5.3 Collateral. Borrower has good title to the Collateral, free and clear of Liens, except for Permitted Liens. The Eligible Accounts are bona fide existing obligations. The property or services giving rise to such Eligible Accounts has been delivered to the account debtor or its agent for immediate shipment to and unconditional acceptance by the account debtor or have been fully and completely performed. Borrower has not received notice of actual or imminent Insolvency Proceeding of any account debtor whose accounts are included in any Borrowing Base Certificate as an Eligible Account. All Inventory is in all material respects of good and marketable. quality, free from all material defects, except for Inventory for which adequate reserves have been made in accordance with GAAP.

5.4 Intellectual Property. Borrower is the sole owner of its Intellectual Property, except for Licenses granted by Borrower to others in the ordinary course of business and Permitted Liens. Each of the Copyrights, Trademarks and Patents is valid and enforceable, and no part of the Borrower's Intellectual Property has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of its Intellectual Property violates the rights of any third party except to the extent such claim could not reasonably be expected to cause a Material Adverse Effect. Except as set forth in the Disclosure Letter, Borrower's rights as a licensee of intellectual property do not give rise to more than five percent (5%) of its gross revenue in any given month, including, without limitation, revenue derived from the sale, licensing, rendering or disposition of any product or service.

5.5 Name; Location of Chief Executive Office. Except as disclosed in the Disclosure Letter, Borrower has not done business under any name other than that specified on the signature page hereof. The chief executive office of Borrower is located at the address indicated in Section 10 hereof.

5.6 Litigation. Except as set forth in the Disclosure Letter, there are no actions or proceedings pending by or against Borrower or any Subsidiary before any court or administrative agency in which a likely adverse decision could reasonably be expected to have a

Material Adverse Effect, or a material adverse effect on Borrower's interest in or Bank's security interest in the Collateral.

5.7 No Material Adverse Change in Financial Statements. All consolidated financial statements of the Borrower and its Subsidiaries that are delivered by Borrower to Bank fairly present in all material respects Borrower's consolidated financial condition as of the date thereof and Borrower's consolidated results of operations for the period then ended. There has not been a material adverse change in the consolidated financial condition of Borrower since the date of the most recent of such financial statements submitted to Bank.

5.8 Solvency, Payment of Debts. Borrower is able to pay its debts (including trade debts) as they mature; the fair saleable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; and Borrower is not left with unreasonably small capital after the transactions contemplated by this Agreement.

5.9 Compliance with Laws and Regulations. Borrower and each Subsidiary have met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. No event has occurred resulting from Borrower's failure to comply with ERISA that is reasonably likely to result in Borrower's incurring any liability that could have a Material Adverse Effect. Borrower is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended. Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). Borrower has complied in all material respects with all the provisions of the Federal Fair Labor Standards Act. Borrower is in compliance with all environmental laws, regulations and ordinances except where the failure to comply could not reasonably be expected to have a Material Adverse Effect. Borrower has not violated any statutes, laws, ordinances or rules applicable to it, the violation of which could have a Material Adverse Effect. Borrower and each Subsidiary have filed or caused to be filed all tax returns required to be filed, and have paid, or have made adequate provision for the payment of, all taxes reflected therein except those being contested in good faith and for which adequate reserves are maintained in accordance with GAAP.

5.10 Subsidiaries. Borrower does not own any stock, partnership interest or other equity securities of any Person, except for Permitted Investments.

5.11 Government Consents. Borrower and each Subsidiary have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of Borrower's business as currently conducted, except where the failure to do so could not reasonably be expected to cause a Material Adverse Effect.

5.12 Inbound Licenses. Except as disclosed on the Disclosure Letter, Borrower is not a party to, nor is bound by, any license or other agreement that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property.

5.13 Deposit Accounts and Securities Accounts. The name and address of each depository institution at which Borrower maintains any deposit account and the account number and account name of each such deposit account is listed in the Disclosure Letter. The name and address of each securities intermediary or commodity intermediary at which Borrower maintains any securities account or commodity account and the account number and account name is listed in the Disclosure Letter. Borrower agrees to amend the Disclosure Letter from time to time within five (5) Business Days after opening any additional deposit account, securities account or commodity account, or closing or changing the account name or number on any existing deposit account, securities account, or commodity account.

5.14 Full Disclosure. No representation, warranty or other statement made by Borrower in any certificate or written statement furnished to Bank taken together with all such certificates and written statements furnished to Bank contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading, it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not to be viewed as facts and that actual results during the period or periods covered by any such projections and forecasts may differ from the projected or forecasted results.

6. Affirmative Covenants.

Borrower covenants and agrees that, until payment in full of all outstanding Obligations, and for so long as Bank may have any commitment to make a Credit Extension hereunder, Borrower shall do all of the following:

6.1 Good Standing and Government Compliance. Except as otherwise provided in Section 7.2, Borrower shall maintain its and each of its Subsidiaries' corporate existence in its jurisdiction of incorporation and maintain qualification in each jurisdiction in which the failure to so qualify could have a Material Adverse Effect. Borrower shall meet, and shall cause each Subsidiary to meet, the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. Borrower shall comply, and shall cause each Subsidiary to comply, in all material respects, with all statutes, laws, ordinances and government rules and regulations to which it is subject, and shall maintain, and shall cause each of its Subsidiaries to maintain, in force all licenses, approvals and agreements, the loss of which or failure to comply with which could have a Material Adverse Effect, or a material adverse effect on the Collateral or the priority of Bank's Lien on the Collateral.

6.2 Financial Statements, Reports, Certificates. Borrower shall deliver to Bank: (a) as soon as available, but in any event within thirty (30) days after the end of each calendar month, a company prepared consolidated and consolidating balance sheet and income statement covering Borrower's consolidated operations during such period, in a form reasonably acceptable to Bank and certified by a Responsible Officer; (b) as soon as available, but in any event within ninety (90) days after the end of Borrower's fiscal year, audited consolidated financial statements of Borrower prepared in accordance with GAAP, consistently applied, together with an opinion which is unqualified or otherwise consented to in writing by Bank on such financial statements of an independent certified public accounting firm reasonably acceptable to Bank; (c) copies of all statements, reports and notices sent or made available

generally by Borrower to its security holders or to any holders of Subordinated Debt and all reports on Forms 10-K (which shall be delivered within ninety (90) days after the end of each fiscal year of Borrower) and 10-Q (which shall be delivered within forty-five (45) days after the end of each fiscal quarter of Borrower) filed with the Securities and Exchange Commission; (d) promptly upon receipt of notice thereof, a report of any legal actions pending or threatened against Borrower or any Subsidiary that could reasonably be expected to result in damages or costs to Borrower or any Subsidiary of Five Hundred Thousand Dollars ($500,000) or more; and (e) such budgets, sales projections and pipelines, operating plans or other financial exhibits and information generally prepared by Borrower in the ordinary course of business as Bank may reasonably request from time to time.

(a) Within fifteen (15) days after the last day of each month, Borrower shall deliver to Bank a Borrowing Base Certificate signed by a Responsible Officer in substantially the form of Exhibit D hereto, together with aged listings of accounts receivable and accounts payable.

