

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, 2022
or

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

For the transition period from _____ to _____
Commission file number: 000-32259

ALIGN TECHNOLOGY, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

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

410 North Scottsdale Road, Suite 1300
Tempe, Arizona 85288
(Address of principal executive offices, including zip code)

(602) 742-2000
(Registrant's telephone number, including area code)

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

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

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

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes No

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

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

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

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

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

Indicate by check mark whether the Registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant was approximately \$13.3 billion as of June 30, 2022 based on the closing sale price of the registrant's common stock on the NASDAQ Global Market on such date. Shares held by persons who may be deemed affiliates have been excluded. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

On February 20, 2023, 76,610,319 shares of the registrant's common stock were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement relating to its 2023 Annual Stockholders' Meeting to be filed pursuant to Regulation 14A within 120 days after the registrant's fiscal year end of December 31, 2022 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, 2022
TABLE OF CONTENTS

		<u>Page</u>
	<u>PART I</u>	<u>3</u>
Item 1.	<u>Business</u>	<u>3</u>
	<u>Information about our Executive Officers</u>	<u>19</u>
Item 1A.	<u>Risk Factors</u>	<u>19</u>
Item 1B.	<u>Unresolved Staff Comments</u>	<u>37</u>
Item 2.	<u>Properties</u>	<u>38</u>
Item 3.	<u>Legal Proceedings</u>	<u>38</u>
Item 4.	<u>Mine Safety Disclosures</u>	<u>38</u>
	<u>PART II</u>	<u>39</u>
Item 5.	<u>Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</u>	<u>39</u>
Item 6.	<u>[Reserved]</u>	<u>40</u>
Item 7.	<u>Management’s Discussion and Analysis of Financial Condition and Results of Operations</u>	<u>40</u>
Item 7A.	<u>Quantitative and Qualitative Disclosures About Market Risk</u>	<u>52</u>
Item 8.	<u>Financial Statements and Supplementary Data</u>	<u>54</u>
Item 9.	<u>Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</u>	<u>90</u>
Item 9A.	<u>Controls and Procedures</u>	<u>90</u>
Item 9B.	<u>Other Information</u>	<u>91</u>
Item 9C.	<u>Disclosure Regarding Foreign Jurisdictions that Prevent Inspections</u>	<u>91</u>
	<u>PART III</u>	<u>91</u>
Item 10.	<u>Directors, Executive Officers and Corporate Governance</u>	<u>91</u>
Item 11.	<u>Executive Compensation</u>	<u>91</u>
Item 12.	<u>Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</u>	<u>91</u>
Item 13.	<u>Certain Relationships and Related Transactions and Director Independence</u>	<u>91</u>
Item 14.	<u>Principal Accountant Fees and Services</u>	<u>92</u>
	<u>PART IV</u>	<u>93</u>
Item 15.	<u>Exhibits and Financial Statement Schedules</u>	<u>93</u>
Item 16.	<u>Form 10-K Summary</u>	<u>95</u>
	<u>Signatures</u>	<u>96</u>

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

In addition to historical information, this annual 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, our expectations and intentions regarding our strategic objectives and the means to achieve them, our beliefs and expectations regarding macroeconomic conditions, including inflation, fluctuations in currency exchange rates, rising interest rates, market volatility, weakness in general economic conditions and recessions and the impact of efforts by central banks and federal, state and local governments to combat inflation and recession, our expectations and beliefs regarding customer and consumer purchasing behavior and changes in consumer spending habits, our expectations regarding the impact of the military conflict in Ukraine generally and specifically regarding our operations and assets in Russia, including the impact on our workforce located in Russia, our expectations regarding the near and long-term implications of the COVID-19 pandemic on the global and regional economies, our marketing and efforts to build our brand awareness, our estimates regarding the size and opportunities of the markets we are targeting along with our expectations for growth in those markets, our beliefs regarding the impact of technological innovation in general, and in our solutions and products in particular, on target markets and patient care, our beliefs regarding digital dentistry and its potential to impact our business, our intentions regarding expanding our business, including its impact on our operational flexibility and responsiveness to customer demand, our beliefs regarding the potential for clinical solutions and their utilization to increase sales of our Invisalign system as well as the complementary products and solutions themselves, our beliefs regarding doctor training and its impact on Invisalign system utilization, our beliefs regarding the importance of our manufacturing operations on our success, our beliefs regarding the need for and benefits of our technological development on Invisalign treatment, the areas of development in which we focus our efforts, and the advantages of our intellectual property portfolio, our beliefs regarding our business strategy and growth drivers, our expectations regarding product mix and product adoption, our expectations regarding the utilization rates for our products, including the impact of marketing on those rates and causes for periodic fluctuations of the rates, our expectations regarding the existence and impact of seasonality, our expectations regarding the sales growth of our intraoral scanner sales in international markets, our expectations regarding the productivity impact additional sales representatives will have on our sales and the impact of specialization of those representatives in sales channels, our expectations regarding the continued expansion of our international markets and their growth, our expectations regarding competition and our ability to compete in our target markets, our expectations regarding staying in compliance with laws and regulations currently applicable to, or which may become applicable to, our business both in the United States and internationally, our beliefs regarding our culture and commitment and its impact on our financial and operational performance and its importance to our future success, our expectations for future investments in and benefits from consumer demand sales and marketing activities, our preparedness and our customers' preparedness to react to changing circumstances and demand, our expectations for our expenses and capital obligations and expenditures in particular, our intentions to control spending and for investments, our intentions regarding the investment of our international earnings from operations, our belief regarding the sufficiency of our cash and investment balances and borrowing capacity, our judgments regarding the estimates used in our revenue recognition and assessment of goodwill and intangible assets, our expectations regarding our tax positions and the judgements we make related to our tax obligations, our predicted level of operating expenses and gross margins and other factors beyond our control, as well as other statements regarding our future operations, financial condition and prospects and business strategies. These statements may contain words such as "expects," "anticipates," "intends," "plans," "believes," "estimates," or other words indicating future results. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from those reflected in the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in Part II, Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations," and in particular, the risks discussed below in Part I, Item 1A "Risk Factors." We undertake no obligation to revise or update these forward-looking statements. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements.

PART I

Business.

Our Company

Align Technology, Inc. ("We", "Our", "Align") is a global medical device company primarily engaged in the design, manufacture and marketing of Invisalign® clear aligners for the treatment of malocclusions, or the misalignment of teeth, by orthodontists and general dental practitioners ("GPs"), Vivera® retainers for retention, iTero® intraoral scanners and services for dentistry, and exocad® computer-aided design and computer-aided manufacturing ("CAD/CAM") software for dental laboratories and dental practitioners. Our vision and strategy is to revolutionize orthodontic and restorative dentistry through digital treatment planning and implementation using our Align Digital Platform™, an integrated suite of proprietary technologies and services designed to deliver a seamless, end-to-end solution for patients and consumers, orthodontists and GPs and lab partners. We strive to achieve our vision and strategy through key objectives made possible with the proprietary technologies and services of the Align Digital Platform to establish: clear aligners as the principal solution for the treatment of malocclusions with the Invisalign System as the treatment solution of choice by orthodontists, GPs and patients globally, our

intraoral scanners as the preferred scanning technology for digital dental scans, and our exocad CAD/CAM software as the dental restorative solution of choice for dental labs.

Align’s corporate headquarters are located at 410 North Scottsdale Road, Suite 1300, Tempe, Arizona 85288. Our telephone number is 602-742-2000. Our internet address is www.aligntech.com. Our Americas regional headquarters is located in Raleigh, North Carolina, U.S.A.; our European, Middle East and Africa (“EMEA”) regional headquarters is located in Rotkreuz, Switzerland; and our Asia Pacific (“APAC”) regional headquarters is located in Singapore.

We have two operating segments: (1) Clear Aligner and (2) Imaging Systems and CAD/CAM Services (“Systems and Services”). For the year ended December 31, 2022, Clear Aligner net revenues represented approximately 82% of worldwide net revenues, while Systems and Services net revenues represented the remaining 18%. We sell the majority of our products directly through a dedicated and specialized sales force to our customers: orthodontists, GPs, including prosthodontists, periodontists, and oral surgeons, and dental laboratories. We also sell through sales agents and distributors in certain countries. In addition, we sell directly to Dental Support Organizations (“DSOs”) who contract with dental practices to provide critical business management and support including non-clinical operations, and we sell products used by dental laboratories who manufacture or customize a variety of products used by licensed dentists to provide oral health care. We also market and sell doctor and consumer accessory products that are complementary to our doctor-prescribed principal products under the Invisalign® and other brands, including retainers, dental supplies, aligner cases (clamshells), teeth whitening products and cleaning solutions (collectively “Invisalign Accessory Products”). Depending on the product, our Invisalign Accessory Products are sold through a variety of channels, including online through large e-commerce websites, our doctor portal and in-store through large retailers and pharmacy stores.

Our clear aligners are sold under the Invisalign® brand name. Our Invisalign System is intended mainly for the treatment of malocclusions and is designed to help dental professionals achieve the clinical outcomes that they expect and the results patients desire. To date, over 14 million people worldwide have been treated with our Invisalign System. In order to provide Invisalign treatment to their patients, orthodontists and GPs must initially complete an Invisalign training course. Our iTero intraoral scanner is used by dental professionals and/or labs and service providers for restorative and orthodontic digital procedures as well as Invisalign case submissions. Our exocad CAD/CAM software products provide restorative dentistry, implantology, guided surgery, and smile design to dental labs and dental practices through fully integrated workflows, paving the way for new, cross-disciplinary dentistry in labs and at chairside.

Our Products, Services and Technologies

Align Digital Platform



We strive to be at the forefront of innovation in digital orthodontics and dentistry, helping doctors transform their practices using digital tools and technology to deliver great treatment experiences and outcomes to people worldwide. The Align Digital Platform is the foundation of our goal to revolutionize the practice of dentistry, delivering interconnected, interdisciplinary workflows and treatment solutions that move all aspects of treatment forward, from first consultations to final smiles with our doctor-centered treatment model. It is an end-to-end digital platform that combines software, systems and services to seamlessly integrate and connect those critical to successful treatment outcomes – doctors, labs, patients, and consumers. At the center of the Align Digital Platform are Invisalign clear aligners, iTero intraoral scanners, and exocad CAD/CAM software.

The Align Digital Platform utilizes the Align Digital Workflow to enable an end-to-end treatment experience with the following key components:



- **Connect:** The initial stage of the platform drives consumer demand and connects potential patients to our websites and Invisalign providers. Some of our tools that support this stage are Invisalign.com, the Invisalign SmileView tool, My Invisalign app, Doctor Locator, Invisalign Practice App, Invisalign Doctor Estimate and Invisalign Virtual Appointment.
- **Scan:** During this stage, patient data is captured through intraoral scanning. Tools support a patient’s diagnosis of oral conditions and health and support the identification of an appropriate treatment pathway. Visualization of their potential smile helps patients understand the benefits of treatment and increase patient conversion. The tools that support this stage, include, iTero scanners and imaging systems, Invisalign Outcome Simulator Pro, Invisalign Photo Uploader, iTero NIRI technology (Near Infra-Red Imaging), iTero TimeLapse technology, iTero Element 5D auto upload feature and iTero Scan Report.
- **Plan:** Doctors digitally visualize and plan orthodontic and restorative treatments. Orthodontists and GPs can use our products to design, build and share their vision for treatment planning and agree on a customized plan with their patients to reach the desired outcomes. Orthodontists and GPs can use our products to design, build and share their vision for treatment planning and agree on a customized plan with their patients to reach the desired outcomes. Some of our tools that support this stage are ClinCheck Pro® 6.0, ClinCheck In-Face Visualization, ClinCheck Live Update, Invisalign Practice App, Invisalign Personalized Plan and CBCT integration for ClinCheck software.
- **Treat:** During this stage, doctors treat their patients with our Invisalign® clear aligners.
- **Monitor:** Doctors are able to remotely track their patient’s treatment between visits, and orthodontists and GPs can more easily communicate treatment progress and tracking to their patients. Some of our tools that support this stage include Invisalign Virtual Care app, My Invisalign app, Invisalign Doctor Site, Invisalign Practice App, Invisalign Progress Assessment and iTero scanners.
- **Retain:** Patients retain the final position of their treatment results through our Vivera® retainers.

As we further evolve the treatment planning experience for doctors leveraging 25 years in technological research and development innovations, we expect to introduce new technologies, features and functionality that improve personalization of treatment planning, predictability, clinical preferences, and 2D/3D imaging, including digital tools for faster and more accurate final tooth positions. In 2022, we launched significant new products and technologies that further enhance the Align Digital Platform, including the ClinCheck® Live Update software, Invisalign® Practice App, Invisalign® Personalized Plan, Invisalign Smile Architect™, Invisalign® Outcome Simulator Pro with in-face visualization, Cone Beam Computed Tomography integration with ClinCheck software, Invisalign® Virtual Care AI software, and the iTero-exocad Connector.

Clear Aligner Segment

Malocclusion and Traditional Orthodontic Treatment

Malocclusion is one of the most prevalent clinical dental conditions in the world, affecting approximately 60% to 75% of the global population. We estimate that there are approximately 500 million people globally with malocclusion who could benefit from straightening their teeth. However, most people afflicted by malocclusion do not seek orthodontic treatment due to a number of reasons, including negative perceptions of metal braces, affordability of treatment, and accessibility to doctors in

certain markets and geographies. Annually, only approximately 21 million people globally elect treatment by orthodontists. Today, most orthodontic patients continue to have their malocclusions treated with the use of traditional corrective methods such as metal arch wires and brackets, referred to as braces, augmented with elastics, metal expanders, headgear or functional appliances, and other ancillary devices as needed. Upon completion of a patient's treatment, their dental professional may recommend the patient use a retainer appliance to preserve the benefits of their treatments. Of the 21 million cases started, we estimate that approximately 90% (19 million) can be treated using our Invisalign System, yet our share of the 21 million case starts through orthodontists is approximately 10% globally. This represents a significant growth opportunity for us to increase our share of the existing market of orthodontic case starts, especially among teens, and expand the market for digital orthodontics, especially among adults. By training more doctors, including GPs as well as orthodontists, educating more consumers about the benefits of straighter teeth using the Invisalign System and connecting consumers with an Invisalign-trained doctor of their choice, we are helping drive adoption of digital orthodontics and restorative dentistry globally.

The Invisalign System

The Invisalign System is a proprietary method for treating malocclusion based on a proprietary computer-simulated virtual treatment plan and a series of doctor-prescribed, custom manufactured, clear polymer removable aligners. We received 510(k) clearance from the United States ("U.S.") Food and Drug Administration ("FDA") to market the Invisalign System in 1998. The Invisalign System offers a range of treatment options, specialized services, and access to proprietary software for treatment visualization and is comprised of the following phases:

Diagnosis and transmission of treatment data. An Invisalign trained dental professional prepares an online prescription form on our Invisalign Doctor Site and securely submits the patient's records, which include a digital intraoral scan or a polyvinyl-siloxane ("PVS") impression of the relevant dental arches, photographs of the patient and, at the dental professional's election, x-rays of the patient's dentition. Intraoral digital scans may be submitted through Align's iTero scanner or certain third-party scanners capable of accurately interfacing with our systems and processes. Globally, more than 89% of Invisalign System prescription orders are now submitted via digital scan, increasing the accuracy of treatments, reducing the time from prescription submission to patient receipt, and decreasing the carbon footprint resulting from the shipment of the materials used to form PVS impressions to the doctors and shipping those PVS impressions back to us. Additionally, it is during this stage that exocad's CAD/CAM software platform can be used to identify, assess and assist doctors and dental labs to collaborate on any needed ortho-restorative treatment options through comprehensive interdisciplinary workflows.

Computer-simulated treatment plan. Using the digital scans or PVS impressions, certain doctor preferences and digital data provided, we generate a proposed custom, three-dimensional treatment plan, called a ClinCheck® treatment plan, using proprietary software developed through significant, ongoing research and development investments spanning more than two decades. A patient's ClinCheck treatment plan simulates desired tooth movement in stages and details the timing and placement of any features or attachments to be used during treatment. Attachments are tooth-colored "buttons" that are sometimes used to increase the biomechanical force on a specific tooth or teeth in order to affect the desired movement(s).

Review and approval of the treatment plan by an Invisalign trained doctor. The patient's ClinCheck treatment plan is then made available to the prescribing dental professional via Align's Invisalign Doctor Site, enabling the dental professional to evaluate projected tooth movement from initial to final position and compare multiple treatment plan options. By reviewing, modifying as needed and approving the treatment plan, the dental professional retains control of the patient's treatment.

Manufacture of custom aligners. Following the dental professional's approval of a ClinCheck treatment plan, we use the data underlying the simulation as input for the next stage of the Align Digital Workflow in which we use stereolithography technology (a form of 3D printing technology) to construct a series of molds depicting the future position of the patient's teeth. Each mold is a replica of the patient's teeth at each stage of the simulated course of treatment. From these molds, aligners are fabricated by pressure-forming polymeric sheets over each mold. Aligners are thin, clear polymer, removable dental appliances that are custom manufactured in a series designed to correspond to each stage of the patient's ClinCheck treatment plan.

Shipment to the dental professional and patient aligner wear. Once manufactured, all the aligners for a patient's doctor-approved treatment plan are typically shipped directly to the dental professional, who then dispenses them to the patient at regular check-up intervals. Aligners are generally worn for a short period of time corresponding to the stages of the patient's approved ClinCheck treatment plan and their doctor's discretion. The patient replaces the aligners with the next pair in the series when prescribed, advancing tooth movement through each stage. At various points in each patient's treatment, their doctor may place attachments or use other auxiliaries to achieve desired tooth movements, per the doctor's original prescription and the approved ClinCheck treatment plan. Additionally, for patients treated using many of our Invisalign System products, doctors have the option to adjust treatment plans to achieve desired results by ordering additional clear aligners in accordance with pre-defined terms.

Clear Aligner Products

We offer our Invisalign System in a variety of treatment packages designed to correspond with the case-by-case treatment needs of our doctors and their patients. The table below provides a general description of the categories of Invisalign System products offered in various regions as they typically correspond to the severity of malocclusion and length of anticipated treatment.

Malocclusion	←	Moderate	→	Severe	
Product	Invisalign® Express Package	Invisalign® Lite Package	Invisalign Go™ Limited Movement (GP)	Invisalign® Moderate Packages (& Invisalign Go™ Plus)	Invisalign® Comprehensive Packages
Treatment Stages*	7	14	20	20-26	As many as required
Clinical Scope	Relapse and minor movement, anterior esthetic alignment	Class I, mild crowding/spacing, non-extraction, pre-restorative	Class I, no anterior / posterior correction, mild to moderate crowding, spacing, non-extraction, pre-restorative Tooth movement from 2nd premolar to 2nd premolar (5x5)	Class I, mild Class II, mild to moderate crowding/spacing, mild anterior / posterior and vertical discrepancies, pre-restorative, (Go Plus tooth movement from 1st molar to 1st molar (6X6))	Class I, II, III, moderate to severe crowding/spacing, anterior / posterior and vertical discrepancies, extractions, complex pre-restorative

* The number of stages can vary by product and region.

Most of our Invisalign System products described above provide dental professionals with the option to order additional aligners if the patient's treatment deviates from the original treatment plan. The number and timing of additional aligner orders are subject to certain requirements noted in our terms and conditions.

Comprehensive Products - Invisalign Treatment Options:

Invisalign Comprehensive Packages. The Invisalign Comprehensive Package is used to treat adults and teens over a wide spectrum of mild to severe malocclusion and contains a broad variety of features to address the desired treatment goals. It also addresses the frequently complex orthodontic needs of teenage or younger patients with advanced features such as mandibular advancement, compliance indicators and compensation for tooth eruption. These packages include Invisalign Comprehensive, Invisalign First Phase 1 and Invisalign First Comprehensive Phase 2.

Invisalign First Phase 1 and Invisalign First Comprehensive Phase 2 Packages. Invisalign First Phase 1 Package is designed specifically for younger patients generally between the ages of six and ten years, who frequently have a mixture of primary/baby and permanent teeth. Invisalign First Phase 1 treatment provides early interceptive orthodontic treatment, traditionally done through arch expansion, or partial metal braces, before all permanent teeth have erupted. Invisalign First Phase 1 clear aligners are designed specifically to address a wide range of younger patients' malocclusions, including shorter clinical crowns, management of erupting dentition and predictable dental arch expansion. Our Invisalign First Comprehensive Phase 2 Package complements Invisalign First Phase 1 and is generally consistent with our Invisalign Comprehensive Package. After a patient completes Invisalign First Phase 1, doctors have the option to purchase a Comprehensive Phase 2 Package for that same patient.

Non-Comprehensive Products - Invisalign Treatment Options:

Invisalign Non-comprehensive Packages. We offer a variety of lower priced treatment packages for less complex orthodontic cases, non-comprehensive relapse cases, or teeth straightening prior to restorative or cosmetic treatments, such as veneers. These treatment packages include Invisalign Express, Invisalign Lite, Invisalign Go, Invisalign Go Express and Invisalign Moderate. These packages may be offered in select countries and/or may differ from region to region.

Invisalign Go Packages. In various markets we also offer Invisalign Go and Invisalign Go Plus, streamlined Non-Comprehensive packages designed for GPs to more easily identify and treat patients with mild malocclusion. The Invisalign Go and Invisalign Go Plus packages include case assessment support, simplified ClinCheck treatment plans and a progress assessment feature for case monitoring.

Feature Enhancement / New Products

Invisalign Mandibular Advancement. Invisalign System with mandibular advancement is designed for tweens and teens. It is targeted for patients with permanent teeth or stable baby teeth who have bite issues in which the lower jaw is further back and can benefit from being brought forward for a better bite relationship. The Invisalign System with mandibular advancement addresses Class II bite correction with simultaneous alignment of the teeth. In 2022, we enhanced the original design with new enhanced precision wings that provide increased durability and comfort, as well as greater overlap to help the aligners remain properly engaged to keep the patient's lower jaw forward during treatment.

Non-Case Products:

Clear Aligner non-case products include retention products, Invisalign training, adjusting tools used by dental professionals during the course of treatment, ancillary Invisalign Accessory Products and other oral health products available in certain e-commerce and retail channels in the U.S.

Retention. We offer up to four sets of custom clear aligners called Vivera retainers made with proprietary material strong enough to maintain tooth position and correct minor relapse, if necessary, as well as Invisalign retainers. Retainers are generally available for doctors to offer to any of their patients, whether they use the Invisalign System or other products, including wires and brackets. In select markets, we also offer single set retainers. Additionally, we offer a professional whitening system using Ultradent's Opalescence PF whitening system with Vivera retainers.

We also offer in the U.S., a Doctor Subscription Program which is a monthly subscription program based on the doctor's monthly need for retention or limited treatment. The program allows doctors the flexibility to order both "touch-up" or retention aligners within their subscribed tier and is designed for a segment of experienced Invisalign trained doctors who are currently not regularly using our retainers or low-stage aligners.

Smart Technology: SmartTrack, SmartForce and SmartStage

Smart technology is applied in the development of Invisalign treatments and leads to a more precise control of individual and multiple tooth movements. We use a force driven system in our Invisalign treatments such that the next aligner is shaped so that when inserted, the aligner stretches and applies the desired forces to the surface of the tooth, resulting in the desired tooth movement. Smart technology allows us to find the right thickness, the right elasticity, and the right force application over a period of time. Smart technology includes the use of SmartTrack, SmartForce and SmartStage Technology.

SmartTrack. SmartTrack clear aligner material is a patented, custom-engineered Invisalign clear aligner material that delivers gentle, more constant force considered ideal for orthodontic tooth movements. Conventional aligner materials relax and lose a substantial percentage of the force applied in the initial days of wear. SmartTrack material maintains more constant force over time. The flexible SmartTrack material also more precisely conforms to tooth morphology, attachments and interproximal spaces to improve control of tooth movement throughout treatment.

SmartForce. SmartForce attachments are small tooth-colored shapes that are attached to teeth before or during Invisalign treatment. Invisalign clear aligners fit smoothly and tightly around the attachments and give the aligners something to gently push on. SmartForce attachments make complex tooth movements possible without braces by helping clear aligners apply the right amount of force in the right direction.

SmartStage Technology. SmartStage is an advanced algorithm that determines the optimal path of tooth movement and the shape of the aligner at every stage of an Invisalign treatment. The programming determines tooth movement in a certain sequence, at the right time to achieve optimal outcomes with greater predictability and fewer undesirable interferences.

Systems and Services Segment

Intraoral scanning is a rapidly evolving technology that is having a substantial impact on the practice of dentistry. By enabling the dental practitioner to create a 3D image of a patient's teeth (digital scan) using a handheld intraoral scanner, digital scanning is faster, more efficient, precise and comfortable for patients. Beginning patient care with the early usage of our iTero intraoral scanners and combining the results with digital workflows designed to assist doctors and patients visualize and evaluate various treatment options with detailed imagery and CAD/CAM solutions is helping patients decide to undergo treatment and improve treatment outcomes and satisfaction. The accuracy of digitally scanned models substantially reduces the rate of restoration "remakes," meaning patients are recalled less often and the appointment time for the restoration is shorter because of fewer adjustments, increasing overall patient satisfaction. Digital models also reduce the carbon footprint associated with the shipping of the materials used to create PVS impressions, the shipping of those impressions and their disposal.

Moreover, the digital model file can be used for various procedures and services including fabrication of physical dental models for use by labs to create restorative units such as veneers, inlays, onlays, crowns, bridges and implant abutments; digital records storage; aid to caries detection; orthodontic diagnosis; orthodontic retainers and appliances; and Invisalign digital impression submission.

iTero Scanner. The iTero Element™ portfolio of intraoral scanners includes the iTero Element™ 2, the iTero Element™ Flex, iTero Element™ 5D Imaging System and iTero Element™ Plus Series which are each available in select regions and countries. These products build on the existing high precision, full-color imaging and fast scan times of the iTero Element portfolio and are available with software options for orthodontic and restorative procedures. The iTero scanner is interoperable with our Invisalign System such that a full arch or full mouth digital scan can be submitted as part of the Invisalign System prescription order submission process.

Our iTero Element 5D Imaging System is the first integrated dental imaging system that simultaneously records 3D, intraoral color camera images, near infrared imaging (“NIRI”) technology and enables comparison over time using the iTero™ TimeLapse technology. NIRI technology, included in our iTero Element 5D and 5D Plus Imaging Systems, aids in detection and monitoring of interproximal caries lesions above the gingiva without using harmful radiation. The iTero Element 5D Imaging System is available in the U.S., Canada, China, and the majority of EMEA and select APAC and LATAM countries and is pending regulatory approval in others. We received 510(k) clearance in the U.S. for the caries detection feature of the iTero Element 5D in 2020. The iTero Element Plus Series of intraoral scanners and imaging systems offers restorative and orthodontic digital workflows that include enhanced visualization for optimized patient experience, including a fully integrated 3D intraoral camera in certain models, seamless scanning with reduced processing time, artificial intelligence-based features, and, in certain models, NIRI technology.

Our iTero Element scanners are offered in a number of software configurations such as Ortho Comprehensive, Restorative Comprehensive and Restorative Foundation. These software packages are included in the price of the scanner and have a service period of 1 to 5 years. They enable various orthodontic and restorative workflows as well as provide other applications, including Invisalign Outcome Simulator, Invisalign Case Assessment tool, Invisalign Progress Assessment tool, and iTero TimeLapse technology. Our iTero software is designed for orthodontists for digital records storage, orthodontic diagnosis, and for the fabrication of printed models and retainers. Our Restorative software is designed for GPs, prosthodontists, periodontists and oral surgeons and includes restorative workflows providing the ability to send digital impressions to the lab of their choice and communicate seamlessly with external treatment planning, custom implant abutment, chairside milling and laboratory CAD/CAM systems such as through our exocad Connector.

Invisalign® Outcome Simulator. The Invisalign Outcome Simulator is an exclusive chair-side and cloud-based application for the iTero scanner that allows doctors to help patients visualize how their teeth may look at the end of Invisalign treatment. This is achieved through a dual view layout that shows a prospective patient an image of their own current dentition next to a simulated final position after Invisalign treatment.

Invisalign® Progress Assessment Tool. The Invisalign Progress Assessment tool provides the ability to compare a patient’s new scan with a specific stage of their ClinCheck® treatment plan, allowing doctors to visually assess and communicate Invisalign treatment progress with an easy-to-read, color-coded, tooth movement report.

iTero® TimeLapse Technology. Our iTero® TimeLapse technology allows doctors or practitioners to compare a patient’s historic 3D scans to a present-day scan, enabling clinicians to identify and measure orthodontic movement, tooth wear, and gingival recession. This highlights areas of diagnostic interest to dental professionals and helps foster a proactive conversation with the patient regarding potential restorative or orthodontic solutions.

CAD/CAM Services. Our exocad CAD/CAM software platform addresses restorative needs in an end-to-end digital platform workflow to facilitate ortho-restorative and comprehensive dentistry. The platform provides doctors and dental labs with digital clinical solutions that aid GPs and dental labs in planning and delivering restorative dental treatments, adding restorative functionality to our comprehensive digital platform to deliver digital ortho-restorative workflows and interdisciplinary dentistry. Our exocad software is licensed and sold separately.

Other proprietary software mentioned in this Annual Report on Form 10-K, such as software embedded in our iTero scanners, ClinCheck and ClinCheck Pro software, the Invisalign Doctor Site, and feature enhancements included as part of the Invisalign System are not sold separately, nor do they contribute as individual items to revenues.

Business Strategy

Our technology and innovations are designed to meet the demands of today's patients with convenient, comfortable, and affordable treatment options, while improving overall oral health. We strive to help doctors and lab technicians move their businesses forward by connecting them with new patients, providing digital solutions that increase operational speed and efficiency and provide solutions that allow them to deliver exceptional treatment outcomes and experiences to millions of people around the world. We achieve this by focusing on and executing to our strategic growth drivers:

- *International Expansion.* We continue increasing our presence globally by making our products available in more countries to more customers. We continue expansion of our sales and marketing by reaching into new countries and regions, including new areas within Africa and Latin America. By the end of 2022, we were selling directly or through authorized distributors in more than 100 countries. As our business continues to grow in both number of new Invisalign trained doctors and customer utilization, we support that growth through targeted investments such as clinical support, product improvements, technological innovations, clinical education and advertising. In addition, we are scaling and expanding our operations and facilities to better support the growing numbers of global customers. In 2022, with the opening of our third clear aligner fabrication facility Wroclaw, Poland, we now have a manufacturing facility in each of our regions: Americas (Mexico), APAC (China), and EMEA (Poland). Each of these three facilities represents a "hub" and together these three hubs form the foundation of our "Regional Hub Model", which will continue to evolve as we consider additional locations to improve coverage and service for any potential future markets. We also perform digital treatment planning and interpretation for restorative cases worldwide, including in Costa Rica, China, Germany, Spain, Poland, and Japan, among others. By establishing and expanding our key operational activities in locations closer to our customers, we are creating an infrastructure that allows us to be responsive to local and regional needs, while providing global operational flexibility and scale needed for variations in global and regional demand. We expect to continue expanding our business in 2023 by investing in resources, infrastructure and initiatives that help drive Invisalign treatment growth, our intraoral scanners as the preferred scanning technology for digital dental scans, and our exocad CAD/CAM software as the solution of choice for dental labs in existing and new international markets.
- *GP Adoption.* We want to enable GPs, who have the potential to treat the general population, to more easily identify potential cases they can treat with the Invisalign System, monitor patient progress or, if needed, help refer cases to an orthodontist while providing high-quality restorative, orthodontic and dental hygiene care. We believe success with GPs can be achieved through doctor training and clinical education, by offering digital tools such as the iTero scanner and products like Invisalign Go™ treatment that address the distinctive needs of GP patients, all delivered by sales and marketing personnel specifically focused on the unique needs of this customer category. We encourage GPs to scan every patient with intraoral scanners that are without harmful radiation as a means to diagnose and treat patients over time and as an opportunity to drive future demand for their services and the Invisalign System. In October 2021, the findings of a clinical study we sponsored were published in the peer-reviewed Journal of Dentistry were validated and demonstrated that the NIRI technology of the iTero Element 5D imaging system was 66% more sensitive than bitewing x-ray radiography for detection of interproximal lesions, without the use of harmful radiation, which supports our belief in the benefits of using iTero scanners.
- *Patient Demand & Conversion.* Our goal is to make the Invisalign brand a highly recognized name brand worldwide by creating awareness for Invisalign treatment among consumers and motivating the potential 500 million patients who can benefit from treatment of malocclusion to seek treatment using the Invisalign System. We accomplish this through an integrated consumer marketing strategy that includes television, media, social networking and event marketing and strategic alliances with professional sports teams, as well as educating patients on treatment options and directing them to high volume Invisalign trained doctors. To further drive consumer awareness, in 2022, we continued to offer additional dental-related Invisalign Accessory Products under the Invisalign brand name available in certain e-commerce channels in the U.S.
- *Orthodontist Utilization.* We continue to innovate and increase product applicability and predictability to address a wide range of cases, from simple to complex, thereby enabling doctors to confidently diagnose and treat children and adults with the Invisalign System. This is especially important to treating teenage patients who make up the largest portion of the 21 million annual orthodontic case starts each year. We also continue to make improvements to our Invisalign treatment software, ClinCheck Pro software, designed to deliver an exceptional user experience and increase treatment control to help doctors achieve their treatment goals. In combination with the new Invisalign System innovations that are part of the Align digital platform, we are enhancing the digital treatment planning experience for orthodontics by providing doctors with greater flexibility, consistency of treatment preferences and real-time treatment plan access and modification capabilities.

Manufacturing and Suppliers

We have three manufacturing facilities for clear aligners, which are located in Juarez, Mexico, where we conduct our aligner fabrication, distribution, and certain services for the Americas market, Ziyang, China, where we fabricate aligners for China and other APAC markets and Wroclaw Poland, where we fabricate aligners for EMEA markets. We have designed this Regional Hub Model to primarily cater to our respective market areas, enable us to better serve our global customer base by being closer to our doctor customers and drive efficiencies in the business. We produce our handheld intraoral scanner wand, perform final scanner assembly and repair our scanners at our facilities in Ziyang, China and Petah Tikva, Israel and service and repair certain scanners in Juarez, Mexico.

We also perform digital treatment planning and interpretation for restorative cases based on digital scans generated by our iTero intraoral scanners. Our digital treatment planning facilities are located worldwide, including in Costa Rica, China, Germany, Spain, Poland and Japan, among other international locations.

Our quality system is required to be in compliance with the Quality System regulations enforced by the FDA, and similar regulations enforced by other worldwide regulatory authorities. We are certified to ISO 13485:2016, an internationally recognized standard for medical device quality. We are routinely audited by third party certification bodies as well as global health authorities for our compliance to this quality standard as well as international regulations. We have a formal, documented quality system by which quality objectives are defined, understood and achieved. Systems, processes and procedures are implemented to ensure high levels of product and service quality. We monitor the effectiveness of the quality system based on internal data and direct customer feedback and strive to continually improve our systems and processes, taking corrective action, as needed.

Since the mass-customized treatment planning and manufacturing processes of our products requires substantial and varied technical expertise, we believe that our manufacturing capacity and capabilities are important to our success. In order to produce our highly-customized, highly-precise, medical quality products in volume, we have developed a number of proprietary processes and technologies. These technologies include complex software algorithms and solutions, including artificial intelligence and machine-learning based CAD/CAM software, Vision systems, CT scanning, stereolithography and automated custom aligner fabrication equipment. To increase the efficiency and yield of our manufacturing processes, we continue to focus our efforts on software development, equipment development and the improvement of rate-limiting processes or bottlenecks. We continuously 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 addition, to improve efficiency and increase the scale of our operations, we continue to invest in the development of automated systems for the fabrication and packaging of aligners.

In addition, predictable and consistent production is essential to our commitment to timely deliver products to our customers efficiently and profitably. Our production can be disrupted by such things as supply chain issues, production manufacturing software system issues and production equipment downtime. Accordingly, as we have grown our operations, we have included flexibility and resiliency in our overall manufacturing design to mitigate the risks of production downtime. Our manufacturing facilities include backup generators and systems and each facility has an emergency response plan that is part of ongoing employee training and testing through recurring cross functional scenario-based simulation exercises. Likewise, the Regional Hub Model provides us with greater flexibility and capacity to redirect production to one or more of our production facilities as needed.

As part of our manufacturing resiliency design efforts, we have also considered climate change, climate-related risks - higher average global temperatures, rising sea levels and more frequent and severe wildfires, hurricanes, floods, winter storms, heat waves and other events and natural disasters (collectively, "climate-related risks"). We view climate-related risks to be one of many operational challenges we face, and factor them into our business continuity planning and strategic risk mitigation efforts.

For instance, our manufacturing plants and operations may be impacted by extreme temperatures and weather, subjecting us to potential brownouts and blackouts, increased energy costs and capital investments needed to maintain ideal operating temperatures. Our manufacturing facility in Juarez, Mexico is located in an area classified as high-water stress and our operations could be impacted by water shortages, rationing and droughts. Our California, Costa Rica, Mexico and North Carolina operations are located in areas that have historically been impacted by extreme weather events such as hurricanes, tornados, wildfires or flooding.

In part to help mitigate risks to our manufacturing operations, we have strategically located our clear aligner production facilities in three facilities on different continents. This allows us to both respond more quickly to customer demand while also

offering redundancy in the event natural disasters or climate-related events affect operations at one or more facilities. Moreover, each of our three key clear aligner manufacturing facilities are located at elevations less likely to be impacted by rising sea levels and at least two hundred miles inland.

Moreover, we are highly dependent on manufacturers of specialized scanning equipment, rapid prototyping machines, resin and other advanced materials for our aligners, as well as the optics, electronic and other mechanical components of our intraoral scanners. We maintain single supplier relationships for many of these machines and materials technologies. In particular, our CT scanning and stereolithography equipment used in our aligner manufacturing and many of the critical components for the optics of our intraoral scanners are provided by single or sole source suppliers. We also currently purchase our resin and polymer, the primary raw materials used in our manufacturing process for clear aligners, from a single source. A discussion of the risks of our supply and manufacturing operations, including foreign operations, may be found in Item 1A of this Annual Report on Form 10-K under the heading "Risk Factors."

Sales and Marketing

Our sales and marketing efforts are focused on increasing adoption and utilization of the Invisalign System and Vivera retainers by orthodontists and GPs worldwide and integrating the iTero scanner and services and exocad CAD/CAM products into dental labs and practices. The iTero scanner is an important component to the customer experience and is central to a digital approach as well as overall customer utilization of Invisalign clear aligners. In each region, we have direct sales, marketing and support organizations, which include quota carrying sales representatives, sales management and sales administration. We also have distribution partners in certain markets. Our sales and marketing personnel are organized primarily to support orthodontists and GPs separately, allowing highly trained and specialized personnel to serve each customer channel, thereby increasing our focus and effectiveness on both. We continue to expand in existing markets through targeted investments in sales resources, professional marketing and education programs. Additionally, our consumer marketing programs are designed to create awareness and educate consumers on the benefits of Invisalign treatment and Vivera retainers, including where they can find a trained doctor to provide treatment.

We provide training, marketing and clinical support to orthodontists and GPs. As of December 31, 2022, we had approximately 124,500 active Invisalign trained doctors. We define doctors as active if they have submitted at least one Invisalign case in the prior 12-month period.

Research and Development

We are committed to investing in world-class digital technology development, which we believe is critical to achieving our goal of establishing the Invisalign System as the standard method for treating malocclusion, our intraoral scanners as the preferred scanning technology for digital dental scans, and our exocad CAD/CAM software as the solution of choice for dental labs.

Our research and development activities are directed toward developing digital technology innovations that we believe will deliver our next generation of products and solutions to enable the Align Digital Platform. These activities range from accelerating product and clinical innovation to developing manufacturing process improvements to researching future technologies, products and software.

In an effort to demonstrate the broad treatment capabilities of the Invisalign System, various clinical case studies and articles have been published that highlight the clinical applicability of Invisalign treatment to malocclusion cases, including those of severe complexity. Similarly, various studies have also been published demonstrating the capabilities of our scanners, including advanced features such as our NIRI technology. We undertake pre-commercialization trials and testing of our technological improvements to our products and manufacturing process. We furthermore fund research in the field of orthodontics and dentistry through initiatives such as our Annual Research Award Program, which was in its 13th year in 2022, our donations to the American Association of Orthodontists Foundation and our partnership with MedTech Innovator Asia Pacific, a nonprofit startup accelerator for the medical technology industry that connects healthcare industry leaders with innovative medical technology startups for mentorship and support.

Intellectual Property

We believe our intellectual property portfolio represents a substantial business advantage. As of December 31, 2022, we had 739 active U.S. patents, 831 active foreign patents, and 813 pending global patent applications. Our active U.S. patents expire between 2023 and 2041. When patents expire, we lose the protection and competitive advantages they provided, which could negatively impact our operating results; however, as we continue to pursue new innovations, we seek intellectual property protection for new inventions and know-how 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 furthermore have a broad and diverse trademark portfolio that we use to highlight and protect our universally recognized brands. Information regarding risks associated with our proprietary technology and our intellectual property rights may be found in *Item 1A* of this Annual Report on Form 10-K under the heading “*Risk Factors*.”

Seasonal Fluctuations

General economic conditions impact our business and financial results, and we have historically experienced seasonal trends within our two operating segments, customer channels and the geographic locations that we serve. Sales of the Invisalign system are often weaker in Europe, especially southern European countries during the summer months due to our customers and their patients being on holiday and seasonally higher in China during the third quarter. Similarly, other international holidays like Lunar New Year can impact our sales in APAC. In North America, summer is typically the busiest season for orthodontists with practices that have a high percentage of adolescent and teenage patients as many parents want to get their teenagers started in treatment before the start of the school year; however, many GPs are on vacation during this time and therefore tend to start fewer cases. For our Systems and Services segment, capital equipment sales are often stronger in the fourth calendar quarter. Consequently, these seasonal trends have caused and may continue to cause fluctuations in our quarterly results, including fluctuations in sequential revenue growth rates. However, our typical seasonal patterns have been impacted by macroeconomic uncertainty including significant changes in foreign exchange rates, the effects of COVID-19, the military conflict between Russia and Ukraine and other macroeconomic challenges, and it remains unclear when or if they will return to historical norms.

Competition

Our clear aligner products compete directly against traditional orthodontic treatments that use metal brackets and wires and increasingly against clear aligner products manufactured and distributed by various companies, both within and outside the U.S. Although the number of competitors varies by segment, product, geography and customer, they include new and well-established regional competitors in certain foreign markets, as well as larger companies, divisions of larger companies or well-capitalized new entrants with substantial sales, marketing, research and financial capabilities. Competition in the clear aligner market continues to increase. In addition, corresponding foreign patents began expiring in 2018 which has increased competition outside the U.S. These competitors include existing larger companies in certain markets who have the ability to leverage their existing channels in the dental market to compete directly with us, direct-to-consumer (“DTC”) companies that provide clear aligners requiring little or no in-office care from trained and licensed doctors themselves who can manufacture retainers and custom aligners for treatment of very simple malocclusion in their offices using modern 3D printing technology. Unlike our DTC competitors, we are committed to doctors being at the core of our business strategy, and Invisalign treatment requires a doctor's prescription and an in-person physical examination of the patient's dentition before treatment can begin.

Additionally, we face competition in the emerging and rapidly evolving markets for intraoral scanners and software solutions, including CAD/CAM. The global intraoral scanner market is very dynamic with participants spanning from traditional dental conglomerates to companies dedicated primarily to scanner development and sales with new entrants from South Korea and China playing larger roles. The iTero intraoral scanner competes with PVS impressions that doctors use for clear aligner therapy or other dental procedures, as well as other intraoral scanners. It also competes with traditional bite wing 2D dental x-rays for detecting interproximal caries. Information regarding risks associated with increased competition may be found in *Item 1A* of this Annual Report on Form 10-K under the heading “*Risk Factors*.”

We believe we are well positioned to compete in the markets we target. We have a dedicated, highly skilled sales force of over 4,000 employees who are focused on key demographics in our target markets that allow us to uniquely address customer needs and thereby enhance the customer experience. Our significant historical and ongoing investments in research and development and design around the movement of teeth, SmartTrack aligner materials and design, intraoral scanning, 3D manufacturing, global scale of manufacturing and treatment planning, strong brand name recognition, and an in depth understanding of the drivers and motivations within the orthodontic and GP dental markets are among a few of our key competitive factors that compare favorably with our competitors' products and services.

Government Regulation

Many countries throughout the world have established regulatory frameworks for commercialization of medical devices. As a designer, manufacturer, and marketer of medical devices, we are obligated to comply with the respective frameworks of these countries to obtain and maintain access to these global markets. The frameworks often define requirements for marketing authorizations which vary by country. Failure to obtain appropriate marketing authorization and to meet all local requirements, including specific quality and safety standards in any country in which we currently market our products, could cause commercial disruption and/or subject us to sanctions and fines. Delays in receipt of, or a failure to receive, such marketing

authorizations, or the loss of any previously received authorizations, could have a material adverse effect on our business, financial condition and results of operations.

With regards to premarket authorization in the U.S., many of our products are classified as medical devices under the U.S. Food, Drug, and Cosmetic Act (“FD&C Act”). The FD&C Act requires these products, when sold in the U.S., to be safe and effective for their intended use and to comply with medical device regulations defined by the FDA. The regulatory framework depends on a set of written processes for ensuring consistent quality called a Quality Management System (“QMS”) coupled with a product marketing authorization which depends on the risk classification of the product. This regulatory framework is comparable to the framework established in the European Union (“EU”). Within the EU, our products are subject to the requirements defined by the Medical Device Regulation EU 2017/745 which replaced the Medical Device Directive 93/42/EEC with a final transition date of May 26, 2021. Similar market access regulations exist in Brazil, China, Japan and other countries. Our QMS is routinely audited by certification bodies as well as country regulators for compliance with applicable regulations. We believe we are in compliance with all state, federal, and international regulatory requirements applicable to our products.

We are also subject to various laws around the world that govern interactions with our customers as healthcare professionals or government officials. The laws govern different interactions and may include: prohibiting improper influence of or payments to healthcare professionals and government officials; setting out rules for when and how to engage healthcare professionals as our vendors; requiring price reporting regulations; requiring marketing of our products within the regulatory approval (e.g., on label) promotion, sale and marketing of our products and services; the importing and exporting of our products; the operation of our facilities and distribution of our products; and disclosure of payments to healthcare professionals and entities. As we expand our operations footprint, countries to which we sell and invest in new business models, compliance with applicable laws becomes more complex and the general trend is toward increasingly stringent oversight and enforcement.

Initiatives sponsored by government agencies, legislative bodies, and the private sector to limit the growth of healthcare expenses generally are ongoing in markets where we do business. It is not possible to predict at this time the long-term impact of such cost containment measures on our future business.

Our customers are healthcare providers that may be reimbursed by state or federal funded programs such as Medicaid, a foreign national healthcare program, or private pay insurance, each of which may offer some degree of oversight. As we expand our customer base and product offering, it is increasingly possible that there will be new opportunities to seek reimbursement from public and private payors for services that include our products, and additional laws or regulatory enforcement requirements may apply now or in the future. Also, as a medical device manufacturer and seller, we are subject to transparency reporting laws (also known as sunshine laws) that in certain countries and U.S. States require us to report transfers of value to healthcare professionals that perform services or receive other items from us (e.g., meals, travel, branded promotional or educational items, or other benefits of value). Many government agencies, both domestic and foreign, have increased their mining of this data and have used this data to drive enforcement activities with respect to healthcare providers and companies in recent years. Enforcement actions and associated efforts to respond or defend against such actions can be expensive, and any resulting findings carry the risk of significant civil and criminal penalties.

In addition, we must comply with numerous data protection and data governance laws that now do or soon will regulate or restrict cross border data transfers, such as in the EU, Switzerland, U.S. Federal and States, Brazil, China, Japan, Korea, and other countries. In the U.S., we may be required to comply with final regulations implementing amendments to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the associated HIPAA Security Rule, and are in the same position as other companies working to ensure compliance with new State Privacy laws coming into effect in 2023, such as California, Virginia, Colorado and Connecticut. In the EU, we must comply with the General Data Protection Regulation, which serves as a harmonization of European data-privacy law and the Swiss Federal Act on Data Protection, where we have our EMEA headquarters. In LATAM markets, we must comply with Brazil's Lei Geral de Proteção de Dados.

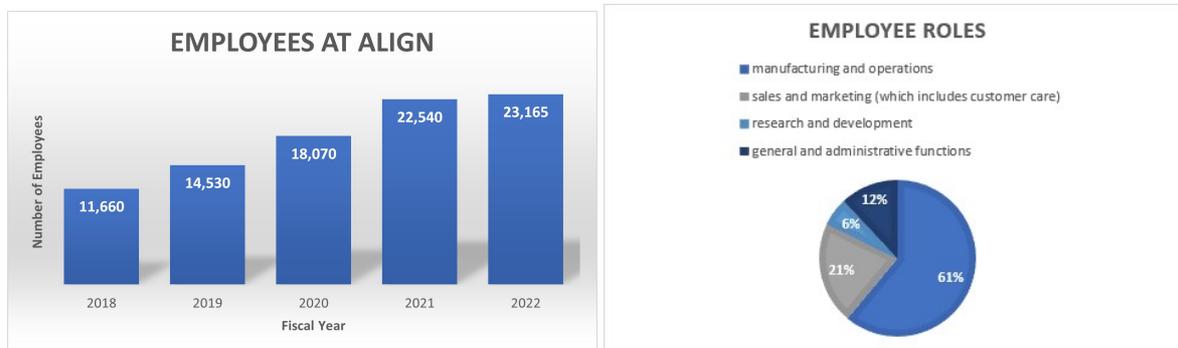
We also have cybersecurity policies to protect confidential personal information and confidential company information. We have internal monitoring and detection systems to safeguard against cyber attacks. We have implemented a security awareness and phishing program to educate our users about the importance of cybersecurity. We evaluate products to ensure compliance with cybersecurity regulations. We have established a business resiliency program and perform regular backups of our critical IT systems to protect against business interruption. In addition, we periodically scan our external environment for vulnerabilities, perform annual external penetration tests and engage an independent third party to assess effectiveness of our security practices for critical IT systems. We also have cybersecurity and other forms of insurance coverage related to a breach event covering expenses for notification, credit monitoring, investigation, crisis management, public relations and legal advice.

Information regarding risks associated with data security and privacy may be found in *Item 1A* of this Annual Report on Form 10-K under the heading “*Risk Factors.*”

Human Capital

We believe our culture and commitment to employees provide unique value that benefits Align, its stockholders and the communities and other stakeholders we serve. Every employee, and every job, is important to our success and helps us achieve our purpose of transforming smiles and changing lives. Align is committed to building a workforce of diverse cultural backgrounds and life experiences. Fostering a culture of dignity, integrity, open dialogue, open-mindedness, compassion, fairness, recognition, and shared goals allows us to attract and retain the best talent, which has ultimately led to the growth and success of our company.

As of December 31, 2022, we had approximately 23,165 employees, an increase of approximately 3% and 28% over December 31, 2021, and December 31, 2020, respectively. The number of employees for each of the last five years and our employees' roles as of December 31, 2022 are as follows:



We are a global organization with the majority of our employees in direct-labor roles in our manufacturing and clinical treatment planning facilities. Set forth in the following paragraphs are some of the most important elements of our culture and commitment to our employees.

Governance. Our commitment to improving the lives of our employees and the communities in which we live and work, including conducting our business ethically, responsibly and transparently through open and clear disclosures that allow us and others to hold us accountable, begins with our Board of Directors (“Board”) and management team. They set the tone for our organization by establishing and clearly communicating our core values of Agility, Customer and Accountability that inform our culture. Our Global Code of Conduct (“Code”) and quality policies are designed to enable us to operate with integrity and deliver superior treatment outcomes and experiences to patients. We seek to create an environment that values the health, safety and well-being of our teams, and we work to equip them with the knowledge and skills to serve our business and develop in their careers. We believe that by effectively managing our business with these values as the foundation, we will drive long-term value for our stockholders and all stakeholders.

As part of our Board’s commitment to our environmental, social and governance (“ESG”) efforts, the Board previously delegated ESG oversight responsibility to our Nominating and Governance Committee. The evolution of our ESG programs was furthered in 2022 when our Board amended the charter of our Compensation Committee to specifically include oversight responsibilities of all human capital management strategies, programs and policies in addition to its oversight of diversity, equity and inclusion initiatives. In doing so, the Board deemed it important to rename the committee to the Compensation and Human Capital Committee in recognition of its additional human capital management oversight responsibilities.

The Compensation and Human Capital Committee regularly reviews and discusses key performance indicators regarding employee and human capital that allow it to more fully monitor trends involving issues such as our total headcount, recruiting, attrition, career development, diversity, compensation, benefits, and other measures of employee engagement and interest to management and the committee.

Diversity. Fostering diversity and encouraging inclusion and belonging in the workplace makes Align a more welcoming and enjoyable place to work. Our products and services are used broadly across age groups, gender identities, races, ethnicities, and cultures, so we aim to build a workforce that optimally reflects this diversity. We believe our success continues to be driven by our focus on integrating and welcoming employees of all different backgrounds, orientations, beliefs, perspectives and capabilities into our workforce. Our approximately 23,165 employees bring a positive mix of ethnic and culturally diverse backgrounds to the more than 40 different countries in which we operate.



Our management team is comprised of diverse individuals from varying countries and nationalities and who are committed to promoting and encouraging the health and well-being of our employees at work, at home and in society in general. We were selected by Untapped, a diversity recruiting platform, for having one of the Top Internship Programs of 2022. Untapped created a list of 75 top programs at companies that provide quality internship experiences, career advancement opportunities, an inclusive and diverse work environment, and significant growth potential. We were recognized for focus and dedication to diversity, equality, inclusion, and belonging.

Our work culture is designed to create financial, health, career and personal benefits for our employees and organization. We sponsor diverse and cultural recognition events to increase awareness of inclusion and diversity, including its importance in creating an environment where every employee can thrive.

We also sponsor employee resource groups based on shared characteristics or life experiences which are open to all employees, including those who do not directly identify with other members but are passionate in supporting the group's members in creating an educated, supportive and inclusive culture.

Talent Recruitment and Engagement. We employ a variety of career development, employee benefits, compensation and other policies and programs designed to attract, develop, and retain employees. We focus on building a talent pipeline that nurtures those early in their careers, encourages continuous learning and growth, and incentivizes employees to stay and contribute to our success over the long term. Our programs include early recruitment at high schools and universities, initiatives such as internships, co-ops, apprenticeships, and training programs, quarterly performance management check-ins focused on individual goals and commitment to values and conducting regular employee surveys to build trust and strengthen relationships.

Our efforts have resulted in numerous awards for our positive work environment and culture. In 2022 alone, we were recognized by:

- Great Places to Work and Best Places to Work based on our employee-validated great workplaces in the following countries - Brazil, Costa Rica, Germany, India, Italy, Poland, Singapore, Taiwan, Thailand, Vietnam - as well as in Raleigh, North Carolina
- 100 Best Companies to Work for in Israel by CofaceBdi
- Computerworld Best Place to Work in IT, based on its survey of organizations across the U.S. to identify those that provide the best benefits and amenities for IT professionals
- AmCham Cares Distinction Award Recipient in Singapore based on our volunteer and fundraising campaigns

We believe it is imperative to provide a vibrant employee experience and we value our employees' collective voices. Accordingly, we conduct employee surveys to collect employee feedback critical to improving our culture. The process serves as a wellness check for us as the surveys cover a broad variety of topics including engagement, inclusion, development, leadership, compliance, alignment and enablement. Our response rates to our annual surveys are consistently high, reflecting strong engagement by our global employees. In 2022, our global employee participation was 89% of eligible employees. We have used information learned from our surveys to improve the way our employees experience us. Examples of the improvements we have made as a result of employee feedback include the design of our hybrid return to office approach, increased career development training opportunities, and a pilot program that allows CAD designers to learn new skills that provide potential pathways to software and operations engineering, cybersecurity and quality/regulatory engineering.

Training and Professional Development. Training is an integral part of developing and retaining our employees and creating a culture of leadership within the Company.

Training at Align begins with our Code and our strong commitment to ethical business practices in all aspects of our operations. Every employee and contractor is required to review the Code and confirm they understand it. We routinely reference the Code in presentations and as part of everyday operations.

As a further part of our standard onboarding program, we train employees on important environmental health and safety topics to protect them and our environment as we operate our business. As a general practice, employees are trained to perform their jobs in accordance with any and all applicable statutory and regulatory requirements and that training is routinely re-administered, updated and refreshed.

At Align, we believe employees learn best when skills development is driven by the changing and immediate needs of our employees and where all employees are empowered to take action and ownership of their careers. We also believe learning should be relevant and actionable as well as rooted in our purpose and values. Align University Online enables our global employee population to access a diverse portfolio of approximately one thousand self-directed courses in up to 80 languages. We also offer a full suite of custom leadership development programs, beginning with aspiring leaders, continuing with managers and directors, and culminating with executive development opportunities. In 2022, we introduced Voyage, Align's approach to career development encouraging employees to think differently about career growth by challenging them to be intentional in planning their development, learning from others, practicing reflection, and embracing a growth mindset. At the end of 2022, 65% of Align employees had completed at least one professional development opportunity.

Compensation and Benefits. Our commitment to our employees starts with benefit and compensation programs that reflect the value and the contributions our employees make. In addition to competitive base pay, we offer an assortment of benefits that vary by country, including performance-based variable compensation programs, health and welfare benefit plans, retirement planning services and benefits, holiday and leave policies, equity participation programs such as our Incentive Plan and Employee Stock Purchase Plan, and charitable and community service opportunities. Besides these, we also offer discounts to our employees and their dependents when they undergo Invisalign treatment.

We are furthermore committed to pay equity practices. We exceed minimum pay requirements for our manufacturing personnel and we regularly review our pay equity practices globally and locally so that we can appropriately address discrepancies.

Health, Wellness and Safety. Our employees are essential to us as a business and their health and well-being is critical to our success and their continuing achievements. Our objective is to prevent injuries and occupational diseases by focusing first and foremost on creating and maintaining environments that are safe. We therefore offer a wide variety of robust programs and initiatives designed to promote the overall health and welfare of all our employees and their families. It is our responsibility to support the health and well-being of our employees. Every year, we have a month dedicated to well-being, called Month of Wellness, which is a worldwide movement fostering employee health. Throughout the Month of Wellness, employees participate in a variety of activities such as informational sessions and health fairs and receive useful resources aligned to our wellness pillars - mental resilience, physical well-being and healthy living, social/family connections, and financial wellness. This provides employees with a variety of meaningful ways to embrace wellness and well-being through mindfulness, meditation, nutrition and mental wellness activities, exercise, hikes, yoga, volunteer activities, financial education sessions, social events and stress management.

We have environmental, health, safety and sustainability personnel who are responsible for ensuring health and safety programs and processes are maintained and effective at each of our locations. Major worksites, such as our aligner fabrication sites, and large offices have dedicated Environmental Health and Safety ("EHS") departments that ensure health and safety programs are maintained while contributing Best Management Practices ("BMP") and general input to corporate-wide programs. Each EHS department is responsible for ensuring all employees at their location are properly trained on various EHS topics and at the appropriate frequencies. A training suite is determined for each employee depending on their responsibilities and function modeled off of ISO 45001.

Community. We actively encourage employees to support local charitable organizations by providing opportunities for volunteerism, team building, and donation and matching programs. In 2022, our employees continued to make us proud through their generosity and dedication, especially during our annual Month of Smiles initiative in October where we encourage our employees to make a difference individually and as teams through volunteer activities, charitable donations, fundraising, and intentional acts of goodness. In addition, through our Align Foundation, we support organizations whose visions closely align with our mission to improve smiles, supporting and educating teens, and empowering our customers through partnerships with learning institutions and foundations. Below are some of our key community initiatives in 2022:

- In honor of our 25th anniversary, we donated \$250,000 to Junior Achievement Worldwide, an organization that delivers hands on, immersive learning in work readiness, financial health, entrepreneurship, sustainability, STEM, economics, and more. In addition, we held several volunteer activities with Junior Achievement.
- Since 2013 we have been a proud supporter of Operation Smile, a global medical nonprofit providing hundreds of thousands of free surgeries for people born with cleft lips and cleft palates in low- and middle-income countries. As of December 31, 2022, we had donated more than \$2.5 million to Operation Smile.
- For 15 years we have supported America's ToothFairy, an organization with a mission to ensure underserved children in the United States have access to dental care and learn about oral health by supporting nonprofit clinics and community partners. As of December 31, 2022, we have provided almost \$2 million for the foundation's operational expenses and children's oral health programs.

We also provide product donations to the dental community to help patients in need of healthy, beautiful smiles. For more information on our charitable and community efforts, please refer to the Corporate Social Responsibility portion of our corporate website located at https://www.aligntech.com/about/corporate_social_responsibility.

Available Information

Our corporate website is www.aligntech.com, and our investor relations website is <http://investor.aligntech.com>. The information on or accessible through our websites is not part of this Annual Report on Form 10-K. Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, our proxy statement on Schedule 14A for our annual stockholders' meeting and amendments to such reports are available, free of charge, on our investor relations website as soon as reasonably practicable after we electronically file or furnish such material with the SEC. Further, the SEC maintains an internet site that contains reports, proxy and information statements and other information regarding our filings at <http://www.sec.gov>.

Information about our Executive Officers

The following table sets forth certain information regarding our executive officers as of February 27, 2023:

Name	Age	Position	Period
 Joseph M. Hogan	65	<i>President and Chief Executive Officer of Align</i> <ul style="list-style-type: none"> • Chief Executive Officer of ABB • Chief Executive Officer of GE Healthcare 	2015-Present 2008-2013 2000-2008
 John F. Morici	56	<i>Chief Financial Officer and Executive Vice President, Global Finance of Align</i> <ul style="list-style-type: none"> • Chief Financial Officer and Senior Vice President, Global Finance of Align • Chief Financial Officer of Align • Executive Vice President and Managing Director of NBC Universal • Chief Financial Officer/Chief Operating Officer of NBC Universal • Senior Vice President and Chief Financial Officer of NBC Universal 	2022-Present 2018-2022 2016-2018 2014-2016 2011-2014 2007-2011
 Julie Coletti	55	<i>Executive Vice President, Chief Legal and Regulatory Officer of Align</i> <ul style="list-style-type: none"> • Senior Vice President, Chief Legal and Regulatory Officer of Align • Vice President, Associate General Counsel, Strategic Commercial Affairs of Align • Vice President, Global General Counsel and Chief Compliance Officer of Danaher • Vice President, Chief Legal Officer and Corporate Secretary of Bayer HealthCare's MEDRAD/Radiology and Interventional Division 	2022-Present 2019-2022 2018-2019 2013-2017 2007-2013
 Stuart Hockridge	51	<i>Executive Vice President, Global Human Resources of Align</i> <ul style="list-style-type: none"> • Senior Vice Present, Global Human Resources of Align • Vice President, Global Human Resources of Align • Vice President of Talent of Visa 	2022-Present 2018-2022 2016-2018 2013-2016
 Emory M. Wright	53	<i>Executive Vice President, Global Operations of Align</i> <ul style="list-style-type: none"> • Senior Vice President, Global Operations of Align • Vice President, Operations of Align • Various roles at Align including Vice President, Manufacturing 	2022-Present 2018-2022 2007-2018 2000-2007

Item 1A. Risk Factors.

The following discusses some of the risks that may affect our business, results of operations and financial condition. You should carefully review this section, as well as our consolidated financial statements and notes thereto and other information appearing in this Annual Report on Form 10-K, for important information regarding these and other risks that may affect us. The order we have chosen to list the risks below or the sections in which we have identified them should not be interpreted to mean we deem any risks to be more or less important or likely to occur or, if any do occur, that their impact may be any less significant than others. These risk factors should be considered in connection with evaluating the forward-looking statements contained in this report because they could cause our actual results and conditions to differ materially from those statements. Before you invest in Align, you should know that investing involves risks, including those described below. The risks below are not the only ones we face. If any of the risks actually occur, our business, financial condition and results of operations could be negatively affected, the trading price of our common stock could decline, and you may lose all or part of your investment.

Summary of Risk Factors

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

Macroeconomic and External Risks

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

Business and Industry Risks

- Changes in demand for our products
- Increased competition
- Failure of our new products, or changes to our existing products, to attract or retain consumers or generate revenue
- Our ability to successfully integrate our acquisitions

Operational Risks

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

Legal, Regulatory and Compliance Risks

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

Intellectual Property Risks

- Our ability to obtain, maintain, protect, and enforce our intellectual property rights

Financial, Tax and Accounting Risks

- Impairment of our goodwill
- Compliance with accounting, financial reporting, and tax laws
- Management of our stock plans
- Volatility of our stock

Macroeconomic and External Risks

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

Macroeconomic conditions impact consumer confidence and discretionary spending, which can adversely affect demand for our products. Consumer spending habits are affected by, among other things, inflation, fluctuations in currency exchange rates, weakness in general economic conditions, threats or actual recessions, pandemics, wars and military actions, levels of employment, wages, debt obligations, discretionary income, interest rates, volatility in capital, and consumer confidence and perceptions of current and future economic conditions. Changes and uncertainty can, among other things, reduce or shift spending away from elective treatments and procedures, drive patients to purchase orthodontic treatments that may cost less than our Invisalign treatment options, result in a decrease in the number of overall orthodontic and dental case starts, reduce patient traffic in dentists' offices or reduce demand for dental services generally. Further, decreased demand for dental services can cause dentists and labs to postpone investments in capital equipment, such as intraoral scanners and CAD/CAM equipment and software. The recent declines in, or uncertain economic outlooks for, the U.S., Chinese, European and certain other international economies has and may continue to adversely affect consumer and dental practice spending. The increase in the cost of fuel and energy, food and other essential items along with climbing interest rates could reduce consumers' disposable income, resulting in less discretionary spending for products like ours. Decreases in disposable income and discretionary spending or change in consumer confidence and spending habits has and may continue to adversely affect our revenues and operating results.

Inflation continues to adversely impact spending and trade activities and we are unable to predict the impacts of higher inflation on global and regional economies. Higher inflation has also increased domestic and international shipping costs, raw material prices, and labor rates, which could adversely impact the costs of producing, procuring and shipping our products. Our ability to recover these cost increases through price increases may continue to lag, resulting in downward pressure on our operating results. Attempts to offset cost increases with price increases may reduce sales, increase customer dissatisfaction or otherwise harm our reputation. Further, we are unable to predict the impact of efforts by central banks and federal, state and local governments to combat elevated levels of inflation. If their efforts to reduce inflation are too aggressive, they may lead to a recession. Alternatively, if they are insufficient or are not sustained long enough to lower inflation to more acceptable levels, consumer spending may be adversely impacted for a prolonged period of time. Any of these events could materially affect our business and operating results.

We have international operations and sales outside the U.S. We earn a large portion of our total revenues from international sales generated through our foreign direct and indirect operations and we expect to increase our sales and presence outside the U.S., particularly in markets we believe have high-growth potential. Moreover, we perform most of our key

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

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

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

COVID-19 has created significant, widespread and unprecedented volatility, uncertainty, and economic instability, disrupting broad aspects of global and regional economies, our operations and the businesses of our customers and suppliers. Many of these effects continue to varying degree as variants of COVID-19 and outbreaks globally or regionally continue to harm recovering consumer confidence. Therefore, comparing our financial results for the reporting periods of 2022 to the same reporting periods of 2021 or earlier may not be a useful means by which to evaluate the health of our business and our results of operations.

As a result of outbreaks of COVID-19 and its variants, customer demand and doctor availability has been inconsistent and difficult to predict. Although the practices of the doctors, dental service organizations and labs that are our principal customers have largely reopened following the initial outbreak of COVID-19 in 2020, many continue to operate at less than pre-pandemic capacities. For example, in China the impact of widespread population lockdowns under the country's zero tolerance policies was more pronounced in 2022, leading to the complete closure of dental offices in major metropolitan and other areas for extended periods of time. Conversely, the reversal of China's zero tolerance policies has resulted in a significant increase in infections that may impact consumer and doctor demand in 2023. These fluctuations are currently and have previously adversely impacted our results of operations and are expected to continue to impact our results, particularly in the near term.

The effects of the pandemic continue to linger and evolve and we cannot predict future direct and ancillary impacts on our business or results of operations, although they may be material to our business as well as the businesses of our customers, suppliers and economic activity generally.

The COVID-19 pandemic has impacted virtually all aspects of our business and society. It has exacerbated many pre-existing risks to our business by making them more likely to occur or more impactful when they do occur. Accordingly, you should consider the risks described in this risk factor in addition to, and not in lieu of, the risks described elsewhere throughout these risk factors.

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

Political events, trade and other international disputes, war, and terrorism could harm or disrupt international commerce and the global economy and could have a material effect on our business as well as our customers, suppliers, contract manufacturers, distributors, and other business partners.

Political events, trade and other international disputes, wars, and terrorism can lead to unexpected tariffs or trade restrictions, which could adversely impact our business. Tariffs increase the cost of our products and the components and raw materials to make them. These increased costs could adversely impact our gross margin and make our products less competitive or reduce demand. Countries could also adopt other measures, such as controls on imports or exports of goods, technology or data, that could adversely impact our operations and supply chain and limit our ability to offer products and services. These measures could require us to take various actions, including changing suppliers or restructuring business relationships. Complying with new or changed trade restrictions is expensive, time-consuming and disruptive to our operations. Such restrictions can be announced with little or no advance notice and we may be unable to effectively mitigate the adverse impacts

of such measures. If disputes and conflicts escalate in the future, actions by governments in response could be significantly more severe and restrictive and could materially affect our business.

Political unrest, threats, tensions, actions and responses to any social, economic, business, geopolitical, military, terrorism, or acts of war involving key commercial, development or manufacturing markets such as China, Mexico, Israel, Europe, or other countries could materially impact our international operation. For example, our employees in Israel could be obligated to perform annual reserve duty in the Israeli military and be called for additional active duty under emergency circumstances. If any of these events or conditions occur, the impact to us, our employees and customers is uncertain, particularly if emergency circumstances, armed conflicts or an escalation in political instability or violence disrupts our product development, data or information exchange, payroll or banking operations, product or materials shipping by us or our suppliers and other unanticipated business disruptions, interruptions and limitations in telecommunication services or critical systems or applications reliant on a stable and uninterrupted communications infrastructure.

The military conflict between Russia and Ukraine has materially adversely impacted global economies, and has materially impacted our global and regional operations. Governments including the U.S., United Kingdom, and those of the European Union have imposed export controls on certain products and financial and economic sanctions on certain industry sectors and parties in Russia which has triggered retaliatory sanctions by the Russian government and its allies. Our commercial operations have been impacted by the conflict and if we fail to support existing customers, we may frustrate those customers, harm our reputation, and be subject to regulatory action in Russia. Additionally, a majority of our research and development personnel in Russia relocated to locations outside of Russia in 2022. Whether they remain in their new locations over the long-term remains unknown. If we are unable to retain key skilled personnel from where they have relocated, or we are unable to quickly replace such personnel with individuals of equivalent technical expertise and qualifications, our business and financial condition could be materially effected.

The outcome and future impacts of the Russia and Ukraine conflict remain highly uncertain, continue to evolve and may grow more severe the longer the military action and sanctions remain in effect. Moreover, this conflict and existing and future sanctions may have broad and pervasive impacts to the global and regional economies and our operations, heightening and affecting many of the other risks described elsewhere throughout these risk factors, any of which could materially and adversely affect our business and results of operations. Such risks include adverse effects on general economic and political conditions such as inflation, supply chain and trade disruptions, and reduced consumer spending; disruptions to our IT systems, including through network failures, malicious or disruptive software, or cyberattacks; energy shortages or rationing that may adversely impact our manufacturing facilities; rising fuel and/or rising costs of producing, procuring and shipping our products; our exposure to foreign currency exchange rate fluctuations; and constraints, volatility or disruption in the financial markets. We may not be successful in our efforts to mitigate the negative impacts of the conflict, particularly the longer sanctions and retaliatory sanctions remain in effect. How we respond to the conflict may also subject us to risk. The resumption of sales in Russia or our decision to continue supporting our personnel and existing customers in Russia may result in reputational harm or boycotts of our products that could impact our sales and operations inside and outside of Russia or subject us to litigation for which we may be found liable in courts or other tribunals in Russia or elsewhere. Moreover, production could be impaired should hostilities spread to other countries such as Poland, where our newest aligner fabrication facility is located.

We have no way to predict the progress or outcome of the conflict in Ukraine or the reactions by governments, businesses or consumers. A prolonged conflict, intensified military activities or more extensive sanctions impacting the region and the resulting economic impact could have a material effect on our business, results of operations, financial condition, liquidity, growth prospects and business outlook.

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

Natural disasters can impact us and our customers, as well as suppliers critical to our operations. Natural disasters include earthquakes, tsunamis, floods, droughts, hurricanes, wildfires, and other extreme weather conditions that can cause deaths, injuries, and critical health crises, power outages, restrictions and shortages of food, water, shelter, and medical supplies, telecommunications failures, materials scarcity, price volatility and other ramifications. Climate change is likely to increase both the frequency and severity of natural disasters and, consequently, risks to our business and operations. Our digital dental modeling and certain of our customer facing operations are primarily processed in our facilities located in Costa Rica. Our aligner molds and finished aligners are fabricated in China, Mexico and Poland. Our locations in Costa Rica and Mexico as well as others are in earthquake and hurricane zones and may be subject to other natural disasters. Moreover, a significant portion of our research and development activities are located in California, which suffers from earthquakes, periodic droughts, heat waves, flooding, power shortages and wildfires. If there is a natural disaster in a region where one of these facilities is located, our employees could be impacted, our research could be lost, and our ability to create ClinCheck treatment plans, respond to customer inquiries or manufacture and ship our aligners or intraoral scanners could be compromised which could result in our customers experiencing significant product and services delays.

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

Business and Industry Risks

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

Invisalign treatment represents a significant change from traditional metal wires and brackets orthodontic treatment, and customers and consumers may not find it cost-effective or preferable to traditional treatment. For instance, a number of dental professionals continue to believe the Invisalign treatment is appropriate for only a limited percentage of patients. Increased market acceptance of our products depends in part upon the recommendations of dental professionals, as well as other factors including efficacy, safety, ease of use, reliability, aesthetics, and price compared to competing products and treatment methods. If demand for our products fails to increase, including due to resistance to nontraditional treatment methods, this could materially affect our business and operating results.

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

Our net revenues remain largely dependent on sales of our Invisalign system of clear aligners and iTero intraoral scanners. Of the two, we expect net revenues from the sale of the Invisalign system, primarily our comprehensive products, will continue to account for the majority of our net revenues, making the continued and widespread acceptance of the Invisalign system by orthodontists, GPs and consumers critical to our future success. Our iTero business also contributes a material percentage of our overall net revenues. Our CAD/CAM software solutions are important to the continuing evolution of our Align Digital Platform and our business overall. Our operating results could be harmed if:

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

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

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

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

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

The dental industry is in a period of immense and rapid digital transformation involving products, technologies, distribution channels and business models. While solutions such as our Invisalign system, iTero scanners and CAD/CAM

software facilitate this transition, whether our technologies will achieve market acceptance and, if adopted, whether and when they may become obsolete, remains unclear.

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

The manipulation and movement of teeth and bone is a complex and delicate process with potentially painful and debilitating results if improperly performed or monitored. Accordingly, we deliver our Invisalign system solutions primarily through trained and skilled doctors. The Invisalign system requires a doctor's prescription and an in-person physical examination of the patient's dentition before beginning treatment; however, with the advent of DTC providers, there has been a shift away from traditional dental practices that may impact our primary selling channels. Doctors and DSOs are sampling alternative products and taking advantage of competitive promotions and sale opportunities. In addition, we face competition from companies that introduce new technologies and we may be unable to compete with these competitors or they may render our technology obsolete or economically unattractive. If we are unable to compete effectively with existing products or respond effectively to any new technologies, our business could be harmed.

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

To stimulate product and services demand, we have a history of offering volume discounts, price reductions and other promotions to targeted customers and consumers. Whether or not successful, these promotional campaigns have had and may in the future have unexpected and unintended consequences, including reduced gross margins, profitability and average selling prices, net revenues, volume growth, and net income.

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

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

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

- successfully predict and timely innovate and develop new technologies and applications with the features and functionality customers desire or expect;
- successfully and timely obtain regulatory approval or clearance of new and improved products or services from government agencies such as the FDA and analogous agencies in other countries;
- cost-effectively and efficiently develop, manufacture, quality test, dispose of, and sell new or improved products and services offerings;
- properly forecast the amount and timing of new or improved product and services demand;
- allocate our research and development funding to products and services with higher growth prospects;
- ensure compatibility of our technology, services and systems with those of our customers;
- anticipate and rapidly innovate in response to new competitive products and services offerings and technologies;
- differentiate our products and product offerings from our competitors as well as other products in our own portfolio and successfully articulate the benefits to our customers;

- cost effectively manage any increased expense of developing, testing, manufacturing and marketing localized versions of our products internationally;
- manage the impact of nationalism or initiatives to encourage the purchase or support of domestic vendors, which can influence customers not to purchase products from, or collaborate to promote interoperability of products with foreign companies;
- qualify for third-party reimbursement for procedures involving our products; and
- encourage customers to adopt new technologies and provide the needed technical, sales and marketing support to make new product and services launches successful.

If we fail to accurately predict customer needs and preferences or fail to produce viable technologies, we may invest heavily in research and development that does not lead to significant revenues. Even if we successfully innovate and develop new products and product improvements, we may incur substantial costs doing so and our profitability may suffer. It may be difficult to gain market share and acceptance for new or improved products. Introduction and acceptance of any products and services may take significant time and effort, particularly if they require doctor education and training to understand their benefits or doctors choose to withhold judgment on a product until patients complete their treatments. For instance, it can take up to 24 months or longer to complete treatment using our Invisalign system.

In addition, we periodically introduce new business and sales initiatives to meet customers' needs and demands. In general, our internal resources support these initiatives without clear indications they will prove successful or be without short-term execution challenges. Should these initiatives be unsuccessful, our business, results of operations and financial condition could be materially impacted.

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

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

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

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

Moreover, opposition to one or more acquisitions could lead to negative ratings by analysts or investors, give rise to objections by one or more stockholders or result in stockholder activism, any of which could harm our stock price.

Operational Risks

Business disruptions could seriously harm our financial condition.

Our global operations have been disrupted in the past and will likely be disrupted and harmed again in the future. The occurrence of any material or prolonged business disruptions, whether internal or at key suppliers, could harm our business and results of operations, result in material losses, seriously harm our revenues, profitability and financial condition, adversely affect our competitive position, increase our costs and expenses, and require substantial expenditures and recovery time in order to fully resume operations.

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

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

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

- higher manufacturing, delivery and inventory costs;
- the creditworthiness, liquidity and solvency of our customers and their ability to timely make payments when due;
- changes in the timing of revenue recognition and changes in our average selling prices, including as a result of the timing of receipt of product orders and shipments, product and services mix, geographic mix, product and services deferrals, the introduction of new products and software releases, product pricing, bundling and promotions, pricing for fees or expenses, modifications to our terms and conditions such as payment terms, or as a result of new accounting pronouncements or changes to critical accounting estimates including, without limitation, estimates based on matters such as our predicted usage of additional aligners;
- seasonal fluctuations, including those related to patient demographics or seasonality as well as the availability of doctors to take appointments;
- longer customer payment cycles and greater difficulty in accounts receivable collection for our international sales;
- costs and expenditures, including connection with the establishment of new treatment planning and fabrication facilities, the hiring and deployment of personnel, litigation, and the success of or changes to our marketing programs from quarter to quarter; and
- timing and fluctuation of spending around marketing and brand awareness campaigns and industry trade shows.

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

Conversely, if we overestimate customer demand, we may lose opportunities to increase revenues and profits, we may have excessive staffing, materials, components and finished products, or capacity. If we hire and train too many technicians in anticipation of demand that does not materialize or materializes slower than anticipated, our costs and expenditures may outpace our revenues or revenue growth, harming our gross margin and financial results. Additionally, in order to secure supplies for production of products, we sometimes enter into non-cancelable minimum purchase commitments with vendors, which could impact our ability to adjust our inventory to reflect declining market demands. If product demand decreases or increases more than forecast, we may be required to purchase or lease additional or larger facilities and additional equipment, or we may be unable to fulfill customer demand in the time frames and with the quantities required, any of which may take time to

accomplish, lower our gross margin, inhibit sales or harm our reputation. Production of our Invisalign clear aligners and iTero intraoral scanners are also limited by capacity constraints due to a variety of factors, including labor shortages, shipping delays, our dependency on third-party vendors for key materials, parts, components and equipment, and limited production yields. Any or all of these problems could result in the loss of customers, provide an opportunity for competing products to gain market acceptance and otherwise harm our business and financial results and those of our business partners.

Improvements to or changes in our products may affect the demand and make demand less predictable. We routinely review inventory for usage potential, including fulfillment of customer warranty obligations and spare part requirements, and we write down to the lower of cost or net realized value the excess and obsolete inventory, which may materially affect our results of operations. For instance, periodically we announce new products, capabilities, or technologies that replace or shorten the life cycles of legacy products or cause customers to defer or stop purchasing legacy products until new products become available. These risks increase the difficulty of accurately forecasting demand for discontinued and new products as well as the likelihood of inventory obsolescence, loss of revenue and associated gross profit.

We may make business decisions that adversely affect our operating results such as modifications to our pricing policies and payment terms, promotions, development efforts, product releases, business structure or operations. Most of our expenses, such as employee compensation and lease obligations, are relatively fixed in the short term. Moreover, our expense levels are based, in part, on our expectations for future revenues. As a result, if our net revenues for a particular period are below expectations, we may be unable to timely or effectively reduce spending to offset any net revenues shortfall.

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

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

Additionally, we have established treatment planning and manufacturing facilities closer to our international customers to provide them with better experiences, improve their confidence using our products to treat patients, create efficiencies, and provide redundancy should other facilities be temporarily or permanently unavailable. Our ability to obtain and maintain regulatory clearance and certifications and equip facilities is subject to significant risk and uncertainty. If a facility is temporarily or permanently, partially or fully shut down, or if demand for our products outpaces our ability to hire qualified personnel and effectively implement systems and infrastructure, we may be unable to fulfill orders timely, or at all, which may negatively impact our financial results, reputation and overall business.

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

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

We have a complex, global iTero intraoral scanner installed base of older and newer models. These models are continually updated to add, expand or improve on existing or new features with hardware improvements, improvements to third party

components, or part repair or replacement. We have experienced hardware issues in the past and may in the future, including issues relating to manufacturing, design, quality, or safety, of which we become aware only after products or changes have been introduced into the market. We also have not been and may not be able to ensure that third party components or any changes to the foregoing will not be incompatible with, or have a negative impact on the functionality of our iTero intraoral scanners. As a result, there have been and may be widespread failures of our iTero intraoral scanners or we may experience epidemic failures of our iTero intraoral scanner to perform as anticipated. Previously, we have not been and in the future may not be prepared for, or have the infrastructure to, timely and adequately remediate or implement corrective measures for such failures, including due to our dependency on third party providers or suppliers. As a consequence, remediation has been and may be in the future time-consuming and difficult to achieve, which may materially impact our customers and our business partners, damage our reputation and result in lost business and revenue opportunities, and could be materially costly.

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

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

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

We are highly dependent on our supply chain, particularly manufacturers of specialized scanning equipment, rapid prototyping machines, resin and other advanced materials, as well as the optics, electronic and other mechanical components of our intraoral scanners. We maintain single supply relationships for many of these machines and materials. In particular, our CT scanning and stereolithography equipment used in our aligner manufacturing and many of the critical components for the optics of our scanners are provided by single suppliers. We rely on a single third-party manufacturer to supply key sub-assemblies for our iTero Element scanner. We purchase the vast majority of our resin and polymer, the primary raw materials used in our manufacturing process for clear aligners, from a single source. By using single suppliers for materials and manufacturing in a limited number of locations, we risk multiple supply chain vulnerabilities. For example, damage to or destruction of a facility can materially disrupt our ability to timely deliver key parts, components and materials or products or a supplier could encounter financial, operating or other difficulties, be unable to hire or maintain personnel, fail to timely obtain supplies, fail to maintain manufacturing standards or controls. To the extent any of our suppliers or others' suppliers in our supply chain are dependent on raw materials, components or other parts from Russia or Ukraine, the foregoing risks may be more likely to occur as a result of the military conflict in Ukraine. Any one of these occurrences would adversely impact our supply chain.

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

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

In addition to our direct sales force, we have and expect to continue to use distributors to import, market, sell, service and support our products. Our agreements with these distributors are generally non-exclusive and terminable by either party with little notice. If alternative distributors must be quickly found and trained in the use, marketing, sales and support of our products and services, our revenues and ability to sell or service our products in markets key to our business could be adversely affected. These distributors may also choose to sell alternative or competing products or services. In addition, we may be held responsible for the actions of these distributors and their employees and agents for compliance with laws and regulations, including fair competition, bribery and corruption, trade compliance, safety, data privacy and marketing and sales activities. A distributor may also affect our ability to effectively market our products in certain foreign countries or regulatory jurisdictions if it holds the regulatory authorization in such countries or within such regions and causes, by action or inaction, the suspension of such marketing authorization or sanctions for non-compliance or prevents us from taking control of any such authorization. It may be difficult, expensive, and time-consuming for us to re-establish market access or regulatory compliance.