(b) Within thirty (30) days after the last day of each month, Borrower shall deliver to Bank, with the monthly financial statements, a Compliance Certificate signed by a Responsible Officer in substantially the form of Exhibit E hereto.

(c) Bank (through any of its officers, employees or agents) shall have a right from time to time, upon reasonable prior notice during Borrower's usual business hours, hereafter to (i) audit Borrower's Accounts, provided that such audits of Borrower's Accounts will be conducted no more often than two (2) times per calendar year; provided, however, upon two (2) consecutive quarters of positive Net Income, such audit rights shall decrease to no more often than every twelve (12) months, and (ii) inspect Borrower's Books and to make copies thereof and to check, test and appraise Borrower's Collateral, provided that such appraisals of Borrower's Collateral will be conducted no more often than every twelve (12) months, unless, in each case, an Event of Default has occurred and is continuing.

6.3 Inventory; Returns. Borrower shall keep all Inventory in good and marketable condition, free from all material defects except for Inventory for which adequate reserves have been made in accordance with GAAP. Returns and allowances, if any, as between Borrower and its account debtors shall be on the same basis and in accordance with the usual customary practices of Borrower, as they exist on the Closing Date. Borrower shall promptly notify Bank of all returns and recoveries and of all disputes and claims involving more than One Hundred Thousand Dollars ($100,000).

6.4 Taxes. Borrower shall make, and cause each Subsidiary to make, due and timely payment or deposit of all material federal, state, and local taxes, assessments, or contributions required of it by law, including, but not limited to, those laws concerning income taxes, F.I.C.A., F.U.T.A. and state disability, and will execute and deliver to Bank, on demand, proof satisfactory to Bank indicating that Borrower or a Subsidiary has made such payments or deposits and any appropriate certificates attesting to the payment or deposit thereof; provided that Borrower or a Subsidiary need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by Borrower or such Subsidiary.

6.5 Insurance.

(a) Borrower, at its expense, shall keep the Collateral insured against loss or damage by fire, theft, explosion, sprinklers, and all other hazards and risks, and in such amounts, as ordinarily insured against by other owners in similar businesses conducted in the locations where Borrower's business is conducted on the date hereof. Borrower shall also maintain liability and other insurance in amounts and of a type that are customary to businesses similar to Borrower's.

(b) All such policies of insurance shall be in such form, with such companies, and in such amounts as are reasonably satisfactory to Bank. All policies of property insurance shall contain a lender's loss payable endorsement, in a form reasonably satisfactory to Bank, showing Bank as an additional loss payee, and all liability insurance policies shall show Bank as an additional insured and specify that the insurer must give at least twenty (20) days notice to Bank before canceling its policy for any reason. Upon Bank's request, Borrower shall deliver to Bank certified copies of the policies of insurance and evidence of all premium payments. If no Event of Default has occurred and is continuing, proceeds payable under any casualty policy will, at Borrower's option, be payable to Borrower to replace the property subject to the claim, provided that any, such replacement property shall, be deemed Collateral in which Bank has been granted a first priority security interest. If an Event of Default has occurred and is continuing, all proceeds payable under any such policy shall, at Bank's option, be payable to Bank to be applied on account of the Obligations.

6.6 Primary Depository. Borrower shall maintain its primary depository account, lockbox account and money market account with Bank. In addition, Borrower shall maintain, at all times, at least Three Million Dollars ($3,000,000) of Borrower's unrestricted cash with Bank or a Bank Affiliate, with an applicable control agreement.

6.7 Financial Covenants. Borrower shall maintain, as of the last day of each calendar month unless stated otherwise:

(a) Quick Ratio. A ratio of Quick Assets to current Liabilities of at least 1.75 to 1.00

(b) Tangible Net Worth. A Tangible Net Worth of not less than Forty Eight Million Dollars ($48,000,000), to be increased at the end of each calendar month by seventy five percent (75%) of the increase in Net Income and one hundred percent (100%) of new equity.

(c) EBITDA. EBITDA in the following amounts for the following periods, to be maintained on the, last day of each fiscal quarter of Borrower:

| Quarterly EBITDA not to exceed: | Quarterly EBITDA to be at least: |
|---|---|
| 12/31/02 ($8,500,000) | 09/30/03 $2,000,000 |
| 03/31/03 ($3,500,000) | 12/31/03 $3,500,000 |

| | |
|---|---|
| 06/30/03 ($1,500,000) | 03/31/04 $4,000,000 |
| | 06/30/04 & thereafter $5,000,000 |

6.8 Registration of Intellectual Property Rights.

(a) Borrower shall register or cause to be registered on an expedited basis (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as the case may be, those registerable intellectual property rights now owned or hereafter developed or acquired by Borrower, to the extent that Borrower, in its reasonable business judgment, deems it appropriate to so protect such intellectual property rights.

(b) Borrower shall promptly give Bank written notice of any applications or registrations of intellectual property rights filed with the United States Patent and Trademark Office, including the date of such filing and the registration or application numbers, if any.

(c) Borrower shall (i) protect, defend and maintain the validity and enforceability of the trade secrets, Trademarks, Patents and Copyrights, (ii) use commercially reasonable efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Bank in writing of material infringements detected and (iii) not allow any material Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Bank, which shall not be unreasonably withheld.

6.9 Minimum Assets. A minimum of seventy five percent (75%) of Borrower's consolidated assets shall be assets of Borrower, which assets shall not include any notes receivable held by Borrower from any Subsidiary, and not of any Subsidiary.

6.10 Further Assurances. At any time and from time to time Borrower shall execute and deliver such further instruments and take such further action as may reasonably be requested by Bank to effect the purposes of this Agreement.

7. Negative Covenants.

Borrower covenants and agrees that, until payment in full of the outstanding Obligations, and for so long as Bank may have any commitment to make any Credit Extension hereunder, Borrower will not do any of the following without Bank's prior written consent, which shall not be unreasonably withheld:

7.1 Dispositions. Convey, sell, lease, transfer or otherwise dispose of (collectively, to "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, other than transfers in the ordinary course of business, Permitted Transfers and Permitted Liens.

7.2 Change in Business; Change in Control, Executive Office or Jurisdiction of Incorporation. Engage in any business, or permit any of its Subsidiaries to

engage in any business, other than the business currently engaged in by Borrower or businesses reasonably related or incidental thereto. Borrower will not have a Change in Control, and will not, without thirty (30) days prior written notification to Bank, (i) relocate its chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located, or (ii) change its jurisdiction of incorporation, its corporate name or in any trade name used to identify it in the conduct of its business or the ownership of its properties, its identity or corporate structure or its federal taxpayer identification number.

7.3 Mergers or Acquisitions. Except as otherwise permitted by Section 7.7, merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with or into any other Person (other than mergers or consolidations of a Subsidiary into another Subsidiary or into Borrower), or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person except where (i) such transactions do not in the aggregate exceed Five Hundred Thousand Dollars ($500,000) in any fiscal year and (ii) no Event of Default has occurred, is continuing or would exist after giving effect to such transaction.

7.4 Indebtedness. Create,. incur, assume or be or remain liable with respect to any Indebtedness, or permit any Subsidiary so to do, other than Permitted Indebtedness.

7.5 Encumbrances. Create, incur, assume or allow any Lien with respect to any of its property, including, without limitation, the Intellectual Property, or assign or otherwise convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries so to do, except for Permitted Liens, or covenant to any other Person that Borrower in the future will refrain from creating, incurring, assuming or allowing any Lien with respect to any of Borrower's property, including, without limitation, the Intellectual Property, except for Permitted Restrictions.

7.6 Distributions. Pay any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any capital stock, except that (a) Borrower may repurchase the stock of former employees pursuant to stock repurchase agreements in an aggregate amount not to exceed One Hundred Thousand Dollars ($100,000) in any fiscal year, as long as an Event of Default does not exist prior to such repurchase or would not exist after giving effect to such repurchase; provided that the foregoing limit on the aggregate amount of such repurchases shall not apply to repurchases to the extent made by the cancellation of indebtedness, (b) each Subsidiary may pay any dividend or make any other distribution or payment to Borrower or any other Subsidiary, (c) Borrower and each Subsidiary may declare and pay dividends or other distributions solely in common stock, (d) Borrower may distribute noncash rights in connection with any stockholders' rights plan, or (e) Borrower may purchase, redeem or acquire non-cash rights distributed in connection with any stockholders' rights plan.

7.7 Investments. Directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries so to do, other than Permitted Investments.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower except for transactions that are in

the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

7.9 Subordinated Debt. Make any payment in respect of any Subordinated Debt, or permit any of its Subsidiaries to make any such payment, except in compliance with the terms of such Subordinated Debt, or amend any provision contained in any documentation relating to the Subordinated Debt without Bank's prior written consent.

7.10 Inventory and Equipment. Store the Inventory or the Equipment with a bailee, warehouseman, or similar party unless Bank has received a pledge of the warehouse receipt covering such Inventory. Except for Inventory sold in the ordinary course of business and except for such other locations as Bank may approve in writing, Borrower shall keep the Inventory and Equipment only at the locations set forth in Section 10, locations set forth in the Disclosure Letter, such other locations within the United States for which Borrower gives Bank prior written notice, such other locations outside of the United States for which Bank gives its prior written consent, and at the premises of Elamex, S.A. DE C.V. ("Elamex") located in C. Juarez, Chihuahua, Mexico pursuant to the terms of that certain Shelter Services Agreement between Borrower and Elamex dated as of June 3, 2002; provided, however, the total value of such Inventory and Equipment shall not, at any time, exceed Nine Million Dollars ($9,000,000), Provided, however, Borrower shall not keep any Equipment or other assets purchased with an Equipment Advance or for which Borrower was reimbursed by an Equipment Advance at any location other than the location set forth in Section 10 without Bank's prior written consent which consent will not be unreasonably withheld.

7.11 Compliance. Become or be controlled by an "investment company," within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Credit Extension for such purpose. Fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur, fail to comply with the Federal Fair Labor Standards Act or violate any law or regulation, which failure, violation or occurrence could reasonably be expected to have a Material Adverse Effect, or a material adverse effect on the Collateral or the priority of Bank's Lien on the Collateral, or permit any of its Subsidiaries to do any of the foregoing.

7.12 Negative Pledge Agreements. Permit the inclusion in any contract to which it becomes a party of any provisions that could restrict or invalidate the creation of a security interest in Borrower's rights and interests in any Collateral, except any such provisions (a) contained in agreements or documents evidencing Indebtedness described in clause (c) of the definition of Permitted Indebtedness, (b) imposed on a Subsidiary and existing at the time it became a Subsidiary if such restrictions were not created in connection with or in anticipation of the transaction or series of transactions pursuant to which such Subsidiary became a Subsidiary or was acquired by Borrower, (c) under any agreement, instrument or contract affecting property or a Person at the time such property or Person was acquired by Borrower or any of its Subsidiaries, so long as such restriction relates solely to the property or Person so acquired and was not created in connection with or in anticipation of such acquisition, or (d) existing by virtue

of, or arising under, applicable law, regulation, order, approval, license, permit or similar restriction, in each case issued or imposed by a governmental authority.

8. Events of Default.

Any one or more of the following events shall constitute an Event of Default by Borrower under this Agreement:

8.1 Payment Default. If Borrower fails to pay any of the Obligations and such failure continues for tree (3) business days or more after the due date, provided that within such three (3) business day cure period, the failure to pay shall not be deemed an Event of Default, but no Credit Extensions will be-made;

8.2 Covenant Default. If Borrower fails to perform any obligation under Article 6 or violates any of the covenants contained in Article 7 of this Agreement, or fails or neglects to perform or observe any other material term, provision, condition, covenant contained in this Agreement, in any of the Loan Documents, or in any other present or future agreement between Borrower and Bank and as to any default under Article 6 or such other term, provision, condition or covenant that can be cured, has failed to cure such default within fifteen (15) days after Borrower receives notice thereof or any officer of Borrower becomes aware thereof; provided, however, that if the default cannot by its nature be cured within the fifteen (15) day period or cannot after diligent attempts by Borrower be cured within such fifteen (15) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional reasonable period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default but no Credit Extensions will be made;

8.3 Material Adverse Change. If there occurs a material adverse change in Borrower's business or, financial condition, or if there is a material impairment of the prospect of repayment of any portion of the Obligations or a material impairment of the value or priority of Bank's security interests in the Collateral;

8.4 Attachment. If any material portion of Borrower's assets is seized, or comes into the possession of any trustee, receiver or person acting in a similar capacity, or is attached, subjected to a writ or distress warrant or is levied upon and such attachment, writ or distress warrant or levy has not been removed, discharged or rescinded within ten (10) days if such attachment, writ or distress warrant or levy was issued by a United States court or other United States governmental entity, or within thirty (30) days if such attachment, writ or distress warrant or levy was issued by a non-United States court or other non-United States entity or if Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any material portion of Borrower's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any of Borrower's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within ten (10) days if within the Unites States or within thirty (30) days if outside of the United States, after Borrower receives notice thereof, provided that none of the foregoing shall constitute an Event of Default where

such action or event is stayed or an adequate bond has been posted pending a good faith contest by Borrower (provided that no Credit Extensions will be required to be made during such cure period);

8.5 Insolvency. If Borrower becomes insolvent, or if an Insolvency Proceeding is commenced by Borrower, or if an Insolvency Proceeding is commenced against Borrower and is not dismissed or stayed within thirty (30) days (provided that no Credit Extensions will be made prior to the dismissal of such Insolvency Proceeding);

8.6 Other Agreements. If there is a default in any agreement to which Borrower is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness having a principal amount in excess of Five Hundred Thousand Dollars ($500,000) or that could have a Material Adverse Effect;

8.7 Subordinated Debt. If Borrower makes any payment on account of Subordinated Debt, except to the extent the payment is allowed under this Agreement or any subordination agreement entered into with Bank;

8.8 Judgments. If a judgment or judgments for the payment of money in an amount, individually or in the aggregate, of Five Hundred Thousand Dollars ($500,000) or more shall be rendered against Borrower and shall remain unsatisfied and unstayed for a period of thirty (30) days (provided that no Credit Extensions will be made prior to the satisfaction or stay of the judgment); or

8.9 Misrepresentations. If any material misrepresentation or material misstatement when made or deemed made in any warranty or representation set forth herein or in any certificate delivered to Bank by any Responsible Officer pursuant to this Agreement or to induce Bank to enter into this Agreement or any other Loan Document.