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

We are dependent on commercial freight carriers, primarily UPS, to deliver our products. If the operations of carriers are disrupted, we may be unable to timely deliver our products to our customers who may choose alternative products which could cause our net revenues and gross margin to materially decline. For example, after Russia's military attacks in Ukraine in 2022, UPS ceased shipments to Russia and we suspended new product sales there. Moreover, when fuel costs increase, our freight costs generally do so as well. In 2022, due to increased fuel costs, we experienced a material increase in freight costs. In addition, we earn an increasingly larger portion of our total revenues from international sales, which carry higher shipping costs that could negatively impact our gross margin and results of operations. If freight costs materially increase and we are unable to successfully pass all or significant portions of the increases along to our customers, or we cannot otherwise offset such increases in our cost of net revenues, our gross margin and financial results could be materially affected.

Our success depends largely on the talents and efforts of our personnel, and if we are unable to attract, motivate, train or retain our personnel, it may be more difficult to grow effectively and pursue our strategic priorities, and could materially effect on our results of operations.

We are highly dependent on the talent and effort of our personnel, including highly skilled personnel like orthodontists and production technicians in our treatment planning facilities, and employees on our clinical engineering, technology development and sales teams. As a result, we strive to retain our personnel, by providing competitive compensation and benefits, development opportunities and training, flexible work options, and an inclusive corporate culture. However, there is substantial competition in our industry for highly-skilled personnel, in particular significantly higher demand for technical and digital talent. Furthermore, our compensation and benefit arrangements, such as our equity award programs, may not always be successful in attracting new employees and retaining and motivating existing employees. In addition, other internal and external factors can impact our ability to hire and retain talent, including insufficient advancement or career opportunities and restrictive immigration policies. The loss of any of our key personnel, particularly executive management, key research and development personnel or key sales team personnel, could harm our business and prospects and could impede the achievement of our research and development, operational or strategic objectives.

We provide significant training to our personnel and our business will be impacted if our training fails to properly prepare our personnel to perform the work required, we are unable to successfully instill technical expertise in new and existing personnel or if our techniques prove unsuccessful or not cost-effective. Moreover, for certain roles, this training and experience can make key personnel, such as our sales personnel, highly desirable to competitors and lead to increased attrition. The loss of the services and knowledge from our highly-skilled employees may significantly delay or prevent the achievement of our development and business objectives and could harm our business. For example, it can take up to twelve months or more to train sales representatives to successfully market and sell our products and for them to establish strong customer relationships.

Additionally, facilitating seamless leadership transitions for key positions is a critical factor in sustaining the culture and maintaining the success of our organization. If our succession planning efforts are not effective, it could adversely impact our business. We continue to assess the key personnel that we believe are essential to our long-term success, as future organizational changes could also cause our employee attrition rate to increase. If we fail to effectively manage any organizational or strategic changes, our financial condition, results of operations, and reputation, as well as our ability to successfully attract, motivate and retain key employees, could be harmed.

In 2022, we gradually reopened many of our offices that had been substantially closed to employees during the COVID-19 pandemic. Where our offices have reopened, we have adopted a hybrid work schedule that allows many of our employees the opportunity to collaborate and connect with others in our offices for some days of the week while having the

option to work remotely other days. This hybrid work approach that we have adopted may materially increase our costs or create unforeseen challenges or complications, including:

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

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

We are dependent on our marketing activities to deepen our market penetration and raise awareness of our brand and products, which may not prove successful or may become less effective or more costly to maintain in the long term.

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

In addition, various countries prohibit certain types of marketing activities. For example, some countries restrict direct to consumer advertising of medical devices. We could run afoul of restrictions and be ordered to stop certain marketing activities. Moreover, competitors do not always follow these restrictions, creating an unfair advantage and making it more difficult and costly for us to compete.

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

Legal, Regulatory and Compliance Risks

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

We are and may be in the future subject to antitrust or competition related investigations, enforcement actions, and settlements, by governmental agencies, competitors, consumers, customers, and others which could cause us to incur substantial costs or require us to change our business practices in a manner materially adverse to our business. Governments, enforcement

authorities and other legislative bodies are actively developing new competition laws and regulations aimed at the technology sector, artificial intelligence and digital platforms, coordinating globally, and enforcing competition laws and regulations, and this includes scrutiny in potentially large markets such as the EU, U.S., and China. Government regulatory actions and court decisions may result in fines or hinder our ability to provide certain benefits to our consumers, reducing the attractiveness of our products and the revenue that comes from them. Other companies and government agencies have in the past and may in the future allege that our actions violate the antitrust or competition laws or otherwise constitute unfair competition. Such claims and investigations, even if without foundation, may be very expensive to defend, involve negative publicity and substantial diversion of management time and effort and could result in significant judgments against us or require us to change our business practices, any of which may materially impact our results of operations.

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

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

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

The healthcare and technology markets are also highly regulated and subject to changing political, economic and regulatory influences. Global regulators are expanding and changing the regulations and guidance for products, which can limit the potential benefits of products and result in protracted review timelines for new product introductions. We are also incorporating artificial intelligence into our software to make it more effective for us, our customers, suppliers and consumers; however, this subjects us to risks of compliance with the expanding and changing regulations regarding the use of artificial intelligence. Our critical vendors and service providers are similarly subject to various regulations. Our failure or the failure of our suppliers, customers, advertisers and influencers to strictly adhere to clearances or approvals in the labeling, marketing and sales of our products and services could subject us to claims or litigation, including actions alleging false or misleading advertising or other violations of laws or regulations, which may result in costly investigations, fines, penalties, as well as material judgments, settlements or decrees. We are also subject to complex and changing environmental and health and safety regulations. Additionally, a large portion of our revenues are derived from international sales and we are dependent on our international operations, which exposes us to additional foreign regulations not otherwise described herein, including without limitation, pricing regulations imposed by governments like the volume-based procurement regulations in China. There can be no assurance that we will adequately address the business risks associated with the implementation and compliance with such laws and our internal processes and procedures to comply with such laws or that we will be able to take advantage of any resulting business opportunities.

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

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

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

In addition, while we have policies requiring our personnel to comply with applicable laws and regulations and we provide significant training to foster compliance, they may not properly adhere to our policies or applicable laws or regulations, including such as our policies on the use of certain electronic communications and maintaining accurate books and records. If our personnel or the personnel of our agents or suppliers fail to comply with any laws, regulations, policies or procedures, or we fail to audit and enforce compliance, it could subject us to harm to our reputation, loss of customers, loss of revenues, or regulatory investigations, actions and fines.

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

We retain confidential customer personal and financial, patient health information and our own proprietary information and data essential to our business operations. We rely upon the effective operation of our IT systems, and those of our service providers, vendors, and other third parties to safeguard the information and data. Additionally, our success may be dependent on the success of healthcare providers, many of whom are comprised of individual or small operations with limited IT experience and inadequate or untested security protocols, in managing data privacy and data security requirements. It is critical that the facilities, infrastructure and IT systems on which we depend to run our business and the products we develop remain secure and be perceived by the marketplace and our customers to be secure. Despite the implementation of security features in our products and security measures in our IT systems, we and our service providers, vendors, and other third parties continue to be targeted by or subject to physical break-ins, computer viruses or other malicious code, unauthorized or fraudulent access, programming errors or other technical malfunctions, hacking or phishing attacks, malware, ransomware, employee error or malfeasance, cyber attacks, and other breaches of IT systems or similar disruptive actions, including by organized groups and nation-state actors. For example, we have experienced, and may again experience in the future, cybersecurity incidents and unauthorized internal employee exfiltration of company information.

Further, the frequency of third-party cyber-attacks has increased over the last several years. The military conflict in Ukraine may cause nation-state actors or hackers sympathetic to either side of the conflict to carry out cyber-attacks to achieve their goals, which may include espionage, information gathering operations, monetary gain, ransomware, disruption, and destruction. To respond to potential increases in cyber-attacks, in 2022, we increased efforts to identify and respond to any attacks, including placing our cybersecurity operations team on high alert. Significant service disruptions, breaches in our infrastructure and IT systems or other cybersecurity incidents could expose us to litigation or regulatory investigations, impair our reputation and competitive position, be distracting to our management, and require significant time and resources to address. Affected parties or regulatory agencies could initiate legal or regulatory action against us, which could prevent us from resolving the issues quickly or force us to resolve them in unanticipated ways, cause us to incur significant expense and liability, or result in judicial or governmental orders forcing us to cease operations or modify our business practices in ways that could materially limit or restrict the products and services we provide. Concerns over our privacy practices could adversely affect others’ perception of us and deter customers, patients and partners from using our products. In addition, patient care could suffer, and we could be liable if our products or IT systems fail to deliver accurate and complete information in a timely manner. We have internal monitoring and detection systems as well as cybersecurity and other forms of insurance coverage related to a breach event covering expenses for notification, credit monitoring, investigation, crisis management, public relations and legal advice. However, damages and claims arising from such incidents may not be covered or may exceed the amount of any coverage and do not cover the time and effort we may incur investigating and responding to any incidents, which may be material. The costs to eliminate, mitigate or recover from security problems and cyber attacks and incidents could be material and depending on the nature and extent of the problem and the networks or products impacted, may result in network or systems interruptions, decreased product sales, or data loss that may have a material impact on our operations, net revenues and operating results.

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

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

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

Our products and services involve an inherent risk of claims concerning their design, manufacture, safety and performance, how they are marketed and advertised in a complex framework of highly regulated domestic and international laws and regulations, how we package, bundle or sell them to customers who may be private individuals or companies or public entities such as hospitals and clinics and how we train and support doctors, their staffs and patients who administer or use our products. Moreover, consumer products and services are routinely subject to claims of false, deceptive or misleading advertising, consumer fraud and unfair business practices. Additionally, we may be held liable if any product we develop or manufacture or services we offer or perform causes injury or is otherwise found unhealthy. If our products are safe but they are promoted for use or used in unintended or unexpected ways or for which we have not obtained clearance or approvals (“off-label” usage), we may be investigated, fined or have our products or services enjoined or approvals rescinded or we may be required to defend ourselves in litigation. Although we maintain insurance for product liability, business practices and other types of activities we make or offer, coverage may not be available on acceptable terms, if at all, and may be insufficient for actual liabilities. Any claim for product liability, sales, advertising and business practices, regardless of its merit or eventual outcome, could result in material legal defense costs and damage our reputation, increase our expenses and divert management’s attention.

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

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

Environmental regulations related to greenhouse gases are expected to have an increasingly larger impact on our or our suppliers’ energy sources. Many U.S. and foreign regulators have enacted or are considering enacting new or additional disclosure requirements or limits on the emissions of greenhouse gases, including, but not limited to, carbon dioxide and methane, from power generation units using fossil fuels. The effects of greenhouse gas emission limits on power generation are subject to significant uncertainties, including the timing of any new requirements, levels of emissions reductions and the scope and types of emissions regulated. These limits may have the effect of increasing our costs and those of our suppliers and could result in manufacturing, transportation and supply chain disruptions and delays if clean energy alternatives are not readily available in adequate amounts when required. Moreover, alternative energy sources, coupled with reduced investments in traditional energy sources and infrastructure, may fail to provide the predictable, reliable, and consistent energy that we, our suppliers and other businesses need for operations.

Regulations related to sourcing of certain metals may have an impact on our business. For instance, the sourcing and availability of metals that may be used in the manufacture of, or contained in, our products may be affected by laws and regulations regarding the use of minerals obtained from certain regions of the world like the Democratic Republic of Congo and adjoining countries. Although we do not believe that we or our suppliers source minerals from this region, these laws and regulations may decrease the number of suppliers capable of supplying our needs for certain metals, thereby negatively affecting our ability to manufacture products in sufficient quantities or at competitive prices, leading customers to potentially choose competitive goods and services.

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

Investor advocacy groups, institutional investors, investment funds, proxy advisory services, stockholders, and customers are also increasingly focused on corporate ESG practices. Additionally, public interest and legislative pressure related to public companies' ESG practices continues to grow. If our ESG practices fail to meet investor or other industry stakeholders' evolving expectations and standards, including environmental stewardship, support for local communities, board of director and employee diversity, human capital management, employee health and safety practices, product quality, supply chain management, corporate governance and transparency and employing ESG strategies in our operations, our brand, reputation and employee retention may be negatively impacted, customers and suppliers may be unwilling to do business with us and investors may be unwilling to invest in us. In addition, as we work to align our ESG practices with industry standards, we have expanded and will likely continue to expand our disclosures in these areas. We also expect to incur additional costs and require additional resources to monitor, report, and comply with our various ESG practices. If we fail to adopt ESG standards or practices as quickly as stakeholders desire, report on our ESG efforts or practices accurately, or satisfy the disclosure and other expectations of stakeholders, our reputation, business, financial performance, growth, and stock price may be adversely impacted.

Intellectual Property Risks

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

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

We rely on our portfolio of issued and pending patent applications in the U.S. and other countries to protect a large part of our IP and our competitive position; however, these patents may be insufficient to protect our IP rights because our patents 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 and foreign patents protections may be more limited than those provided under U.S. patents and IP laws. Additionally, international IP rights laws are typically less protective than the protections afforded under the laws of the U.S.

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

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

Our inability to maintain the proprietary nature of our technology through patents, copyrights or trade secrets would impair our competitive advantages and could have a material effect on our operating results, financial condition and future growth prospects. In particular, a failure to protect our IP rights might allow competitors to copy our technology or create counterfeit or pirated versions of our products, which could adversely affect our reputation, pricing and market share.

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

Extensive litigation over patents and other IP rights is common in medical device, optical scanner, 3D printing and other technologies and industries on which our products and services are based. Litigation, interferences, oppositions, re-exams, *inter partes* reviews, post grant reviews or other proceedings have been necessary and will likely be needed in the future to determine the validity and scope of certain of our IP rights and the IP rights claimed by third parties. These proceedings are used to determine the validity, scope or non-infringement of certain patent rights pertinent to the manufacture, use or sale of our products and the products of competitors. We have been sued for infringement of third parties' patents in the past and we are currently defending patent infringement lawsuits and other legal claims. In addition, we periodically receive letters from third parties drawing our attention to their IP rights and there may be other third-party IP rights of which we are presently unaware. Asserting or defending these types of proceedings can be unpredictable, protracted, time-consuming, expensive and distracting to management and technical personnel. Their outcomes could adversely affect the validity and scope of our patent or other IP rights, hinder our ability to manufacture and market our products, require us to seek a license for infringing products or technologies or result in the assessment of significant monetary damages. An unfavorable ruling could include monetary damages, an injunction prohibiting us from selling our products, or an exclusion order preventing us from importing our products in one or more countries. Moreover, independent actions by competitors, customers or others have been brought alleging that our efforts to enforce our patent or other IP rights constitute unfair competition or violations of antitrust laws in the U.S. and other jurisdictions and investigations and additional litigation based on the same or similar claims may be brought in the future. The potential effects on our business operations resulting from litigation, whether or not ultimately determined in our favor or settled by us, are costly and could materially affect our results of operations and reputation.

Financial, Tax and Accounting Risks

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

Under U.S. Generally Accepted Accounting Practices ("GAAP"), we review our goodwill and long-lived asset group for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. Additionally, goodwill must be tested for impairment at least annually. The qualitative and quantitative analysis used to test goodwill are dependent upon various assumptions and reflect management's best estimates. Changes in certain assumptions, including revenue growth rates, discount rates, earnings multiples and future cash flows may cause a change in circumstances indicating that the carrying value of goodwill or the asset group may be impaired and assessing these assumptions and predicting and forecasting future events can be difficult. Goodwill and purchased assets require periodic fair value assessments to determine if they have become impaired. Consequently, we may be required to record a material charge to earnings in the financial statements during the period in which any impairment of goodwill or long-lived asset group is determined.

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

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

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

We are required to furnish in our Form 10-K a report by our management regarding the effectiveness of our internal control over financial reporting that includes, among other things, an assessment of the effectiveness of our internal control over financial reporting as of the end of our fiscal year, including a statement as to whether our internal control over financial reporting is effective. Our internal controls may become inadequate because of changes in personnel, updates and upgrades to existing software, failure to maintain accurate books and records, changes in accounting standards or interpretations of existing standards, and, as a result, the degree of compliance of our internal control over financial reporting with the existing policies or procedures may become ineffective. Establishing, testing and maintaining an effective system of internal control over financial reporting requires significant resources and time commitments on the part of our management and our finance staff, may require additional staffing and infrastructure investments and increases our costs of doing business. If we are unable to assert that our internal control over financial reporting is effective in any future period (or if our auditors are unable to express an opinion on the effectiveness of our internal controls or conclude that our internal controls are ineffective), the timely filing of our financial reports could be delayed or we could be required to restate past reports, and cause us to lose investor confidence in the accuracy and completeness of our financial reports in the future, which could have an adverse effect on our stock price.

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

A majority of our marketable investments are investment grade, liquid, fixed-income securities and money market instruments denominated in U.S. dollars. If the carrying value of an investment exceeds the fair value, and the decline in fair value is deemed to be other-than-temporary, we are required to write down the value of the investment, which could materially harm our results of operations and financial condition. Moreover, the performance of certain securities in our investment

portfolio correlates with the credit condition of the U.S. financial sector. In an unstable credit or economic environment, it is necessary to assess the value of our investments more frequently and we might incur material realized, unrealized or impairment losses associated with these investments.

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

Align operates globally and is subject to taxes in the U.S. and foreign countries. Various internal and external factors may affect our future effective tax rate. These factors include changes in the global economic environment, changes in our legal entity structure or activities performed within our entities, changes in our business operations, changes in tax laws, regulations and/or rates, new or changes to accounting pronouncements, changing interpretations of existing tax laws or regulations, changes in relative proportions of revenues and income before taxes in the various jurisdictions in which we operate that have differing statutory tax rates, changes in overall levels of pretax earnings, the future levels of tax benefits of stock-based compensation, settlement of income tax audits and non-deductible goodwill impairments.

Our effective tax rate is also dependent in part on forecasts of full year results which can vary materially. Furthermore, we may continue to experience significant variation in our effective tax rate related to excess tax benefits on stock-based compensation, particularly in the first quarter of each year when the majority of our equity awards vest.

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

We are subject to tax laws both within and outside of the U.S. requiring significant judgment in determining our worldwide provision for income taxes. Changes in tax laws or changes to how those laws are applied to our business in practice, could affect the amount of tax to which we are subject and the manner in which we operate. Additionally, the Organization for Economic Cooperation and Development's ("OECD") Base Erosion and Profit Shifting ("BEPS") project has resulted in considerable new reporting obligations worldwide as OECD member countries have implemented its guidance. The OECD continues to publish guidance pursuant to the BEPS and other projects which, if adopted by member countries, may affect our tax positions in many of the countries in which we do business.

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

On August 16, 2022, the Inflation Reduction Act of 2022 ("IRA") was enacted. It contains numerous new U.S. federal tax law provisions, including a corporate alternative minimum tax on adjusted financial statement income and an excise tax on corporate stock repurchases, both effective after December 31, 2022. We continue to evaluate the IRA's impact to our business, which may be material.

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

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

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

- quarterly variations in our results of operations and liquidity or changes in our forecasts and guidance;
- our ability to regain or sustain our historical growth rates;
- changes in recommendations by the investment community or speculation in the press or investment community regarding estimates of our net revenues, operating results or other performance indicators;
- announcements by us or our competitors or new market entrants, including strategic actions, management changes, and material transactions or acquisitions;

- technical factors in the public trading markets for our stock that may produce price movements that may or may not comport with macro, industry or company-specific fundamentals, including, without limitation, the sentiment of retail investors (including as it may be expressed on financial trading and other social media sites), the amount and status of short interest in our securities, access to margin debt, trading in options and other derivatives on our common stock, fractional share trading, and other technical trading factors or strategies;
- announcements regarding stock repurchases, sales or purchases of our common stock by us, our officers or directors, credit agreements and debt issuances;
- announcements of technological innovations, new, additional or revised programs, business models, products or product offerings by us, our customers or competitors;
- key decisions in pending litigation, new litigation, settlements, judgments or decrees; and
- general economic market conditions, including rising interest rates, inflationary pressures, recessions, consumer sentiment and demand, global political conflict and industry factors unrelated to our actual performance.

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

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

We have a history of recurring stock repurchase programs intended to return capital to our investors. Future stock repurchase programs are contingent on a variety of factors, including our financial condition, results of operations, business requirements, and our Board of Directors' continuing determination that stock repurchases are in the best interests of our stockholders and in compliance with all applicable laws and agreements. There is no assurance that we will continue repurchasing our common stock in the future, consistent with historical levels or at all, or that our stock repurchase programs will have a beneficial impact on our stock price. Additionally, the IRA, among other things, imposes a 1% excise tax on any domestic corporation that repurchases its stock after December 31, 2022, which will increase our cost to make repurchases and may impact if and how much stock we choose to repurchase in the future.

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

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

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

We occupy several leased and owned facilities. As of December 31, 2022, the significant facilities occupied were as follows:

Location	Lease/Own	Primary Use
Tempe, Arizona, U.S.A.	Lease	Office for corporate headquarters
San Jose, California, U.S.A.	Own	Office for research & development and administrative personnel
Raleigh, North Carolina, U.S.A.	Own	Office for Americas regional headquarters
San Jose, Costa Rica	Lease and Own	Office for administrative personnel, treatment personnel, and customer care
Wroclaw, Poland	Lease and Own	Manufacturing and office for treatment and administrative personnel
Petah Tikva, Israel	Lease and Own	Manufacturing and office for research & development and administrative personnel
Rotkreuz, Switzerland	Lease	Office for EMEA regional headquarters
Juarez, Mexico	Own	Manufacturing and office for administrative personnel
Ziyang, China	Own	Manufacturing and office for administrative personnel

We believe our existing facilities are in good operating condition and are suitable for the conduct of our business. The facilities noted above are used mostly by all our reportable segments.

Item 3. Legal Proceedings.

For a discussion of legal proceedings, refer to *Note 7 "Legal Proceedings" of the Notes to Consolidated Financial Statements* in Part II, Item 8 of this Form 10-K.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

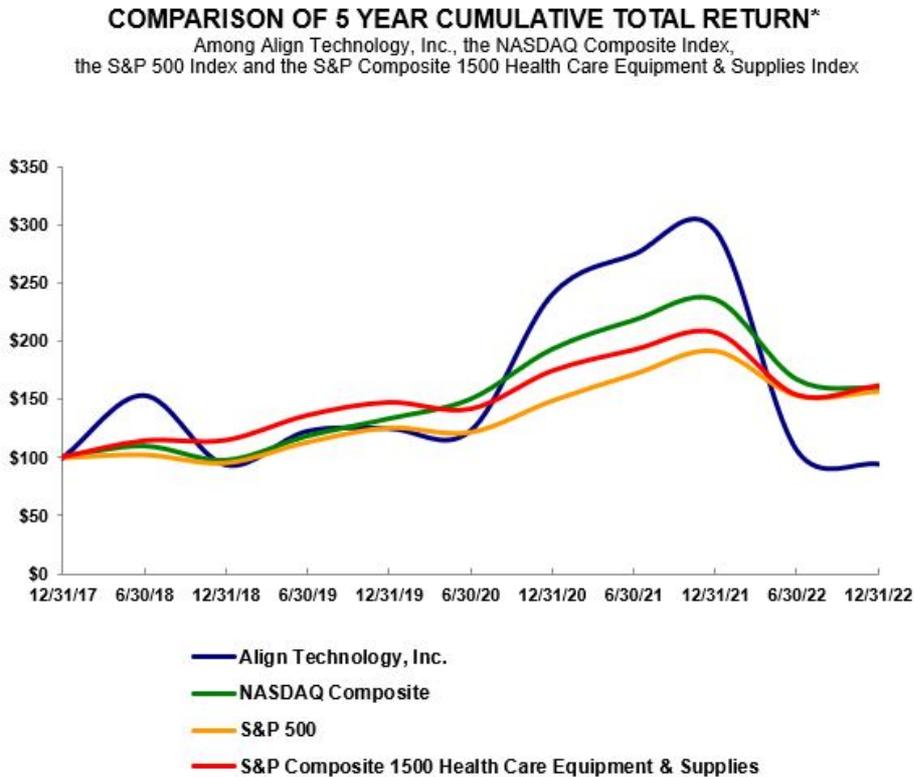
Market Information

Our common stock is traded on the NASDAQ Global Market under the symbol ALGN. As of February 20, 2023, there were approximately 53 holders of record of our common stock. Because the majority of our shares of outstanding common stock are held by brokers and other institutions on behalf of stockholders, we are unable to estimate the total number of stockholders represented by these record holders.

Performance Graph

Notwithstanding any statement to the contrary in any of our previous or future filings with the SEC, the following information relating to the price performance of our common stock shall not be deemed “filed” with the SEC or “Soliciting Material” under the Securities Exchange Act of 1934, as amended, or subject to Regulation 14A or 14C, or to liabilities of Section 18 of the Exchange Act except to the extent we specifically request that such information be treated as soliciting material or to the extent we specifically incorporate this information by reference.

The graph below matches our cumulative 5-year total stockholder return on common stock with the cumulative total returns of the NASDAQ Composite index, the S&P 500 index and the S&P 1500 Composite Health Care Equipment & Supplies index. The graph tracks the performance of a \$100 investment in our common stock and each index (with the reinvestment of all dividends) from December 31, 2017 to December 31, 2022.



*\$100 invested on 12/31/17 in stock or index, including reinvestment of dividends. Fiscal year ending December 31.

Copyright© 2023 Standard & Poor's, a division of S&P Global. All rights reserved.

Unregistered Sales of Equity Securities

None.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

The following table summarizes the stock repurchase activity for the three months ended December 31, 2022:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Programs ⁽¹⁾
October 1, 2022 through October 31, 2022	848,266	\$ 188.62	848,266	\$ 249,926,094
November 1, 2022 through November 30, 2022	—	\$ —	—	\$ 249,926,094
December 1, 2022 through December 31, 2022	—	\$ —	—	\$ 249,926,094
Total	<u>848,266</u>		<u>848,266</u>	

¹ *May 2021 Repurchase Program.* On May 13, 2021, we announced that our Board of Directors had authorized a plan to repurchase up to \$1.0 billion of our common stock. See Note 10 “Common Stock Repurchase Programs” of the Notes to Consolidated Financial Statements for details on the May 2021 Repurchase Program.

Item 6. [Reserved]

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 our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K.

A discussion regarding our financial condition and results of operations for fiscal 2022 compared to fiscal 2021 is presented under Results of Operations of this Form 10-K. Discussions regarding our financial condition and results of operations for fiscal 2021 compared to 2020 have been omitted from this Annual Report on Form 10-K, but can be found in “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021, filed with the SEC on February 25, 2022, which is available without charge on the SEC’s website at www.sec.gov and on our investor relations website at investor.aligntech.com.

Executive Overview of Results

Trends and Uncertainties

Our business strategic priorities remain focused on four principal pillars for growth: (i) international expansion; (ii) GP adoption; (iii) patient demand and conversion; and (iv) orthodontic utilization. Our growth strategy depends on our ability to facilitate the digital transformation of dentistry happening around the world, our continuous focus on innovation, and expansion to meet and exceed evolving customer expectations as the array of products and services available to them increases.

We strive to deliver on each of our strategic growth drivers through a variety of interrelated enterprise-wide efforts including:

- Continuing penetration and adoption of Invisalign products, intraoral scanners and CAD/CAM solutions in international markets by investing in manufacturing operations, research and development, clinical treatment planning, sales and marketing and building our quality and regulatory capabilities in existing and emerging markets globally. For instance, in 2022, we opened a new aligner fabrication facility in Wroclaw, Poland as a part of our strategy to bring operational facilities closer to customers to serve them more quickly and respond to their needs more effectively as well as new treatment planning operations in targeted regional geographies. We also diversified our research and development activities throughout Europe in 2022, which has created a longer term, more stable environment for consistent hiring, retention and innovation in a variety of high technology sectors.
- Targeting growth opportunities with international orthodontists and GP customers, particularly with adopters of digital dentistry platforms by tailoring our sales and marketing strategies, manufacturing operations and resources around the

unique needs of each customer channel. As we continue growing, we intend to opportunistically expand our research, development, manufacturing, treatment planning, and sales and marketing operations to meet local and regional demand thoughtfully and deliberately. Over the longer-term, we expect international revenues to grow faster than Americas' revenues as a result of growing international demand, our continued investment in international market expansion, the size of the market opportunities and our relatively low market penetration in these regions.

- Building confidence within the GP and orthodontic communities through training and education efforts to increase their adoption and utilization of digital dental practice transformation and clear aligner treatment. Accordingly, we continue to expand our Invisalign customer base by educating new doctors on the benefits of digital dentistry through the Invisalign system and demonstrating to GPs and orthodontists how the iTero portfolio of intraoral scanners and CAD/CAM restorative services and workflows can increase revenues and profitability for their dental practices by enhancing patient experiences and creating operation practice efficiencies.
- Investing in research and development that allows us to innovate, develop and bring to market products and solutions that deliver the ever-increasing clinical precision and predictability that doctors expect with the speed and convenience their patients require.
- Creating demand and enabling patient conversion through targeted investments in advertising and public relations through social media, influencers and other forms of digital communications to encourage treatment by Invisalign trained doctors. We believe that well-designed, targeted sales and marketing promotions that build on our strong brand awareness allow us to differentiate our products and solutions from traditional and emerging competitors. In 2022, we continued to build on the success of the “Invis-is” consumer advertising campaign with creative content and influencers focused on teens and young adults. We expect to make further investments to create additional demand for Invisalign system treatment driving more consumers to dental professionals for those treatments.
- Pursuing new product lines that complement our doctor-prescribed principal products currently available in certain e-commerce and retail channels in the U.S. Similarly, in 2023 we expect to continue to focus on our doctor subscription plan and grow our underpenetrated share of the retainer business through strategic marketing campaigns focused on driving adoption and increasing market share in the U.S.
- Increasing global orthodontic utilization rates as doctors' clinical confidence in the efficacy and predictability of the Invisalign system increases with advancements in products and technology and as patients and doctors demand treatments that emphasize convenience and safety through fewer visits and less invasive and quicker treatments. In addition, the teenage and younger market makes up 75% of the approximately 21 million total annual global orthodontic case starts each year. As we continue to emphasize the benefits of the Invisalign system for teenage and younger patient treatments through education, training and sales and marketing programs, we expect utilization rates to rise. However, our utilization rates will fluctuate from period to period due to a variety of factors, which may include seasonal trends in our business, consumer demand due to macroeconomic factors, office closures or slowdowns related to COVID-19 and adoption rates for new products and features.

Macroeconomic Challenges and Military Conflict in Ukraine

Our revenues are susceptible to fluctuations in macroeconomic conditions, in line with inflation, rising interest rates, threats of or actual recessions, fluctuations in currency exchange rates, supply chain challenges, market volatility, wars and military actions, and other factors, each of which impact customer confidence, consumer sentiment and demand. Many of these same factors are also impacting our costs through higher raw material prices, transportation costs, labor costs, supply and distribution operations and the operations of our suppliers. Additionally, many of our international operations are denominated in currencies other than the U.S. dollar and in 2022 were impacted, and may continue to be impacted, by macroeconomic slowing or contraction causing weakening against the U.S. dollar, which is negatively impacting our financial condition and results of operations. While we expect moderation of the strength of the dollar, we also expect the dollar to remain historically strong against many of these currencies. The nature and extent of the impact of these factors varies by time and region and remains uncertain and unpredictable.

The military conflict between Russia and Ukraine increased the unpredictability of the already uncertain macroeconomic conditions during 2022 and may continue to impact this unpredictability. While we continue to employ research and development personnel in Russia as well as certain sales, marketing and administrative personnel, the total number of employees in Russia was significantly reduced in 2022, complementing programs previously underway aimed at maintaining and growing our research and development operations and diversifying the facilities at which our personnel are located.

Although immaterial to our consolidated financial statements, our commercial business operations in Russia were significantly impacted by the conflict in 2022. Although we remain committed to providing continuity of care consistent with our values and ethical responsibility to patients who are in Invisalign treatment in Russia, we deemed it prudent to align the size of our commercial operations with the ongoing resources needed to perform those functions. Accordingly, in the fourth quarter of 2022, we initiated a restructuring plan to increase efficiencies across the organization and lower our overall cost structure, which reduced the number of employees and our commercial business operations in Russia. Refer to *Note 16 “Restructuring and Other Charges” of the Notes to Consolidated Financial Statements* for further details.

Our Board of Directors and its applicable committees receive regular updates from management regarding the military conflict between Russia and Ukraine and continue to provide oversight of the risks to our personnel, operations and other areas of strategic importance. Our management continues to closely monitor the situation and evaluate additional ways in which we can support our employees and operations.

COVID-19 Pandemic Update

Although there remains significant uncertainty surrounding the COVID-19 pandemic for regional economies, its global impact has gradually declined. During 2022, we experienced the impacts of the COVID-19 pandemic primarily in the Asia Pacific region, particularly in China, where lockdowns decreased economic activity throughout most of the year. With the easing of the restrictions in China in 2023 and the increased rate of infections, the impacts of the COVID-19 pandemic are likely to persist into 2023 and remain unpredictable, but we expect it to be at a lesser extent than in 2022. Nevertheless, comparing our financial results for the reporting periods of 2023 to the same reporting periods of 2022 or earlier may not be a useful means by which to evaluate our business and results of operations due to volatility in regional business environments caused by the pandemic.

Changing Product Preferences

As the markets for clear aligners and digital processes and workflows used to transform the practice of dentistry continue to mature, we anticipate customer and patient expectations and demands will evolve. We expect to meet customer demands with innovative treatment options that include more choices to address a wider scope of treatment goals and budgets based on our existing and new products. This may result in larger and unpredictable variations in geographic and product mix and selling prices with uncertain implications on our financial statements and business operations.

We strive to manage the challenges from the macroeconomic conditions, the conflict in Ukraine, COVID-19 and the evolution of our target markets by focusing on improving our operations, building flexibility and efficiencies in our processes, adjusting our business models to changing circumstances and offering products that meet market demand. Specifically, we are managing cost impacts through pricing actions, implementing cost saving measures and slowing hiring. We also continue to innovate and introduce new and enhanced products that augment our doctor customer and patient experiences.

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

Key Financial and Operating Metrics

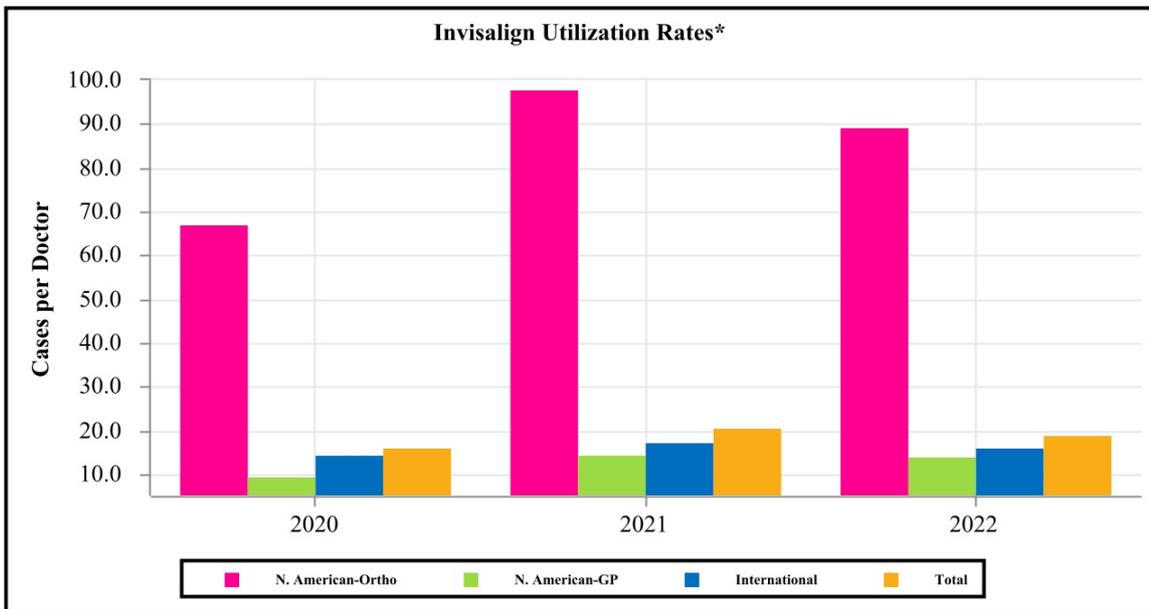
We measure our performance against these strategic priorities by the achievement of key financial and operating metrics. For the year ended December 31, 2022, our business operations reflect the following:

- Revenues of \$3,734.6 million, a decrease of 5.5% year-over-year;
- Clear Aligner revenues of \$3,072.6 million, a decrease of 5.4% year-over-year;
 - Americas Clear Aligner revenues of \$1,458.8 million, a decrease of 5.6% year-over-year;
 - International Clear Aligner revenues of \$1,349.0 million, a decrease of 10.0% year-over-year;
 - Clear Aligner volume decrease of 7.4% year-over-year and Clear Aligner volume decrease for teenage patients of 0.2% year-over-year;
- Imaging Systems and CAD/CAM Services revenues of \$662.1 million, a decrease of 6.2% year-over-year;
- Income from operations of \$642.6 million and operating margin of 17.2%;
- Effective tax rate of 39.6%;
- Net income of \$361.6 million with diluted net income per share of \$4.61;
- Cash, cash equivalents and marketable securities of \$1,041.6 million as of December 31, 2022;
- Operating cash flow of \$568.7 million;
- Capital expenditures of \$291.9 million, predominantly related to increases in our manufacturing capacity and facilities; and

- Number of employees was 23,165 as of December 31, 2022, an increase of 2.8% year-over-year.

Other Statistical Data and Trends

- As of December 31, 2022, over 14 million people worldwide have been treated with our Invisalign system. Management measures these results by comparing to the millions of people who can benefit from straighter teeth and uses this data to target opportunities to expand the market for orthodontics by educating consumers about the benefits of straighter teeth using the Invisalign system.
- For the fourth quarter of 2022, total Invisalign cases submitted with a digital scanner in the Americas increased to 92.5%, up from 89.1% in the fourth quarter of 2021 and international scans increased to 86.8%, up from 80.8% in the fourth quarter of 2021. For the fourth quarter of 2022, 97.4% of Invisalign cases submitted by North American orthodontists were submitted digitally.
- The total utilization rate in 2022 was 18.9 cases per doctor compared to 20.8 cases per doctor in 2021 and 16.1 cases per doctor in 2020. Our utilization rates have declined in 2022 due to the macroeconomic conditions, COVID-19 impacts, and other factors as described in the Trends and Uncertainties section above. In general, we expect utilization rates to rise over time although they are likely to fluctuate from period to period.
 - *North America:* The utilization rate among our North American orthodontist customers was 89.2 cases per doctor in 2022 compared to 98.1 cases per doctor in 2021 and 67.3 cases per doctor in 2020 and the utilization rate among our North American GP customers was 13.9 cases per doctor in 2022 compared to 14.3 cases per doctor in 2021 and 9.6 cases per doctor in 2020.
 - *International:* International doctor utilization rate was 16.2 cases per doctor in 2022 compared to 17.5 cases per doctor in 2021 and 14.5 cases per doctor in 2020.



*Invisalign utilization rates are calculated by the number of cases shipped divided by the number of doctors to whom cases were shipped. Our International region includes Europe, Middle East and Africa (“EMEA”) and Asia Pacific (“APAC”). Latin America (“LATAM”) is excluded from the International region based on its immateriality to the year; however is included in the Total utilization.

Results of Operations

Net Revenues by Reportable Segment

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

- Our Clear Aligner segment consists of Comprehensive Products, Non-Comprehensive Products and Non-Case revenues as defined below:
 - Comprehensive Products include, but are not limited to, Invisalign Comprehensive and Invisalign First.
 - Non-Comprehensive Products include, but are not limited to, Invisalign Moderate, Lite and Express packages and Invisalign Go and Invisalign Go Plus.
 - Non-Case products include, but are not limited to, retention products, Invisalign training, adjusting tools used by dental professionals during the course of treatment and Invisalign Accessory Products that are complementary to our doctor-prescribed principal products such as aligner cases (clamshells), teeth whitening products, cleaning solutions (crystals, foam and other material) and other oral health products available in certain e-commerce channels in select markets. We also offer in the U.S. and Canada, a Doctor Subscription Program which is a monthly subscription program based on the doctor's monthly need for retention or limited treatment. The program allows doctors the flexibility to order both "touch-up" or retention aligners within their subscribed tier and is designed for a segment of experienced Invisalign trained doctors who are currently not regularly using our retainers or low-stage aligners.
- Our Systems and Services segment consists of our iTero intraoral scanning systems, which includes a single hardware platform and restorative or orthodontic software options. Our services include subscription software, disposables, rentals, leases, pay per scan services, as well as exocad's CAD/CAM software solutions that integrate workflows to dental labs and dental practices.

Net revenues for our Clear Aligner and Systems and Services segments by region for the year ended December 31, 2022, 2021 and 2020 are as follows (in millions):

Net Revenues	Year Ended December 31,				Year Ended December 31,			
	2022	2021	Change		2021	2020	Change	
Clear Aligner revenues:								
Americas	\$ 1,458.8	\$ 1,544.8	\$ (85.9)	(5.6)%	\$ 1,544.8	\$ 1,010.2	\$ 534.5	52.9 %
International	1,349.0	1,498.7	(149.7)	(10.0)%	1,498.7	965.4	533.2	55.2 %
Non-case	264.8	203.7	61.1	30.0 %	203.7	125.8	77.8	61.9 %
Total Clear Aligner net revenues	\$ 3,072.6	\$ 3,247.1	\$ (174.5)	(5.4)%	\$ 3,247.1	\$ 2,101.5	\$ 1,145.6	54.5 %
Systems and Services net revenues	662.1	705.5	(43.5)	(6.2)%	705.5	370.5	335.0	90.4 %
Total net revenues	\$ 3,734.6	\$ 3,952.6	\$ (217.9)	(5.5)%	\$ 3,952.6	\$ 2,471.9	\$ 1,480.6	59.9 %

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

Clear Aligner Case Volume

Case volume data which represents Clear Aligner case shipments for the year ended December 31, 2022, 2021 and 2020 is as follows (in thousands):

Total case volume	Year Ended December 31,				Year Ended December 31,			
	2022	2021	Change		2021	2020	Change	
	2,358.7	2,547.7	(189.0)	(7.4)%	2,547.7	1,645.3	902.4	54.8 %

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

Total net revenues decreased by \$217.9 million in 2022 as compared to 2021, primarily due to unfavorable foreign exchange rates, a decrease in both Clear Aligner case volumes and scanner volumes, partially offset by increases in Clear Aligner non-case revenues, service revenues and an increase in Clear Aligner average selling price ("ASP").