9. Bank's Rights and Remedies.

9.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, Bank may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by Borrower:

(a) Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable (provided that upon the occurrence of an Event of Default described in Section 8.5, all Obligations shall become immediately due and payable without any action by Bank);

(b) Cease advancing money or extending credit to or for the benefit of Borrower under this Agreement or under any other agreement between Borrower and Bank;

(c) Settle or adjust disputes and claims directly with account debtors for amounts, upon terms and in whatever order that Bank reasonably considers advisable;

(d) Make such payments and do such acts as Bank considers necessary or reasonable to protect its security interest in the Collateral. Borrower agrees to assemble the Collateral if Bank so requires, and to make the Collateral available to Bank as Bank may designate. Borrower authorizes Bank to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in Bank's determination appears to be prior or superior to its security interest and to pay all expenses incurred in connection therewith. With respect to any of Borrower's owned premises, Borrower hereby grants Bank a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of Bank's rights or remedies provided herein, at law, in equity, or otherwise;

(e) Set off and apply to the Obligations any and all (i) balances and deposits of Borrower held by Bank, or (ii) indebtedness at any time owing to or for the credit or the account of Borrower held by Bank;

(f) Convert the Committed Revolving Line and the Equipment Line to a full remittance basis or a dominion of funds basis;

(g) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Bank is hereby granted a license or other right, solely pursuant to the provisions of this Section 9.1, to use, without charge, Borrower's labels, Patents, Copyrights, rights of use of any name, trade secrets, trade names, Trademarks, service marks, and, advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 9.1, Borrower's rights under all licenses and all franchise agreements shall inure to Bank's benefit;

(h) Sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrower's premises) as Bank determines is commercially reasonable, and apply any proceeds to the Obligations in whatever manner or order Bank deems appropriate;

(i) Bank may credit bid and purchase at any public sale; and

(j) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrower.

9.2 Power of Attorney. Effective only upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably appoints Bank (and any of Bank's designated officers, or employees) as Borrower's true and lawful attorney to: (a) send requests for verification of Accounts or notify account debtors of Bank's security interest in the Accounts; (b) endorse Borrower's name on any checks or other forms of payment or security that may come into Bank's possession; (c) sign Borrower's name on any invoice or bill of lading relating to any Account, drafts against account debtors, schedules and assignments of Accounts, verifications of Accounts, and notices to account debtors; (d) dispose of any Collateral; (e) make, settle, and adjust all claims under and decisions with respect to Borrower's policies of insurance;

(f) settle and adjust disputes and claims respecting the accounts directly with account debtors, for amounts and upon terms which Bank determines to be reasonable; and (g) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral; provided Bank may exercise such power of attorney to sign the name of Borrower on any of the documents described in Section 4.2 regardless of whether an Event of Default has occurred. The appointment of Bank as Borrower's attorney in fact, and each and every one of Bank's rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully repaid and performed and Bank's obligation to provide advances hereunder is terminated.

9.3 Accounts Collection. Upon the occurrence and continuance of an Event of Default, Borrower shall collect all amounts owing to Borrower for Bank, receive in trust all payments as Bank's trustee, and immediately deliver such payments to Bank in their original form as received from the account debtor, with proper endorsements for deposit.

9.4 Bank Expenses. If Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Bank may do any or all of the following after reasonable notice to Borrower: (a) make payment of the same or any part thereof; (b) set up such reserves under the Revolving Facility as Bank deems necessary to protect Bank from the exposure created by such failure; or (c) obtain and maintain insurance policies of the type discussed in Section 6.5 of this Agreement, and take any action with respect to such policies as Bank deems prudent. Any amounts so paid or deposited by Bank shall constitute Bank Expenses, shall be immediately due and payable, and shall bear interest at the then applicable rate hereinabove provided, and shall be secured by the Collateral. Any payments made by Bank shall not constitute an agreement by Bank to make similar payments in the future or a waiver by Bank of any Event of Default under this Agreement.

9.5 Bank's Liability for Collateral. So long as Bank complies with reasonable banking practices and Section 9207 of the UCC, Bank shall not in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other person whomsoever. All risk of loss, damage or destruction of the Collateral shall be borne by Borrower.

9.6 Remedies Cumulative. Bank's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Bank shall have all other rights and remedies not inconsistent herewith as provided under the UCC, by law, or in equity. No exercise by Bank of one right or remedy shall be deemed an election, and no waiver by Bank of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Bank shall constitute a waiver, election, or acquiescence by it. No waiver by Bank shall be effective unless made in a written document signed on behalf of Bank and then shall be effective only in the specific instance and for the specific purpose for which it was given.

9.7 Demand; Protest. Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default,

nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, Instruments, Chattel Paper, and guarantees at any time held by Bank on which Borrower may in any way be liable.

10. Notices.

Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by a recognized overnight delivery service, certified mail, postage prepaid, return receipt requested, or by telefacsimile to Borrower or to Bank, as the case may be, at its addresses set forth below:

| | |
|---|---|
| If to Borrower: | Align Technology, Inc.<br>881 Martin Avenue<br>Santa Clara, California 95050<br>Attn: Roger E. George<br>FAX: (408) 727-1393 |
| If to Bank: | Comerica Bank-California<br>5 Palo Alto Square, Suite 800<br>Palo Alto, California<br>Attn:. Rob Ways<br>FAX: (650)213-1710 |

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

11. Choice Of Law And Venue; Jury Trial Waiver.

This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Each of Borrower and Bank hereby sgbmits to the exclusive jurisdiction of the state and Federal courts located in the County of Santa Clara, State of California. BORROWER AND BANK EACH HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY RECOGNIZES AND AGREES THAT THE FOREGOING WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR IT TO ENTER INTO THIS AGREEMENT. EACH PARTY REPRESENTS AND WARRANTS THAT .IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

12. General Provisions.

12.1 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that neither this Agreement nor any rights hereunder may be assigned by Borrower without Bank's prior written consent, which consent may be granted or withheld in Bank's sole discretion. Bank shall have the right without the consent of or notice to Borrower to sell, transfer, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights and benefits hereunder.

12.2 Indemnification. Borrower shall defend, indemnify and hold harmless Bank and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all losses or Bank Expenses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following, or consequential to transactions between Bank and Borrower whether under this Agreement, or otherwise (including without limitation reasonable attorneys fees and expenses), except for obligations, demands, claims, liabilities and losses caused by Bank's gross negligence or willful misconduct.

12.3 Time of Essence. Time is of the essence for the performance of all obligations set forth in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

12.5 Amendments in Writing, Integration. All amendments to or terminations of this Agreement must be in writing. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Agreement, if any, are merged into this Agreement and the Loan Documents.

12.6 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

12.7 Survival. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations remain outstanding. The obligations of Borrower to indemnify Bank with respect to the expenses, damages, losses, costs and liabilities described in Section 12.2 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Bank have run.