Clear Aligner - Americas

Americas net revenues decreased by \$85.9 million in 2022 as compared to 2021, primarily due to a decrease in case volumes of 9.4% which reduced net revenues by \$145.3 million, partially offset by an increase in ASP which increased net revenues by \$59.4 million. Higher ASP was mainly due to processing fees charged on most shipments and price increases in certain markets which increased net revenues by \$54.2 million along with lower net deferrals which increased net revenues by \$34.5 million. The increases in ASP were partially offset by unfavorable promotional discounts and sales credits which reduced net revenues by \$25.1 million.

Clear Aligner - International

International net revenues decreased by \$149.7 million in 2022 as compared to 2021 due to a 5.0% decrease in case volumes, which decreased net revenues by \$75.1 million, and lower ASP, which decreased net revenues by \$74.6 million. Lower ASP was largely due to unfavorable foreign exchange rates which resulted in lower net revenues of \$150.6 million, a product mix shift to lower priced products which decreased net revenues by \$60.5 million, and unfavorable promotional discounts which decreased net revenues \$39.4 million. The decrease in ASP was partially offset by processing fees charged on most shipments which increased net revenues by \$94.1 million and lower net deferrals which increased net revenues by \$81.4 million.

Clear Aligner - Non-Case

Non-case net revenues increased by \$61.1 million in 2022 compared to 2021 mainly due to increased volume for retention products across most regions primarily driven by Viverra retainers.

Systems and Services

Systems and Services net revenues decreased by \$43.5 million in 2022 as compared to 2021 primarily due to a lower number of scanners sold which decreased net revenues by \$97.1 million and lower scanner ASP which decreased net revenues by \$9.0 million. The decreases were partially offset by higher service and other revenues which increased net revenues by \$62.6 million mostly due to a larger scanner install base.

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

	Year Ended December 31,			Year Ended December 31,		
	2022	2021	Change	2021	2020	Change
Clear Aligner						
Cost of net revenues	\$ 844.4	\$ 772.7	\$ 71.7	\$ 772.7	\$ 569.3	\$ 203.4
% of net segment revenues	27.5 %	23.8 %		23.8 %	27.1 %	
Gross profit	\$ 2,228.2	\$ 2,474.4	\$ (246.2)	\$ 2,474.4	\$ 1,532.1	\$ 942.2
Gross margin %	72.5 %	76.2 %		76.2 %	72.9 %	
Systems and Services						
Cost of net revenues	\$ 256.4	\$ 244.5	\$ 11.9	\$ 244.5	\$ 139.4	\$ 105.1
% of net segment revenues	38.7 %	34.7 %		34.7 %	37.6 %	
Gross profit	\$ 405.6	\$ 461.0	\$ (55.4)	\$ 461.0	\$ 231.1	\$ 229.9
Gross margin %	61.3 %	65.3 %		65.3 %	62.4 %	
Total cost of net revenues	\$ 1,100.9	\$ 1,017.2	\$ 83.6	\$ 1,017.2	\$ 708.7	\$ 308.5
% of net revenues	29.5 %	25.7 %		25.7 %	28.7 %	
Gross profit	\$ 2,633.8	\$ 2,935.4	\$ (301.6)	\$ 2,935.4	\$ 1,763.2	\$ 1,172.1
Gross margin %	70.5 %	74.3 %		74.3 %	71.3 %	

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

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

Clear Aligner

The gross margin percentage decreased in 2022 as compared to 2021 primarily due to a higher mix of additional aligners, higher freight costs and increased manufacturing spend as we continue to ramp our new manufacturing facility in Poland.

Systems and Services

The gross margin percentage decreased in 2022 as compared to 2021 primarily due to manufacturing inefficiencies from lower production volumes and lower ASP. These factors were partially offset by higher service revenues.

Selling, general and administrative (in millions):

	Year Ended December 31,			Year Ended December 31,		
	2022	2021	Change	2021	2020	Change
Selling, general and administrative	\$ 1,674.5	\$ 1,708.6	\$ (34.2)	\$ 1,708.6	\$ 1,200.8	\$ 507.9
% of net revenues	44.8 %	43.2 %		43.2 %	48.6 %	

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

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

Selling, general and administrative expense decreased in 2022 compared to 2021 primarily due to lower incentive compensation, lower advertising and marketing costs and lower allocations of corporate overhead expenses. These decreases were offset by higher salaries expenses, fringe benefits and stock-based compensation from increased headcount as well as higher equipment, software and maintenance costs.

Research and development (in millions):

	Year Ended December 31,			Year Ended December 31,		
	2022	2021	Change	2021	2020	Change
Research and development	\$ 305.3	\$ 250.3	\$ 54.9	\$ 250.3	\$ 175.3	\$ 75.0
% of net revenues	8.2 %	6.3 %		6.3 %	7.1 %	

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

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

Research and development expense increased in 2022 compared to 2021 primarily due to higher salaries expense, fringe benefits and stock-based compensation as we continue to focus our investments in innovation and research in addition to higher allocations of corporate overhead expenses, outside services costs and equipment and materials costs. These increases were partially offset by lower incentive compensation.

Restructuring and other charges (in millions):

	Year Ended December 31,			Year Ended December 31,		
	2022	2021	Change	2021	2020	Change
Restructuring and other charges	\$ 11.5	\$ —	\$ 11.5	\$ —	\$ —	\$ —
% of net revenues	0.3 %	— %		— %	— %	

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

Restructuring and other charges includes \$7.3 million of severance and related costs, in addition to lease termination charges and asset impairments.

Income from operations (in millions):

	Year Ended December 31,			Year Ended December 31,		
	2022	2021	Change	2021	2020	Change
Clear Aligner						
Income from operations	\$ 1,134.4	\$ 1,325.9	\$ (191.4)	\$ 1,325.9	\$ 768.0	\$ 557.8
Operating margin %	36.9 %	40.8 %		40.8 %	36.5 %	
Systems and Services						
Income from operations	\$ 179.8	\$ 259.1	\$ (79.4)	\$ 259.1	\$ 96.1	\$ 163.1
Operating margin %	27.2 %	36.7 %		36.7 %	25.9 %	
Total income from operations ¹	\$ 642.6	\$ 976.4	\$ (333.8)	\$ 976.4	\$ 387.2	\$ 589.2
Operating margin %	17.2 %	24.7 %		24.7 %	15.7 %	

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

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

Clear Aligner

Operating margin percentage decreased in 2022 compared to 2021 primarily due to lower gross margin.

Systems and Services

Operating margin percentage decreased in 2022 compared to 2021 primarily due to higher operating expenses as a percentage of net revenues as well as lower gross margin.

Interest income (in millions):

	Year Ended December 31,			Year Ended December 31,		
	2022	2021	Change	2021	2020	Change
Interest income	\$ 5.4	\$ 3.1	\$ 2.3	\$ 3.1	\$ 3.1	\$ —
% of net revenues	0.1 %	0.1 %		0.1 %	0.1 %	

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

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

Interest income increased in 2022 compared to 2021 primarily due to higher interest rates during 2022, which was partially offset by the interest earned from the arbitration award related to our investment in SmileDirectClub in the first quarter of 2021.

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

	Year Ended December 31,			Year Ended December 31,		
	2022	2021	Change	2021	2020	Change
Other income (expense), net	\$ (48.9)	\$ 32.9	\$ (81.8)	\$ 32.9	\$ (11.3)	\$ 44.3
% of net revenues	(1.3)%	0.8 %		0.8 %	(0.5)%	

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

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

Other income (expense), net decreased in 2022 compared to 2021 primarily due to a \$43.4 million gain associated to the arbitration award related to our investment in SmileDirectClub recognized in the first quarter of 2021 as well as \$30.5 million of higher net foreign exchange losses from the weakening of international currencies against the U.S. dollar in 2022 as compared to 2021.

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

	Year Ended December 31,			Year Ended December 31,		
	2022	2021	Change	2021	2020	Change
Provision for (benefit from) income taxes	\$ 237.5	\$ 240.4	\$ (2.9)	\$ 240.4	\$ (1,396.9)	\$ 1,637.3
Effective tax rates	39.6 %	23.7 %		23.7 %	(368.6)%	

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

The increase in our effective tax rate for the year ended December 31, 2022 compared to the same period in 2021 is primarily attributable to decreased earnings in low tax jurisdictions and an increase in the amount of foreign earnings subject to US tax in 2022. Additionally, a change in U.S. tax laws effective January 1, 2022 which requires capitalization and amortization of research and development expenses incurred after December 31, 2021 increased our effective tax rate for the year ended December 31, 2022.

During 2020, we completed an intra-entity transfer of certain intellectual property rights and fixed assets to our Swiss subsidiary, where our EMEA regional headquarters is located beginning January 1, 2020. The transfer of intellectual property rights did not result in a taxable gain; however, it did result in a step-up of the Swiss tax deductible basis in the transferred assets, and accordingly, created a temporary difference between the book basis and the tax basis of such intellectual property rights. Consequently, this transaction resulted in the recognition of a deferred tax asset and related one-time tax benefit of approximately \$1,493.5 million during the year ended December 31, 2020, which is the net impact of the deferred tax asset recognized as a result of the additional Swiss tax deductible basis in the transferred assets and certain costs related to the transfer of fixed assets and inventory. The amortization of this deferred tax asset depends on the profitability of our Swiss headquarters and the recognition of this tax benefit is allowed for a maximum recovery period of 15 years.

The U.S. Inflation Reduction Act of 2022 (“IRA”) was enacted in the United States on August 16, 2022. The IRA imposes a 15% alternative minimum tax on the financial statement income of certain corporations which is effective for tax years beginning after December 31, 2022, as well as a 1% excise tax on the net fair market value of stock repurchases made after December 31, 2022. Based upon our analysis of the IRA, we have determined there is no impact to our tax provision for the year ended December 31, 2022. We will continue to evaluate the impact of these tax law changes on future periods.

Liquidity and Capital Resources

Liquidity and Trends

As of December 31, 2022 and 2021, we had the following cash and cash equivalents and short-term and long-term marketable securities (in thousands):

	December 31,	
	2022	2021
Cash and cash equivalents	\$ 942,050	\$ 1,099,370
Marketable securities, short-term	57,534	71,972
Marketable securities, long-term	41,978	125,320
Total	\$ 1,041,562	\$ 1,296,662

As of December 31, 2022 and 2021, approximately \$653.7 million and \$713.8 million, respectively, of cash, cash equivalents and marketable securities were held by our foreign subsidiaries. We intend to continue reinvesting our foreign subsidiary earnings indefinitely and expect the additional costs upon repatriation of these foreign earnings not to be significant. We generate sufficient domestic operating cash flow and have access to external funding under our \$300.0 million revolving line of credit. We believe that our current cash balances and the borrowing capacity under our credit facility, if necessary, will be sufficient to fund our business for at least the next 12 months.

The sanctions against Russian banks or international bank messaging systems due to the military conflict between Ukraine and Russia could impact our ability to access our cash in Russia but would not materially impact our liquidity position. As of December 31, 2022, cash and cash equivalents domiciled in Russia, which is required to fund their current operating requirements, represent approximately 2.6% of our total cash, cash equivalents and marketable securities.

Our material cash requirements as of December 31, 2022 are as below:

- Our purchase commitments for goods and services, excluding capital expenditures, totaled \$1,151.7 million, of which \$860.8 million will be payable within the next 12 months. These commitments primarily relate to agreements with contract manufacturers and suppliers, sales and marketing services, research and development services and technological services.
- We expect our investments in capital expenditures to exceed \$200.0 million for the next 12 months. Capital expenditures primarily relate to building construction and improvements as well as additional manufacturing capacity due to international expansion. Despite the challenging market conditions, we intend to expand our investments in research and development, manufacturing, treatment planning, sales and marketing operations to meet actual and anticipated local and regional demands.
- We have future operating lease payments of \$158.3 million, which includes \$14.3 million for leases that have not yet commenced as of December 31, 2022. Refer to *Note 4 “Leases” of the Notes to Consolidated Financial Statements* for details on the lease payments.
- We have \$249.9 million available for repurchase under the stock repurchase program authorized by our Board of Directors in May 2021 (“May 2021 Repurchase Program”). Our stock repurchase program is subject to periodic evaluations to determine when and if repurchases are in the best interests of our stockholders, taking into account prevailing market conditions. Refer to *Note 10 “Common Stock Repurchase Programs” of the Notes to Consolidated Financial Statements* for details on our stock repurchase programs. Subsequent to the fourth quarter, in January 2023, our Board of Directors authorized a new plan to repurchase up to \$1.0 billion of our common stock. Additionally, in February 2023, we entered into an ASR to repurchase \$250.0 million of our common stock, completing our 2021 Repurchase Program. Under the Inflation Reduction Act of 2022, effective January 1, 2023, excise tax of 1% is applicable to stock repurchases. We are currently evaluating the impact of this provision, if any, on our results of operations and cash flows.

Sources and Use of Cash

The following table summarizes our Consolidated Statements of Cash Flows for the year ended December 31, 2022, 2021 and 2020 (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Net cash provided by (used in):			
Operating activities	\$ 568,732	\$ 1,172,544	\$ 662,174
Investing activities	(213,316)	(563,430)	(231,506)
Financing activities	(501,686)	(458,332)	(30,808)
Effects of foreign exchange rate changes on cash, cash equivalents, and restricted cash	(11,514)	(12,117)	10,480
Net (decrease) increase in cash, cash equivalents, and restricted cash	\$ (157,784)	\$ 138,665	\$ 410,340

Operating Activities

For the year ended December 31, 2022, cash flows from operations of \$568.7 million resulted primarily from our net income of approximately \$361.6 million as well as the following:

Significant adjustments to net income

- Stock-based compensation of \$133.4 million related to equity awards granted to employees and directors; and
- Depreciation and amortization of \$125.8 million related to our investments in property, plant and equipment and intangible assets.

Significant changes in working capital

- Increase of \$241.9 million in deferred revenues due to the deferral of revenue on shipments over the period as well as timing of revenue recognition;
- Increase of \$130.1 million in inventories primarily due to lower shipment volumes over the period in addition to our efforts to manage stock at appropriate levels as required; and

- Decrease of \$121.9 million in accrued and other long-term liabilities primarily due to the payment of our 2021 corporate bonus as well as timing payment of other activities.

For the year ended December 31, 2021, cash flows from operations of \$1,172.5 million resulted primarily from our net income of approximately \$772.0 million as well as the following:

Significant adjustments to net income

- Stock-based compensation of \$114.3 million related to equity awards granted to employees and directors;
- Depreciation and amortization of \$108.7 million related to our investments in property, plant and equipment and intangible assets; and
- Gain related to our SDC arbitration award of \$43.4 million.

Significant changes in working capital

- Increase of \$462.6 million in deferred revenues primarily related to increased case volumes in our Clear Aligner segment, increased scanner volumes in our Systems and Services segment and timing of revenue recognition;
- Increase of \$262.1 million in accounts receivable which is primarily a result of the increase in our sales;
- Increase of \$158.5 million in accrued and other long-term liabilities and an increase of \$124.6 million in prepaid expenses and other assets due to the timing of prepayment and activities; and
- Increase of \$112.5 million in inventories to support our demand, including safety stock, due to shipping delays during the COVID-19 pandemic as well as long lead times with our suppliers.

Investing Activities

Net cash used in investing activities was \$213.3 million for the year ended December 31, 2022 which primarily consisted of purchases of property, plant and equipment of \$291.9 million, purchases of marketable securities of \$28.0 million and \$12.3 million cash paid relating to a business acquisition. These outflows were partially offset by sales and maturities of marketable securities of \$121.1 million.

Net cash used in investing activities was \$563.4 million for the year ended December 31, 2021 and primarily consisted of purchases of property, plant and equipment of \$401.1 million and purchases of marketable securities of \$200.9 million, which were partially offset by \$43.4 million of proceeds from our SDC arbitration award.

Financing Activities

Net cash used in financing activities was \$501.7 million for the year ended December 31, 2022 which consisted of payments related to our common stock repurchases of \$475.0 million and payroll taxes paid for equity awards through share withholdings of \$52.8 million, which were partially offset by \$26.1 million of proceeds from the issuance of common stock under our employee stock purchase plan.

Net cash used in financing activities was \$458.3 million for the year ended December 31, 2021 which consisted of payments related to our accelerated stock repurchase arrangements of \$375.0 million and payroll taxes paid for equity awards through share withholdings of \$108.9 million which were partially offset by \$25.6 million of proceeds from the issuance of common stock.

Critical Accounting Policies and Estimates

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 management to make estimates and judgments that affect the reported amounts of assets and liabilities, revenues and expenses and disclosures at the date of the financial statements. We evaluate our estimates on an on-going basis and use authoritative pronouncements, historical experience and other assumptions as the basis for making the estimates. Actual results could differ from those estimates.

We believe the following critical accounting policies and estimates affect our more significant judgments used in the preparation of our consolidated financial statements. For further information on all of our significant accounting policies, see *Note 1 "Summary of Significant Accounting Policies" of the Notes to Consolidated Financial Statements under Item 8.*

Revenue Recognition

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

Determining the standalone selling price (“SSP”) in order to allocate consideration from the contract to the individual performance obligations is the result of various factors, such as changing trends and market conditions, historical prices, costs, and gross margins. While changes in the allocation of the SSP between performance obligations will not affect the amount of total revenues recognized for a particular contract, any material changes could impact the timing of revenue recognition, which would have a material effect on our financial position and result of operations. This is because the contract consideration is allocated to each performance obligation, delivered or undelivered, at the inception of the contract based on the SSP of each distinct performance obligation.

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

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

Unfulfilled Performance Obligations for Clear Aligners and Scanners

The estimated revenues expected to be recognized in the future related to our unfulfilled performance obligations, including deferred revenues and backlog, as of December 31, 2022 is \$1,515.4 million. This estimate includes both product and service unfulfilled performance obligations and the time range reflects our best estimate of when we will transfer control to the customer and may change based on customer usage patterns, timing of shipments, readiness of customers' facilities for installation, and manufacturing availability some of which involve significant judgement. Generally, our deferred revenue will be recognized over a period of one to five years.

Goodwill and Finite-Lived Acquired Intangible Assets

Goodwill and acquired intangible assets with finite lives are subject to impairment testing and are reviewed for impairment when events or circumstances indicate that the carrying value of an asset is not recoverable and the carrying amount exceeds its fair value. We evaluate the recoverability of the carrying value of these identifiable intangible assets based on estimated undiscounted cash flows to be generated from such assets. If the cash flow estimates or the significant operating assumptions upon which they are based change in the future, we may be required to record impairment charges.

Assumptions and estimates about future values and remaining useful lives of our acquired intangible assets are complex and subjective. They can be affected by external factors such as industry and economic trends and internal factors such as changes in our business strategy and internal forecasts. Our ongoing consideration of all these factors could result in impairment charges in the future.

If we were to have impairments to goodwill or finite-lived acquired intangible assets, it could adversely affect our operating results. During the fiscal year 2022 and 2021, we did not have any impairment charges related to our goodwill or acquired intangible assets.

Accounting for Income Taxes

We are subject to income taxes in the U.S. and numerous foreign jurisdictions. The evaluation of our uncertain tax positions involves significant judgment in the interpretation and application of U.S. GAAP and complex domestic and international tax laws related to the allocation of international taxation rights between countries. We are also required to evaluate the realizability of our deferred tax assets on an ongoing basis in accordance with U.S. GAAP, which requires the assessment of both of our historical and future performance as well as other relevant factors. Realization of our deferred tax assets is dependent on our ability to generate future taxable income which is determined based on assumptions such as

estimated growth rates in revenues, gross margins, future cash flows and discount rates. The accuracy of these estimates could be affected by unforeseen events or actual results, and the sustainability of our future tax benefits is dependent upon the acceptance of these valuation estimates and assumptions by the taxing authorities.

Accounting for Legal Proceedings and Litigation

Estimates of probable losses resulting from litigation are inherently difficult to make, particularly when the matters are in early procedural stages with incomplete facts and information. The final outcome of legal proceedings is dependent on many variables difficult to predict and, therefore, the ultimate cost to entirely resolve such matters may be materially different than the amount of current estimates. Consequently, new information or changes in judgments and estimates could have a material adverse effect on our business, financial condition, and results of operations or cash flows.

Recent Accounting Pronouncements

See Note 1 “Summary of Significant Accounting Policies” of the Notes to Consolidated Financial Statements in Item 8 for a discussion of recent accounting pronouncements, including the expected dates of adoption and estimated effects on results of operations and financial condition, which is incorporated herein.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

In the normal course of business, we are exposed to interest rate, foreign currency exchange and inflation risks that could impact our financial position and results of operations. In addition, we are subject to the broad market risk that is created by the global market disruptions and uncertainties resulting from macroeconomic challenges, the military conflict between Russia and Ukraine and the COVID-19 pandemic. Further discussion on these risks may be found in Item 1A of this Annual Report on Form 10-K under the heading “Risk Factors”.

Interest Rate Risk

Changes in interest rates could impact our anticipated interest income on our cash equivalents and investments in marketable securities. Our investments are fixed-rate short-term and long-term securities. Fixed-rate securities may have their fair market value adversely impacted due to a rise in interest rates, and, as a result, our future investment income may fall short of expectations due to changes in interest rates or we may suffer losses in principal if forced to sell securities which have declined in market value due to changes in interest rates. As of December 31, 2022, we had approximately \$99.5 million invested in available-for-sale marketable securities. An immediate 10% change in interest rates would not have a material adverse impact on our future operating results and cash flows.

We do not enter into investments for trading or speculative purposes and have not used any derivative financial instruments to manage our interest rate risk exposure. As of December 31, 2022, we are not subject to risks from immediate interest rate increases on our unsecured revolving line of credit facility.

Currency Rate Risk

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

We enter into foreign currency forward contracts for currencies where we have exposures, primarily the Euro, Chinese Yuan, Polish Zloty and Canadian Dollar, to minimize the short-term impact of foreign currency exchange rate fluctuations on cash and certain trade and intercompany receivables and payables. These forward contracts are not designated as hedging instruments and are generally one month in original maturity and are marked to market through earnings every period. The gains and losses on these forward contracts are intended to offset the gains and losses in the underlying foreign currency denominated monetary assets and liabilities being economically hedged. We do not enter into foreign currency forward contracts for trading or speculative purposes. As our international operations grow, we will continue to reassess our approach to managing the risks relating to fluctuations in currency rates. It is difficult to predict the impact forward contracts could have on our results of operations.

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

Military Conflict between Russia and Ukraine

Beginning 2022, the military conflict between Russia and Ukraine has continued to escalate and create challenges to already uncertain macroeconomic conditions. As of December 31, 2022, we do not expect these events to have any material impact on our operations. Our Russia net revenues as a percentage of our consolidated net revenues and our assets domiciled in Russia, including cash and cash equivalents, as a percentage of our total assets, are immaterial.

Inflation Risk

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

Item 8. Financial Statements and Supplementary Data.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

	<u>Page</u>
Report of Management on Internal Control over Financial Reporting	55
Report of Independent Registered Public Accounting Firm (PCAOB ID 238)	56
Consolidated Statements of Operations for the year ended December 31, 2022, 2021 and 2020	58
Consolidated Statements of Comprehensive Income for the year ended December 31, 2022, 2021 and 2020	59
Consolidated Balance Sheets as of December 31, 2022 and 2021	60
Consolidated Statements of Stockholders' Equity for the year ended December 31, 2022, 2021 and 2020	61
Consolidated Statements of Cash Flows for the year ended December 31, 2022, 2021 and 2020	62
Notes to Consolidated Financial Statements	63

REPORT OF MANAGEMENT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Management of Align is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. Our internal control over financial reporting is designed by, or under supervision of, our CEO and CFO, and effected by the board of directors, management and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Internal control over financial reporting includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Align;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of Align are being made only in accordance with authorizations of management and directors of Align; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of Align's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2022. In making this assessment, management used the criteria set forth in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO").

Based on our assessment, management has concluded that, as of December 31, 2022, our internal control over financial reporting was effective based on criteria in *Internal Control - Integrated Framework (2013)* issued by the COSO.

The effectiveness of our internal control over financial reporting as of December 31, 2022 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which is included herein.

/s/ JOSEPH M. HOGAN

Joseph M. Hogan
President and Chief Executive Officer
February 27, 2023

/s/ JOHN F. MORICI

John F. Morici
Chief Financial Officer and Executive Vice President, Global Finance
February 27, 2023

Report of Independent Registered Public Accounting Firm

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

Opinions on the Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of Align Technology, Inc. and its subsidiaries (the “Company”) as of December 31, 2022 and 2021, and the related consolidated statements of operations, of comprehensive income, of stockholders’ equity and of cash flows for each of the three years in the period ended December 31, 2022, including the related notes and financial statement schedule listed in the index appearing under Item 15(a)(2) (collectively referred to as the “consolidated financial statements”). We also have audited the Company’s internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the COSO.

Basis for Opinions

The Company’s management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Report of Management on Internal Control over Financial Reporting. Our responsibility is to express opinions on the Company’s consolidated financial statements and on the Company’s internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

Definition and Limitations of Internal Control over Financial Reporting

A company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Critical Audit Matters

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that (i) relates to accounts or disclosures that are material to the consolidated financial statements and (ii) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Revenue Recognition – Determination of Standalone Selling Price of Distinct Performance Obligations in Clear Aligner Contracts

As described in Notes 1 and 15 to the consolidated financial statements, the Company recognized net revenues of \$3.1 billion from its Clear Aligner segment for the year ended December 31, 2022. The Company enters into contracts (“treatment plans”) that involve multiple future performance obligations. Management identifies a performance obligation as distinct if both of the following criteria are met: the customer can benefit from the good or service either on its own or together with other resources that are readily available to the customer and the entity’s promise to transfer the good or service to the customer is separately identifiable from other promises in the contract. Management allocates revenues for each treatment plan based on each unit’s standalone selling price. Management considers a variety of factors such as same or similar product historical sales, costs, and gross margin, which may vary over time depending upon the unique facts and circumstances related to each performance obligation in making these estimates. In addition to historical data, they take into consideration changing trends and market conditions. Management also considers usage rates, which is the number of times a customer is expected to order additional aligners. Management’s process for estimating usage rates requires significant judgment and evaluation of inputs, including historical usage data by region, country and channel.

The principal considerations for our determination that performing procedures related to revenue recognition and the determination of standalone selling price of distinct performance obligations in Clear Aligner contracts is a critical audit matter are the significant judgment by management in determining the estimate of standalone selling price, which includes significant assumptions related to usage rates for each distinct performance obligation. This in turn led to significant auditor judgment, subjectivity, and effort in performing procedures to evaluate management’s determination of the estimates of standalone selling price and usage rates for each distinct performance obligation.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to revenue recognition, including controls over the determination of standalone selling price for each distinct performance obligation in the Company’s Clear Aligner contracts. These procedures also included, among others, (i) testing management’s process for determining the estimate of standalone selling price, which included testing the completeness and accuracy of inputs used and evaluating the reasonableness of factors considered by management related to same or similar product historical sales and usage rates, and (ii) testing management’s process for estimating usage rates, which included evaluating the reasonableness of inputs evaluated by management related to historical usage data by region, country and channel.

/s/ PricewaterhouseCoopers LLP
San Jose, California
February 27, 2023

We have served as the Company’s auditor since 1997.

ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)

	Year Ended December 31,		
	2022	2021	2020
Net revenues	\$ 3,734,635	\$ 3,952,584	\$ 2,471,941
Cost of net revenues	1,100,860	1,017,229	708,706
Gross profit	2,633,775	2,935,355	1,763,235
Operating expenses:			
Selling, general and administrative	1,674,469	1,708,640	1,200,757
Research and development	305,258	250,315	175,307
Restructuring and other charges	11,453	—	—
Total operating expenses	1,991,180	1,958,955	1,376,064
Income from operations	642,595	976,400	387,171
Interest income and other income (expense), net:			
Interest income	5,367	3,103	3,125
Other income (expense), net	(48,905)	32,920	(11,347)
Total interest income and other income (expense), net	(43,538)	36,023	(8,222)
Net income before provision for (benefit from) income taxes	599,057	1,012,423	378,949
Provision for (benefit from) income taxes	237,484	240,403	(1,396,939)
Net income	\$ 361,573	\$ 772,020	\$ 1,775,888
Net income per share:			
Basic	\$ 4.62	\$ 9.78	\$ 22.55
Diluted	\$ 4.61	\$ 9.69	\$ 22.41
Shares used in computing net income per share:			
Basic	78,190	78,917	78,760
Diluted	78,420	79,670	79,230

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

ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(in thousands)

	Year Ended December 31,		
	2022	2021	2020
Net income	\$ 361,573	\$ 772,020	\$ 1,775,888
Other comprehensive income (loss):			
Change in foreign currency translation adjustment, net of tax	(11,480)	(38,680)	44,383
Change in unrealized gains (losses) on investments, net of tax	(3,130)	(495)	(194)
Other comprehensive income (loss)	(14,610)	(39,175)	44,189
Comprehensive income	<u>\$ 346,963</u>	<u>\$ 732,845</u>	<u>\$ 1,820,077</u>

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

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

	December 31,	
	2022	2021
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 942,050	\$ 1,099,370
Marketable securities, short-term	57,534	71,972
Accounts receivable, net of allowance for doubtful accounts of \$10,343 and \$9,245, respectively	859,685	897,198
Inventories	338,752	230,230
Prepaid expenses and other current assets	226,370	195,305
Total current assets	2,424,391	2,494,075
Marketable securities, long-term	41,978	125,320
Property, plant and equipment, net	1,231,855	1,081,926
Operating lease right-of-use assets, net	118,880	121,257
Goodwill	407,551	418,547
Intangible assets, net	95,720	109,709
Deferred tax assets	1,571,746	1,533,767
Other assets	55,826	57,509
Total assets	\$ 5,947,947	\$ 5,942,110
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 127,870	\$ 163,886
Accrued liabilities	454,374	607,315
Deferred revenues	1,343,643	1,152,870
Total current liabilities	1,925,887	1,924,071
Income tax payable	124,393	118,072
Operating lease liabilities	100,334	102,656
Other long-term liabilities	195,975	174,597
Total liabilities	2,346,589	2,319,396
Commitments and contingencies (Notes 7 and 8)		
Stockholders' equity:		
Preferred stock, \$0.0001 par value (5,000 shares authorized; none issued)	—	—
Common stock, \$0.0001 par value (200,000 shares authorized; 77,267 and 78,710 issued and outstanding, respectively)	8	8
Additional paid-in capital	1,044,946	999,006
Accumulated other comprehensive income (loss), net	(10,284)	4,326
Retained earnings	2,566,688	2,619,374
Total stockholders' equity	3,601,358	3,622,714
Total liabilities and stockholders' equity	\$ 5,947,947	\$ 5,942,110

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

ALIGN TECHNOLOGY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands)

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss), Net	Retained Earnings	Total
	Shares	Amount				
Balance as of December 31, 2019	78,433	\$ 8	\$ 906,937	\$ (688)	\$ 439,912	\$ 1,346,169
Net income	—	—	—	—	1,775,888	1,775,888
Net change in unrealized gains (losses) from investments	—	—	—	(194)	—	(194)
Net change in foreign currency translation adjustment	—	—	—	44,383	—	44,383
Issuance of common stock relating to employee equity compensation plans	427	—	20,314	—	—	20,314
Tax withholdings related to net share settlements of equity awards	—	—	(51,122)	—	—	(51,122)
Stock-based compensation	—	—	98,427	—	—	98,427
Balance as of December 31, 2020	78,860	8	974,556	43,501	2,215,800	3,233,865
Net income	—	—	—	—	772,020	772,020
Net change in unrealized gains (losses) from investments	—	—	—	(495)	—	(495)
Net change in foreign currency translation adjustment	—	—	—	(38,680)	—	(38,680)
Issuance of common stock relating to employee equity compensation plans	442	—	25,623	—	—	25,623
Tax withholdings related to net share settlements of equity awards	—	—	(108,917)	—	—	(108,917)
Common stock repurchased and retired	(592)	—	(6,592)	—	(368,446)	(375,038)
Stock-based compensation	—	—	114,336	—	—	114,336
Balance as of December 31, 2021	78,710	8	999,006	4,326	2,619,374	3,622,714
Net income	—	—	—	—	361,573	361,573
Net change in unrealized gains (losses) from investments	—	—	—	(3,130)	—	(3,130)
Net change in foreign currency translation adjustment	—	—	—	(11,480)	—	(11,480)
Issuance of common stock relating to employee equity compensation plans	305	—	26,149	—	—	26,149
Tax withholdings related to net share settlements of equity awards	—	—	(52,799)	—	—	(52,799)
Common stock repurchased and retired	(1,748)	—	(20,777)	—	(414,259)	(435,036)
Equity forward contract related to accelerated stock repurchase	—	—	(40,000)	—	—	(40,000)
Stock-based compensation	—	—	133,367	—	—	133,367
Balance as of December 31, 2022	77,267	\$ 8	\$ 1,044,946	\$ (10,284)	\$ 2,566,688	\$ 3,601,358

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,		
	2022	2021	2020
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	\$ 361,573	\$ 772,020	\$ 1,775,888
Adjustments to reconcile net income to net cash provided by operating activities:			
Deferred taxes	(39,495)	15,455	(1,491,577)
Depreciation and amortization	125,793	108,729	93,538
Stock-based compensation	133,367	114,336	98,427
Non-cash operating lease cost	30,520	26,807	22,467
Arbitration award gain	—	(43,403)	—
Other non-cash operating activities	41,288	24,363	33,743
Changes in assets and liabilities, net of effects of acquisitions:			
Accounts receivable	21,549	(262,066)	(139,777)
Inventories	(130,097)	(112,450)	(29,110)
Prepaid expenses and other assets	(65,514)	(124,626)	(21,130)
Accounts payable	(36,523)	19,747	52,206
Accrued and other long-term liabilities	(121,942)	158,543	42,168
Long-term income tax payable	6,327	12,449	(2,802)
Deferred revenues	241,886	462,640	228,133
Net cash provided by operating activities	<u>568,732</u>	<u>1,172,544</u>	<u>662,174</u>
CASH FLOWS FROM INVESTING ACTIVITIES:			
Acquisitions, net of cash acquired	(12,304)	(8,002)	(420,788)
Purchase of property, plant and equipment	(291,900)	(401,098)	(154,916)
Purchase of marketable securities	(28,002)	(200,928)	(5,341)
Proceeds from maturities of marketable securities	23,785	498	42,641
Proceeds from sales of marketable securities	97,316	3,114	278,817
Repayment on unsecured promissory note	—	4,594	26,925
Proceeds from arbitration award	—	43,403	—
Other investing activities	(2,211)	(5,011)	1,156
Net cash used in investing activities	<u>(213,316)</u>	<u>(563,430)</u>	<u>(231,506)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from issuance of common stock	26,149	25,623	20,314
Common stock repurchases	(435,036)	(375,038)	—
Payment for equity forward contract related to accelerated stock repurchase agreement	(40,000)	—	—
Payroll taxes paid upon the vesting of equity awards	(52,799)	(108,917)	(51,122)
Net cash used in financing activities	<u>(501,686)</u>	<u>(458,332)</u>	<u>(30,808)</u>
Effect of foreign exchange rate changes on cash, cash equivalents, and restricted cash	(11,514)	(12,117)	10,480
Net (decrease) increase in cash, cash equivalents, and restricted cash	<u>(157,784)</u>	<u>138,665</u>	<u>410,340</u>
Cash, cash equivalents, and restricted cash at beginning of year	1,100,139	961,474	551,134
Cash, cash equivalents, and restricted cash at end of year	<u>\$ 942,355</u>	<u>\$ 1,100,139</u>	<u>\$ 961,474</u>

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

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

Note 1. Summary of Significant Accounting Policies

Business Description

Align Technology, Inc. (“We”, “Our”, “Align”) is a global medical device company primarily engaged in the design, manufacture and marketing of Invisalign® clear aligners for the treatment of malocclusions, or the misalignment of teeth, by orthodontists and general dental practitioners (“GPs”), Vivera® retainers for retention, iTero® intraoral scanners and services for dentistry, and exocad® computer-aided design and computer-aided manufacturing (“CAD/CAM”) software for dental laboratories and dental practitioners. Our vision and strategy is to revolutionize orthodontic and restorative dentistry through digital treatment planning and implementation using our Align Digital Platform™, an integrated suite of proprietary technologies and services designed to deliver a seamless, end-to-end solution for patients and consumers, orthodontists and GPs and lab partners. We strive to achieve our vision and strategy through key objectives made possible with the proprietary technologies and services of the Align Digital Platform to establish: clear aligners as the principal solution for the treatment of malocclusions with the Invisalign System as the treatment solution of choice by orthodontists, GPs and patients globally, our intraoral scanners as the preferred scanning technology for digital dental scans, and our exocad CAD/CAM software as the dental restorative solution of choice for dental labs. Our corporate headquarters is located in Tempe, Arizona and we have offices worldwide. Our Americas regional headquarters is located in Raleigh, North Carolina; our European, Middle East and Africa (“EMEA”) regional headquarters is located in Rotkreuz, Switzerland; and our Asia Pacific (“APAC”) regional headquarters is located in Singapore. We have two operating segments: (1) Clear Aligner, known as the Invisalign system, and (2) Imaging Systems and CAD/CAM services (“Systems and Services”), known as the iTero intraoral scanner and CAD/CAM services.

Basis of Presentation and Preparation

The consolidated financial statements include the accounts of Align and our wholly-owned subsidiaries after elimination of intercompany transactions and balances.

Use of Estimates

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

Fair Value of Financial Instruments

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

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

Level 2 - Observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the asset or liability. We obtain fair values for our Level 2 investments. Our custody bank and asset managers independently use professional pricing services to gather pricing data which may include quoted market prices for identical or comparable financial instruments, or inputs other than quoted prices that are observable either directly or indirectly, and we are ultimately responsible for these underlying estimates.

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

Cash and Cash Equivalents

We consider currency on hand, demand deposits, time deposits, and all highly liquid investments with an original maturity of three months or less at the date of purchase to be cash and cash equivalents. Cash and cash equivalents are held in various financial institutions in the U.S. and internationally.

Restricted Cash

The restricted cash primarily consists of funds reserved for legal requirements. Restricted cash balances are primarily included in other assets within our Consolidated Balance Sheets.

Marketable Securities

Our marketable securities consist of marketable debt securities which are classified as available-for-sale and are carried at fair value. Our fixed-income securities investment portfolio allows for investments with a maximum effective maturity of up to 40 months on any individual security. Marketable securities classified as current assets have maturities within one year from the balance sheet date. Unrealized gains or losses on such securities are included in accumulated other comprehensive income (loss), net ("AOCI") in stockholders' equity. Realized gains and losses from sales and maturities of all such securities are reported in earnings and computed using the specific identification cost method.

All of our marketable securities are subject to a periodic impairment review. We evaluate if an allowance for credit loss is necessary by considering available information relevant to the collectibility of the security and information about credit rating changes, past events, current conditions, and reasonable and supportable forecasts. Any allowance for credit loss is recorded as a charge to other income (expense), net, in our Consolidated Statement of Operations. If we have an intent to sell, or if it is more likely than not that we will be required to sell the security in an unrealized loss position before recovery of its amortized cost basis, we will write down the security to its fair value and record the corresponding charge as a component of other income (expense), net in our Consolidated Statement of Operations.

Variable Interest Entities

We evaluate whether an entity in which we have made an investment is considered a variable interest entity ("VIE"). If we determine we are the primary beneficiary of a VIE, we would consolidate the VIE into our financial statements. In determining if we are the primary beneficiary, we evaluate whether we have the power to direct the activities that most significantly impact the VIE's economic performance and the obligation to absorb losses or the right to receive benefits of the VIE that could potentially be significant to the VIE. Our evaluation includes identification of significant activities and an assessment of our ability to direct those activities based on governance provisions and arrangements to provide or receive product and process technology, product supply, operations services, equity funding, financing, and other applicable agreements and circumstances. Our assessments of whether we are the primary beneficiary of a VIE require significant assumptions and judgments. We have concluded that we are not the primary beneficiary of our VIE investments; therefore, we do not consolidate their results into our consolidated financial statements.

Investments in Privately Held Companies

Our investments in privately held companies in which we cannot exercise significant influence and do not own a majority equity interest or otherwise control are accounted for under the measurement alternative. Under the measurement alternative, the carrying value of our equity investment is adjusted to fair value for observable transactions for identical or similar investments of the same issuer. Investments in equity securities are reported on our Consolidated Balance Sheet as other assets, and we periodically evaluate them for impairment. We record any change in carrying value of our equity securities, in other income (expense), net in our Consolidated Statement of Operations. The carrying value of our equity investments in privately held companies without readily determinable fair values were not material as of December 31, 2022 or 2021 and the associated adjustments to the carrying values of the investments were not material during the year ended December 31, 2022, 2021 and 2020.

Derivative Financial Instruments

We enter into foreign currency forward contracts to minimize the short-term impact of foreign currency exchange rate fluctuations associated with certain assets and liabilities. These forward contracts are not designated as hedging instruments. The gains and losses on these forward contracts are intended to offset the gains and losses in the underlying foreign currency denominated monetary assets and liabilities being economically hedged. We do not enter into foreign currency forward contracts for trading or speculative purposes. The net gain or loss from the settlement of these foreign currency forward contracts is recorded in other income (expense), net in the Consolidated Statement of Operations.

Foreign Currency

For our international subsidiaries, we analyze on an annual basis or more often if necessary, if a significant change in facts and circumstances indicate that the functional currency has changed. For international subsidiaries where the local currency is the functional currency, adjustments from translating financial statements from the local currency to the U.S. dollar reporting currency are recorded as a separate component of AOCI in the stockholders' equity section of the Consolidated Balance Sheet. This foreign currency translation adjustment reflects the translation of the balance sheet at period end exchange rates, and the income statement at the transaction date or average exchange rate in effect during the period. The foreign currency revaluation that are derived from monetary assets and liabilities stated in a currency other than functional currency are included in other income (expense), net. For the year ended December 31, 2022, 2021 and 2020, we had foreign currency net gains (losses) of \$(43.8) million, \$(13.3) million and \$6.8 million, respectively.

Certain Risks and Uncertainties

We are subject to risks including, but not limited to, global and regional economic market conditions, inflation, fluctuations in foreign currency exchange rates, changes in consumer confidence and demand, increased competition, dependence on key personnel, protection and litigation of proprietary technology, shifts in taxable income between tax jurisdictions and compliance with regulations of the U.S. Food and Drug Administration ("FDA") and similar international agencies. Further, our operations globally have been impacted by the COVID-19 pandemic. Although its impact has been gradually declining, we continue to be exposed to risks and uncertainties posed by it which varies by geographic regions at different levels. The extent to which our business could be impacted in the future by the pandemic is highly uncertain and difficult to predict.

Our cash and investments are held primarily by five financial institutions. Financial instruments which potentially expose us to concentrations of credit risk consist primarily of cash equivalents and marketable securities. We invest excess cash primarily in money market funds, corporate bonds, asset-backed securities, municipal bonds and U.S. government agency bonds and treasury bonds and periodically evaluate them for credit losses. Such credit losses have not been material to our financial statements.

We purchase certain inventory from sole suppliers. Additionally, we rely on a limited number of hardware manufacturers. The inability of any supplier or manufacturer to fulfill our supply requirements could materially and adversely impact our future operating results.

Accounts Receivable, net

Trade accounts receivable are recorded at the invoiced amount. Accounts receivable, net includes allowances for doubtful accounts for any potentially uncollectible amounts. We periodically assess the adequacy of the allowance for doubtful accounts by reviewing the accounts receivable on a collective basis by considering factors such as aging of the receivables and customers' expected ability to pay, and on an individual basis for specific customers with known disputes or collectability issues. In determining the amount of the allowance for doubtful accounts, we also evaluate the creditworthiness of customers, current market conditions and forecasts of future economic conditions to make any adjustments. Actual write-offs have not materially differed from the estimated allowances. No individual customer accounted for 10% or more of our accounts receivable at December 31, 2022 or 2021 or net revenues for the year ended December 31, 2022, 2021 or 2020.

In 2022, we entered into factoring transactions on a non-recourse basis with financial institutions to sell certain of our non-U.S. accounts receivable. We account for these transactions as sales of accounts receivables and include the cash proceeds as a part of our cash flows from operations in the Consolidated Statements of Cash Flows. Total accounts receivable sold under the factoring arrangements was \$37.0 million during the year ended December 31, 2022. Factoring fees on the sales of receivables were recorded in other income (expense), net in our Consolidated Statement of Operations and were not material.

Inventories

Inventories are valued at the lower of cost or net realizable value, with cost computed using standard cost which approximates actual cost on a first-in-first-out basis. Excess and obsolete inventories are determined primarily based on future demand forecasts, and write-downs of excess and obsolete inventories are recorded as a component of cost of net revenues.

Property, Plant and Equipment, net

Property, plant and equipment, net 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. Construction in progress is related to the construction or development of property (including land) and equipment that have not yet been placed in service for their intended use. Upon sale or retirement, the asset's cost and related accumulated depreciation are removed from the balance sheet and any related gains or losses are reflected in income from operations. Maintenance and repairs are expensed as incurred. Refer to Note 3 "Balance Sheet Components" of the Notes of Consolidated Financial Statements for details on estimated useful lives.

Leases - Lessee

We determine if an arrangement is a lease at inception. Leases with a term of 12 months or less are not recorded on the balance sheet. Right-of-use ("ROU") assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. ROU assets and liabilities are recognized at commencement date based on the present value of lease payments over the lease term. We use our incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments as the rate implicit in our leases is not readily determinable. We determine lease terms as the noncancellable period of the lease and may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. We have lease agreements with lease and non-lease components which are accounted for as a single lease component. Payments under our lease arrangements are primarily fixed; however, certain lease agreements contain variable payments which are expensed as incurred and not included in the operating lease ROU assets and liabilities.

Business Combinations

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

Goodwill and Finite-Lived Acquired Intangible Assets

Goodwill represents the excess of the purchase price paid over the fair value of tangible and identifiable intangible net assets acquired in business combinations and is allocated to the respective reporting units based on relative synergies generated.

Our intangible assets primarily consist of intangible assets acquired as part of our acquisitions. These assets are amortized using the straight-line method over their estimated useful lives ranging from two to fifteen years reflecting the period in which the economic benefits of the assets are expected to be realized.

Impairment of Goodwill and Long-Lived Assets

Goodwill

We evaluate goodwill for impairment at least annually on November 30th or more frequently if indicators are present, an event occurs or changes in circumstances suggest an impairment may exist and that it would more likely than not reduce the fair value of a reporting unit below its carrying amount. The allocation of goodwill to the respective reporting unit is based on relative synergies generated as a result of an acquisition.

We perform an initial assessment of qualitative factors to determine whether the existence of events and circumstances leads to a determination that it is more likely than not that the fair value of a reporting unit is less than its carrying amount. In

performing the qualitative assessment, we identify and consider the significance of relevant key factors, events, and circumstances that affect the fair value of our reporting units. These factors include external factors such as macroeconomic, industry, and market conditions, as well as entity-specific factors, such as our actual and planned financial performance. We also give consideration to the difference between the reporting unit fair value and carrying value as of the most recent date a fair value measurement was performed. If, after assessing the totality of relevant events and circumstances, we determine that it is more likely than not that the fair value of the reporting unit exceeds its carrying value and there is no indication of impairment, no further testing is performed; however, if we conclude otherwise, then we will perform the quantitative impairment test which compares the estimated fair value of the reporting unit to its carrying value, including goodwill. If the carrying amount of the reporting unit is in excess of its fair value, an impairment loss would be recorded in the Consolidated Statement of Operations.

Long-Lived Assets

We evaluate long-lived assets (including finite-lived intangible assets) for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset group may not be recoverable. An asset or asset group is considered impaired if its carrying amount exceeds the future undiscounted net cash flows that the asset or asset group is expected to generate. Factors we consider important which could trigger an impairment review include significant negative industry or economic trends, significant loss of customers and changes in the competitive environment. If an asset or asset group is considered to be impaired, the impairment to be recognized is calculated as the amount by which the carrying amount of the asset or asset group exceeds its fair market value. Our estimates of future cash flows attributable to our long-lived assets require significant judgment based on our historical and anticipated results and are subject to many assumptions. The estimation of fair value utilizing a discounted cash flow approach includes numerous uncertainties which require our significant judgment when making assumptions of expected growth rates and the selection of discount rates, as well as assumptions regarding general economic and business conditions, and the structure that would yield the highest economic value, among other factors. Refer to Note 5 "Goodwill and Intangible Assets" of Notes to Consolidated Financial Statements for details on intangible long-lived assets.

Development Costs for Internal Use Software

Internally developed software includes enterprise-level business software that we customize to meet our specific operational needs. Such capitalized costs include external direct costs utilized in developing or obtaining the applications and payroll and payroll-related costs for employees, who are directly associated with the development of the applications. There were no significant internally developed software costs capitalized in 2022 or 2021.

Development Costs for Software to be Marketed

The costs to develop software that is marketed externally have not been capitalized as we believe our current software development process is essentially completed concurrent with the establishment of technological feasibility. As such, all related software development costs are expensed as incurred and included in research and development expense in our Consolidated Statement of Operations.

Product Warranty

We offer assurance warranties on our products which provide the customer assurance that the product will function as the parties intended because it complies with agreed-upon specifications; therefore, warranties are not treated as a separate revenue performance obligation and are accounted for as guarantees under GAAP.

Clear Aligner

We warrant our Invisalign products against material defects until the treatment plan is complete except in the case of retainers, which are warranted up to three months from expected first use. We accrue for warranty costs, which are primarily based on historical experience as to product failures as well as current information on replacement costs.

Systems and Services

We warrant our intraoral scanners for a period of one year, which includes materials and labor. We accrue for these warranty costs based on average historical repair costs. An extended warranty may be purchased for additional fees. We warrant our CAD/CAM software for a one year period to perform in accordance with agreed product specifications. As we have not historically incurred any material warranty costs, we do not accrue for these software warranties.

Warranty costs are recorded in cost of net revenues upon shipment of products. We regularly review our warranty liability and update these balances based on historical warranty cost trends. Actual warranty costs incurred have not materially differed from those accrued; however future actual warranty costs could differ from the estimated amounts.

Revenue Recognition

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

We identify a performance obligation as distinct if both of the following criteria are met: the customer can benefit from the good or service either on its own or together with other resources that are readily available to the customer and the entity’s promise to transfer the good or service to the customer is separately identifiable from other promises in the contract. Determining the standalone selling price (“SSP”) in order to allocate consideration from the contract to the individual performance obligations is the result of various factors, such as changing trends and market conditions, historical prices, costs, and gross margins. While changes in the allocation of the SSP between performance obligations will not affect the amount of total revenues recognized for a particular contract, any material changes could impact the timing of revenue recognition, which would have a material effect on our financial position and result of operations. This is because the contract consideration is allocated to each performance obligation, delivered or undelivered, at the inception of the contract based on the SSP of each distinct performance obligation.

Clear Aligner

We enter into contracts (“treatment plan(s)”) that involve multiple future performance obligations. Invisalign Comprehensive, Invisalign First, Invisalign Moderate, Invisalign Go, Invisalign Go Plus, and Lite and Express Packages include optional additional aligners at no charge for a certain period of time ranging from six months to five years after initial shipment.

Our treatment plans comprise the following performance obligations that also represent distinct deliverables: initial aligners, the option of additional aligners, case refinement, and replacement aligners. We take the practical expedient to consider shipping and handling costs as activities to fulfill the performance obligation. Where processing fees are charged, the consideration received from the fees are included in the total consideration. We allocate revenues for each treatment plan based on each unit’s standalone selling price. Management considers a variety of factors such as same or similar product historical sales, costs, and gross margin, which may vary over time depending upon the unique facts and circumstances related to each performance obligation in making these estimates. In addition to historical data, we take into consideration changing trends and market conditions. For treatment plans with multiple future options, we also consider usage rates, which is the number of times a customer is expected to order additional aligners. Our process for estimating usage rates requires significant judgment and evaluation of inputs, including historical usage data by region, country and channel. We recognize the revenues upon shipment, as the customers obtain physical possession and we have enforceable rights to payment. As we collect most consideration upfront, we consider whether a significant financing component exists; however, as the delivery of the performance obligations are at the customer’s discretion, we conclude that no significant financing component exists.

Systems and Services

We sell intraoral scanners and CAD/CAM services through both our direct sales force and distribution partners. The intraoral scanner sales price includes one year of warranty and unlimited scanning services. The customer may also select, for additional fees, extended warranty and unlimited scanning services for periods beyond the initial year. When intraoral scanners are sold with an unlimited scanning service agreement and/or extended warranty, we allocate revenues based on the respective SSP of the scanner and the subscription service. We estimate the SSP of each element, taking into account factors such as same or similar historical prices and discounting strategies. Revenues are then recognized over time as the monthly services are rendered and upon shipment of the scanner, as that is when we deem the customer to have obtained control. We also have a rental program, where scanners are leased to customers. The contracts for the program are treated as operating leases, and the revenue is recognized ratably over the lease term.

CAD/CAM services, where sold separately, include the initial software license and maintenance and support. We allocate revenues based upon the respective SSPs of the software license and the maintenance and support. We estimate the SSP of each element using data such as historical prices. Revenues related to the software license are recognized upfront and revenues related to the maintenance and support are recognized over time. For both scanner and service sales, most consideration is

collected upfront and in cases where there are payment plans, consideration is collected within one year and, therefore, there are no significant financing components.

Volume Discounts

In certain situations, we offer promotions in which the discount will increase depending upon the volume purchased over time. We concluded that in these situations, the promotions can represent either variable consideration or options, depending upon the specifics of the promotion. In the event the promotion contains an option, the option is considered a material right and, therefore, included in the accounting for the initial arrangement. We estimate the average anticipated discount over the lifetime of the promotion or contract, and apply that discount to each unit as it is sold. On a quarterly basis, we review our estimates and, if needed, updates are made and changes are applied prospectively.

Accrued Sales Return Reserve

We provide a reserve for sales returns based on historical sales returns as a percentage of revenues.

Costs to Obtain a Contract

We offer a variety of commission plans to our salesforce; each plan has multiple components. To match the costs to obtain a contract to the associated revenues, we evaluate the individual components and capitalize the eligible components, recognizing the costs over the treatment period. The costs to obtain contracts were \$27.4 million and \$31.1 million as of December 31, 2022 and 2021, respectively, and are included in other assets in our Consolidated Balance Sheets. We recognized amortization on our costs to obtain a contract of \$20.8 million, \$17.0 million, and \$10.1 million during the year ended December 31, 2022, 2021, and 2020, respectively, which is included in selling, general and administrative expenses in our Consolidated Statements of Operations.

Unfulfilled Performance Obligations for Clear Aligners and Scanners

Our unfulfilled performance obligations, including deferred revenues and backlog, as of December 31, 2022 and the estimated revenues expected to be recognized in the future related to these performance obligations are \$1,515.4 million. This includes performance obligations from the Clear Aligner segment, primarily the shipment of additional aligners, which are fulfilled over six months to five years. This also includes the performance obligations from the Systems and Services segment, primarily services and support, which are fulfilled over one to five years, and contracted deliveries of additional scanners. The estimate includes both product and service unfulfilled performance obligations and the time range reflects our best estimate of when we will transfer control to the customer and may change based on customer usage patterns, timing of shipments, readiness of customers' facilities for installation, and manufacturing availability.

Contract Balances

The timing of revenue recognition results in deferred revenues being recognized on our Consolidated Balance Sheet. For both aligners and scanners, we usually collect the total consideration owed prior to all performance obligations being performed with payment terms generally varying from net 30 to net 180 days. Contract liabilities are recorded as deferred revenue balances, which are generated based upon timing of invoices and recognition patterns, not payments. If the revenue recognition exceeds the billing, the exceeded amount is considered unbilled receivable and a contract asset. Conversely, if the billing occurs prior to the revenue recognition, the amount is considered deferred revenue and a contract liability.

Shipping and Handling Costs

Shipping and handling charges to customers as well as processing fees are included in net revenues, and the associated costs incurred are recorded in cost of net revenues.

Legal Proceedings and Litigations

We are involved in legal proceedings on an ongoing basis. If we believe that a loss arising from such matters is probable and can be reasonably estimated, we accrue the estimated loss in our consolidated financial statements. If only a range of estimated losses can be determined, we accrue an amount within the range that, in our judgment, reflects the most likely outcome; if none of the estimates within that range is a better estimate than any other amount, we accrue the low end of the range.

Research and Development

Research and development costs are expensed as incurred and includes the costs associated with the research and development of new products and enhancements to existing products. These costs primarily include personnel-related costs, including payroll and stock-based compensation, equipment, material and maintenance costs, outside consulting expenses, depreciation and amortization expense and allocations of corporate overhead expenses including facilities and information technology (“IT”).

Advertising Costs

The cost of advertising and media is expensed as incurred. For the year ended December 31, 2022, 2021 and 2020, we incurred advertising costs of \$222.0 million, \$325.6 million and \$161.0 million, respectively.

Stock-Based Compensation

We recognize stock-based compensation cost for shares expected to vest on a straight-line basis over the requisite service period of the award, net of estimated forfeitures. We use the Black-Scholes option pricing model to determine the fair value of employee stock purchase plan shares. We use a Monte Carlo simulation model to estimate the fair value of market-performance based restricted stock units which requires the input of assumptions, including expected term, stock price volatility and the risk-free rate of return. For restricted stock units which vest based on performance conditions, we use the stock price on the grant date to estimate the fair value and stock-based compensation cost is recorded based on expected attainment of performance targets. Forfeitures are estimated based on historical experience at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

Income Taxes

We make certain estimates and judgments in determining income tax expense for financial statement purposes. These estimates and judgments occur in the calculation of certain tax assets and liabilities, which arise from differences in the timing of recognition of revenues and expenses for tax and financial statement purposes.

As part of the process of preparing our consolidated financial statements, we are required to estimate our income taxes in each of the jurisdictions in which we operate. This process involves us estimating our current tax exposure under the applicable tax laws and assessing temporary differences resulting from differing treatment of items for tax and accounting purposes. These differences result in deferred tax assets and liabilities which are included in our Consolidated Balance Sheets.

We account for uncertainty in income taxes pursuant to authoritative guidance based on a two-step approach to recognize and measure uncertain tax positions taken or expected to be taken in a tax return. The first step is to determine if the weight of available evidence indicates that it is more likely than not that the tax position will be sustained on audit based on its technical merits, including resolution of any related appeals or litigation processes. The second step is to measure the tax benefit as the largest amount that is more than 50% likely to be realized upon ultimate settlement. We adjust reserves for our uncertain tax positions due to changing facts and circumstances, such as the closing of a tax audit or refinement of estimates due to new information. To the extent that the final outcome of these matters is different than the amounts recorded, such differences will impact our tax provision in our Consolidated Statement of Operations in the period in which such determination is made.

We assess the likelihood that we will be able to realize our deferred tax assets. Should there be a change in our ability to realize our deferred tax assets, our tax provision would increase in the period in which we determine that it is more likely than not that we cannot realize our deferred tax assets. We consider all available evidence, both positive and negative, including historical levels of income, expectations and risks associated with estimates of future taxable income and ongoing prudent and feasible tax planning strategies in assessing the need for a valuation allowance. If it is more likely than not that we will not realize our deferred tax assets, we will increase our provision for taxes by recording a valuation allowance against the deferred tax assets that we estimate will not ultimately be realizable.

During fiscal 2020, we completed an intra-entity transfer of certain intellectual property rights and fixed assets to our Swiss subsidiary, which resulted in the recognition of deferred tax assets and related tax benefits. Refer to Note 12 “Income Taxes” of Notes to Consolidated Financial Statements for more information. The establishment of deferred tax assets from the intra-entity transfer of intangible assets required us to make significant estimates and assumptions to determine the fair value of intellectual property rights transferred which include, but are not limited to, our expectations of growth rates in revenue, margins, future cash flows, and discount rates. The accuracy of these estimates could be affected by unforeseen events or actual

results, and the sustainability of our future tax benefits is dependent upon the acceptance of these valuation estimates and assumptions by the taxing authorities.

The U.S. Tax Cuts and Jobs Act includes provisions for certain foreign-sourced earnings referred to as Global Intangible Low-Taxed Income (“GILTI”) which imposes a tax on foreign income in excess of a deemed return on tangible assets of foreign corporations. We have made the election to record GILTI tax using the period cost method.

Common Stock Repurchase

We repurchase our own common stock from time to time under stock repurchase programs approved by our Board of Directors. We account for these repurchases under the accounting guidance for equity where we allocate the total repurchase value that is in excess over par value between additional paid-in capital and retained earnings. All shares repurchased are retired.

Recent Accounting Pronouncements

(i) New Accounting Updates Recently Adopted

In October 2021, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update 2021-08, “*Business Combinations (Topic 805) Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*,” which requires contract assets and contract liabilities acquired in a business combination to be recognized and measured in accordance with ASC 606, *Revenue from Contracts with Customers* as if the acquirer had originated the contracts. The updated guidance is effective for fiscal years and interim periods within those years beginning after December 15, 2022 on a prospective basis and early adoption is permitted. We early adopted this standard during 2022 which did not have a material impact on our consolidated financial statements and related disclosures.

(ii) Recent Accounting Pronouncements Not Yet Effective

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

Note 2. Financial Instruments

Cash, Cash Equivalents and Marketable Securities

The following tables summarize our cash and cash equivalents, and marketable securities on our Consolidated Balance Sheet as of December 31, 2022 and 2021 (in thousands):

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

December 31, 2021	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Reported as:		
					Cash and Cash Equivalents	Marketable securities, short-term	Marketable securities, long-term
Cash	\$ 754,802	\$ —	\$ —	\$ 754,802	\$ 754,802	\$ —	\$ —
Money market funds	343,012	—	(2)	343,010	343,010	—	—
Corporate bonds	115,507	9	(398)	115,118	1,042	35,065	79,011
U.S. government treasury bonds	42,976	—	(48)	42,928	—	22,251	20,677
Asset-backed securities	32,031	—	(40)	31,991	—	10,999	20,992
Municipal bonds	7,628	—	(15)	7,613	516	3,657	3,440
U.S. government agency bonds	1,201	—	(1)	1,200	—	—	1,200
Total	\$ 1,297,157	\$ 9	\$ (504)	\$ 1,296,662	\$ 1,099,370	\$ 71,972	\$ 125,320

The following table summarizes the fair value of our available-for-sale marketable securities classified by contractual maturity as of December 31, 2022 and 2021 (in thousands):

	December 31,	
	2022	2021
Due in 1 year or less	\$ 51,037	\$ 59,737
Due in 1 year through 5 years	48,475	139,113
Total	\$ 99,512	\$ 198,850

The securities that we invest in are generally deemed to be low risk based on their credit ratings from the major rating agencies. The longer the duration of these securities, the more susceptible they are to changes in market interest rates and bond yields. As interest rates increase, those securities purchased at a lower yield show a mark-to-market unrealized loss. Our unrealized losses as of December 31, 2022 and 2021 are primarily due to changes in interest rates and credit spreads.

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

December 31, 2022	As of December 31, 2022					
	Less than 12 months		12 Months of Greater		Total	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
Corporate bonds	\$ 10,639	\$ (440)	\$ 54,634	\$ (2,475)	\$ 65,273	\$ (2,915)
U.S. government treasury bonds	5,262	(177)	14,748	(372)	20,010	(549)
Asset-backed securities	2,636	(17)	1,275	(20)	3,911	(37)
Municipal bonds	—	—	2,412	(61)	2,412	(61)
U.S. government agency bonds	3,017	(5)	1,136	(64)	4,153	(69)
Total	\$ 21,554	\$ (639)	\$ 74,205	\$ (2,992)	\$ 95,759	\$ (3,631)

As of December 31, 2021, all gross unrealized losses had been in an unrealized loss position for less than 12 months.

Investment in SmileDirectClub, LLC (“SDC”)

After tendering of our SDC equity interest in 2019, on July 3, 2019, we filed a demand for arbitration regarding SDC’s calculation of the “capital account” balance. On March 12, 2021, the arbitrator ruled in our favor and against SDC and issued an award of \$43.4 million along with interest. The gain of \$43.4 million was recognized as a part of our other income (expense), net in our Consolidated Statement of Operation during the year ended December 31, 2021.

Fair Value Measurements

The following tables summarize our financial assets measured at fair value as of December 31, 2022 and 2021 (in thousands):

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

Description	Balance as of December 31, 2021	Level 1	Level 2
Cash equivalents:			
Money market funds	\$ 343,010	\$ 343,010	\$ —
Corporate bonds	1,042	—	1,042
Municipal bonds	516	—	516
Short-term investments:			
U.S. government treasury bonds	22,251	22,251	—
Corporate bonds	35,065	—	35,065
Municipal bonds	3,657	—	3,657
Asset-backed securities	10,999	—	10,999
Long-term investments:			
U.S. government treasury bonds	20,677	20,677	—
Corporate bonds	79,011	—	79,011
Municipal bonds	3,440	—	3,440
U.S. government agency bonds	1,200	—	1,200
Asset-backed securities	20,992	—	20,992
Prepaid expenses and other current assets:			
Israeli funds	3,841	—	3,841
	<u>\$ 545,701</u>	<u>\$ 385,938</u>	<u>\$ 159,763</u>

Derivatives Not Designated as Hedging Instruments

Recurring foreign currency forward contracts

We enter into foreign currency forward contracts to minimize the short-term impact of foreign currency exchange rate fluctuations on certain trade and intercompany receivables and payables. These forward contracts are classified within Level 2 of the fair value hierarchy. As a result of the settlement of foreign currency forward contracts, the net gain recognized during the year ended December 31, 2022 was not material and we recognized a net gain of \$18.8 million and a net loss of \$22.1 million, during the year ended December 31, 2021 and 2020, respectively. As of December 31, 2022 and 2021, the fair value of foreign exchange forward contracts outstanding was not material.

The following tables presents the gross notional value of all our foreign exchange forward contracts outstanding as of December 31, 2022 and 2021 (in thousands):

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

	December 31, 2021	
	Local Currency Amount	Notional Contract Amount (USD)
Euro	€165,110	\$ 186,358
Canadian Dollar	C\$99,800	78,018
Chinese Yuan	¥494,500	77,358
Polish Zloty	PLN219,800	54,014
Brazilian Real	R\$286,500	50,894
Japanese Yen	¥5,548,700	48,206
British Pound	£34,740	46,881
Israeli Shekel	ILS54,110	17,416
Mexican Peso	M\$311,500	15,133
Swiss Franc	CHF9,950	10,883
Australian Dollar	A\$6,900	5,009
		<u>\$ 590,170</u>

Other foreign currency forward contract

Prior to the closing of the exocad acquisition on April 1, 2020, we entered into a Euro foreign currency forward contract with a notional contract amount of €376.0 million. Relating to this forward contract, in 2020, we recognized a loss of \$10.2 million within other income (expense), net in our Consolidated Statement of Operations.

Note 3. Balance Sheet Components

Inventories consist of the following (in thousands):

	December 31,	
	2022	2021
Raw materials	\$ 172,758	\$ 123,234
Work in progress	96,558	51,706
Finished goods	69,436	55,290
Total inventories	<u>\$ 338,752</u>	<u>\$ 230,230</u>

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

	December 31,	
	2022	2021
Value added tax receivables	\$ 140,484	\$ 93,610
Prepaid expenses	69,124	70,218
Other current assets	16,762	31,477
Total prepaid expenses and other current assets	<u>\$ 226,370</u>	<u>\$ 195,305</u>

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

	Generally Used Estimated Useful Life	December 31,	
		2022	2021
Clinical and manufacturing equipment	Up to 10 years	\$ 583,776	\$ 452,876
Building	20 years	466,003	310,344
Leasehold improvements	Lease term ¹	64,238	61,289
Computer software and hardware	3 years	120,544	117,986
Land	—	58,885	58,869
Furniture, fixtures and other	2-5 years	102,933	71,977
Construction in progress	—	285,202	367,686
Total		<u>1,681,581</u>	<u>1,441,027</u>
Less: Accumulated depreciation and impairment charges		<u>(449,726)</u>	<u>(359,101)</u>
Total property, plant and equipment, net		<u>\$ 1,231,855</u>	<u>\$ 1,081,926</u>

¹ Shorter of the remaining lease term or the estimated useful lives of the assets

Depreciation was \$109.8 million, \$92.1 million and \$80.1 million for the year ended December 31, 2022, 2021 and 2020, respectively.

Accrued liabilities consist of the following (in thousands):

	December 31,	
	2022	2021
Accrued payroll and benefits	\$ 149,508	\$ 288,355
Accrued income taxes	74,323	33,838
Accrued expenses	64,341	67,169
Accrued sales and marketing expenses	36,407	41,387
Current operating lease liabilities	26,574	22,719
Accrued property, plant and equipment	19,922	46,561
Other accrued liabilities	83,299	107,286
Total accrued liabilities	<u>\$ 454,374</u>	<u>\$ 607,315</u>

Accrued warranty as of December 31, 2022 and 2021, which is included in the “Other accrued liabilities” category of the accrued liabilities table above, consists of the following activity (in thousands):

Accrued warranty as of December 31, 2020	\$	12,615
Charged to cost of net revenues		18,213
Actual warranty expenditures		(14,659)
Accrued warranty as of December 31, 2021		16,169
Charged to cost of net revenues		16,429
Actual warranty expenditures		(14,725)
Accrued warranty as of December 31, 2022	\$	17,873

Deferred revenues consist of the following (in thousands):

	December 31,	
	2022	2021
Deferred revenues - current	\$ 1,343,643	\$ 1,152,870
Deferred revenues - long-term ¹	160,662	136,684

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

During the year ended December 31, 2022 and 2021, we recognized \$3,734.6 million and \$3,952.6 million of net revenues, respectively, of which \$635.3 million and \$481.1 million was included in the deferred revenues balance at December 31, 2021 and December 31, 2020, respectively.

Note 4. Leases

Lessee Information

We have operating leases for our digital treatment planning and office facilities, retail spaces, vehicles and office equipment. The components of lease expenses consist of following (in thousands):

Lease Cost	Year Ended December 31,		
	2022	2021	2020
Operating lease cost ¹	\$ 37,919	\$ 33,241	\$ 27,825
Variable lease cost ²	22,084	11,134	1,429
Total lease cost	\$ 60,003	\$ 44,375	\$ 29,254

¹ Includes expense associated with short term leases of less than 12 months which is not material

² Includes payments related to agreements with embedded leases that are not otherwise reflected on the balance sheet. These costs are primarily associated with our manufacturing supply arrangements and fluctuate based on factory output and material price changes.

The following table provides a summary of our operating lease terms and discount rates:

Remaining Lease Term and Discount Rate	December 31,	
	2022	2021
Weighted average remaining lease term (in years)	7.2	7.8
Weighted average discount rate	3.5 %	3.2 %

As of December 31, 2022, the future payments related to our operating lease liabilities are as follows (in thousands):

Fiscal Year Ending December 31,	Operating Leases
2023	\$ 30,596
2024	24,606
2025	19,480
2026	16,511
2027	13,363
Thereafter	39,449
Total lease payments	144,005
Less: Imputed interest	(17,097)
Total lease liabilities	<u>\$ 126,908</u>

As of December 31, 2022, we had additional leases that have not yet commenced with future lease payments of \$14.3 million. These leases will commence during 2023 with non-cancelable lease terms of three to six years.

Lessors Information

We lease iTero intraoral scanners to customers which are classified as operating leases. Our portfolio of leased iTero scanners included in Property, plant and equipment, net are as follows:

	December 31,	
	2022	2021
Scanners under operating leases, gross	\$ 22,914	\$ 10,927
Less: accumulated depreciation	(3,919)	(785)
Scanners under operating leases, net	<u>\$ 18,995</u>	<u>\$ 10,142</u>

As of December 31, 2022, the future lease payments due to us are as follows (in thousands):

Fiscal Year Ending December 31,	Operating Leases
2023	\$ 15,714
2024	13,967
2025	6,202
Total lease payments	<u>\$ 35,883</u>

For the year ended December 31, 2022, operating lease income was \$12.3 million and for the years ended December 31, 2021 and 2020, operating lease income was not material.

Note 5. Goodwill and Intangible Assets

During the year ended December 31, 2022, we completed an immaterial business combination which increased goodwill and existing technology intangible assets.

Goodwill

The change in the carrying value of goodwill for the year ended December 31, 2022 and 2021, categorized by reportable segments, is as follows (in thousands):

	Clear Aligner	Systems and Services	Total
Balance as of December 31, 2020	\$ 112,691	\$ 332,126	\$ 444,817
Additions from acquisition	3,646	—	3,646
Foreign currency translation adjustments	(4,129)	(25,787)	(29,916)
Balance as of December 31, 2021	112,208	306,339	418,547
Additions from acquisition	—	8,729	8,729
Foreign currency translation adjustments	(2,728)	(16,997)	(19,725)
Balance as of December 31, 2022	\$ 109,480	\$ 298,071	\$ 407,551

We completed our annual goodwill impairment assessments in 2022 and 2021 and determined there were no impairments.

Intangible Long-Lived Assets

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

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

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

	Weighted Average Amortization Period (in years)	Gross Carrying Amount as of December 31, 2021	Accumulated Amortization	Accumulated Impairment Loss	Net Carrying Value as of December 31, 2021
Existing technology	10	\$ 104,531	\$ (22,495)	\$ (4,328)	\$ 77,708
Customer relationships	11	55,000	(25,891)	(10,751)	18,358
Trademarks and tradenames	10	17,200	(4,547)	(4,179)	8,474
Patents	8	6,511	(4,495)	—	2,016
		\$ 183,242	\$ (57,428)	\$ (19,258)	106,556
Foreign currency translation adjustments					3,153
Total intangible assets, net					\$ 109,709

There were no triggering events in 2022 or 2021 that would cause impairments of our intangible long-lived assets.

The total estimated annual future amortization expense for these acquired intangible assets as of December 31, 2022 is as follows (in thousands):

Fiscal Year	Amortization
2023	\$ 16,501
2024	15,335
2025	14,959
2026	14,353
2027	11,992
Thereafter	24,492
Total	\$ 97,632

Amortization expense was \$16.0 million, \$16.6 million and \$13.4 million for the year ended December 31, 2022, 2021 and 2020, respectively.

Note 6. Credit Facility

We have a credit facility that provides for a \$300.0 million unsecured revolving line of credit, along with a \$50.0 million letter of credit. On December 23, 2022, we amended certain provisions in our credit facility which included extending the maturity date on the facility to December 23, 2027 and replacing the interest rate from the existing LIBOR with SOFR (“2022 Credit Facility”). The 2022 Credit Facility requires us to comply with specific financial conditions and performance requirements. Loans under the 2022 Credit Facility bear interest, at our option, at either a rate based on the SOFR for the applicable interest period or a base rate, in each case plus a margin. As of December 31, 2022, we had no outstanding borrowings under the 2022 Credit Facility and were in compliance with the conditions and performance requirements in all material respects.

Note 7. Legal Proceedings

2019 Shareholder Derivative Lawsuit

In January 2019, three derivative lawsuits were filed in the U.S. District Court for the Northern District of California which were later consolidated, purportedly on our behalf, naming as defendants the then current members of our Board of Directors along with certain of our executive officers. The complaints assert various state law causes of action, including for breaches of fiduciary duty, insider trading, and unjust enrichment. The complaints seek unspecified monetary damages on our behalf, which is named solely as a nominal defendant against whom no recovery is sought, as well as disgorgement and the costs and expenses associated with the litigation, including attorneys’ fees. The consolidated action is currently stayed. Defendants have not yet responded to the complaints.

On April 12, 2019, a derivative lawsuit was also filed in California Superior Court for Santa Clara County, purportedly on our behalf, naming as defendants the members of our Board of Directors along with certain of our executive officers. The allegations in the complaint are similar to those in the derivative suits described above. The matter is currently stayed. Defendants have not yet responded to the complaint.

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

2020 Securities Class Action Lawsuit

On March 2, 2020, a class action lawsuit against us and two of our executive officers was filed in the U.S. District Court for the Southern District of New York (later transferred to the U.S. District Court for the Northern District of California) on behalf of a purported class of purchasers of our common stock. The complaint alleged claims under the federal securities laws and sought monetary damages in an unspecified amount and costs and expenses incurred in the litigation. The lead plaintiff filed an amended complaint on August 4, 2020 against us and three of our executive officers alleging similar claims as in the initial complaint on behalf of a purported class of purchasers of our common stock from April 25, 2019 to July 24, 2019. On March 29, 2021, defendants’ motion to dismiss the amended complaint was granted with leave for the lead plaintiff to file a further amended complaint. On April 22, 2021, lead plaintiff filed a notice stating it would not file a further amended complaint. On April 23, 2021, the Court dismissed the action with prejudice and judgment was entered. Lead plaintiff filed a notice of appeal on April 28, 2021 and filed its opening appeal brief with the United States Court of Appeals for the Ninth

Circuit on September 1, 2021. The defendants-appellees filed their answering brief on November 22, 2021. The lead plaintiff-appellant's reply brief was filed on January 12, 2022. Oral argument was held on March 10, 2022. On July 8, 2022, a panel of the Ninth Circuit affirmed the district court order dismissing the complaint. On July 21, 2022, plaintiff-appellant filed a petition for rehearing or hearing en banc, which the court denied on August 15, 2022. On November 14, 2022, the deadline for plaintiff-appellant to file a petition for writ of certiorari to the United States Supreme Court passed without plaintiff-appellant filing a petition, finally resolving this matter in our favor.

Antitrust Class Actions

On June 5, 2020, a dental practice named Simon and Simon, PC doing business as City Smiles brought an antitrust action in the U.S. District Court for the Northern District of California on behalf of itself and a putative class of similarly situated practices seeking monetary damages and injunctive relief relating to our alleged market activities in alleged clear aligner and intraoral scanner markets. Plaintiff filed an amended complaint and added VIP Dental Spas as a plaintiff on August 14, 2020. A jury trial is scheduled to begin in this matter on June 29, 2024. We believe the plaintiffs' claims are without merit and we intend to vigorously defend ourselves.

On May 3, 2021, an individual named Misty Snow brought an antitrust action in the U.S. District Court for the Northern District of California on behalf of herself and a putative class of similarly situated individuals seeking monetary damages and injunctive relief relating to our alleged market activities in alleged clear aligner and intraoral scanner markets. Plaintiff filed an amended complaint on July 30, 2021 adding new plaintiffs and various state law claims. Plaintiffs filed a second amended complaint on October 21, 2021. On March 2, 2022, Plaintiffs filed a third amended complaint. On October 3, 2022, Plaintiffs filed a fourth amended complaint. A jury trial is scheduled to begin in this matter on June 29, 2024 for issues related to Section 2 allegations. A jury trial is scheduled to begin in this matter on September 30, 2024 for issues related to Section 1 allegations. We believe the plaintiffs' claims are without merit and we intend to vigorously defend ourselves.

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

SDC Dispute

On August 27, 2020, we initiated a confidential arbitration proceeding against SmileDirectClub LLC ("SDC") before the American Arbitration Association in San Jose, California. This arbitration relates to the Strategic Supply Agreement ("Supply Agreement") entered into between the parties in 2016. The complaint alleges that SDC breached the Supply Agreement's terms, causing damages to us in an amount to be determined. On January 19, 2021, SDC filed a counterclaim alleging that we breached the Supply Agreement. On May 3, 2022, SDC filed an additional counterclaim alleging that we breached the Supply Agreement. We deny SDC's allegations in the counterclaims and we intend to vigorously defend ourselves against them. The arbitration hearing on our claims and SDC's first counterclaim was held on July 18-27, 2022 in Chicago, Illinois.

On October 27, 2022, the arbitrator issued an interim award on our claims and SDC's first counterclaim finding that SDC breached the Supply Agreement, we did not breach the Supply Agreement, and SDC caused harm to us. Based on these findings, the arbitrator awarded us an interim award that, when confirmed, may be material to our results in the quarter reported.

On December 2, 2022, SDC filed a motion to re-open the arbitrator's interim award in Align's favor. We anticipate recognizing the amount ultimately realizable following confirmation of the final award.

The arbitration hearing on SDC's second counterclaim was held on February 21-23, 2023 in Chicago, Illinois. We are currently unable to predict the outcome of SDC's second counterclaim and therefore cannot determine the likelihood of loss or success nor estimate a range of possible loss or success, if any.

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

Note 8. Commitments and Contingencies

Unconditional Purchase Obligations

On October 30, 2020, we entered into a subscription agreement with a software company to renew our license for a total consideration of \$95.2 million. As of December 31, 2022, we had a remaining commitment of \$23.8 million which is expected to be paid through 2024.

On December 6, 2020, we entered into a supply agreement for certain components used for our manufacturing operations. As of December 31, 2022, we had purchase commitments of \$85.8 million which is expected to be paid through 2025.

On June 24, 2021, we entered into an amended purchase agreement with an existing single source supplier which requires us to purchase aligner material for a minimum amount of approximately \$348.0 million from 2023 through 2026.

On March 11, 2022, we entered into an amended promotional rights agreement with a third-party which includes advertising and media coverage. As of December 31, 2022, we had a remaining commitment of \$60.0 million which is expected to be paid through 2026.

On December 9, 2022, we entered into a cloud services agreement to support our production operations and research and development efforts for clinical applications which requires us to make minimum purchases totaling \$145.0 million from 2023 through 2027.

Off-Balance Sheet Arrangements

As of December 31, 2022, we had no material off-balance sheet arrangements that have, or are reasonably likely to have, a current or future material effect on our consolidated financial condition, results of operations, liquidity, capital expenditures or capital resources other than certain items disclosed in the Unconditional Purchase Obligations section above.

Indemnification Provisions

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

It is not possible to make a reasonable estimate of the maximum potential amount under these indemnification agreements due to the unique facts and circumstances involved in each particular agreement. Additionally, we have a limited history of prior indemnification claims and the payments we have made under such agreements have not had a material adverse effect on our results of operations, cash flows or financial position. However, to the extent that valid indemnification claims arise in the future, future payments by us could be significant and could have a material adverse effect on our results of operations or cash flows in a particular period. As of December 31, 2022, we did not have any material indemnification claims that were probable or reasonably possible.

Note 9. Stockholders' Equity

Common Stock

The holders of common stock are entitled to receive dividends whenever funds are legally available and when and if declared by the Board of Directors. We have never declared or paid dividends on our common stock.

Stock-Based Compensation Plans

Our 2005 Incentive Plan, as amended, provides for the granting of incentive stock options, non-statutory stock options, restricted stock, stock appreciation rights, performance units and performance shares to employees, non-employee directors and consultants. Shares granted on or after May 16, 2013 as an award of restricted stock, restricted stock units, performance shares or performance units ("full value awards") are counted against the authorized share reserve as one and nine-tenths (1.9/10) shares for every one (1) share subject to the award, and any shares canceled that were counted as one and nine-tenths against the plan reserve will be returned at the same ratio.

As of December 31, 2022, the 2005 Incentive Plan, as amended, has a total reserve of 27,783,379 shares for issuance of which 3,760,672 shares are available for issuance. We issue new shares from our pool of authorized but unissued shares to satisfy the exercise and vesting obligations of our stock-based compensation plans.

Summary of Stock-Based Compensation Expense

The stock-based compensation related to our stock-based awards and employee stock purchase plan for the year ended December 31, 2022, 2021 and 2020 is as follows (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Cost of net revenues	\$ 6,438	\$ 5,633	\$ 4,719
Selling, general and administrative	103,134	90,659	78,500
Research and development	23,795	18,044	15,208
Total stock-based compensation	\$ 133,367	\$ 114,336	\$ 98,427

The income tax benefit related to stock-based compensation was \$14.9 million, \$13.8 million and \$11.9 million for the year ended December 31, 2022, 2021 and 2020, respectively.

Restricted Stock Units (“RSUs”)

The fair value of RSUs is based on our closing stock price on the date of grant. RSUs granted generally vest over a period of four years. A summary for the year ended December 31, 2022 is as follows:

	Number of Shares Underlying RSUs (in thousands)	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Unvested as of December 31, 2021	492	\$ 369.17		
Granted	248	469.12		
Vested and released	(200)	333.76		
Forfeited	(51)	437.05		
Unvested as of December 31, 2022	489	\$ 427.23	1.2	\$ 103,138

The aggregate intrinsic value in the table above represents the total pre-tax intrinsic value (calculated by multiplying our closing stock price on the last trading day of 2022 by the number of unvested RSUs) that would have been received by the unit holders had all RSUs been vested and released as of the last trading day of 2022. This amount will fluctuate based on the fair market value of our stock. During 2022, of the 199,832 shares vested and released, 59,115 shares were withheld for employee statutory tax obligations, resulting in a net issuance of 140,717 shares.