12.8 Confidentiality. In handling any confidential information of Borrower, Bank and all employees and agents of Bank shall exercise the same degree of care that Bank exercises with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this Agreement except that disclosure of such information may be made (i) to the subsidiaries or

affiliates of Bank in connection with their present or prospective business relations with Borrower, (ii) to prospective transferees or purchasers of any interest in the Credit Extensions, provided that they have entered into a comparable confidentiality agreement in favor of Borrower and have delivered a copy to Borrower, (iii) as required by law, regulations, rule or order, subpoena, judicial order or similar order, (iv) as may be required in connection with the examination, audit or similar investigation of Bank and (v) as Bank may determine in connection with the enforcement of any remedies hereunder. Confidential information hereunder shall not include information that either: (a) is in the public domain or in the knowledge or possession of Bank when disclosed to Bank, or becomes part of the public domain after disclosure to Bank through no fault of Bank; or (b) is disclosed to Bank by a third party, provided Bank does not have actual knowledge that such third party is prohibited from disclosing such information.

In Witness Whereof, the parties hereto have caused this Agreement to be executed as of the date first above written.

Align, Technology, Inc.

By: /s/ Roger E. George
---

Title: Vice President
Legal Affairs &
General Counsel

Comerica Bank-California

By: /s/ Illegible
---

Title: SVP

Exhibit A

DEFINITIONS

"Accounts" means all presently existing and hereafter arising accounts, contract rights, and all other forms of obligations owing to Borrower arising out of the sale or lease of goods (including, without limitation, the licensing of software and other technology) or the rendering of services by Borrower, whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrower and Borrower's Books relating to any of the foregoing.

"Affiliate" means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, any Person that controls or is controlled by or is under common control with such Person, and each of such Person's senior executive officers, directors, and partners.

"Bank Expenses" means all reasonable costs or expenses (including reasonable attorneys' fees and expenses) incurred in connection with the preparation, negotiation, administration, and enforcement of the Loan Documents; reasonable Collateral audit fees; and Bank's reasonable attorneys' fees and expenses incurred in amending, enforcing or defending the Loan Documents (including fees and expenses of appeal), incurred before, during and after an Insolvency Proceeding, whether or not suit is brought.

"Borrower's Books" means all of Borrower's books and records including: ledgers; records concerning Borrower's assets or liabilities, the Collateral, business operations or financial condition; and all computer programs, or tape files, and the equipment, containing such information.

"Borrowing Base" means an amount equal to the lesser of (i) eighty percent (80%) of Eligible Accounts, as determined by Bank with reference to the most recent Borrowing Base Certificate delivered by Borrower or (ii) forty-five (45) days of cash collections of accounts receivable.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks in the State of California are authorized or required to close.

"Cash Equivalents" means (a) securities issued or unconditionally guaranteed or insured by the United States Government or any agency or any State thereof and backed by the full faith and credit of the United States or such State having maturities of not more than one (1) year from the date of acquisition; (b) certificates of deposit, time deposits, Eurodollar time deposits, repurchase agreements, reverse repurchase agreements or bankers' acceptances, having in each case a tenor of not more than one (1) year issued by any nationally or state chartered commercial bank or any branch or agency of a foreign bank licensed to conduct business in the United States having combined capital and surplus of not less than $100,000,000 whose short term securities are rated at least A-1 by Standard & Poor's Rating Group and P-1 by Moody's Investors Service, Inc.; (c) commercial paper of an issuer rated at least A-1 by Standard & Poor's Rating Group or P-1 by Moody's Investors Service, Inc. and in either case having a tenor of not more than two hundred and seventy (270) days; and (d) money market funds at least ninety-five percent (95%)

of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (c) above.

"Change in Control" shall mean a transaction in which any "person" or "group" (within the meaning of Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, of a sufficient number of shares of all classes of stock then outstanding of Borrower ordinarily entitled to vote in the election of directors, empowering such "person" or "group" to elect a majority of the Board of Directors of Borrower, who did not have such power before such transaction.

"Chattel Paper" means any "chattel paper," as such term is defined in Section 9102(a)(11) of the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires an interest.

"Closing Date" means the date of this Agreement.

"Collateral" means the property described on Exhibit B attached hereto except to the extent any such property or rights (i) are nonassignable by their terms without the consent of the licensor thereof or another party (but only to the extent such prohibition on transfer is enforceable under applicable law, including, without limitation, Section 9406 of the UCC), (ii) the granting of a security interest therein is contrary to applicable law or the terms of the agreement pursuant to which the rights or property is acquired, provided that upon the cessation of any such restriction or prohibition, such property shall automatically become part of the Collateral, (iii) are with respect to the capital stock of a controlled foreign corporation (as defined in the Internal Revenue Code of 1986, as amended), in excess of 65% of the voting power of all classes of capital stock of such controlled foreign corporations entitled to vote.

"Committed Revolving Line" means a Credit Extension of up to Ten Million Dollars ($10,000,000).

"Contingent Obligation" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another, including, without limitation, any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn letters of credit issued for the account of that Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

"Copyrights" means any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held.

"Credit Extension" means each Revolving Advance, each Letter of Credit, each Equipment Advance, or any other extension of credit by Bank for the benefit of Borrower hereunder.

"Current Liabilities" means, as of any applicable date, all amounts that should, in accordance with GAAP, be included as current liabilities on the consolidated balance sheet of Borrower and its Subsidiaries, as at such date, plus, to the extent not already included therein, all outstanding Credit Extensions made under this Agreement, including all Indebtedness that is payable upon demand or within one year from the date of determination thereof unless such Indebtedness is renewable or extendible at the option of Borrower or any Subsidiary to a date more than one year from the date of determination.

"Deposit Accounts" means any "deposit account" as such term is defined in Section 9102(a)(29) of the UCC, and should include, without limitation, any demand, time, savings passbook or like account, now or hereafter maintained by or for the benefit of Borrower, or in which Borrower now holds or hereafter acquires any interest, with a bank, savings and loan association, credit union or like organization (including Bank) and all funds and amounts therein, whether or not restricted or designated for a particular purpose.

"Disclosure Letter" means the Disclosure Letter dated December 20, 2002 executed by Borrower in connection with this Agreement.

"EBITDA" means, on a consolidated basis for Borrower and its Subsidiaries, for any period of determination, the sum of (a) Net Income plus (b) to the extent included in the determination of Net Income, an amount equal to: (i) the provision for income taxes plus (ii) depreciation expense plus (iii) amortization expense including, but not limited to, amortization of non-cash deferred compensation plus (iv) Net Interest Expense.