The total fair value of RSUs vested as of their respective vesting dates during 2022, 2021 and 2020 was \$93.7 million, \$158.8 million and \$89.6 million, respectively. The weighted average grant date fair value of RSUs granted during 2022, 2021 and 2020 was \$469.12, \$600.10 and \$267.24, respectively. As of December 31, 2022, we expect to recognize \$133.4 million of total unamortized compensation costs, net of estimated forfeitures, related to RSUs over a weighted average period of 2.2 years.

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

We grant MSUs to members of senior management. Each MSU represents the right to one share of our common stock. The actual number of MSUs which will be eligible to vest will be based on the performance of our stock price relative to the performance of a stock market index over the vesting period. MSUs vest over a period of three years and the maximum number eligible to vest in the future is 250% of the MSUs initially granted.

The following table summarizes the MSU performance activity for the year ended December 31, 2022:

	Number of Shares Underlying MSUs (in thousands)	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Unvested as of December 31, 2021	174	\$ 551.57		
Granted ¹	101	607.96		
Vested and released	(128)	396.10		
Forfeited	(3)	744.39		
Unvested as of December 31, 2022	<u>144</u>	<u>\$ 725.73</u>	1.0	\$ 30,384

¹ Includes MSUs vested during the period above 100% of the grant as actual shares released is based on our stock performance over the vesting period

The aggregate intrinsic value in the table above represents the total pre-tax intrinsic value (calculated by multiplying our closing stock price on the last trading day of 2022 by the number of unvested MSUs) that would have been received by the unit holders had all MSUs been vested and released as of the last trading day of 2022. This amount will fluctuate based on the fair market value of our stock. During 2022, of the 128,259 shares vested and released, 49,524 shares were withheld for employee statutory tax obligations, resulting in a net issuance of 78,735 shares.

The total fair value of MSUs vested as of their respective vesting dates during 2022, 2021 and 2020 was \$64.0 million, \$135.6 million and \$47.1 million, respectively. As of December 31, 2022, we expect to recognize \$40.1 million of total unamortized compensation costs, net of estimated forfeitures, related to MSUs over a weighted average period of 1.0 year.

The fair value of MSUs is estimated at the grant date using a Monte Carlo simulation that includes factors for market conditions. The weighted average assumptions used in the Monte Carlo simulation were as follows:

	Year Ended December 31,		
	2022	2021	2020
Expected term (in years)	3.0	3.0	3.0
Expected volatility	53.8 %	56.3 %	44.4 %
Risk-free interest rate	1.7 %	0.2 %	1.4 %
Expected dividends	—	—	—
Weighted average fair value per share at grant date	\$ 915.22	\$ 1,102.09	\$ 392.67

Restricted Stock Units with Performance Conditions (“PSUs”)

In the fourth quarter of 2022, we granted PSUs to certain employees which are eligible to vest based on the achievement of project-based milestones over a term of 2.2 years. Total PSUs granted were 4,728 and the weighted average grant date fair value for the PSUs was \$201.63.

Employee Stock Purchase Plan (“ESPP”)

In May 2010, our stockholders approved the 2010 Employee Stock Purchase Plan (the “2010 Purchase Plan”) which consists of consecutive overlapping twenty-four month offering periods with four six-month purchase periods in each offering period. Employees purchase shares at 85% of the lower of the fair market value of the common stock at either the beginning of the offering period or the end of the purchase period. The 2010 Purchase Plan will continue until terminated by either the Board of Directors or its administrator. The 2010 Purchase Plan also allows for purchase rights to employees outside the U.S. and Canada with six-month offering periods and purchase periods. In May 2021, the 2010 Purchase Plan was amended and restated to increase the maximum number of shares available for purchase to 4,400,000 shares.

The following table summarizes the ESPP shares issued:

	Year Ended December 31,		
	2022	2021	2020
Number of shares issued (in thousands)	86	131	116
Weighted average price	\$ 305.24	\$ 195.44	\$ 175.69

As of December 31, 2022, 2,108,898 shares remain available for future issuance.

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

	Year Ended December 31,		
	2022	2021	2020
Expected term (in years)	1.5	1.1	1.0
Expected volatility	50.2 %	52.7 %	55.0 %
Risk-free interest rate	1.8 %	0.1 %	0.9 %
Expected dividends	—	—	—
Weighted average fair value at grant date	\$ 159.44	\$ 246.84	\$ 96.94

We recognized stock-based compensation related to our employee stock purchase plan of \$23.5 million, \$12.2 million and \$10.5 million for the year ended December 31, 2022, 2021 and 2020, respectively. As of December 31, 2022, we expect to recognize \$14.8 million of total unamortized compensation costs related to future employee stock purchases over a weighted average period of 0.9 year.

Note 10. Common Stock Repurchase Programs

In May 2018, our Board of Directors authorized a plan to repurchase up to \$600.0 million of our common stock (“May 2018 Repurchase Program”). As of December 31, 2021, the authorization under the May 2018 Repurchase Program was completed. In May 2021, our Board of Directors authorized a plan to repurchase up to \$1.0 billion of our common stock (“May 2021 Repurchase Program”). As of December 31, 2022, we have \$249.9 million available for repurchases under the May 2021 Repurchase Program.

Subsequent to the fourth quarter, in January 2023, our Board of Directors authorized a plan to repurchase up to \$1.0 billion of our common stock.

Accelerated Share Repurchase Agreements (“ASRs”)

We entered into ASRs providing for the repurchase of our common stock based on the volume-weighted average price during the term of the agreement, less an agreed upon discount. Under the terms of the ASRs, the financial institution may be required to deliver additional shares of common stock at final settlement or, under certain circumstances, we may be required at our election, to either deliver shares or make a cash payment to the financial institution. The ASRs limit the number of shares we would be required to deliver.

The following table summarizes the information regarding repurchases of our common stock under ASRs:

Agreement Date	Repurchase Program	Amount Paid (in millions)	Completion Date	Total Shares Received	Average Price per Share
Q2 2021	May 2018	\$ 100.0	Q3 2021	171,322	\$ 583.70
Q2 2021	May 2021	\$ 100.0	Q3 2021	161,707	\$ 618.40
Q3 2021	May 2021	\$ 75.0	Q3 2021	109,239	\$ 686.91
Q4 2021	May 2021	\$ 100.0	Q4 2021	150,031	\$ 666.53
Q2 2022	May 2021	\$ 200.0	Q2 2022	756,502	\$ 264.37
Q4 2022	May 2021	\$ 200.0	N/A ¹	848,266	\$ 188.62

¹ As of December 31, 2022, the contract was open and we recorded the remaining equity forward contract at a fair value of \$40.0 million which was included within “Additional paid-in capital” in stockholders' equity in our Consolidated Balance Sheet. Subsequent to the fourth quarter, the ASR was completed and 0.1 million additional shares were received at an average price per share of \$293.15.

Subsequent to the fourth quarter, on February 3, 2023, we entered into an ASR to repurchase \$250.0 million of our common stock, completing our 2021 Repurchase Program. We paid \$250.0 million and received an initial delivery of approximately 0.6 million shares based on current market prices. The final number of shares to be repurchased will be based on our volume-weighted average stock price under the terms of the ASR, less an agreed upon discount.

Open Market Common Stock Repurchases

During the year ended December 31, 2022, we repurchased on the open market approximately 0.1 million shares of our common stock at an average price of \$522.61 per share, including commissions and fees, for an aggregate purchase price of \$75.0 million.

Note 11. Employee Benefit Plans

We have defined contribution retirement plan under Section 401(k) of the Internal Revenue Code for our U.S. employees which covers substantially all U.S. employees who meet minimum age and service requirements and allows participants to defer a portion of their annual compensation on a pre-tax basis. We match 50% of our employee's salary deferral contributions up to 6% of the employee's eligible compensation. We contributed approximately \$10.0 million, \$8.5 million and \$6.9 million to the 401(k) plan during the year ended December 31, 2022, 2021 and 2020, respectively. We also have defined contribution retirement plans outside of the U.S. to which we contributed \$54.5 million, \$42.3 million and \$28.9 million during the year ended December 31, 2022, 2021 and 2020, respectively.

Note 12. Income Taxes

Net income before provision for (benefit from) income taxes consists of the following (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Domestic	\$ 268,097	\$ 378,478	\$ 173,099
Foreign	330,960	633,945	205,850
Net income before provision for (benefit from) income taxes	<u>\$ 599,057</u>	<u>\$ 1,012,423</u>	<u>\$ 378,949</u>

The provision for (benefit from) income taxes consists of the following (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Federal			
Current	\$ 188,050	\$ 157,383	\$ 55,291
Deferred	(55,579)	(25,598)	(11,749)
	<u>132,471</u>	<u>131,785</u>	<u>43,542</u>
State			
Current	34,621	28,365	8,862
Deferred	(12,265)	(5,860)	(2,121)
	<u>22,356</u>	<u>22,505</u>	<u>6,741</u>
Foreign			
Current	56,537	42,681	29,399
Deferred	26,120	43,432	(1,476,621)
	<u>82,657</u>	<u>86,113</u>	<u>(1,447,222)</u>
Provision for (benefit from) income taxes	<u>\$ 237,484</u>	<u>\$ 240,403</u>	<u>\$ (1,396,939)</u>

The differences between income taxes using the federal statutory income tax rate for 2022, 2021 and 2020 and our effective tax rates are as follows:

	Year Ended December 31,		
	2022	2021	2020
U.S. federal statutory income tax rate	21.0 %	21.0 %	21.0 %
State income taxes, net of federal tax benefit	3.7	2.2	1.5
U.S. tax on foreign earnings	5.6	2.5	(1.2)
Impact of differences in foreign tax rates	3.3	(2.0)	5.6
Stock-based compensation	2.1	(0.3)	1.1
Impact of intra-entity intellectual property rights transfer	—	—	(395.6)
Settlement on audits	1.9	—	(1.4)
Change in valuation allowance	1.7	1.1	0.1
Other items not individually material	0.3	(0.8)	0.3
Effective tax rate	39.6 %	23.7 %	(368.6)%

We intend to continue reinvesting our foreign subsidiary earnings indefinitely and do not expect any additional costs that we may incur upon repatriation of these foreign earnings to be significant.

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

As of December 31, 2022 and 2021, the significant components of our deferred tax assets and liabilities are (in thousands):

	December 31,	
	2022	2021
Deferred tax assets:		
Net operating loss and capital loss carryforwards	\$ 15,380	\$ 11,069
Reserves and accruals	32,759	47,641
Stock-based compensation	19,469	13,576
Deferred revenue	117,039	83,514
Capitalized research & development	54,293	413
Amortizable tax basis in intangibles	1,350,434	1,392,471
Other	16,645	15,645
Deferred tax assets before valuation allowance	1,606,019	1,564,329
Valuation allowance	(23,286)	(12,938)
Total deferred tax assets	1,582,733	1,551,391
Deferred tax liabilities:		
Depreciation and amortization	11,407	12,328
Acquisition-related intangibles	26,008	28,989
Other	3,438	6,931
Total deferred tax liabilities	40,853	48,248
Net deferred tax assets	1,541,880	1,503,143

The available positive evidence at December 31, 2022 included historical operating profits and a projection of future income sufficient to realize most of our remaining deferred tax assets. As of December 31, 2022, it was considered more likely

than not that our deferred tax assets would be realized with the exception of certain net operating loss, capital loss carryovers and unrealized translation losses as we are unable to forecast sufficient future profits to realize the deferred tax assets. The total valuation allowance as of December 31, 2022 was \$23.3 million. During the year ended December 31, 2022, the valuation allowance increased by \$10.3 million primarily due to deferred tax assets related to unrealized translation losses and net operating loss from one of our German subsidiaries and the deferred tax assets from our Russian commercial entity are not more likely than not to be realized.

As of December 31, 2022, we have foreign net operating loss carryforwards of approximately \$48.2 million, attributed mainly to losses in China, Italy and Germany. The losses in Italy and Germany can be carried forward indefinitely. The operating loss carryforwards in China, if not utilized, will expire beginning 2026.

The changes in the balance of gross unrecognized tax benefits, which exclude interest and penalties, for the year ended December 31, 2022, 2021 and 2020, are as follows (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Gross unrecognized tax benefits at January 1,	\$ 63,295	\$ 46,320	\$ 46,650
Increases related to tax positions taken during the current year	84,249	27,710	20,592
Increases related to tax positions taken during a prior year	15,411	5,471	10,201
Decreases related to tax positions taken during a prior year	(2,647)	(5,804)	(29,977)
Decreases related to expiration of statute of limitations	(4,582)	(8,986)	—
Decreases related to settlement with tax authorities	(14,166)	(1,416)	(1,146)
Gross unrecognized tax benefits at December 31,	\$ 141,560	\$ 63,295	\$ 46,320

The total amount of gross unrecognized tax benefits as of December 31, 2022 was \$141.6 million, of which \$134.3 million would impact our effective tax rate if recognized.

We file U.S. federal, U.S. state, and non-U.S. income tax returns. Our major tax jurisdictions include U.S. federal, the State of California and Switzerland. For U.S. federal and state tax returns, we are no longer subject to tax examinations for years before 2017 and 2015, respectively. Our Israeli subsidiary was under tax audit for years 2016 through 2019. During the fourth quarter of 2022, we settled the audit with the Israel Tax Authority in connection with a 2016 transaction to which our Israeli subsidiary was a party. As a result, we are no longer subject to tax examinations for years through 2021 in Israel. With few exceptions, we are no longer subject to examination by other foreign tax authorities for years before 2015.

We have elected to recognize interest and penalties related to unrecognized tax benefits as a component of income taxes. Interest and penalties included in tax expense for the year ended December 31, 2022, 2021 and 2020 as well as accrued as of December 31, 2022 and 2021 were not material. While we defend income tax audits in various jurisdictions and the results of such audits may differ materially from the amounts accrued for each year, we cannot currently ascertain the bases on which any given audit will be ultimately resolved. Accordingly, we are unable to estimate the range of possible adjustments to our balance of gross unrecognized tax benefits in the next 12 months.

Note 13. Net Income per Share

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

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

	Year Ended December 31,		
	2022	2021	2020
Numerator:			
Net income	\$ 361,573	\$ 772,020	\$ 1,775,888
Denominator:			
Weighted average common shares outstanding, basic	78,190	78,917	78,760
Dilutive effect of potential common stock	230	753	470
Total shares, diluted	78,420	79,670	79,230
Net income per share, basic	\$ 4.62	\$ 9.78	\$ 22.55
Net income per share, diluted	\$ 4.61	\$ 9.69	\$ 22.41
Anti-dilutive potential common shares ¹	320	1	280

¹ Represents stock-based awards not included in the calculation of diluted net income per share as the effect would have been anti-dilutive.

Note 14. Supplemental Cash Flow Information

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

	Year Ended December 31,		
	2022	2021	2020
Taxes paid	\$ 231,884	\$ 203,309	\$ 76,332
Non-cash investing and financing activities:			
Acquisition of property, plant and equipment in accounts payable and accrued liabilities	\$ 35,767	\$ 64,135	\$ 37,267
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash flows from operating leases	\$ 31,015	\$ 29,769	\$ 26,022
Right-of-use assets obtained in exchange for lease obligations:			
Operating leases	\$ 34,144	\$ 68,463	\$ 47,981

Note 15. Segments and Geographical Information

Segment Information

We report segment information based on the management approach. The management approach designates the internal reporting used by our Chief Operating Decision Maker for decision making and performance assessment as the basis for determining our reportable segments. The performance measures of our reportable segments include net revenues, gross profit and income from operations. Income from operations for each segment includes all geographic revenues, related cost of net revenues and operating expenses directly attributable to the segment. Certain operating expenses are attributable to operating segments and each allocation is measured differently based on the specific facts and circumstances of the costs being allocated. Costs not specifically allocated to segment income from operations generally include various corporate expenses such as stock-based compensation and costs related to IT, facilities, human resources, accounting and finance, legal and regulatory, other separately managed general and administrative costs outside the operating segments and restructuring costs. We group our operations into two reportable segments: Clear Aligner segment and Imaging Systems and CAD/CAM services (“Systems and Services”) segment.

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

	Year Ended December 31,		
	2022	2021	2020
Net revenues			
Clear Aligner	\$ 3,072,585	\$ 3,247,080	\$ 2,101,459
Systems and Services	662,050	705,504	370,482
Total net revenues	\$ 3,734,635	\$ 3,952,584	\$ 2,471,941
Gross profit			
Clear Aligner	\$ 2,228,170	\$ 2,474,373	\$ 1,532,130
Systems and Services	405,605	460,982	231,105
Total gross profit	\$ 2,633,775	\$ 2,935,355	\$ 1,763,235
Income from operations			
Clear Aligner	\$ 1,134,420	\$ 1,325,866	\$ 768,045
Systems and Services	179,765	259,127	96,052
Unallocated corporate expenses	(671,590)	(608,593)	(476,926)
Total income from operations	\$ 642,595	\$ 976,400	\$ 387,171
Stock-based compensation			
Clear Aligner	\$ 14,816	\$ 10,648	\$ 8,975
Systems and Services	994	705	734
Unallocated corporate expenses	117,557	102,983	88,718
Total stock-based compensation	\$ 133,367	\$ 114,336	\$ 98,427
Depreciation and amortization			
Clear Aligner	\$ 57,888	\$ 50,723	\$ 41,371
Systems and Services	28,300	21,581	16,798
Unallocated corporate expenses	39,605	36,425	35,369
Total depreciation and amortization	\$ 125,793	\$ 108,729	\$ 93,538

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

	Year Ended December 31,		
	2022	2021	2020
Total segment income from operations	\$ 1,314,185	\$ 1,584,993	\$ 864,097
Unallocated corporate expenses	(671,590)	(608,593)	(476,926)
Total income from operations	642,595	976,400	387,171
Interest income	5,367	3,103	3,125
Other income (expense), net	(48,905)	32,920	(11,347)
Net income before provision for (benefit from) income taxes	\$ 599,057	\$ 1,012,423	\$ 378,949

Geographical Information

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

	Year Ended December 31,		
	2022	2021	2020
Net revenues ¹ :			
U.S.	\$ 1,660,045	\$ 1,724,296	\$ 1,099,564
Switzerland	1,216,094	1,353,229	809,080
Other International	858,496	875,059	563,297
Total net revenues	\$ 3,734,635	\$ 3,952,584	\$ 2,471,941

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

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

	December 31,	
	2022	2021
Long-lived assets ¹ :		
Switzerland	\$ 532,921	\$ 444,205
U.S.	214,804	210,582
China	118,669	125,346
Other International	484,341	423,050
Total long-lived assets	\$ 1,350,735	\$ 1,203,183

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

Note 16. Restructuring and Other Charges

Restructuring Activities

During the fourth quarter of 2022, we initiated a restructuring plan to increase efficiencies across the organization which is expected to be completed in the first half of 2023. We incurred approximately \$10.2 million in restructuring expenses, of which \$2.9 million was recorded in Cost of net revenues and \$7.3 million was recorded in Restructuring and other charges.

Activity related to the restructuring liabilities associated with our restructuring initiatives consist of the following (in thousands):

	Severance and related costs	Impairment Charges	Total
Restructuring charges	\$ 8,723	\$ 1,453	\$ 10,176
Cash payments	(4,807)	—	(4,807)
Non-cash charges	—	(1,453)	(1,453)
Balance as of December 31, 2022 ¹	<u>\$ 3,916</u>	<u>\$ —</u>	<u>\$ 3,916</u>

¹ Included in “Accrued liabilities” within our Consolidated Balance Sheet.

Other Charges

In addition to the restructuring charges, during the fourth quarter of 2022, we also incurred certain lease termination costs of \$2.3 million and asset impairments of \$1.8 million which were also recorded in Restructuring and other charges.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of disclosure controls and procedures.

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we have evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based upon that evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that our disclosure controls and procedures are effective as of December 31, 2022 to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure, and that such information is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms.

Management's annual report on internal control over financial reporting.

See “Report of Management on Internal Control over Financial Reporting” of this Annual Report on Form 10-K.

Changes in internal control over financial reporting.

There have been no changes in our internal control over financial reporting during the quarter ended December 31, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information.

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

None.

PART III

Certain information required by Part III is omitted from this Form 10-K because we intend to file a definitive Proxy Statement for our 2023 Annual Meeting of Stockholders (the “Proxy Statement”) not later than 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K, and certain information to be included therein is incorporated herein by reference.

Item 10. Directors, Executive Officers and Corporate Governance.

The information required by Item 401 of Regulation S-K concerning our directors is incorporated by reference to the Proxy Statement under the section captioned “Directors.” The information required by Item 401 of Regulation S-K concerning our executive officers is set forth in *Item 1—“Business” of this Annual Report on Form 10-K*. The information required by Item 405 of Regulation S-K is incorporated by reference to the section entitled “Delinquent Section 16(a) Reports” contained in the Proxy Statement. The information required by Item 407(c)(3), 407(d)(4) and 407(d)(5) of Regulation S-K is incorporated by reference to the Proxy Statement under the section entitled “Corporate Governance”.

Code of Ethics

We have a code of ethics (which we call our Global Code of Conduct) that applies to all of our employees, including our principal executive officer, principal financial officer and controller. Our Global Code of Conduct is posted on the investor relations portion of our website at <http://investor.aligntech.com> within the section captioned “Corporate Governance”.

We intend to satisfy the disclosure requirement under Item 5.05 of Form 8-K regarding an amendment to, or waiver from, a provision of this code of ethics by posting such information on our website, at the address and location specified above, or as otherwise required by the NASDAQ Global Select Market.

Item 11. Executive Compensation.

The information required by Item 402 of Regulation S-K is incorporated by reference to the Proxy Statement under the section captioned “Executive Compensation - Compensation Discussion and Analysis.” The information required by Items 407(e)(4) and (e)(5) is incorporated by reference to the Proxy Statement under the section captioned “Corporate Governance - Committee Oversight - Compensation Committee Interlocks and Insider Participation” and “Compensation Committee of the Board Report,” respectively.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The information required by Item 403 and Item 201(d) of Regulation S-K is incorporated by reference to the Proxy Statement under the sections captioned “Security Ownership of Certain Beneficial Owners and Management” and “Equity Compensation Plan Information,” respectively.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

The information required by Item 404 and Item 407 of Regulation S-K is incorporated by reference to the Proxy Statement under the sections captioned “Certain Relationships and Related Party Transactions” and “Corporate Governance—Board and Committee Independence and Qualifications,” respectively.

Item 14. Principal Accountant Fees and Services.

The information required by Item 9(e) of Schedule 14A of the Securities Act of 1934, as amended, is incorporated by reference to the Proxy Statement under the section captioned "Ratification of Appointment of Independent Registered Public Accountants."

PART IV

Item 15. Exhibit and Financial Statement Schedules.

(a) Financial Statements

1. Consolidated financial statements

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

Report of Independent Registered Public Accounting Firm	56
Consolidated Statements of Operations for the year ended December 31, 2022, 2021 and 2020	58
Consolidated Statements of Comprehensive Income for the year ended December 31, 2022, 2021 and 2020	59
Consolidated Balance Sheets as of December 31, 2022 and 2021	60
Consolidated Statements of Stockholders' Equity for the year ended December 31, 2022, 2021 and 2020	61
Consolidated Statements of Cash Flows for the year ended December 31, 2022, 2021 and 2020	62
Notes to Consolidated Financial Statements	63

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 for the year ended December 31, 2022, 2021 and 2020

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

SCHEDULE II: VALUATION AND QUALIFYING ACCOUNTS AND RESERVES

	Balance at Beginning of Period	Additions (Reductions) to Costs and Expenses	Write Offs	Balance at End of Period
(in thousands)				
Allowance for doubtful accounts:				
Year Ended December 31, 2020	\$ 6,756	\$ 12,073	\$ (8,590)	\$ 10,239
Year Ended December 31, 2021	\$ 10,239	\$ 2,814	\$ (3,808)	\$ 9,245
Year Ended December 31, 2022	\$ 9,245	\$ 4,102	\$ (3,004)	\$ 10,343
Valuation allowance for deferred tax assets:				
Year Ended December 31, 2020	\$ 1,086	\$ 239	\$ —	\$ 1,325
Year Ended December 31, 2021	\$ 1,325	\$ 11,613	\$ —	\$ 12,938
Year Ended December 31, 2022	\$ 12,938	\$ 10,348	\$ —	\$ 23,286

(b) The following Exhibits are included in this Annual Report on Form 10-K:

Exhibit Number	Description	Form	Date	Exhibit Number Incorporated by Reference herein	Filed herewith
3.1	Amended and Restated Certificate of Incorporation of registrant	S-1, as amended (File No. 333-49932)	12/28/2000	3.1	
3.1A	Certificate of Amendment to the Amended and Restated Certificate of Incorporation	8-K	5/20/2016	3.01	
3.2	Amended and Restated Bylaws of registrant	8-K	2/29/2012	3.2	
3.2A	Amendment to Amended and Restated Bylaws of registrant	Def 14A	4/7/2021	1.0	
4.1	Form of Specimen Common Stock Certificate	S-1, as amended (File No. 333-49932)	1/17/2001	4.1	
4.2	Description of the Capital Stock of registrant	10-K	2/28/2020	4.2	
10.1A†	Registrant's 2010 Employee Stock Purchase Plan (as amended and restated as of May 19, 2021)	8-K	5/20/2021	10.1	
10.2†	Registrant's 2005 Incentive Plan (as amended May 2016)	10-K	2/26/2021	10.2	
10.3†	Form of RSU agreement under Registrant's 2005 Incentive Plan (Officer Form for officers appointed after September 2016)	10-K	2/28/2020	10.3	
10.3A†	Form of RSU agreement under Registrant's 2005 Incentive Plan (Officer Form for officers appointed prior to September 2016)	10-K	2/28/2020	10.3A	
10.4†	Form of RSU agreement (CEO)	10-K	2/28/2020	10.4	
10.5†	Form of RSU agreement under Registrant's 2005 Incentive Plan (Non-employee Director Form)	10-K	2/28/2020	10.5	
10.6†	Align 2019 Global RSU Agreement	10-K	2/28/2019	10.6	
10.7†	Form of option award agreement under registrant's 2005 Incentive Plan	10-Q	8/4/2005	10.4	
10.8†	Form of Market Stock Unit Agreement under Registrant's 2005 Incentive Plan (Officer Form for MSU awards granted in 2019, 2020 and 2022 to officers appointed after September 2016)	10-K	2/28/2020	10.8	
10.8A†	Form of Market Stock Unit Agreement under Registrant's 2005 Incentive Plan (Officer Form for MSU awards granted in 2019, 2020 and 2022 to officers appointed prior to September 2016)	10-K	2/28/2020	10.8A	
10.9†	Form of Market Stock Unit Agreement under Registrant's 2005 Incentive Plan (Officer Form for MSU awards granted in 2021 to officers appointed after September 2016)	10-K	2/26/2021	10.9	
10.9A†	Form of Market Stock Unit Agreement under Registrant's 2005 Incentive Plan (Officer Form for MSU awards granted in 2021 to officers appointed prior to September 2016)	10-K	2/26/2021	10.9A	
10.10†	Form of Market Stock Unit Agreement for CEO (Focal grants)	10-K	2/28/2020	10.9	
10.11†	Form of Employment Agreement entered into by and between registrant and each executive officer (other than CEO for executives appointed prior to September 2016)	10-Q	5/8/2008	10.3	
10.12†	Form of Employment Agreement entered into by and between registrant and each executive officer (other than CEO for executives appointed after September 2016)	10-K	2/28/2017	10.8	
10.13†	Amended and Restated Chief Executive Officer Employment Agreement between Align Technology, Inc. and Joseph Hogan	10-Q	5/1/2015	10.30	
10.14†	Employment Agreement between registrant and John F. Morici (Chief Financial Officer)	10-Q	11/8/2016	10.2	
10.15†	Form of Indemnification Agreement by and between registrant and its Board of Directors and its executive officers	S-1 as amended (File No. 333-49932)	1/17/2001	10.15	
10.16	Sale and Purchase Agreement between CETP III Ivory S.a.r.l., and Align Technology, Inc. and its indirect wholly owned German subsidiary, mertus 602.GmbH, dated March 3, 2020	10-Q	5/5/2020	10.1	

Exhibit Number	Description	Form	Date	Exhibit Number Incorporated by Reference herein	Filed herewith
10.17	Credit Agreement between Align Technology, Inc. and the lenders party thereto from time to time and Citibank, N.A., as administrative agent, dated July 21, 2020	10-Q	10/30/2020	10.1	
10.18	First Amendment, dated April 21, 2022, to Credit Agreement between Align Technology, Inc. and the lenders party thereto from time to time and Citibank, N.A., as administrative agent, dated July 21, 2020				*
10.19	Second Amendment, dated December 23, 2022, to Credit Agreement between Align Technology, Inc. and the lenders party thereto from time to time and Citibank, N.A., as administrative agent, dated July 21, 2020				*
10.20	Fixed Dollar Accelerated Share Repurchase Transaction between Goldman Sachs & Co. LLC and Align Technology, Inc. dated October 28, 2022				*
21.1	Subsidiaries of Align Technology, Inc.				*
23.1	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm				*
31.1	Certifications of Chief Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2003				*
31.2	Certifications of Chief Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2003				*
32f	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 2003				*
101.INS	Inline XBRL Instance Document (the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document).				*
101.SCH	Inline XBRL Taxonomy Extension Schema Document				*
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document				*
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document				*
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document				*
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document				*
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)				*

† 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.
t Furnished herewith

Item 16. Form 10-K Summary.

Not applicable.

FIRST AMENDMENT TO CREDIT AGREEMENT

FIRST AMENDMENT TO CREDIT AGREEMENT, dated as of April 21, 2022 (this “First Amendment”), by and among ALIGN TECHNOLOGY, INC., a Delaware corporation (the “Borrower”), certain Lenders (as defined below) party to the Credit Agreement referred to below and Citibank, N.A., as administrative agent for the Lenders (the “Administrative Agent”).

WITNESSETH:

WHEREAS, the Borrower, each Loan Party from time to time party thereto, the lenders from time to time party thereto (the “Lenders”) and the Administrative Agent have entered into that certain Credit Agreement, dated as of July 21, 2020 (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time through the date hereof, the “Credit Agreement”; capitalized terms not otherwise defined in this First Amendment having the same meanings assigned thereto in the Credit Agreement);

WHEREAS, pursuant to Section 9.02 of the Credit Agreement, the Borrower has requested that the Credit Agreement be amended as more fully described herein and each Lender party hereto is so willing to amend the Credit Agreement on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. Amendments to Credit Agreement.

(a) Section 1.01 of the Credit Agreement is hereby amended by deleting the defined term “Projections” contained therein.

(b) Section 5.01(d) of the Credit Agreement is amended and restated in its entirety to read as follows:

“(d) [Reserved].”.

SECTION 2. Representations and Warranties. The Borrower hereby represents and warrants on the First Amendment Effective Date that:

(a) The execution, delivery and performance by the Borrower of the First Amendment is within the Borrower’s corporate power and has been duly authorized by all necessary corporate and, if required, stockholder action on the part of the Borrower.

(b) The First Amendment has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(c) The execution, delivery and performance by the Borrower of the First Amendment (i) does not, on the part of the Borrower or any of its Subsidiaries, require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such

as have been obtained or made and are in full force and effect, (ii) will not violate any Requirement of Law applicable to the Borrower or any of its Subsidiaries any order of any Governmental Authority applicable to the Borrower or any of its Subsidiaries, (iii) will not violate or result in a default under, or give rise to a right to require any payment to be made by the Borrower or any of its Subsidiaries under, (A) any indenture or loan agreement, in each case, evidencing Indebtedness in excess of \$50 million, (B) any Swap Agreement with a Swap Termination Value in excess of \$50 million or (C) any other material agreement, in each case which is binding upon the Borrower or any of its Subsidiaries or its assets, and (iv) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries, in each case of clauses (i), (ii) or (iii)(C), except as would not reasonably be expected to result in a Material Adverse Effect.

(d) At the time of and immediately after the First Amendment Effective Date, no Default or Event of Default has occurred and is continuing.

(e) Immediately after giving effect to this First Amendment the representations and warranties of the Borrower set forth in the Credit Agreement and in each other Loan Document are true and correct in all material respects with the same effect as though made on and as of such date, except that (i) to the extent that such representations and warranties specifically refer to an earlier date, such representations and warranties are true and correct in all material respects as of such earlier date and (ii) any representation and warranty that is qualified as to “materiality” or “Material Adverse Effect” is true and correct in all respects.

SECTION 3. Conditions of Effectiveness of the First Amendment. This First Amendment shall become effective as of the date on which the following conditions shall have been satisfied (or waived) (the “First Amendment Effective Date”):

(a) the Administrative Agent (or its legal counsel) shall have received counterparts to this First Amendment, duly executed by (i) the Borrower and (ii) Lenders constituting the Required Lenders;

(b) at the time of and immediately after the First Amendment Effective Date, no Default or Event of Default shall have occurred or be continuing;

(c) immediately after giving effect to this First Amendment, the representations and warranties of the Borrower set forth in this First Amendment, the Credit Agreement and in each other Loan Document shall be true and correct in all material respects on and as of the First Amendment Effective Date with the same effect as though made on and as of such date, except that (i) to the extent that such representations and warranties specifically refer to an earlier date, such representations and warranties shall be true and correct in all material respects as of such earlier date and (ii) any representation and warranty that is qualified as to “materiality” or “Material Adverse Effect” shall be true and correct in all respects;

(d) the Administrative Agent’s receipt of a certificate, in form and substance reasonably satisfactory to the Administrative Agent and its legal counsel, dated as of the First Amendment Effective Date, signed by the chief financial officer of the Borrower, certifying as to compliance with the conditions precedent set forth in clauses (b) and (c) of this Section 3; and

(e) the Borrower shall pay or cause to be paid, without duplication, (i) the reasonable and documented fees and expenses of Weil, Gotshal & Manges LLP, as counsel to the Administrative Agent and the Lenders, to the extent invoiced prior to the First Amendment Effective Date and (ii)

reasonable out-of-pocket expenses required to be paid by Section 6 below to the extent invoiced prior to the First Amendment Effective Date.

SECTION 4. Reference to and Effect on the Credit Agreement and the other Loan Documents.

(a) On and after the First Amendment Effective Date, each reference in the Credit Agreement to “this Agreement,” “hereunder,” “hereof” or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement, as amended by this First Amendment.

(b) The Credit Agreement and each of the other Loan Documents, as specifically amended by this First Amendment, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed.

(c) The execution, delivery and effectiveness of this First Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Loan Documents, nor constitute a waiver of any provision of any of the Loan Documents. On and after the First Amendment Effective Date, this First Amendment shall for all purposes constitute a Loan Document.

(d) This First Amendment shall not extinguish the Loans or any other Obligations outstanding under the Credit Agreement. Nothing contained herein shall be construed as a substitution or novation of the Loans or any other Obligations outstanding under the Credit Agreement, which shall remain outstanding after the First Amendment Effective Date as modified hereby.

(e) The Borrower expressly acknowledges and agrees that (i) there has not been, and this First Amendment does not constitute or establish, a novation with respect to the Credit Agreement or any other Loan Document, or a mutual departure from the strict terms, provisions, and conditions thereof and (ii) nothing in this First Amendment shall affect or limit the Administrative Agent’s or Lenders’ right to demand payment of liabilities owing from Borrower to Administrative Agent or the Lenders under, or to demand strict performance of the terms, provisions and conditions of, the Credit Agreement and the other Loan Documents, to exercise any and all rights, powers, and remedies under the Credit Agreement or the other Loan Documents or at law or in equity, or to do any and all of the foregoing, immediately at any time after the occurrence and continuance of an Event of Default under the Credit Agreement or the other Loan Documents.

(f) This First Amendment is a Loan Document executed pursuant to the Credit Agreement and shall be construed, administered and applied in accordance with the terms and provisions thereof.

SECTION 5. Reaffirmation. The Borrower hereby reaffirms its obligations under the Credit Agreement and each other Loan Document, in each case as amended by this First Amendment.

SECTION 6. Costs and Expenses. The Borrower hereby agrees to pay or reimburse the Administrative Agent for its reasonable and documented out-of-pocket costs and expenses incurred in connection with this First Amendment in accordance with, and to the extent required by, the terms and conditions of Section 9.03 of the Credit Agreement.

SECTION 7. Execution in Counterparts. This First Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this First Amendment by telecopy, emailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this First Amendment. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this First Amendment and the transactions contemplated hereby or thereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 8. Governing Law.

(a) This First Amendment shall be governed by and construed in accordance with the laws of the State of New York

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any U.S. Federal or New York State court sitting in New York, New York in any action or proceeding arising out of or relating to this First Amendment or the transactions contemplated hereby, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this First Amendment shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this First Amendment or the transactions contemplated hereby against the Borrower or its properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this First Amendment and the transactions contemplated hereby in any court referred to in clause (b) of this Section 8. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 9. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS FIRST AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS

FIRST AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.

SECTION 10. Headings. Section headings herein are included for convenience of reference only and shall not affect the interpretation of this First Amendment.

SECTION 11. Required Lender Direction. The Lenders party hereto, who constitute all Lenders, hereby direct the Administrative Agent to execute and deliver this First Amendment.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

ALIGN TECHNOLOGY, INC.,
as the Borrower

By: /s/ John Morici
Name: John Morici
Title: Chief Financial Officer and EVP, Global Finance

[Signature Page to First Amendment to Credit Agreement (Align Technologies)]

CITIBANK, N.A.,
as a Lender and as Administrative Agent

By: /s/ Michael Chen
Name: Michael Chen
Title: Authorized Signer

[Signature Page to First Amendment to Credit Agreement (Align Technologies)]

Bank of America, N.A.,
as a Lender

By: /s/ Sebastian Lurie
Name: Sebastian Lurie
Title: SVP

[Signature Page to First Amendment to Credit Agreement (Align Technologies)]

HSBC Bank USA, N.A.,
as a Lender

By: /s/ Radmila Stolle
Name: Radmila Stolle
Title: Senior Vice President

[Signature Page to First Amendment to Credit Agreement (Align Technologies)]

SECOND AMENDMENT TO CREDIT AGREEMENT

SECOND AMENDMENT TO CREDIT AGREEMENT, dated as of December 23, 2022 (this “Second Amendment”), by and among ALIGN TECHNOLOGY, INC., a Delaware corporation (the “Borrower”), the Lenders (as defined below) party to the Existing Credit Agreement referred to below and Citibank, N.A., as administrative agent for the Lenders (in such capacity, the “Administrative Agent”).

WITNESSETH:

WHEREAS, the Borrower, each Loan Party from time to time party thereto, the lenders from time to time party thereto (the “Lenders”) and the Administrative Agent have entered into that certain Credit Agreement, dated as of July 21, 2020 (as amended by that certain First Amendment to Credit Agreement, dated as of April 21, 2022, and as further amended, restated, amended and restated, supplemented and/or otherwise modified from time to time and in effect immediately prior to the Second Amendment Effective Date (as defined below), the “Existing Credit Agreement”; capitalized terms used in this Second Amendment and not otherwise defined in this Second Amendment have the same meanings assigned thereto in the Amended Credit Agreement (as defined below));

WHEREAS, pursuant to Section 9.02 of the Existing Credit Agreement, the Borrower has requested that the Existing Credit Agreement be amended to, among other things, (i) extend the Revolving Credit Termination Date from July 21, 2023 to a date that is five (5) years from the Second Amendment Effective Date (as defined below), (ii) replace the existing LIBO Rate based benchmark interest rate with a Term SOFR based benchmark interest rate, (iii) reduce (x) the Applicable Rate which corresponds to certain Total Leverage Ratio levels and (y) the benchmark interest rate floor and (iv) modify the existing financial covenants;

WHEREAS, the Borrower, each Lender party hereto (who collectively constitute all Lenders as of the date hereof) and the Administrative Agent have agreed, subject to the terms and conditions herein, to amend the Existing Credit Agreement as hereinafter set forth (the Existing Credit Agreement as amended by this Second Amendment, the “Amended Credit Agreement”) in accordance with Section 9.02 of the Existing Credit Agreement; and

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. Amendments to Existing Credit Agreement.

(a) Effective as of, and subject to the occurrence of, the Second Amendment Effective Date (as defined below), the Existing Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double- underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the form of Amended Credit Agreement attached as Exhibit A hereto.

(b) Effective as of, and subject to the occurrence of, the Second Amendment Effective Date (as defined below), Exhibit F to the Existing Credit Agreement (Form of Borrowing Notice) is hereby amended and restated in its entirety in the form attached hereto as Exhibit B.

(c) Effective as of, and subject to the occurrence of, the Second Amendment Effective Date (as defined below), Exhibit G to the Existing Credit Agreement (Form of Notice Of Continuation/Conversion) is hereby amended and restated in its entirety in the form attached hereto as Exhibit C.

SECTION 2. Representations and Warranties. The Borrower hereby represents and warrants on the Second Amendment Effective Date that:

(a) The execution, delivery and performance by the Borrower of the Second Amendment is within the Borrower's corporate power and has been duly authorized by all necessary corporate and, if required, stockholder action on the part of the Borrower.

(b) The Second Amendment has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(c) The execution, delivery and performance by the Borrower of the Second Amendment (i) does not, on the part of the Borrower or any of its Subsidiaries, require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (ii) will not violate any Requirement of Law applicable to the Borrower or any of its Subsidiaries any order of any Governmental Authority applicable to the Borrower or any of its Subsidiaries, (iii) will not violate or result in a default under, or give rise to a right to require any payment to be made by the Borrower or any of its Subsidiaries under, (A) any indenture or loan agreement, in each case, evidencing Indebtedness in excess of \$100 million, (B) any Swap Agreement with a Swap Termination Value in excess of \$100 million or (C) any other material agreement, in each case which is binding upon the Borrower or any of its Subsidiaries or its assets, and (iv) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries, in each case of clauses (i), (ii) or (iii)(C), except as would not reasonably be expected to result in a Material Adverse Effect.

(d) At the time of and immediately after the Second Amendment Effective Date, no Default or Event of Default has occurred and is continuing.

(e) Immediately after giving effect to this Second Amendment the representations and warranties of the Borrower set forth in the Amended Credit Agreement and in each other Loan Document are true and correct in all material respects with the same effect as though made on and as of such date, except that (i) to the extent that such representations and warranties specifically refer to an earlier date, such representations and warranties are true and correct in all material respects as of such earlier date and (ii) any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" is true and correct in all respects.