"Eligible Accounts" means those Accounts that arise in the ordinary course of Borrower's business that comply with all of Borrower's representations and warranties to Bank set forth in Section 5.3; provided, that Bank may change the standards of eligibility by giving Borrower thirty (30) days prior written notice. Unless otherwise agreed to by Bank, Eligible Accounts shall not include the following:

(a) Accounts that the account debtor has failed to pay within one ,hundred twenty (120) days of invoice date;

(b) Accounts with respect to an account debtor, fifty percent (50%) of whose Accounts the account debtor has failed to pay within one hundred twenty (120) days of invoice date;

(c) Accounts with respect to which the account debtor is an officer, employee, or agent of Borrower;

(d) Accounts with respect to which goods are placed on consignment, guaranteed sale, sale or return, sale on approval, bill and hold, or other terms by reason of which the payment by the account debtor may be conditional;

(e) Accounts with respect to which the account debtor is an Affiliate of Borrower;

(f) Accounts with respect to which the account debtor does not have its principal place of business in the United States, except for Eligible Foreign Accounts;

(g) Accounts with respect to which the account debtor is the United States or any department, agency, or instrumentality of the United States;

(h) Accounts with respect to which Borrower is liable to the account debtor for goods sold or services rendered by the account debtor to Borrower, but only to the extent of any amounts owing to the account debtor against amounts owed to Borrower;

(i) Accounts with respect to an account debtor, including Subsidiaries and Affiliates of such account debtor, whose total obligations to Borrower exceed twenty percent (20%) of all Accounts, to the extent such obligations exceed the aforementioned percentage, except as approved in writing by Bank;

(j) Accounts with respect to which the account debtor disputes liability or makes any claim with respect thereto as to which Bank believes, in its sole discretion, that there may be a basis for dispute (but only to the extent of the amount subject to such dispute or claim), or is subject to any Insolvency Proceeding, or becomes insolvent, or goes out of business; and

(k) Accounts the collection of which Bank reasonably determines after inquiry and consultation with Borrower to be doubtful.

"Eligible Foreign Accounts" means Accounts with respect to which the account debtor does not have its principal place of business in the United States and that (i) are supported by one or more letters of credit in an amount and of a tenor, and issued by a financial institution, reasonably acceptable to Bank, or (ii) that Bank approves on a case-by-case basis.

"Equipment" means all present and future machinery, equipment, tenant improvements, furniture, fixtures, vehicles, tools, parts and attachments in which Borrower has any interest.

"Equipment Advance" or "Equipment Advances" shall have the meaning set forth in Section 2.1(c).

"Equipment Line" means a Credit Extension of up to Five Million Dollars ($5,000,000).

"Equipment Maturity Date" means December 20, 2005.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

"Event of Default" has the meaning assigned in Article 8.

"GAAP" means generally accepted accounting principles as in effect from time to time.

"Gross Interest Expense" shall mean, as calculated on a consolidated basis for Borrower and its Subsidiaries for any period of determination, cash interest expense for such period (including all commissions, discounts, fees, and other charges under letters of credit and similar instruments) classified and accounted for in accordance with GAAP.

"Indebtedness" means (a) all indebtedness for borrowed money or the deferred purchase price of property or services, including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar Instruments, (c) all capital lease obligations and (d) all Contingent Obligations.

"Insolvency Proceeding" means any proceeding commenced by or against any person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally' with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"Instruments" means any "instrument," as such term is defined in Section 9102(a)(47) of the UCC now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest, including, without limitation, all notes, certificated securities, and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper.

"Intellectual Property" means all of Borrower's right, title, and interest in and to the following:

(a) Copyrights, Trademarks and Patents;

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

(c) Any and all design rights which may be available to Borrower now or hereafter existing, created, acquired or held;

(d) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(e) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights; and

(f) All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"Inventory" means all present and future inventory in which Borrower has any interest, including merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or at any time hereafter owned by or in the custody or possession, actual or constructive, of Borrower, including such inventory as is temporarily out of its custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Borrower's Books relating to any of the foregoing.

"Investment" means any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

"Lien" means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

"Letter of Credit" has the meaning set forth in Section 2.1(b).

"Loan Documents" means, collectively, this Agreement, any note or notes executed by Borrower in connection with this Agreement, and any other agreement entered into between Borrower and Bank in connection with this Agreement, all as amended or extended from time to time.

"Material Adverse Effect" means a material adverse effect on (i) the business operations or condition (financial or otherwise) of Borrower and its Subsidiaries taken as a whole or (ii) the ability of Borrower to repay the Obligations or otherwise perform its obligations under the Loan Documents.

"Negotiable Collateral" means all of Borrower's present and future letters of credit of which it is a beneficiary, notes, drafts, Instruments, securities, documents of title, and Chattel Paper, and Borrower's Books relating to any of the foregoing.

"Net Income" means the net income (or loss) of a Person on a consolidated basis for any period determined in accordance with GAAP, but excluding in any event:

(i) to the extent included in net income, any gains or losses on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets, and any taxes on the excluded gains and any tax deductions or credits on account of any excluded losses; and

(ii) in the case of Borrower, net earnings of any Person in which Borrower has an ownership interest (other than a Subsidiary of Borrower), unless such net earnings shall have actually been received by Borrower in the form of cash distributions.

"Net Interest Expense" means, as calculated on a consolidated basis for Borrower and its Subsidiaries for any period of determination (a) Gross Interest Expense minus (b) interest income for that period.

"Obligations" means all debt, principal, interest, Bank Expenses and other amounts owed to Bank by Borrower pursuant to this Agreement or any other agreement, whether absolute or contingent, due or to become due, now existing or hereafter arising, including any interest that accrues after the commencement of an Insolvency Proceeding and including any debt, liability, or obligation owing from Borrower to others that Bank may have obtained by assignment or otherwise.

"Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"Periodic Payments" means all installments or similar recurring payments that Borrower may now or hereafter become obligated to pay to Bank pursuant to the terms and provisions of any instrument, or agreement now or hereafter in existence between Borrower and Bank.

"Permitted Indebtedness" means:

(a) Indebtedness of Borrower in favor of Bank arising under this Agreement or any other Loan Document;

(b) Indebtedness existing on the Closing Date and disclosed in the Disclosure Letter:

(c) Indebtedness secured by a lien described in clause (c) of the defined term "Permitted' Liens," provided such Indebtedness does not exceed the lesser of the cost or fair market value of the equipment financed with such Indebtedness;

(d) Indebtedness arising from the endorsement of instruments in the ordinary course of business;

(e) Subordinated Debt;

(f) Indebtedness of Borrower to any Subsidiary and Contingent Obligations of any Subsidiary with respect to obligations of Borrower (provided the primary obligations are not prohibited hereby), and Indebtedness of any Subsidiary to any other Subsidiary and Contingent Obligations of any Subsidiary with respect to any other Subsidiary (provided the primary obligations are not prohibited hereby);

(g) Indebtedness of any Subsidiary to Borrower, provided that Borrower is in compliance with each of the covenants set forth in Sections 6 and 7 hereof, including Section 6.9, and the aggregate principal amount of such Indebtedness shall not at any time exceed five percent (5%) of the assets of Borrower as of the end of the most recent fiscal quarter, determined in accordance with GAAP;

(h) other unsecured Indebtedness of Borrower or any Subsidiary incurred in the ordinary course of business in an aggregate amount not to exceed $1,000,000 at any time; and

(i) Indebtedness of Borrower consisting of international standby letters of credit incurred in the ordinary course of business in an aggregate amount not to exceed $2,500,000 at any time.

"Permitted Investment" means:

(a) Investments existing on the Closing Date disclosed in the Disclosure Letter;

(b) (i) Marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof, (ii) commercial paper maturing no more than one year from the date of creation thereof and currently having rating of at least A-2 or P-2 from either Standard & Poor's Corporation or Moody's Investors Service, (iii) Bank's certificates of deposit maturing no more than one year from the date of investment therein, (iv) Bank's money market accounts and (v) any Cash Equivalents;

(c) Repurchases of stock from former employees or directors of Borrower under the terms of applicable repurchase agreements in an aggregate amount not to exceed One Hundred Thousand Dollars ($100,000) in the aggregate in any fiscal year, provided that no Event of Default has occurred, is continuing or would exist after giving effect to the repurchases; provided further that the foregoing limit on the aggregate amount of such repurchases shall not apply to the extent such repurchases are made by the cancellation of indebtedness;

(d) Investments accepted in connection with Permitted Transfers;

(e) Investments of Subsidiaries in or to other Subsidiaries or Borrower and Investments by Borrower in Subsidiaries not to exceed One Million Dollars ($1,000,000) in the aggregate in any fiscal year;

(f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plan agreements approved by Borrower's Board of Directors;

(g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of Borrower's business;

(h) Investments consisting of accounts receivable of, notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not

Affiliates, in the ordinary course of business, provided that this subparagraph (h) shall not apply to Investments of Borrower in any Subsidiary;

(i) Joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support, provided that any cash Investments by Borrower do not exceed One Hundred Thousand Dollars ($100,000) in the aggregate in any fiscal year; and

(j) Investments permitted by subsection (f) and (g) of the definition of Permitted Indebtedness.

"Permitted Liens" means the following:

(a) Any Liens existing on the Closing Date and disclosed in the Disclosure Letter or arising under this Agreement or the other Loan Documents;

(b) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings and for which Borrower maintains adequate reserves in accordance with GAAP, provided the same have no priority over any of Bank's security interests;

(c) Liens, not to exceed Five Hundred Thousand Dollars ($500,000) in the aggregate (i) upon or in any Equipment (and additions, accessions, parts, replacements, fixtures, improvements and attachments thereto, and the proceeds thereof) acquired or held by Borrower or any of its Subsidiaries to secure the purchase price of such Equipment or indebtedness incurred solely for the purpose of financing the acquisition of such Equipment, or (ii) existing on such Equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and additions, accessions, parts, replacements, fixtures, improvements and attachments thereto, and the proceeds of such Equipment;

(d) Liens to secure payment of workers' compensation, employment insurance, old age pensions, social security or other like obligations incurred in the ordinary course of business;

(e) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clauses (a) through (c) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase;

(f) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Sections 8.4 or 8.8;

(g) Liens in favor of other financial institutions arising in connection with Borrower's Deposit Accounts or other accounts maintained with a depository institution or institutions holding securities accounts, provided that Bank has a perfected security interest in the amounts held in such Deposit Accounts and other accounts;

(h) carriers' warehousemen's, mechanics, materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not delinquent or which are being contested in good faith and by appropriate proceedings and for which Borrower maintains adequate reserves in accordance with GAAP;

(i) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of Borrower or any applicable Subsidiary;

(j) Leases or subleases and licenses or sublicenses granted to others in the ordinary course of business which do not interfere in any material respect with the business operations of the Borrower or any applicable Subsidiary;

(k) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; and

(l) Other Liens not described above arising in the ordinary course of business and not having or not reasonably likely to have a Material Adverse Effect on borrower and its Subsidiaries taken as a whole.

"Permitted Restrictions" means any covenant restricting the creation, incurrence, assumption or allowance of any Lien with respect to any property contained in any agreement, but only to the extent such prohibition is enforceable under applicable law, including, without limitation, Section 9406 of the UCC.

"Permitted Transfer" means the conveyance, sale, lease, transfer or disposition by Borrower or any Subsidiary of:

(a) Inventory in the ordinary course of business;

(b) licenses and similar arrangements for the use of the property of Borrower or its Subsidiaries in the ordinary course of business;

(c) assets of any Subsidiary to another Subsidiary or to the Borrower;

(d) surplus, worn-out or obsolete Equipment;

(e) other assets of Borrower or its Subsidiaries which do not in the aggregate exceed Five Hundred Thousand Dollars ($500,000) in any fiscal year; or

(f) assets consisting of real property, equipment and office furniture having a book value of $2,500,000 in connection with the closing of Borrower's location in Lahore, Pakistan.

"Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental agency.

"Prime Rate" means the variable rate of interest, per annum, most recently announced by Bank, as its "prime rate," whether or not such announced rate is the lowest rate available from Bank.

"Quick Assets" means, at any date as of which the amount thereof shall be determined, the unrestricted cash and Cash Equivalents, net accounts receivable and investments with maturities not to exceed ninety (90) days, of Borrower determined on a consolidated basis in accordance with GAAP.

"Responsible Officer" means each of the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer and the Controller of Borrower.

"Revolving Advance" or "Revolving Advances" shall have the meaning set forth in Section 2.1(a).

"Revolving Facility" means the facility under which Borrower may request Bank to issue Advances, as specified in Section 2.1(a) hereof.

"Revolving Maturity Date" means June 20, 2004.

"Subordinated Debt" means any debt incurred by Borrower that is subordinated to the debt owing by Borrower to Bank on terms reasonably acceptable to Bank (and identified as being such by Borrower and Bank).

"Subsidiary" means any corporation, limited liability company or partnership in which (i) any general partnership interest or (ii) more than fifty percent (50%) of the stock of which by the terms thereof ordinary voting power to elect the Board of Directors, managers or trustees of the entity, at the time as of which any determination is being made, is owned by Borrower, either directly or through an Affiliate.

"Tangible Net Worth" means at any date as of which the amount thereof shall be determined, the sum of the capital stock and additional paid-in capital plus retained earnings (or minus accumulated deficit) of Borrower and its Subsidiaries minus intangible assets, plus Subordinated Debt, on a consolidated basis determined in accordance with GAAP.

"Trademarks" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

"UCC" means the Uniform Commercial Code as the same may from time to time be in effect in the State of California (and each reference in this Agreement to an Article thereof (denoted as a Division of the UCC as adopted and in effect in the State of California) shall refer to that Article (or Division, as applicable) as from time to time in effect; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection

or priority of the Secured Party's security interest in any collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of California, the term "UCC" shall mean the Uniform Commercial Code (including the Articles thereof) as in effect at such time in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions. Notwithstanding anything contained herein to the contrary, the parties intend that the terms used herein which are defined in the UCC have, at all times, the broadest and most inclusive meanings possible. Accordingly, if the UCC shall in the future be amended or held by a court to define any term used herein more broadly or inclusively than the UCC in effect on the date of this Agreement, then such term, as used herein, shall be given such broadened meaning. If the UCC shall in the future be amended or held by a court to define any term used herein more narrowly, or less inclusively, than the UCC in effect on the date of this Agreement, such amendment or holding shall be disregarded in defining terms used in this Agreement.

DEBTOR ALIGN TECHNOLOGY, INC.

SECURED PARTY: COMERICA BANK-CALIFORNIA

Exhibit B

COLLATERAL DESCRIPTION ATTACHMENT
TO LOAN AND SECURITY AGREEMENT

All personal property of Debtor of every kind, whether presently existing or hereafter created, written, produced or acquired, including, but not limited to: (a) all accounts (including healthcare-insurance receivables), chattel paper (including tangible and electronic chattel paper), deposit accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), general intangibles (including payment intangibles and software), goods (including fixtures), instruments (including promissory notes), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), Negotiable Collateral, letter of credit rights, money, and all of Debtor's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records and (b) any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment. All terms above have the meanings given to them in the California Uniform Commercial Code, as amended or supplemented from time to time.