SECTION 3. Conditions of Effectiveness of the Second Amendment. This Second Amendment shall become effective as of the date on which the following conditions shall have been satisfied (or waived by the Lenders party hereto and the Administrative Agent) (the "Second Amendment Effective Date"):

(a) the Administrative Agent (or its legal counsel) shall have received counterparts to this Second Amendment, duly executed by (i) the Borrower and (ii) all Lenders as of the date hereof;

(b) at the time of and immediately after the Second Amendment Effective Date, no Default or Event of Default shall have occurred or be continuing;

(c) immediately after giving effect to this Second Amendment, the representations and warranties of the Borrower set forth in this Second Amendment, the Amended Credit Agreement and in each other Loan Document shall be true and correct in all material respects on and as of the Second

Amendment Effective Date with the same effect as though made on and as of such date except that (i) to the extent that such representations and warranties specifically refer to an earlier date, such representations and warranties shall be true and correct in all material respects as of such earlier date and (ii) any representation and warranty that is qualified as to “materiality” or “Material Adverse Effect” shall be true and correct in all respects;

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

(e) the Administrative Agent shall have received the results of recent customary lien searches (including with respect to intellectual property), and such searches shall reveal no liens on any of the assets of the Loan Parties except for liens permitted by Section 6.02 of the Existing Credit Agreement;

(f) the Administrative Agent shall have received a solvency certificate from a Financial Officer of the Borrower substantially in the form of Exhibit D to the Existing Credit Agreement attesting to the solvency of the Loan Parties (taken as a whole) on the Second Amendment Effective Date after giving effect to the transactions contemplated hereby;

(g) the Administrative Agent shall have received a customary legal opinion of Wilson Sonsini Goodrich & Rosati, P.C. in respect of this Second Amendment, in its capacity as counsel to the Loan Parties, which legal opinion shall be addressed to the Administrative Agent and the Lenders; and

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

(i) the Borrower shall have paid all fees set forth in the Second Amendment Engagement and Fee Letter that are due and payable on the Second Amendment Effective Date; and

(j) the Borrower shall pay or cause to be paid, without duplication, (i) the reasonable and documented fees and expenses of Weil, Gotshal & Manges LLP, as counsel to the Administrative Agent and the Lenders, to the extent invoiced prior to the Second Amendment Effective Date and (ii) reasonable out-of-pocket expenses required to be paid by Section 6 below to the extent invoiced prior to the Second Amendment Effective Date.

SECTION 4. Reference to and Effect on the Existing Credit Agreement and the other Loan Documents.

(a) On and after the Second Amendment Effective Date, each reference in the Amended Credit Agreement to “this Agreement,” “hereunder,” “hereof” or words of like import referring

to the Amended Credit Agreement shall mean and be a reference to the Existing Credit Agreement, as amended by this Second Amendment.

(b) The Existing Credit Agreement and each of the other Loan Documents, as specifically amended by this Second Amendment, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed.

(c) The execution, delivery and effectiveness of this Second Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Loan Documents, nor constitute a waiver of any provision of any of the Loan Documents. On and after the Second Amendment Effective Date, this Second Amendment shall for all purposes constitute a Loan Document.

(d) This Second Amendment shall not extinguish the Loans or any other Obligations outstanding under the Existing Credit Agreement. Nothing contained herein shall be construed as a substitution or novation of the Loans or any other Obligations outstanding under the Existing Credit Agreement, which shall remain outstanding after the Second Amendment Effective Date as modified hereby.

(e) The Borrower expressly acknowledges and agrees that (i) there has not been, and this Second Amendment does not constitute or establish, a novation with respect to the Existing Credit Agreement or any other Loan Document, or a mutual departure from the strict terms, provisions, and conditions thereof and (ii) nothing in this Second Amendment shall affect or limit the Administrative Agent's or Lenders' right to demand payment of liabilities owing from Borrower to Administrative Agent or the Lenders under, or to demand strict performance of the terms, provisions and conditions of, the Amended Credit Agreement and the other Loan Documents, to exercise any and all rights, powers, and remedies under the Amended Credit Agreement or the other Loan Documents or at law or in equity, or to do any and all of the foregoing, immediately at any time after the occurrence and continuance of an Event of Default under the Amended Credit Agreement or the other Loan Documents.

(f) This Second Amendment is a Loan Document executed pursuant to the Existing Credit Agreement and shall be construed, administered and applied in accordance with the terms and provisions thereof.

SECTION 5. Reaffirmation. The Borrower hereby reaffirms its obligations under the Existing Credit Agreement and each other Loan Document, in each case as amended by this Second Amendment.

SECTION 6. Costs and Expenses. The Borrower hereby agrees to pay or reimburse the Administrative Agent for its reasonable and documented out-of-pocket costs and expenses incurred in connection with this Second Amendment in accordance with, and to the extent required by, the terms and conditions of Section 9.03 of the Amended Credit Agreement and/or the Second Amendment Engagement and Fee Letter.

SECTION 7. Execution in Counterparts. This Second Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Second Amendment by telecopy, emailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Second Amendment. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Second Amendment and the transactions contemplated hereby or thereby shall be deemed to include

Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 8. Governing Law.

(a) This Second Amendment shall be governed by and construed in accordance with the laws of the State of New York

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any U.S. Federal or New York State court sitting in New York, New York in any action or proceeding arising out of or relating to this Second Amendment or the transactions contemplated hereby, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Second Amendment shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Second Amendment or the transactions contemplated hereby against the Borrower or its properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Second Amendment and the transactions contemplated hereby in any court referred to in clause (b) of this Section 8. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 9. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SECOND AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS SECOND AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.

SECTION 10. Headings. Section headings herein are included for convenience of reference only and shall not affect the interpretation of this Second Amendment.

SECTION 11. Lender Direction. The Lenders party hereto, who constitute all Lenders, hereby direct the Administrative Agent to execute and deliver this Second Amendment.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

ALIGN TECHNOLOGY, INC.,
as the Borrower

By: /s/ John Morici

Name: John Morici

Title: Chief Financial Officer and
Executive Vice President, Global Finance

[Signature Page to Second Amendment to Credit Agreement (Align Technology, Inc.)]

CITIBANK, N.A.,
as a Lender and as Administrative Agent

By: /s/ Michael Chen
Name: Michael Chen
Title: Authorized Signer

BANK OF AMERICA, N.A.,
as a Lender

By: /s/Kenneth Wong
Name: Kenneth Wong
Title: Senior Vice President

[Signature Page to Second Amendment to Credit Agreement (Align Technology, Inc.)]

HSBC BANK USA, N.A., individually as a Lender

By: /s/ Radmila Stolle

Name: Radmila Stolle

Title: SVP, Global Relationship Manager

[Signature Page to Second Amendment to Credit Agreement (Align Technology, Inc.)]

Exhibit A

(See attached.)



CREDIT AGREEMENT

dated as of July 21, 2020

(as amended by that certain First Amendment to Credit Agreement, dated as of April 21, 2022) and
that certain Second Amendment to Credit Agreement, dated as of December 23, 2022).

among

ALIGN TECHNOLOGY, INC.,

The other Loan Parties Party Hereto, The Lenders Party

Hereto,

and

CITIBANK, N.A.,
as Administrative Agent

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

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

TABLE OF CONTENTS

		Page
ARTICLE I	DEFINITIONS	1
Section 1.01	Defined Terms	1
Section 1.02	Classification of Loans and Borrowings	31 32
Section 1.03	Terms Generally	31 32
Section 1.04	Accounting Terms; GAAP	32 33
Section 1.05	Status of Obligations	32 33
Section 1.06	Financial Ratios	32 34
Section 1.07	Limited Liability Companies	32 34
Section 1.08	Calculations	33 34
Section 1.09	Rates	34
Section 1.10	Limited Liability Companies	35
ARTICLE II	THE CREDITS	33 35
Section 2.01	Commitments	33 35
Section 2.02	Loans and Borrowings	33 35
Section 2.03	Requests for Borrowings	34 36
Section 2.04	Swingline Loans	34 37
Section 2.05	{Section intentionally omitted}	36 38
	[Reserved]	
Section 2.06	Letter of Credit	36 38
Section 2.07	Funding of Borrowings	41 43
Section 2.08	Interest Elections	41 43
Section 2.09	Termination and Reduction of Commitments	42 45
Section 2.10	Repayment of Loans; Evidence of Debt	43 45
Section 2.11	Prepayment of Loans	44 46
Section 2.12	Fees	44 47
Section 2.13	Interest	45 48
Section 2.14	Alternate Rate of Interest; Illegality	46 49
Section 2.15	Increased Costs	47 50
Section 2.16	Break Funding Payments	48 51
Section 2.17	Withholding of Taxes; Gross-Up	48 51
Section 2.18	Payments Generally; Allocation of Proceeds; Sharing of Setoffs	52 55
Section 2.19	Mitigation Obligations; Replacement of Lenders	54 57
Section 2.20	Defaulting Lenders	55 58
Section 2.21	Returned Payments	56 59
Section 2.22	Increase of Commitments	57 60
Section 2.23	[Reserved]	58 61
Section 2.24	[Reserved]	58 61
Section 2.25	Effect of a Benchmark Transition Event	58 61
Article III	REPRESENTATIONS AND WARRANTIES	59 62
Section 3.01	Organization; Powers	59 62
Section 3.02	Authorization; Enforceability	59 62

Section 3.03	Governmental Approvals; No Conflicts	59	63
Section 3.04	Financial Condition; No Material Adverse Change	60	63
Section 3.05	Properties	60	63
Section 3.06	Litigation and Environmental Matters	60	63
Section 3.07	Compliance with Laws and Agreements; No Default	60	64
Section 3.08	Investment Company Status	61	64
Section 3.09	Taxes	61	64
Section 3.10	ERISA	61	64
Section 3.11	Disclosure	61	65
Section 3.12	Capitalization and Subsidiaries	62	65
Section 3.13	[Reserved]	62	65
Section 3.14	Federal Reserve Regulations	62	65
Section 3.15	Anti-Corruption Laws and Sanctions; USA Patriot Act	62	65
Section 3.16	Not an Affected Financial Institution	63	66
Section 3.17	Solvency	63	66
Section 3.18	FDA and Other Regulatory Matters	63	66
Section 3.19	Health Care Matters	65	68
Section 3.20	Employee Relations	66	69
ARTICLE IV	CONDITIONS	66	70
Section 4.01	Conditions to Initial Loans	66	70
Section 4.02	Each Credit Event	68	71
ARTICLE V	AFFIRMATIVE COVENANTS	69	72
Section 5.01	Financial Statements and Other Information	69	72
Section 5.02	Notices of Material Events	70	73
Section 5.03	Existence; Conduct of Business	71	74
Section 5.04	Payment of Taxes	71	74
Section 5.05	Maintenance of Properties; Insurance; Casualty and Condemnation	71	74
Section 5.06	Books and Records; Inspection Rights	71	75
Section 5.07	Compliance with Laws	72	75
Section 5.08	Use of Proceeds	72	75
Section 5.09	Further Assurances	72	76
Section 5.10	Anti-Corruption Laws and Sanctions	73	76
Section 5.11	Compliance with Environmental Laws	73	76
Section 5.12	Intellectual Property	73	76
Section 5.13	ERISA	73	76
Section 5.14	Compliance with Health Care Laws	73	77
Section 5.15	Compliance with Public Health Laws	74	77
ARTICLE VI	NEGATIVE COVENANTS	74	77
Section 6.01	Indebtedness	74	77
Section 6.02	Liens	77	80
Section 6.03	Fundamental Changes	79	82
Section 6.04	Investments, Loans, Advances, Guarantees and Acquisitions	79	82
Section 6.05	Asset Dispositions; Sale and Leaseback Transactions	81	84

Section 6.06	Swap Agreements	82	<u>85</u>
Section 6.07	Restricted Payments; Prepayments of Indebtedness	82	<u>85</u>
Section 6.08	Transactions with Affiliates	84	<u>87</u>
Section 6.09	Restrictive Agreements	84	<u>87</u>
Section 6.10	Amendment of Material Documents	85	<u>88</u>
Section 6.11	Financial Covenants	85	<u>88</u>
Section 6.12	ERISA	85	<u>89</u>
ARTICLE VII	EVENTS OF DEFAULT	86	<u>89</u>
ARTICLE VIII	THE ADMINISTRATIVE AGENT	88	<u>91</u>
Section 8.01	Appointment	88	<u>91</u>
Section 8.02	Rights as a Lender	89	<u>92</u>
Section 8.03	Duties and Obligations	89	<u>92</u>
Section 8.04	Reliance	89	<u>92</u>
Section 8.05	Actions through Sub-Agents	90	<u>93</u>
Section 8.06	Resignation	90	<u>93</u>
Section 8.07	Non-Reliance	90	<u>93</u>
Section 8.08	Not Partners or Co-Venturers	91	<u>94</u>
Section 8.09	Lenders Not Subject to ERISA	91	<u>94</u>
Section 8.10	Syndication Agents	92	<u>95</u>
<u>Section 8.11</u>	<u>Erroneous Payments</u>		<u>95</u>
ARTICLE IX	MISCELLANEOUS	92	<u>98</u>
Section 9.01	Notices	92	<u>98</u>
Section 9.02	Waivers; Amendments	94	<u>100</u>
Section 9.03	Expenses; Indemnity; Damage Waiver	96	<u>101</u>
Section 9.04	Successors and Assigns	98	<u>103</u>
Section 9.05	Survival	101	<u>106</u>
Section 9.06	Counterparts; Integration; Effectiveness; Electronic Execution	101	<u>107</u>
Section 9.07	Severability	101	<u>107</u>
Section 9.08	Right of Setoff	102	<u>107</u>
Section 9.09	Governing Law; Jurisdiction; Consent to Service of Process	102	<u>108</u>
Section 9.10	WAIVER OF JURY TRIAL	102	<u>108</u>
Section 9.11	Headings	103	<u>108</u>
Section 9.12	Confidentiality	103	<u>108</u>
Section 9.13	Several Obligations; Nonreliance; Violation of Law	104	<u>110</u>
Section 9.14	USA PATRIOT Act	104	<u>110</u>
Section 9.15	Disclosure	104	<u>110</u>
Section 9.16	[Reserved]	104	<u>110</u>
Section 9.17	Interest Rate Limitation	104	<u>110</u>
Section 9.18	No Advisory or Fiduciary Responsibility	105	<u>110</u>
Section 9.19	Acknowledgement and Consent to Bail-In of Affected Financial Institutions	105	<u>111</u>
ARTICLE X	LOAN GUARANTY	106	<u>111</u>
Section 10.01	Guaranty	106	<u>111</u>

Section 10.02	Guaranty of Payment	106	112
Section 10.03	No Discharge or Diminishment of Loan Guaranty	106	112
Section 10.04	Defense Waived	107	112
Section 10.05	Rights of Subrogation	107	113
Section 10.06	Reinstatement; Stay of Acceleration	107	113
Section 10.07	Information	107	113
Section 10.08	[Reserved]	108	113
Section 10.09	[Reserved]	108	113
Section 10.10	Maximum Liability	108	113
Section 10.11	Contribution	108	113
Section 10.12	Liability Cumulative	109	114

SCHEDULES:

Commitment Schedule EXHIBITS:

- Exhibit A — Form of Assignment and Assumption
- Exhibit B — Form of Compliance Certificate
- Exhibit C — Joinder Agreement
- Exhibit D — Form of Solvency Certificate
- Exhibit E - 1 — U.S. Tax Certificate (For Foreign Lenders that are not Partnerships for U.S. Federal Income Tax Purposes)
- Exhibit E - 2 — U.S. Tax Certificate (For Foreign Participants that are not Partnerships for U.S. Federal Income Tax Purposes)
- Exhibit E - 3 — U.S. Tax Certificate (For Foreign Participants that are Partnerships for U.S. Federal Income Tax Purposes)
- Exhibit E - 4 — U.S. Tax Certificate (For Foreign Lenders that are Partnerships for U.S. Federal Income Tax Purposes)
- Exhibit F — Form of Borrowing Request
- Exhibit G — Form of Notice of Continuation/Conversion
- Exhibit H — Form of Swingline Request
- Exhibit I — Form of Promissory Note

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

The parties hereto agree as follows:

ARTICLE I
DEFINITIONS

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

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

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

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

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

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

“Adjusted Term SOFR” means, for purposes of any calculation, the rate *per annum* equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided, that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

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

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

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

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

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

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

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

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

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to (a) bribery and/or corruption and (b) terrorism financing and/or money laundering, including the UK Bribery Act and the United States Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

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

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

Level	Total Leverage Ratio	Applicable Rate for Eurodollar Term SOFR Loans	Applicable Rate for ABR Loans	Commitment Fee Rate
Level I	< 1.00 to 1.00	1.50 0.875%	0.50 0.000%	0.25 0.075%
Level II	≥ 1.00 to 1.00 but < 2.00 1.50 to 1.00	1.75 1.000%	0.75 0.000%	0.30 0.100%
Level III	≥ 1.50 to 1.00 but < 2.00 to 1.00	1.125%	0.125%	0.150%
Level III IV	≥ 2.00 to 1.00 but < 3.00 to 1.00	2.00 1.250%	1.00 0.250%	0.35 0.200%
Level IV V	≥ 3.00 to 1.00	2.25 1.375%	1.25 0.375%	0.40 0.250%

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

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

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of

its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

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

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

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

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

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.25(d).

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

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

“Bank of America” means ~~BANK OF AMERICA~~ Bank of America, N.A.

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

instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Benchmark” means, initially, the Term SOFR Reference Rate; provided, that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.25(a).

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, the sum of:

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

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

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

“Benchmark Replacement Date” means the earlier date to occur of the following events with respect to the LIBO Rate any then-current Benchmark:

(a) (a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the LIBO Screen Rate such Benchmark (or the published component

used in the calculation thereof) permanently or indefinitely ceases to provide ~~the LIBO Screen Rate~~ all Available Tenors of such Benchmark (or such component thereof); or

(b) ~~(b)~~ in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date of the public on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication of information referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to ~~the LIBO Rate~~ any then-current Benchmark:

(a) ~~(a)~~ a public statement or publication of information by or on behalf of the administrator of ~~the LIBO Screen Rate~~ such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide ~~the LIBO Screen Rate~~ all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely,; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Screen Rate any Available Tenor of such Benchmark (or such component thereof);

(b) ~~(b)~~ a public statement or publication of information by the regulatory supervisor for the administrator of ~~the LIBO Screen Rate, the U.S.~~ such Benchmark (or the published component used in the calculation thereof), the Federal Reserve System Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for the LIBO Screen Rate such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for the LIBO Screen Rate such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority with jurisdiction over the administrator for the LIBO Screen Rate such Benchmark (or such component), which states that the administrator of the LIBO Screen Rate such Benchmark (or such component) has ceased or will cease to provide the LIBO Screen Rate all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely,; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Screen Rate any Available Tenor of such Benchmark (or such component thereof); or

(c) ~~(c)~~ a public statement or publication of information by the regulatory supervisor for the administrator of ~~the LIBO Screen Rate announcing that LIBO Screen Rate is no longer~~ such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

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

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

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

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

“BHC Act Affiliate” ~~has the meaning~~ has the meaning ~~of an “affiliate” (as assigned to such term is defined under, and interpreted in accordance with 12 U.S.C. 1841(k) of a party in Section 9.20.~~

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

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

“Borrower” means Align Technology, Inc., a Delaware corporation.

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

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

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided, that, when used in connection with a ~~Eurodollar~~ Term SOFR Loan, the term “Business Day” shall also exclude any day ~~on which banks are not open for dealings in Dollar deposits in the London interbank market which is not a~~ U.S. Government Securities Day.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal

property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Equivalents” means:

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

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

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

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

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

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

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

“CFC” means a “controlled foreign corporation” as defined in Section 957 of the Code. “CHAMPVA” means,

collectively, the Civilian Health and Medical Program of the Department

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

“Change in Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) of Equity Interests representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower, (b) the occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated or approved (either by a specific vote or by approval of a proxy statement issued by the Borrower on behalf of its board of directors (as

constituted at the time of such proxy statement) in which such individual is named as a nominee for director) by the board of directors of the Borrower nor (ii) appointed by directors so nominated or (c) the occurrence of any “change of control” or similar event with respect to any Material Indebtedness.

“Change in Law” means the occurrence after the date of this Agreement (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement) of any of the following:

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

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

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

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

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

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

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

meaning assigned to such term in Section 2.22(a). “Commitment Schedule” means the Schedule attached hereto

identified as such.

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

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

“Conforming Changes” means with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Adjusted Term SOFR,” the definition of “Alternate Base Rate”, the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or “Interest Payment Date”, the definition of “Term SOFR” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.16 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

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

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

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b), (ii) a “covered bank” as that term is defined in, and interpreted in accordance with 12 C.F.R. § 47.3(b), or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b). has the meaning assigned to such term in Section 9.20.

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

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

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

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

“Default Right” has the meaning assigned to such term in Section 9.20.

“Defaulting Lender” means any Lender that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied, (b) has notified the Borrower or any Credit Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular Default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement; provided, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party’s receipt of such certification in form and substance satisfactory to it and the Administrative Agent, (d) has become the subject of a Bankruptcy Event, or (e) has become (or whose direct or indirect parent company has become) subject to a Bail-In Action.

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

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

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

“Dollars” or “\$” refers to lawful money of the United States of America.

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

~~“Early Opt-in Election” means the occurrence of:~~

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

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

“EBITDA” means, for any period, the sum of:

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

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

(i) Interest Expense for such period;

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

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

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

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

(vi) costs and expenses incurred with respect to the Transactions consummated on the Effective Date or in connection with the Second Amendment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Effective Date” means July 21, 2020.

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

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

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

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

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

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

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

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to make any “minimum required contribution” (as defined in Section 430(a) of the Code) with respect to any Plan, at the time and in the amount provided for in Section 430 of the Code; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan

administrator of any notice relating to an intention to terminate any Plan or Plans in a distress termination described in Section 4041(c) of ERISA or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“Erroneous Payment” has the meaning assigned to it in Section 8.11(a).

“Erroneous Payment Deficiency Assignment” has the meaning assigned to it in Section 8.11(d)(i).

“Erroneous Payment Impacted Class” has the meaning assigned to it in Section 8.11(d)(i).

“Erroneous Payment Return Deficiency” has the meaning assigned to it in Section 8.11(d)(i).

“Erroneous Payment Subrogation Rights” has the meaning assigned to it in Section 8.11(e).

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

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

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

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

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

“Existing Credit Agreement” means that certain Credit Agreement, dated as of February 27, 2018 (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time

prior to the Effective Date), by and between the Borrower, as borrower, and Wells Fargo Bank, National Association, as the lender thereunder.

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

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

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

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

“Financial Covenants” means the covenants set forth in Section 6.11.

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

“Floor” means a rate of interest equal to 0.00% per annum.

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

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

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

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

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

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

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

“Government Reimbursement Program” means (a) Medicare, (b) Medicaid, (c) the Federal Employees Health Benefit Program under 5 U.S.C. §§ 8902 et seq., (d) TRICARE, (e) CHAMPVA, or (f) if applicable within the context of this Agreement, any agent, administrator, administrative contractor, intermediary or carrier for any of the foregoing.

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

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

the ordinary course of business or customary indemnification obligations in connection with transactions not prohibited by any of the Loan Documents.

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

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

“Health Care Laws” means, collectively, any and all applicable laws relating to any of the following: (a) fraud and abuse (including the following statutes, as amended, modified or supplemented from time to time and any successor statutes thereto and regulations promulgated from time to time thereunder: the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Stark Law (42 U.S.C.

§ 1395nn and § 1395(q)), the civil False Claims Act (31 U.S.C. § 3729 et seq.), the federal health care program exclusion provisions (42 U.S.C. § 1320a-7), the Civil Monetary Penalties Act (42 U.S.C.

§ 1320a-7a), and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173)); (b) any Government Reimbursement Program; (c) HIPAA and Other Privacy Laws; and (d) any other applicable law regulating the health care industry.

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

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

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

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

“HSBC” means HSBC ~~BANK~~Bank USA, N.A.

“Immaterial Subsidiary” means, as of any date of determination, any Subsidiary of the Borrower that does not have (a) assets with a value in excess of 5.00% of Consolidated Total Assets or (b) revenues (for the most recently completed Reference Period) representing in excess of 5.00% of total revenues, in

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

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

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of Deferred Acquisition Consideration to the extent constituting a liability on a balance sheet prepared under GAAP and any other deferred purchase price of property or services (excluding (i) accounts payable incurred in the ordinary course of business and not more than one hundred eighty (180) days past due or that are being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of such Person, (ii) deferred compensation and (iii) intercompany liabilities in respect of cost-plus or transfer pricing arrangements for the purchase of products or services or the licensing of intellectual property), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (j) any other Off-Balance Sheet Liability and (k) the net obligations of such Person with respect to any Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. In respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the amount of such Indebtedness as of any date of determination will be the lesser of (x) the fair market value of such assets as of such date and (y) the amount of such Indebtedness as of such date. The amount of any net obligation under any Swap Agreements on any date shall be deemed to be the Swap Termination Value thereof as of such date. For purposes hereof, the amount of any Convertible Debt Securities shall be the aggregate stated principal amount thereof without giving effect to any obligation to pay cash or deliver shares with value in excess of such principal amount, and without giving effect to any integration thereof with any Permitted Call Spread Agreement pursuant to U.S. Treasury Regulation § 1.1275-6.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of any Loan Party under any Loan Document and

(b) to the extent not otherwise described in clause (a) above, Other Taxes. “Indemnitee” has the meaning

assigned to such term in Section 9.03(b).

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

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

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

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

“Interest Expense” means, with reference to any period, total interest expense of the Borrower and its Subsidiaries for such period (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP), calculated on a consolidated basis for the Borrower and its Subsidiaries for such period in accordance with GAAP (and including for the avoidance of doubt, interest expense attributable to Capital Lease Obligations whether or not included in interest expense determined in accordance with GAAP).

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

“Interest Period” means with respect to any Eurodollar Term SOFR Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, ~~two~~, three or six months thereafter, as the Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Term SOFR Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period pertaining to a Eurodollar Term SOFR Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period ~~and~~, (iii) no Interest Period may extend beyond the Maturity Date and (iv) no tenor that has been removed from this definition pursuant to Section 2.25(a) shall be available for specification in any Borrowing Request or Interest Election Request. For purposes hereof, the date of a Borrowing initially shall be the date on

which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Investment” has the meaning assigned to such term in Section 6.04. “IRS” means the

United States Internal Revenue Service.

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

“Joinder Agreement” has the meaning assigned to such term in Section 5.09(a). “LC Collateral Account”

has the meaning assigned to such term in Section 2.06(j).

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

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements relating to Letters of Credit that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

“Lead Arranger” means Citibank, N.A.

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

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

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

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

~~(b) if the rate referenced in the preceding clause (a) does not appear on such page or service or such page or service shall not be available, the rate *per annum* equal to the rate~~

~~reasonably determined by the Administrative Agent to be the offered rate on such other page or other service that displays an average ICE Benchmark Administration London Interbank Offered Rate for deposits in Dollars offered in the London interbank market (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period; or~~

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

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

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

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

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

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

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

shall refer to the Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

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

“Loan Guaranty” means Article X of this Agreement.

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

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

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, operations, or financial condition of the Borrower and its Subsidiaries taken as a whole, (b) the ability of the Loan Parties to perform any of their material obligations under the Loan Documents, or (c) the rights of or benefits available to the Administrative Agent, the Issuing Banks or the Lenders under the Loan Documents.

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

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

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

“Material Indebtedness” means any Indebtedness (other than the Loans, Letters of Credit and Intercompany Loans among the Loan Parties and their Subsidiaries), or any obligations under Swap Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding \$~~50~~100 million. For purposes of determining Material Indebtedness, the aggregate principal amount of “obligations” of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the Swap Termination Value.

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

“Medicaid” means, collectively, the healthcare assistance program established by Title XIX of the Social Security Act (42 U.S.C. §§ 1396 et seq.) and any statutes succeeding thereto, and all laws, rules and regulations having the force of law and pertaining to such program, including all state statutes and

plans for medical assistance enacted in connection with such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

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

“Moody’s” means Moody’s Investors Service, Inc.

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

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

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(d). “Note” and “Notes” have the meanings assigned to such terms in Section 2.10(e). “Notice of Increase” has the meaning assigned to such term in Section 2.22(a)(i). “Obligated Party” has the meaning assigned to such term in Section 10.02.

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

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

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

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

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

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

“Participant” has the meaning assigned to such term in [Section 9.04\(c\)](#). “Participant Register” has the meaning assigned to such term in [Section 9.04\(c\)](#).

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

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

“Periodic Term SOFR Determination Day” [has the meaning assigned to such term in the definition “Term SOFR” set forth in this Section 1.01.](#)

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

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

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

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

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

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

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

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

(g) after giving effect to such Acquisition (including the incurrence, assumption or acquisition of any Indebtedness in connection therewith) the ~~(x)~~ Total Leverage Ratio for the most recently ended Reference Period for which financial statements have been (or were required to be) delivered to the Administrative Agent is not more than ~~3.00 to 1.00~~ and ~~(y) the Interest Coverage Ratio for the most recently ended Reference Period for which financial statements have been (or were required to be) delivered to the Administrative Agent is not less than~~ 23.50 to 1.00;

(h) [Reserved];

(i) if the Permitted Acquisition Consideration for any such Acquisition exceeds ~~\$75.0~~150.0 million, the Borrower shall have delivered to the Administrative Agent a certificate of a Financial Officer, on the date of the consummation of such Acquisition, certifying as to the accuracy and completeness of, and setting forth the calculations demonstrating compliance with, clause (g) of this definition; and

(j) no less than ten (10) Business Days prior to the proposed closing date of such Acquisition (or such shorter period as may be agreed to by the Administrative Agent), the Borrower shall have delivered written notice of such Acquisition to the Administrative Agent, which notice shall include the proposed closing date of such Acquisition; provided that no such notice shall be required for any Acquisition so long as the Permitted Acquisition Consideration for any such Acquisition does not exceed ~~\$5100.0~~5100.0 million.

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

Permitted Acquisition executed by the Borrower or any of its Subsidiaries in order to consummate the applicable Permitted Acquisition.

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

“Permitted Encumbrances” means:

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

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

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

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

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

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

from the value of the affected property or materially interfere with the ordinary conduct of business of the Borrower or any Subsidiary; and

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

provided, that the term “Permitted Encumbrances” shall not include any Lien securing Indebtedness. “Permitted Liens”

means all Liens permitted under Section 6.02.

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

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

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

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

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

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

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

“QFC” has the meaning assigned to such term in Section 9.20.

“Receivables Facility” means any customary receivables factoring facility entered into by a Foreign Subsidiary, that is non-recourse to the Borrower and/or any Subsidiary (other than, in the case of the applicable Foreign Subsidiary, with respect to customary representations, warranties, repurchase covenants and indemnities for such type of transaction), pursuant to which such Foreign Subsidiary sells (for cash) Receivables Assets to a Person that is not the Borrower or a Subsidiary of the Borrower for fair market value.

“Receivables Assets” means (x) accounts receivable and (y) contractual rights, rights to payment and cash proceeds, in each case, related to accounts receivable, in all cases, that are customarily sold in connection with customary receivables factoring facilities.

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

“Reference Period” has the meaning assigned to such term in the definition of “EBITDA”. “Refinancing” has the meaning assigned to such term in Section 4.01(k).

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

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

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

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

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

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

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

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

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

applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

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

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

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

“Revolving Credit Loan” means a Loan made pursuant to Section 2.02.

“Revolving Credit Termination Date” means the ~~third~~fifth anniversary of the Second Amendment Effective Date.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business.

“Sanctioned Country” means, at any time, a country or territory which is the subject or target of any comprehensive Sanctions (which, as of the Second Amendment Effective Date of this Agreement, includes the so - called Donetsk People’s Republic, the so - called Luhansk People’s Republic, Crimea and the Crimea Region, Cuba, Iran, North Korea, Sudan, Syria and Venezuela).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the OFAC, the U.S. Department of State or by the United Nations Security Council, the European Union or any EU member state, His Majesty’s Treasury of the United Kingdom, the Hong Kong Monetary Authority or any other relevant sanctions authority; (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person majority-owned or controlled by any such Person or Persons described in the foregoing clause (a) or (b).

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, ~~or~~ (b) the United Nations Security Council, the European Union or ~~Her~~His Majesty’s Treasury of the United Kingdom or (c) the Hong Kong Monetary Authority.

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

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

“Second Amendment” means that certain Second Amendment to Credit Agreement, dated as of December 23, 2022, by and among the Borrower, the Lenders party thereto and the Administrative Agent.

“Second Amendment Effective Date has the meaning assigned to such term in the Second Amendment (it being understood and agreed that the Second Amendment Effective Date occurred on December 23, 2022).

“Second Amendment Engagement and Fee Letter” means that certain Second Amendment Fee Letter, dated as of December 23, 2022, by and between the Borrower and Citibank, N.A., as arranger, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

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

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

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

“Swap Agreement” means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided, that the term “Swap Agreement” shall not include (i)

any phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries, (ii) any forward, option, warrant agreement or Forward Agreement for the purchase or sale of Equity Interests of the Borrower, (iii) contracts for the purchase of securities of the Borrower, (iv) any Permitted Call Spread Agreement and ~~(iv)~~ any items described in this definition to the extent that it constitutes a derivative security embedded in Convertible Debt Securities issued by the Borrower.

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

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

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

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

“Swingline Loan” means a Loan made pursuant to Section 2.04.

“Swingline Request” has the meaning assigned to such term in Section 2.04(b). “Syndication Agents”

means Bank of America and HSBC.

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

“Term SOFR” means:

(a) for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that

if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “ABR Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such ABR SOFR Determination Day.

“Term SOFR Adjustment” means, for any calculation with respect to an ABR Loan or a Term SOFR Loan, a percentage per annum equal to 0.10%.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Borrowing” means, as to any Borrowing, the Term SOFR Loans comprising such Borrowing.

“Term SOFR Loan” means a Loan that bears interest at a rate based on the Adjusted Term SOFR other than pursuant to clause (c) of the definition of “Alternate Base Rate”.

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR ~~that has been selected or recommended by the Relevant Governmental Body.~~

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

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

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

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

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

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

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

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

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the Benchmark Replacement Adjustment.

“United States” means the United States of America.

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

“U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

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

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

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

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

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

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

SECTION 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “~~Eurodollar~~ Term SOFR Loan”).

SECTION 1.03 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “law” shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply) and all judgments, orders and decrees of all Governmental Authorities. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise

(a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented, refinanced, replaced, or otherwise modified (subject to any restrictions on such amendments, restatements, amendment and restatement, supplements, refinancings, replacements, or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (f) any reference in any definition to the phrase “at any time” or “for any period” shall refer to the same time or period for all calculations or determinations within such definition, and (g) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

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

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

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

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

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

SECTION 1.08 Calculations.

(a) For purposes of determining the amount of any Investment outstanding for purposes of Section 6.04, such amount shall be deemed to be the amount of such Investment when made, purchased or acquired (without adjustment for subsequent increases or decreases in the value of such Investment) less

any actual cash amount realized by the applicable Loan Party or Subsidiary in respect of such Investment upon the sale, collection or return of capital (not to exceed the original amount invested).

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

SECTION 1.09 Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Alternate Base Rate, Adjusted Term SOFR, SOFR, Term SOFR or Term SOFR Reference Rate, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Alternate Base Rate, Adjusted Term SOFR, Term SOFR or Term SOFR Reference Rate or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of Alternate Base Rate, Adjusted Term SOFR, SOFR, Term SOFR or Term SOFR Reference Rate, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain Alternate Base Rate, Adjusted Term SOFR, SOFR, Term SOFR, Term SOFR Reference Rate or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE II

THE CREDITS

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

SECTION 2.02 Loans and Borrowings.

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

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

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

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

SECTION 2.03 Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request either in writing (delivered by hand, e-mail or fax) in substantially the form of Exhibit F and signed by the Borrower or by telephone (such request a “Borrowing Request”) (a) in the case of a EurodollarTerm SOFR Borrowing, not later than 12:00 p.m. (noon), New York City time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 12:00 p.m. (noon), New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery, fax or e-mail to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.01:

- (i) the aggregate amount of the requested Borrowing and a breakdown of the separate wires comprising such Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be an ABR Borrowing or a EurodollarTerm SOFR Borrowing; and
- (iv) in the case of a EurodollarTerm SOFR Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period.”.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested EurodollarTerm SOFR Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the

Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04 Swingline Loans.

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

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

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

(d) Any Swingline Lender may by written notice given to the Administrative Agent require the Lenders to acquire participations in all or a portion of its Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Lender, specifying in such notice such Lender's applicable percentage of such Swingline Loans. Each Lender hereby absolutely and unconditionally agrees, promptly upon receipt of such notice from the Administrative Agent (and in any event, if such notice is received by 12:00 p.m. (noon), New York City time, on a Business Day no later than 4:00 p.m. New York City time on such Business Day and if received after 12:00 p.m. (noon), New York City time, on a Business Day shall mean no later than 12:00 p.m. (noon) New York City time on the immediately succeeding Business Day), to pay to the Administrative Agent, for the account of such Swingline Lenders, such Lender's applicable percentage of such Swingline Loans. Each Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section

2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to such Swingline Lenders the amounts so received by it from the Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to such Swingline Lenders. Any amounts received by a Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by such Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Lenders that shall have made their payments pursuant to this paragraph and to such Swingline Lenders, as their interests may appear; provided, that any such payment so remitted shall be repaid to such Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

(e) Any Swingline Lender may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Swingline Lender and the successor Swingline Lender. The Administrative Agent shall notify the Lenders of any such replacement of a Swingline Lender. At the time any such replacement shall become effective, the Borrower shall pay all unpaid interest accrued for the account of the replaced Swingline Lender pursuant to Section 2.13(a). From and after the effective date of any such replacement, (x) the successor Swingline Lender shall have all the rights and obligations of the replaced Swingline Lender under this Agreement with respect to Swingline Loans made thereafter and (y) references herein to the term "Swingline Lender" shall be deemed to refer to such successor or to any previous Swingline Lender, or to such successor and all previous Swingline Lenders, as the context shall require. After the replacement of a Swingline Lender hereunder, the replaced Swingline Lender shall remain a party hereto and shall continue to have all the rights and obligations of a Swingline Lender under this Agreement with respect to Swingline Loans made by it prior to its replacement, but shall not be required to make additional Swingline Loans.

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

SECTION 2.05 [Reserved]. SECTION 2.06 Letters of

Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of (and the Issuing Bank shall issue) Letters of Credit denominated in Dollars as the applicant thereof for the support of its or its Subsidiaries' obligations in a form reasonably acceptable to the applicable Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, any Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. The Borrower unconditionally and irrevocably agrees that, in connection with any Letter of Credit issued for the support of any Subsidiary's obligations as provided in the first sentence of this clause (a), the Borrower will be fully responsible for the reimbursement of LC Disbursements in accordance with the terms hereof, the payment of interest thereon and the payment of fees due under Section 2.12(b) to the same extent as if it were the sole account party in respect of such

Letter of Credit (the Borrower hereby irrevocably waiving any defenses that might otherwise be available to it as a guarantor or surety of the obligations of such Subsidiary that is an account party in respect of any such Letter of Credit). Notwithstanding anything herein to the contrary, the Issuing Bank shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit (i) the proceeds of which would be made available to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions, in either such case, in violation of any such Sanctions or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) if any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Requirement of Law relating to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Issuing Bank in good faith deems material to it, or (iii) if the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally; provided, that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed not to be in effect on the Effective Date for purposes of clause (ii) above, regardless of the date enacted, adopted, issued or implemented

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

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination or non-renewal by notice from the applicable Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any one-time renewal or extension thereof, including any automatic renewal provision, one year after such renewal or extension) and (ii) the date that is five (5) Business Days prior to the Maturity Date; provided, that, upon the Borrower's request, any such Letter of Credit which is issued in the final

year prior the Maturity Date may have an expiry date which is up to one year after the Maturity Date if, at least five (5) Business Days prior to the Maturity Date, the Borrower (A) deposits with the Administrative Agent cash collateral in an amount equal to 105% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon or (B) provides a backup standby letter of credit, in each case, reasonably satisfactory to the relevant Issuing Bank. Each Letter of Credit with automatic extension or renewal provisions shall, subject to the right of the respective Issuing Bank to terminate such automatic renewal in accordance with the terms of such Letter of Credit upon the occurrence of an Event of Default, be automatically renewed for a successive one-year period on each anniversary of the date of the issuance of such Letter of Credit, until cancelled by the Borrower by notice to the applicable Issuing Bank in accordance with the terms of such Letter of Credit agreed upon at the time such Letter of Credit is issued; provided, that such Letter of Credit shall expire at or prior to the close of business on the date that is five

(5) Business Days prior to the Maturity Date if not earlier cancelled, unless otherwise agreed with the relevant Issuing Bank and subject to satisfactory arrangements with respect thereto as contemplated above.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Lenders, such Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of such Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in clause (e) of this Section 2.06, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

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

Issuing Bank for any LC Disbursement (other than the funding of ABR Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in clause (e) of this Section 2.06 shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by an Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.06, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor any Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of any Issuing Bank; provided, that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, an Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

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

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

this paragraph shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to clause (e) of this Section 2.06 to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment.

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

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

(k) Issuing Bank Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each Issuing Bank shall, in addition to its notification obligations set forth elsewhere in this Section 2.06, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as shall be requested by the Administrative Agent) in respect of Letters of Credit issued by such Issuing Bank, including all issuances, extensions, amendments and renewals, all expirations and cancelations and all disbursements and reimbursements, (ii) reasonably prior to the time

that such Issuing Bank issues, amends, renews or extends any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the stated amount of the Letters of Credit issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed), (iii) on each Business Day on which such Issuing Bank makes any LC Disbursement, the date and amount of such LC Disbursement, (iv) on any Business Day on which the Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and the amount of such LC Disbursement, and (v) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such Issuing Bank.

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

SECTION 2.07 Funding of Borrowings.

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

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

SECTION 2.08 Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Term SOFR Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Term SOFR Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.08. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall

be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This section shall not apply to Swingline Borrowings, which may not be converted or continued.

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

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

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

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

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a [EurodollarTerm SOFR](#) Borrowing; and

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

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

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

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

SECTION 2.09 Termination and Reduction of Commitments.

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

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

(c) The Borrower may from time to time, without (subject to Section 2.16) premium or penalty, reduce the Commitments; provided, that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of \$1.0 million and not less than \$5.0 million (or if less, the aggregate amount of the outstanding Commitments), and (ii) the Borrower shall not reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, the Aggregate Credit Exposure would exceed the aggregate Commitments of all Lenders.

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

SECTION 2.10 Repayment of Loans; Evidence of Debt.

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

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

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

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

(e) Any Lender may request that Loans made by it be evidenced by a promissory note in substantially the form of Exhibit I completed as appropriate (each a "Note" and, collectively, the "Notes"). In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to such Lender and its registered assigns and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more Notes in such form payable to such payee and its registered assigns.

SECTION 2.11 Prepayment of Loans.

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

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

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

SECTION 2.12 Fees.