Notwithstanding anything to the contrary contained in the foregoing, the "collateral" shall not include the Intellectual Property of Debtor, but shall include any and all cash proceeds and/or noncash proceeds of Debtor's Intellectual Property.

Exhibit C

LOAN PAYMENT/ADVANCE TELEPHONE REQUEST FORM

LOAN PAYMENT/ADVANCE TELEPHONE REQUEST FORM DEADLINE FOR SAME DAY PROCESSING FOR REVOLVING ADVANCES IS 3:00 P.M., E.S.T., AND FOR EQUIPMENT ADVANCES IS 3:00 P.M. E.S.T., 3 BUSINESS DAYS PRIOR TO THE EQUIPMENT ADVANCE

TO: [_____] DATE: _____

FAX #:[_____] TIME: _____

FROM: ALIGN TECHNOLOGY, INC.

CLIENT NAME (BORROWER)
REQUESTED BY: _____

AUTHORIZED SIGNER'S NAME

AUTHORIZED SIGNATURE: _____

PHONE NUMBER: _____

| FROM ACCOUNT # | TO ACCOUNT # |
|---|---|
| | |

| REQUESTED TRANSACTION TYPE | REQUEST DOLLAR AMOUNT |
|---|---|
| | $ |
| PRINCIPAL INCREASE (ADVANCE) | $ |
| PRINCIPAL PAYMENT (ONLY) | $ |
| INTEREST PAYMENT (ONLY) | $ |
| PRINCIPAL AND INTEREST (PAYMENT) | $ |

OTHER INSTRUCTIONS: _____

All representations and warranties of Borrower stated in the Loan and Security Agreement are true, correct and complete in all material respects as of the date of the telephone request for an Advance confirmed by this Payment/Advance Form; provided, however, that those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date.

BANK USE ONLY TELEPHONE REQUEST:

The following person is authorized to request the loan payment transfer/loan advance on the advance designated account and is known to me.

Authorized Requester _____ Phone # _____

Received By (Bank) _____ Phone # _____

Authorized Signature (Bank). _____

Exhibit D

BORROWING BASE CERTIFICATE

Borrower: Align Technology, Inc. Lender: Comerica Bank-California

Commitment Amount: $10,000,000 for Revolving Advances

ACCOUNTS RECEIVABLE

| | |
|---|---|
| 1. Accounts Receivable Book Value as of ------- | $ |
| 2. Additions (please explain on reverse) | $ |
| 3. TOTAL ACCOUNTS RECEIVABLE | $ |

ACCOUNTS RECEIVABLE DEDUCTIONS (without duplication)

| | |
|---|---|
| 4. Amounts over 120 days due | $ |
| 5. Balance of 50% over 120 day accounts | $ |
| 6. Concentration Limits | $ |
| 7. Foreign Accounts | $ |
| 8. Governmental Accounts | $ |
| 9. Contra Accounts | $ |
| 10. Demo Accounts | $ |
| 11. Intercompany/Employee Accounts | $ |
| 12. Other (please explain on reverse) | $ |
| 13. TOTAL ACCOUNTS RECEIVABLE DEDUCTIONS | $ |
| 14. Eligible Accounts (#3 minus #13) | $ |
| 15. LOAN VALUE OF ACCOUNTS(80% of #14) | $ |
| 16. 45 days of cash collections of accounts receivable | $ |

BALANCES

| | |
|---|---|
| 17. Maximum Loan Amount | $ |
| 18. Total Funds Available [Lesser of #17, #16 or #15] | $ |
| 19. Present balance owing on Line of Credit | $ |
| 20. Outstanding under Sublimits (Letters of Credit) | $ |
| 21. RESERVE POSITION (#18 minus #19 and #20) | $ |

The undersigned represents and warrants that the foregoing is true, complete and correct, and that the information reflected in this Borrowing Base Certificate complies with the representations and warranties set forth in the Loan and Security Agreement between the undersigned and Comerica Bank-California.

Align Technology, Inc.

By:
---
Authorized Signer

Exhibit E

COMPLIANCE CERTIFICATE

TO: COMERICA BANK-CALIFORNIA

FROM: ALIGN TECHNOLOGY, INC.

The undersigned authorized officer of Align Technology, Inc. hereby certifies that in accordance with the terms and conditions of the Loan and Security Agreement between Borrower and Bank (the "Agreement"), (i) Borrower is in complete compliance for the period ending _____ with all required covenants, including without limitation Section 6.7, except as noted below and (ii) all representations and warranties of Borrower stated in the Agreement are true and correct in all material respects as of the date hereof. Attached herewith are the required documents supporting the above certification. The Officer further certifies that these are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes.

Please indicate compliance status by circling Yes/No under "Complies" column.

| Reporting Covenant | Required | Complies |
|---|---|---|
| Monthly financial statements | Monthly within 30 days | Yes No |
| Annual (CPA Audited) | FYE within 90 days | Yes No |
| I0K and 1OQ | (as applicable) | Yes No |
| A/R & A/P Agings, Borrowing Base Cert. | Monthly within 15 days | Yes No |
| A/R Audit | Initial and [Semi-]Annual | Yes No |

| Financial Covenant | Required | Actual | Complies |
|---|---|---|---|
| Maintain on a Monthly/Quarterly Basis, as applicable: | | | |
| Minimum Quick Ratio | :1.00 | :1.00 | Yes No |
| Minimum Tangible Net Worth | $ | $ | Yes No |
| EBITDA | $ | $ | Yes No |

Comments Regarding Exceptions: See Attached.

BANK USE ONLY

Sincerely,

Received by:

AUTHORIZED SIGNER

SIGNATURE

Date:

TITLE

Verified:

AUTHORIZED SIGNER

DATE

Date:

Compliance Status Yes No

**EXHIBIT 23.1**

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-55020 and No. 333-82874) of Align Technology, Inc. of our report dated February 7, 2003 relating to the consolidated financial statements and financial statement schedule, which appear in this Annual Report on Form 10-K.

PricewaterhouseCoopers LLP

San Jose, CA
March 27, 2003

**Exhibit 99.1**

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

I, Thomas M. Prescott, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Align Technology, Inc. on Form 10-K for the fiscal year ended December 31, 2002 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Annual Report on Form 10-K fairly presents in all material respects the financial condition and results of operations of Align Technology, Inc.

Date: March 27, 2003

By: /s/ THOMAS M. PRESCOTT

Name: **Thomas M. Prescott**
Title: **President and Chief Executive Officer**

I, Eldon M. Bullington, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Align Technology, Inc. on Form 10-K for the fiscal year ended December 31, 2002 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Annual Report on Form 10-K fairly presents in all material respects the financial condition and results of operations of Align Technology, Inc.

Date: March 27, 2003

By: /s/ ELDON M. BULLINGTON

Name: **Eldon M. Bullington**
Title: **Chief Financial Officer and Vice President, Finance**