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

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender (other than a Defaulting Lender, subject to Section 2.20) a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to ~~Eurodollar~~ the Term SOFR Loans, on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the applicable Issuing Bank a fronting fee, which shall accrue at the rate of 0.25% *per annum* on the average daily amount of each applicable Letter of Credit (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as the applicable Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of each calendar quarter shall be payable on the first Business Day of each of each January, April, July and October following such last day, commencing on the first such date to occur after the Effective Date; provided, that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to any Issuing Bank pursuant to this paragraph shall be payable within ten (10) days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed.

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

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

SECTION 2.13 Interest.

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

(b) [Reserved]

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

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

(ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in clause (a) of this Section 2.13.

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

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

~~(g)~~ In connection with the use or administration of Adjusted Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Adjusted Term SOFR.

SECTION 2.14 Alternate Rate of Interest; Illegality.

~~(a)~~ Subject to Section 2.25, if, on or prior to the first day of any Interest Period for any Term SOFR Loan:

~~(i) (a) If prior to the commencement of any Interest Period for a Eurodollar Borrowing~~ the Administrative Agent determines (which determination shall be conclusive absent manifest error), ~~or the Required Lenders notify the Administrative Agent (with a copy to the Borrower) that the Required Lenders have determined that: that adequate and reasonable means do not exist for ascertaining Adjusted Term SOFR, Term SOFR or SOFR pursuant to the definition thereof; or~~

~~(i) adequate and reasonable means do not exist for ascertaining the LIBO Rate or Adjusted LIBO Rate, as applicable, for any requested Interest Period, including because the LIBO~~

Rate is not available or published on a current basis and such circumstances are unlikely to be temporary;

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

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

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

(ii) the Required Lenders determine that for any reason in connection with any request for a Term SOFR Loan or a conversion thereto or a continuation thereof that Adjusted Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Loan does not adequately and fairly reflect the cost to such Lenders of making and maintaining such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent;

the Administrative Agent will promptly so notify the Borrower and the Lenders.

~~If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist, the~~Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make or maintain Eurodollar Loans Term SOFR Loans, and any right of the Borrower to continue Term SOFR Loans or to convert ABR Loans to Term SOFR Loans, shall be suspended, (to the extent of the affected Eurodollar Term SOFR Loans or affected Interest Periods) until the Administrative Agent (with respect to clause (a)(ii), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a Eurodollar Borrowing of, conversion to or continuation of Eurodollar Term SOFR Loans (to the extent of the affected Eurodollar Term SOFR Loans or affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for an ABR Borrowing of or conversion to ABR Loans in the amount specified therein. and (ii) any outstanding affected Term SOFR Loans will be deemed to have been converted into ABR Loans at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 2.16. Subject to Section 2.25, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that "Adjusted

Term SOFR” cannot be determined pursuant to the definition thereof on any given day, the interest rate on ABR Loans shall be determined by the Administrative Agent without reference to clause (c) of the definition of “Alternate Base Rate” until the Administrative Agent revokes such determination.

~~(b) If after the date hereof, the adoption of any applicable law, or any change in any applicable law (whether adopted before or after the Effective Date), or any change in interpretation or administration thereof by any Lender determines that any Law has made it unlawful, or that any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender with any directive (whether or not having the force of law) of any such authority, central bank or comparable agency, shall make it unlawful or impossible for any Lender or its applicable lending office to make, maintain or fund its portion of Eurodollar Loans, Loans whose interest is determined by reference to SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or to determine or charge interest rates based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, then, upon notice thereof by such Lender shall so notify the Borrower (through the Administrative Agent, and) (an “Illegality Notice”), (i) any obligation of the Lenders to make Term SOFR Loans, and any right of the Borrower to continue Term SOFR Loans or to convert ABR Loans to Term SOFR Loans, shall be suspended, and (ii) the interest rate on which ABR Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent shall forthwith give notice thereof to the other Lenders and the Borrower. Before giving any notice to without reference to clause (c) of the definition of “Alternate Base Rate”, in each case until each affected Lender notifies the Administrative Agent pursuant to this Section 2.14(b), such Lender shall designate a different lending office if such designation will avoid the need for giving such notice and will not, in the sole reasonable judgment of such Lender, be otherwise materially disadvantageous to such Lender. Upon receipt of such notice, notwithstanding anything contained in Article II, the Borrower shall repay in full the then outstanding principal amount of such Lender’s portion of each affected Eurodollar Loan, together with accrued interest thereon, on either (i) and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, the Borrower shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term SOFR Loans to ABR Loans (the interest rate on which ABR Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of “Alternate Base Rate”), on the last day of the then current Interest Period applicable to such therefor, if all affected Eurodollar Loans if such Lenders may lawfully continue to maintain and fund its portion of such Eurodollar Term SOFR Loans to such day, or (ii) immediately, if such any Lender may not lawfully continue to fund and maintain its portion of such affected Eurodollar such Term SOFR Loans to such day. Concurrently with repaying such portion of each affected Eurodollar Loan, the Borrower may borrow an ABR Loan from such Lender, whether or not it would have been entitled to effect such borrowing and such Lender shall make such Loan, if so requested, in an amount such that the outstanding principal amount of the affected Loan made by such Lender shall equal the outstanding principal amount of such Loan immediately prior to such repayment. The obligation of such Lender to make Eurodollar Loans is suspended only until such time as it is once more possible and legal for such Lender to fund and maintain Eurodollar Loans., in each case until the Administrative Agent is advised in writing by each affected Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.16.~~

SECTION 2.15 Increased Costs.

(a) If any Change in Law shall:

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

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

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

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting into or maintaining any Eurodollar Term SOFR Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or such Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

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

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

(d) Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to clauses (a), (b) and (c) of this Section 2.15 shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation; provided, that the Borrower shall not be required to compensate a Lender or an Issuing Bank pursuant to this Section 2.15 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or such Issuing Bank, as the

case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.16 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Term SOFR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Term SOFR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Term SOFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.09(d) or Section 2.11(c) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Term SOFR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event (which shall not include any loss of margin or Applicable Rate). In the case of a Eurodollar Term SOFR Loan, such loss, cost or expense to any Lender shall include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBOR Rate Term SOFR that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest (as reasonably determined by such Lender) which accrued on such principal amount for such period at the interest rate which such Lender bid, at the commencement of such period, for Dollar deposits of a comparable amount and period from other banks in the eurodollar applicable market. A certificate of any Lender setting forth, in reasonable detail, any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.16 shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.17 Withholding of Taxes; Gross-Up.

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

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

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

evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

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

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this clause (e).

(f) Status of Lenders.

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

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

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

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

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

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

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

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

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

reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made;

(D) if a payment made to a Recipient under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Recipient shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Recipient has complied with such Recipient's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement; and

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

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

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

party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

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

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

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

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 1:00 p.m., New York City time, on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to one or more accounts as it may designate to the Borrower in writing from time to time, except payments to be made directly to an Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars.

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

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

(d) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and Swingline Loans; provided, that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

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

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

(g) The Administrative Agent may from time to time provide the Borrower with billing statements or invoices with respect to any of the Obligations (the "Billing Statements"). The

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

SECTION 2.19 Mitigation Obligations; Replacement of Lenders.

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

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

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

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

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

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

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

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

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

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

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

payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Banks until such LC Exposure is cash collateralized and/or reallocated;

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

(e) if (i) a Bankruptcy Event with respect to a Parent of any Lender shall occur following the date hereof and for so long as such event shall continue or (ii) any Swingline Lender or Issuing Bank has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, no Swingline Lender shall be required to fund any Swingline Loan and no such Issuing Bank shall be required to issue or increase any Letter of Credit unless such Swingline Lender or Issuing Bank shall have entered into arrangements with the Borrower or such Lender, reasonably satisfactory to such Swingline Lender or Issuing Bank, as the case may be, to defease any risk to it in respect of such Lender hereunder; and

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

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

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

SECTION 2.22 Increase of Commitments.

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

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

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

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

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

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

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

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

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

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

SECTION 2.23 [Reserved].

SECTION 2.24 [Reserved].

SECTION 2.25 Effect of a Benchmark Transition Event.

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

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

(c) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) ~~any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date,~~ (ii) the implementation of any Benchmark Replacement, and (iii) the effectiveness

of any ~~Benchmark Replacement~~ Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.25(d) and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.25, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party ~~hereto~~ to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.25.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the applicable then current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) ~~(d)~~ Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (i) the Borrower may revoke any pending request for a Eurodollar Term SOFR Borrowing of, conversion to or continuation of Eurodollar Term SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans and (ii) any outstanding affected Term SOFR Loans will be deemed to have been converted into ABR Loans immediately. During any Benchmark Unavailability Period, the component of ABR Adjusted Base Rate based upon the LIBO Rate then current Benchmark will not be used in any determination of ABR Adjusted Base Rate.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Lenders that:

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

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

SECTION 3.03 Governmental Approvals; No Conflicts. The Transactions (a) do not, on the part of any Loan Party or any of its Subsidiaries, require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party or any of its Subsidiaries or any order of any Governmental Authority applicable to any Loan Party, (c) will not violate or result in a default under, or give rise to a right to require any payment to be made by any Loan Party or any of its Subsidiaries under, (i) any indenture or loan agreement, in each case, evidencing Indebtedness in excess of ~~\$50~~100 million, (ii) any Swap Agreement with a Swap Termination Value in excess of \$5100.0 million or (iii) any other material agreement, in each case which is binding upon any Loan Party or any of its Subsidiaries or its assets, and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party or any of its Subsidiaries, except Liens on cash collateral created pursuant to the Loan Documents, except, solely in the case of clauses (a), (b) or (c)(iii) hereof, as could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.04 Financial Condition; No Material Adverse Change.

(a) The Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of and for the fiscal year ended December 31, 2019, reported on by the Accounting Firm and (ii) as of and for the fiscal quarter and the portion of the fiscal year ending March 31, 2020. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

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

SECTION 3.05 Properties.

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

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

SECTION 3.06 Litigation and Environmental Matters.

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

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

SECTION 3.07 Compliance with Laws and Agreements; No Default.

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

(b) No Default has occurred and is continuing.

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

SECTION 3.09 Taxes. Each Loan Party and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes, and claims that that were required to have been paid by it, except (a) Taxes and claims that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10 ERISA.

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

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

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

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

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

SECTION 3.13 [Reserved].

SECTION 3.14 Federal Reserve Regulations.

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

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

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

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

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

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

SECTION 3.17 Solvency. (a) The fair value of the assets of the Loan Parties and their Subsidiaries, taken as a whole, at a fair valuation, exceeds their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of the Loan Parties and their Subsidiaries, taken as a whole, is greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) the Loan Parties will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) the Loan Parties and their Subsidiaries, taken as a whole, will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted after the Effective Date.

SECTION 3.18 FDA and Other Regulatory Matters.

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

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

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

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

(e) No Loan Party nor any Subsidiary of any Loan Party has received any written or verbal notice from any Governmental Authority alleging material noncompliance with any Requirement of Law. No Product has been seized, recalled, detained, or subject to a suspension (other than in the ordinary course of business) of research, manufacturing, distribution, or commercialization activity, and, to the knowledge of Loan Party and each of its Subsidiaries, there are no facts or circumstances reasonably likely to cause (i) the seizure, denial, recall, detention, public health notification, safety alert or suspension of manufacturing or other activity relating to any Product except as would not reasonably be

expected to have a Material Adverse Effect; or (ii) a termination, seizure or suspension of manufacturing, researching, distributing or marketing of any Product. No proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, revocation, suspension, import detention, or seizure of any Product are pending or threatened in writing or verbally against any Loan Party or any of its Subsidiaries.

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

SECTION 3.19 Health Care Matters.

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

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

(c) Prohibited Transactions. No Loan Party or any of its Subsidiaries nor, to the knowledge of the Loan Parties, any officer, affiliate or managing employee of any Loan Party or any Subsidiary of a Loan Party has (i) offered or paid or solicited or received any remuneration, in cash or in kind, or made

any financial arrangements, in material violation of any applicable Health Care Law; (ii) given any gift or gratuitous payment of any kind, nature or description (whether in money, property or services) in material violation of any applicable Health Care Law; (iii) made any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift or the purpose of such contribution, payment or gift was illegal in any material respect under the applicable laws of any Governmental Authority having jurisdiction over such payment, contribution or gift; (iv) established or maintained any unrecorded fund or asset or made any misleading, false or artificial entries on any of its books or records in material violation of applicable Health Care Laws; or (v) made any payment to any person with the intention that any part of such payment would be in violation of any applicable Health Care Law. No Person has filed or has threatened in writing to file against any Loan Party or any of their Subsidiaries an action under any federal or state whistleblower statute related to alleged noncompliance with applicable Health Care Laws, including under the False Claims Act of 1863 (31 U.S.C. 6 3729 et seq.).

(d) Exclusion. No Loan Party nor any of their Subsidiaries, nor, to the knowledge of Loan Party or its Subsidiaries, any owner, officer, director, partner, agent or managing employee or Person with a “direct or indirect ownership interest” (as that phrase is defined in 42 C.F.R. § 420.201) in any Loan Party or any Subsidiary of any Loan Party or an Affiliate, has (i) had a civil monetary penalty assessed pursuant to 42 U.S.C. § 1320a-7; (ii) been convicted (as that term is defined in 42 C.F.R. 61001.2) of any of those offenses described in 42 U.S.C. §1320a-7b or 18 U.S.C. 11669, 1035. 1347 or 1518, including any of the following categories of offenses: (A) criminal offenses relating to the delivery of an item or service under any federal health care program (as that term is defined in 42 U.S.C. §1320a-7b) or healthcare benefit program (as that term is defined in 18 U.S.C. 124b), (B) criminal offenses under federal or state law relating to patient neglect or abuse in connection with the delivery of a healthcare item or service, (C) criminal offenses under laws relating to fraud and abuse, theft, embezzlement, false statements to third parties, money laundering, kickbacks, breach of fiduciary responsibility or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in a program operated by or financed in whole or in part by any federal, state or local governmental agency, (D) laws relating to the interference with or obstruction of any investigations into any criminal offenses described in this clause (d), or (E) criminal offenses under laws relating to the unlawful manufacturing, distribution, prescription or dispensing of a controlled substance; or (iii) been involved or named in a U.S. Attorney complaint made or any other action taken pursuant to the False Claims Act under 31 U.S.C. §13729-3731 or qui tam action brought pursuant to 31 U.S.C. 63729 et seq.

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

(f) Corporate Integrity Agreement. No Loan Party nor any of their Subsidiaries, nor, to the knowledge of Loan Party or its Subsidiaries, any owner, officer, director, partner, agent or managing employee of any Loan Party or any Subsidiary of any Loan Party, is a party to or bound by any individual

integrity agreement, corporate integrity agreement, corporate compliance agreement, deferred prosecution agreement, or other formal agreement with any Governmental Authority concerning compliance with Health Care Laws, any Government Reimbursement Programs or the requirements of any Health Care Permit.

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

ARTICLE IV CONDITIONS

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

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

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

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

such Loan Party and a true and correct copy of its by-laws or operating, management or partnership agreement, and (ii) a good standing certificate dated as of the Effective Date for each Loan Party from its jurisdiction of organization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V

AFFIRMATIVE COVENANTS

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

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

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

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

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

(d) [Reserved].

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

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

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

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

(a) the occurrence of any Default;

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

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding ~~\$~~2100.0 million;

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

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

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

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

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

(i) any written notice that the FDA or any other similar Governmental Authority is (i) suspending or revoking any Registration, changing the market classification, distribution pathway or parameters of the Products of the Loan Parties or their respective Subsidiaries; (ii) any Loan Party or any of its Subsidiaries becoming subject to any administrative or regulatory action, inspection, Form FDA

483 observation, warning letter, notice of violation letter, or other material notice, response or commitment made to or with the FDA or any comparable Governmental Authority, except as would not be reasonably expected to have a Material Adverse Effect; (iii) any Product of any Loan Party or any of its Subsidiaries being seized, recalled, detained, or subject to a suspension of manufacturing, or the commencement of any proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, suspension, import detention, or seizure of any Product are pending or threatened in writing or verbally against the Loan Parties or their respective Subsidiaries; (iv) any voluntary recall of any Product by any Loan Party or any of its Subsidiaries in an amount in excess of \$5100.0 million (based on the fair market value of such Product) in the aggregate for all such recalls, or in an amount which would, in the aggregate, have a Material Adverse Effect; or (v) proposing that any Loan Party be suspended, debarred or excluded under 21 U.S.C. § 335a, 42 U.S.C. § 1320a-7, or any similar state or foreign law, rule or regulation; and

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

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

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

Borrower, similar, complimentary, ancillary or substantially related thereto or are reasonable extensions thereof.

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

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

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

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

SECTION 5.08 Use of Proceeds.

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

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

SECTION 5.09 Further Assurances.

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

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

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

SECTION 5.11 Compliance with Environmental Laws. Each Loan Party shall comply with all Environmental Laws applicable to its operations and properties; and obtain and renew all material

authorizations and permits required pursuant to Environmental Laws for its operations and properties, in each case in accordance with Environmental Laws, except, in each case, to the extent failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.12 Intellectual Property. Each Loan Party shall maintain adequate licenses, patents, patent applications, copyrights, service marks, trademarks, trademark applications, tradestyles and trade names to continue its business as heretofore conducted by it or as hereafter conducted by it unless the failure to maintain any of the foregoing could not reasonably be expected to have a Material Adverse Effect on such Loan Party.

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

SECTION 5.14 Compliance with Health Care Laws.

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

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

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

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

ARTICLE VI
NEGATIVE COVENANTS

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

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

- (a) the Obligations;
- (b) Indebtedness existing or available for draw on the date hereof and set forth on Schedule 6.01 to the Disclosure Letter;
- (c) Indebtedness of the Borrower to any Subsidiary and of any Subsidiary to the Borrower or any other Subsidiary; provided, that (i) Indebtedness of any Subsidiary that is not a Loan Party to the Borrower or to any Subsidiary that is a Loan Party shall be subject to Section 6.04 and (ii) Indebtedness of a Loan Party to any Subsidiary that is not a Loan Party shall be subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent;
- (d) Guarantees by the Borrower of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of the Borrower or any other Subsidiary; provided, that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01, (ii) Guarantees by the Borrower or any Subsidiary that is a Loan Party of Indebtedness of any Subsidiary that is not a Loan Party shall be subject to Section 6.04, (iii) Guarantees permitted under this clause (d) shall be subordinated to the Obligations on the same terms as the Indebtedness so Guaranteed is subordinated to the Obligations and (iv) no Subsidiary of the Borrower that is not a Loan Party may rely on this clause (d) to Guarantee any Indebtedness of a Loan Party incurred pursuant to clause (u) of this Section 6.01;
- (e) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets (including any accessions, additions, parts, fixtures, improvements and attachments thereto) (whether or not constituting purchase money Indebtedness), including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition (including by way of any Permitted Acquisition) of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness in accordance with clause (f) hereof; provided, that, (i) such Indebtedness is incurred prior to or within one hundred eighty days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) (including any refinancing thereof permitted by clause (f)) shall not exceed \$5100.0 million at any time outstanding;
- (f) Indebtedness which represents an extension, refinancing, or renewal of any of the Indebtedness described in clauses (b), (e) or (s) hereof; provided, that, (i) the aggregate principal amount of such Indebtedness does not exceed the principal amount of such Indebtedness being refinanced plus the amount of any interest, premiums or penalties required to be paid plus fees and expenses associated therewith, (ii) any Liens securing such Indebtedness are not extended to any additional property of any Loan Party (or, if no Liens secure such Indebtedness being extended, refinanced or renewed, no Liens secure such Indebtedness), (iii) no Loan Party that is not originally obligated (or required to become obligated) with respect to repayment of such Indebtedness is required to become obligated with respect thereto, (iv) such extension, refinancing or renewal does not result in a shortening of the average

weighted maturity of the Indebtedness so extended, refinanced or renewed, (v) the terms of any such extension, refinancing, or renewal are not materially less favorable to the obligor thereunder than the original terms of such Indebtedness, taken as a whole, and (vi) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension Indebtedness must include subordination terms and conditions, taken as a whole, that are at least as favorable to the Administrative Agent and the Lenders as those that were applicable to the refinanced, renewed, or extended Indebtedness;

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

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

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

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

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

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

(m) Indebtedness of Foreign Subsidiaries; provided, that the aggregate outstanding principal amount of such Indebtedness shall not exceed ~~\$5~~120.0 million (or the equivalent thereof) at any time;

(n) Deferred Acquisition Consideration in connection with Permitted Acquisitions;

(o) Indebtedness of a Person or Indebtedness attaching to assets of a Person that, in either case, becomes a Subsidiary or Indebtedness attaching to assets that are acquired by Borrower or any of its Subsidiaries, in each case as the result of a Permitted Acquisition or other acquisition permitted under this Agreement; provided, that (i) such Indebtedness existed at the time such Person became a Subsidiary or at the time such assets were acquired and, in each case, was not created in anticipation thereof and (ii) (x) such Indebtedness incurred in connection with any single Permitted Acquisition shall not exceed ~~\$2~~40.0 million and (y) the aggregate amount of such Indebtedness permitted to be incurred shall under this clause ~~(o)~~ not exceed ~~\$5~~100.0 million;

(p) Indebtedness of the Borrower or any Subsidiary in connection with any Guarantees given by them, or any letters of credit or bank guarantees issued by any bank or financial institution, in favor of any Governmental Authority to secure the payment of Taxes owed by the Borrower or any Subsidiary to such Governmental Authorities;

(q) Indebtedness incurred with corporate credit cards in the ordinary course of business;

(r) Indebtedness with respect to letters of credit, bank guarantees, banker's acceptances and similar instruments, so long as the aggregate face amount of all such letters of credit, bank guarantees, banker's acceptances and similar instruments does not exceed \$240.0 million at any time;

(s) Indebtedness consisting of promissory notes issued to current or former officers, directors and employees (or their respective family members, estates or trusts or other entities for the benefit of any of the foregoing) of the Borrower or its Subsidiaries to purchase or redeem Equity Interests or options of the Borrower permitted pursuant to Section 6.07(a)(vi); provided that the aggregate principal amount of all such Indebtedness shall not exceed \$5.0 million at any time outstanding;

(t) Indebtedness consisting of obligations under Repurchase Agreements;

(u) unsecured Indebtedness of any Loan Party not otherwise permitted pursuant to this Section 6.01; provided that (i) the Total Leverage Ratio of the Borrower recomputed on a pro forma basis for the incurrence of such Indebtedness, and based on the most recently ended Reference Period for which financial statements have been (or were required to be), in each case in accordance with this Agreement, delivered to the Administrative Agent, shall not exceed ~~2.503.00~~ to 1.00, (ii) the final maturity of such Indebtedness shall not be prior to the date that is ninety (90) days after the Maturity Date, (iii) such Indebtedness will not have mandatory prepayment or mandatory amortization, redemption, sinking fund or similar prepayments (other than asset sale, casualty, condemnation or extraordinary receipts events, change of control, fundamental change, make-whole fundamental change or similar event risk provisions providing for mandatory offers to repurchase customary for debt securities, and, for the avoidance of doubt, any net share settlement provisions) prior to the date that is ninety (90) days after the Maturity Date at the time of issuance of such Indebtedness, (iv) such Indebtedness is not guaranteed by any Subsidiary that is not a Guarantor, (v) to the extent such Indebtedness is subordinated in right of payment to the Obligations, any guaranty thereof by the Loan Parties shall be expressly subordinated to the Obligations on terms materially not less favorable to the Lenders than the subordination terms of such Indebtedness, (vi) the terms of such Indebtedness, taken as a whole, are not materially more restrictive on the Borrower and its Subsidiaries than the terms of the Loan Documents, taken as a whole (as determined in good faith by the Borrower, it being understood that (1) customary repurchase obligations described in the parenthetical in clause (iii) above and (2) customary additional interest provisions for failure to file required reports or additional interest in lieu of customary events of default, in each case shall not be materially more restrictive), and (viii) no Default or Event of Default shall have occurred and be continuing or result from the incurrence of such Indebtedness; ~~and~~

(v) other Indebtedness in an aggregate principal amount not exceeding \$5100.0 million at any time outstanding; provided, that no Subsidiary of the Borrower that is not a Loan Party may rely on this clause (v) to Guarantee any Indebtedness of a Loan Party incurred pursuant to clause (u) of this Section 6.01.; and

(w) to the extent constituting Indebtedness, obligations in respect of customary representations, warranties, repurchase covenants and indemnities entered into by a Foreign Subsidiary with respect to a Receivables Facility; provided, that the aggregate outstanding principal amount of such Receivables Facilities shall not exceed \$75.0 million (or the equivalent thereof) at any time.

SECTION 6.02 Liens. No Loan Party will, nor will it permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or

assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

- (a) Liens on cash collateral created pursuant to any Loan Document;
- (b) Permitted Encumbrances;

(c) any Lien on any property or asset of the Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02 to the Disclosure Letter; provided, that (i) such Lien shall not apply to any other property or asset of the Borrower or such Subsidiary, except for proceeds of the foregoing and (ii) such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof except by the amount of any interest, premiums or penalties required to be paid plus fees and expenses associated therewith;

(d) any Lien existing on any property or asset prior to the acquisition thereof (including by way of any Permitted Acquisition) by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the Effective Date prior to the time such Person becomes a Subsidiary; provided, that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof except by the amount of any interest, premiums or penalties required to be paid plus fees and expenses associated therewith;

(e) Liens on fixed or capital assets (including any accessions, additions, parts, fixtures, improvements and attachments thereto and the proceeds thereof) acquired, constructed or improved by the Borrower or any Subsidiary; provided, that (i) such security interests secure Indebtedness permitted by clause (e) of Section 6.01, (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within one hundred eighty (180) days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 110% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Borrower or Subsidiary;

(f) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon;

(g) Liens granted by a Subsidiary that is not a Loan Party in favor of the Borrower or another Loan Party in respect of Indebtedness owed by such Subsidiary;

(h) Liens arising by operation of law under Article 2 of the Uniform Commercial Code in favor of a reclaiming seller of goods or buyer of goods;

(i) broker's Liens, bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower or any Subsidiary, in each case, granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, including any such Liens or rights of setoff securing amounts owing in the ordinary course of business to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements;

provided, that the aggregate amount of cash collateral under this clause (i) shall not exceed ~~\$5.0~~10.0 million in the aggregate at any one time;

(j) leases, licenses, sub-leases, sub-licenses and other similar encumbrances incurred in the ordinary course of business that do not materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower or any Subsidiary;

(k) Liens on assets of Foreign Subsidiaries to secure Indebtedness of such Foreign Subsidiaries permitted under Section 6.01(m);

(l) Liens in the nature of the right of setoff in favor of counterparties to contractual agreements not otherwise prohibited hereunder with the Borrower or any other Subsidiary in the ordinary course of business;

(m) Liens on cash collateral to secure obligations of Borrower or any Subsidiary under any Swap Agreement permitted under Section 6.06, so long as the aggregate amount of such cash collateral does not, as of any date of determination, exceed ~~\$240.0~~ million;

(n) Liens on cash collateral securing letters of credit, bank guarantees, banker's acceptances and similar instruments permitted under Section 6.01(r);

(o) Liens on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition;

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(q) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods by the Borrower or any of its Subsidiaries in the ordinary course of business;

(r) customary encumbrances or restrictions (including put and call arrangements) with respect to the Equity Interests of any joint venture or minority investment in favor of the other parties to such joint venture or other investors;

(s) Liens on cash collateral and/or Cash Equivalents securing Indebtedness permitted under Section 6.01(t); ~~and~~

(t) other Liens securing Indebtedness or other obligations in an aggregate amount not exceeding ~~\$5100.0~~ million at any time outstanding; provided, that this clause (t) may not be utilized to secure any Indebtedness permitted under Section 6.01(u); ~~and~~

(u) Liens on Receivables Assets of Foreign Subsidiaries in favor of any applicable counterparty in a Receivables Facility; provided, that the aggregate outstanding principal amount of Indebtedness which such Liens secure shall not exceed \$75.0 million (or the equivalent thereof) at any time.

SECTION 6.03 Fundamental Changes.

(a) No Loan Party will, nor will it permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, sell, transfer, lease or

otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing (i) any Subsidiary of the Borrower may merge into the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) any Subsidiary may merge into any Loan Party in a transaction in which the surviving entity is a Loan Party, (iii) any Person may merge or consolidate with or into any Loan Party or any of its Subsidiaries in connection with a Permitted Acquisition or any Investment permitted under Section 6.04 so long as, in the case of a merger involving any Loan Party, such Loan Party is the surviving entity (or the surviving entity becomes a Loan Party in accordance with this Agreement), (iv) any Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the Borrower or to another Subsidiary, (v) any Subsidiary that is not a Loan Party may merge or consolidate with or into any other Subsidiary that is not a Loan Party and (vi) any Subsidiary may liquidate or dissolve if the Borrower reasonably determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and its Subsidiaries, and is not materially disadvantageous to the Lenders; provided, that any such merger involving a Person that is not a wholly owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04.

(b) No Loan Party will, nor will it permit any of its Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the date of execution of this Agreement and businesses which are, in the good faith judgment of the Borrower, similar, complementary or substantially related or ancillary thereto or are reasonable extensions thereof.

(c) The Borrower will not change its fiscal year which currently ends on December 31 of each year.

SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions. No Loan Party will, nor will it permit any Subsidiary to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a Loan Party and a wholly owned Subsidiary prior to such merger) any capital stock, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (each such action, an "Investment"), except:

(a) investments in cash and Cash Equivalents;

(b) investments in existence on the date of this Agreement and described in Schedule 6.04 to the Disclosure Letter;

(c) investments by the Borrower and its Subsidiaries in the capital stock of their respective Subsidiaries; provided, that the aggregate amount of investments (together with the aggregate amount of loans and advances described in Section 6.04(d)), as of any date of determination, made by the Borrower or the other Loan Parties after the date of this Agreement in the capital stock of their respective Subsidiaries who are not Loan Parties does not at any time exceed an amount equal to ~~\$100.0~~175.0 million;

(d) loans or advances made by the Borrower or any of its Subsidiaries to the Borrower or any other Subsidiary; provided, that the aggregate amount of loans and advances (together with the aggregate amount of investments described in Section 6.04(c)) made by the Borrower or the other Loan Parties to

Subsidiaries who are not Loan Parties that are at any time outstanding does not, as of any date of determination, exceed an amount equal to ~~\$100.0~~175.0 million;

(e) (i) Guarantees ~~constituting~~of Indebtedness permitted by Section 6.01 (other than, in the case of any Subsidiary of the Borrower that is not a Loan Party, Indebtedness permitted pursuant to Section 6.01(u)) and (ii) Guarantees of obligations (owed by the Borrower or any of its Subsidiaries or any suppliers providing essential products to the Borrower or any of its Subsidiaries) not prohibited by this Agreement that do not constitute Indebtedness;

(f) Permitted Acquisitions, including the formation of a Subsidiary in connection therewith;

(g) loans and advances to officers, directors and employees of the Borrower or any Subsidiaries in the ordinary course of business in an aggregate amount for the Borrower and its Subsidiaries not to exceed \$5.0 million at any time outstanding;

(h) investments received in connection with the bankruptcy, liquidation or reorganization of any Person or in settlement of obligations of, or disputes with, any Person arising in the ordinary course of business;

(i) Swap Agreements permitted by Section 6.06;

(j) investments consisting of extensions of trade credit in the ordinary course of business, intercompany receivables and intercompany charges of expenses arising in the ordinary course of business, and any prepayments and other credits to suppliers or vendors made in the ordinary course of business;

(k) to the extent constituting Investments, performance guarantees of obligations of the Borrower's Subsidiaries in the ordinary course of business;

(l) Investments in joint ventures; provided, that the aggregate amount of all such Investments shall not at any time exceed \$50.0 million;

(m) deposits made in the ordinary course of business to secure the performance of leases or other obligations to the extent the Lien thereon is permitted by Section 6.02;

(n) Investments received in connection with the Disposition of any asset permitted by Section 6.05 (so long as the receipt of such Investment (in the form so received) does not result in the Disposition no longer being permitted under Section 6.05);

(o) endorsements of negotiable instruments deposited or to be deposited for collection in the ordinary course of business;

(p) Investments of any Person that becomes a Subsidiary after the Effective Date pursuant to a Permitted Acquisition, provided that (i) such Investments exist at the time that such Person becomes a Subsidiary and (ii) such Investments were not made in anticipation of such Person becoming a Subsidiary;

(q) Investments consisting of earnest money deposits required in connection with a Permitted Acquisition or consisting of earnest money deposits required in connection with an acquisition of property permitted hereunder;

(r) any Forward Agreement to the extent constituting an Investment that is permitted to be entered into by Borrower pursuant to Section 6.07;

(s) Permitted Call Spread Agreements; provided, that such Permitted Call Spread Agreement was entered into in connection with the issuance of an unsecured Convertible Debt Security; and

(t) Investments not otherwise permitted pursuant to this Section 6.04 not exceeding \$175.0 million in the aggregate in any fiscal year of the Borrower and in an aggregate amount not to exceed \$350.0 million at any time outstanding; provided that, immediately before and immediately after giving pro forma effect to any such Investments (and any Indebtedness incurred in connection therewith), no Default or Event of Default shall have occurred and be continuing.

SECTION 6.05 Asset Dispositions; Sale and Leaseback Transactions.

(a) No Loan Party will, nor will it permit any Subsidiary to, make any Disposition except:

(i) Dispositions of obsolete, surplus or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(ii) Dispositions of inventory in the ordinary course of business;

(iii) [Reserved];

(iv) Dispositions of equipment or real property to the extent that (A) such property is exchanged for credit against the purchase price of similar replacement property or (B) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(v) Dispositions of property by Borrower to any Subsidiary and by any Subsidiary to Borrower or any other Subsidiary;

(vi) Dispositions permitted by Sections 6.02 (to the extent the granting of a Lien constitutes a Disposition), 6.03, 6.04, 6.05(b), 6.07 and 6.08;

(vii) Dispositions of overdue accounts receivable solely in connection with the collection or compromise thereof;

(viii) Dispositions pursuant to operating leases (not in connection with any sale and leaseback transactions or other Capital Lease Obligations) entered into in the ordinary course of business;

(ix) Dispositions of property and assets subject to condemnation and casualty events;

(x) Dispositions of cash and Cash Equivalents;

(xi) Dispositions by Borrower and any Subsidiary not otherwise permitted under this Section 6.05(a); provided, that (A) at the time of such Disposition, no Default or Event of Default shall exist or would result from such Disposition and (B) such Disposition is made for fair market value and the consideration received shall be no less than 75% in cash and (C) the aggregate fair market value of all property Disposed of in reliance on this subclause (xi) in any fiscal year (or in

the case of any Disposition for which the fair market value cannot reasonably be determined, the aggregate purchase price therefor) shall not exceed 10% of Consolidated Total Assets;

(xii) the Disposition or unwinding of any (x) Permitted Call Spread Agreement that was entered into in connection with the issuance of an unsecured Convertible Debt Security or (y) any Swap Agreement;

(xiii) the lapse or abandonment of registered intellectual property (or applications therefor) of the Borrower or its Subsidiaries to the extent not necessary or desirable in the conduct of their business; ~~and~~

(xiv) other Dispositions not otherwise permitted pursuant to this Section 6.05(a), the aggregate fair market value of which (or in the case of any Disposition for which the fair market value cannot reasonably be determined, the aggregate purchase price therefor) shall not exceed \$~~3~~5.0 million in any fiscal year of the Borrower.; and

(xv) Dispositions by Foreign Subsidiaries of Receivables Assets in connection with any Receivables Facility; provided, that the aggregate fair market value of Receivables Assets Disposed in reliance on this clause (xv) in any fiscal quarter shall not exceed \$50.0 million.

(b) No Loan Party will, nor will it permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any owned property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred, except for any such sale of any newly acquired fixed or capital assets by the Borrower or any Subsidiary that is made for cash consideration in an amount not less than the purchase price of such fixed or capital asset and is consummated within one hundred eighty (180) days after the completion of the acquisition or construction of such fixed or capital asset.

SECTION 6.06 Swap Agreements. No Loan Party will, nor will it permit any Subsidiary to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks (including foreign currency exchange risks) to which the Borrower or any Subsidiary has actual or reasonably anticipated exposure (other than those in respect of Equity Interests of the Borrower or any of its Subsidiaries), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary.

SECTION 6.07 Restricted Payments; Prepayments of Indebtedness.

(a) No Loan Party will, nor will it permit any Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except:

(i) (A) the Borrower may declare and pay dividends with respect to its common stock payable solely in additional shares of its common stock, and, with respect to its preferred stock, payable solely in additional shares of such preferred stock or in shares of its common stock, and (B) Subsidiaries may declare and pay dividends or make distributions ratably with respect to their Equity Interests;

(ii) Restricted Payments paid in cash, so long as (A) no Event of Default has occurred and is continuing or would result therefrom and (B) after giving effect thereto on a pro

forma basis, ~~(1)~~ the Total Leverage Ratio for the most recently ended Reference Period for which financial statements have been (or were required to be) delivered to the Administrative Agent is not more than ~~3.00 to 1.00~~ and ~~(2) the Interest Coverage Ratio for the most recently ended Reference Period for which financial statements have been (or were required to be) delivered to the Administrative Agent is not less than 2.50~~ to 1.00 (it being agreed that with respect to the payment of cash dividends by the Borrower, such determinations under clauses (A) and (B) shall be made at the time of the declaration of such dividend);

(iii) issuances of Equity Interests to sellers of Permitted Acquisitions in satisfaction of obligations of the type described in Section 6.01(j);

(iv) the Borrower may deliver shares of Borrower's common stock, in connection with the settlement at maturity or early termination of any Forward Agreement if, at the time of entering into such Forward Agreement, the Borrower would have been permitted under this Agreement to pay the initial premium or prepayment amount due under such Forward Agreement on the initial prepayment date under such Forward Agreement;

(v) (A) any Subsidiary of the Borrower may pay cash dividends or make distributions to the Borrower or any other Loan Party and (B) any non-Loan Party may pay cash dividends or make distributions to any other non-Loan Party;

(vi) cash payment, *in lieu* of issuance of fractional shares arising out of stock dividends, splits or combinations or business combinations, or in connection with the exercise of warrants, options or other securities convertible into or exchangeable for the Equity Interests of the Borrower or a Subsidiary;

(vii) the Borrower may make Restricted Payments pursuant to and in accordance with stock plans and other benefit plans for management, employees or other eligible service providers of the Borrower and its Subsidiaries, including in connection with the payment of withholding taxes in connection with such plans;

(viii) the Borrower may repurchase, redeem, retire or otherwise acquire for value Equity Interests (including any stock appreciation rights in respect thereof) of the Borrower from current or former employees, officers or directors; provided, that the aggregate annual cash payments in respect of such repurchases, redemptions, retirements and acquisitions shall not exceed \$~~2~~40.0 million in any fiscal year;

(ix) repurchases or other acquisitions of Equity Interests deemed to occur upon the exercise of warrants or other rights to purchase Equity Interests or convertible securities if such Equity Interests represent a portion of the exercise price thereof or conversion price thereof;

(x) the Borrower or any Subsidiary may receive or accept the return to the Borrower or any Subsidiary of the Equity Interests of the Borrower or any Subsidiary from the sellers constituting a portion of the purchase price consideration in settlement of indemnification claims or as a result of purchase price adjustments (including earn-outs and similar obligations) in connection with Permitted Acquisitions; and

(xi) to the extent constituting Restricted Payments, the Borrower may pay the premium in respect of, make any payments (of cash or deliveries in shares of the Borrower's Equity Interests (or other securities or property (to the extent not secured by a Lien) following a merger event, reclassification or other change of the Equity Interests), or any combination thereof

and cash in lieu of fractional shares)) required by, and otherwise perform its obligations under, any Permitted Call Spread Agreement, including in connection with any settlement, unwind or termination thereof.

(b) No Loan Party will, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Subordinated Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Subordinated Indebtedness, except:

(i) payment of regularly scheduled interest and principal payments as and when due in respect of any Subordinated Indebtedness permitted under Section 6.01 and any other payments permitted by the subordination terms applicable thereto; and

(ii) purchases, redemptions and other payments of any Subordinated Indebtedness, so long as (A) no Event of Default has occurred and is continuing or would result therefrom and (B) after giving effect thereto on a pro forma basis, ~~(1) the Total Leverage Ratio for the most recently ended Reference Period for which financial statements have been (or were required to be) delivered to the Administrative Agent is not more than 3.00 to 1.00 and (2) the Interest Coverage Ratio for the most recently ended Reference Period for which financial statements have been (or were required to be) delivered to the Administrative Agent is not less than 2.50 to 1.00.~~

SECTION 6.08 Transactions with Affiliates. No Loan Party will, nor will it permit any Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that are at prices and on terms and conditions not less favorable to such Loan Party or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and any Subsidiary not involving any other Affiliate, (c) any Restricted Payment permitted by Section 6.07, (d) reasonable and customary director, officer and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans), indemnification arrangements and severance arrangements and (e) transactions described in Schedule 6.08 to the Disclosure Letter.

SECTION 6.09 Restrictive Agreements. No Loan Party will, nor will it permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Loan Party or any of its Subsidiaries to create, incur or permit to exist any Lien in favor of Administrative Agent upon any of its property or assets, (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary or (c) the ability of the Borrower or any other Subsidiary to make any Disposition to the Borrower or any Subsidiary; except for: (i) such encumbrances or restrictions existing under or by reason of applicable law or any Loan Document; (ii) restrictions and conditions existing on the date hereof identified on Schedule 6.09 to the Disclosure Letter (including any extension or renewal thereof, or any amendment or modification thereof, in each case so long as such extension, renewal, amendment or modification does not expand the scope of any such restriction or condition in any material respect); (iii) customary restrictions and conditions contained in asset sale agreements, purchase agreements, acquisition agreements (including by way of merger, acquisition or consolidation) entered into by the Borrower or any Subsidiary in accordance with this Agreement, provided such restrictions and conditions are only in effect pending consummation of such transaction and apply only to the entity or other property that is to be sold; (iv)

restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness; (v) customary provisions in leases and other contracts restricting the assignment thereof;

(vi) customary restrictions contained in any software licenses; (vii) without affecting the Loan Parties' obligations under [Section 5.09](#), customary provisions in the organizational documents of a Person or asset sale or stock sale agreements or similar agreements which restrict the transfer of ownership in such Person; (viii) in the case of any joint venture permitted hereunder with a Person that is not a Loan Party, restrictions in such Person's organizational documents or pursuant to any joint venture agreement or stockholders agreement solely to the extent of the Equity Interests of or property held in the subject joint venture; (ix) restrictions imposed by any holder of a Lien permitted by [Section 6.02](#) restricting the transfer of the property subject thereto; (x) without affecting the Loan Parties' obligations under [Section 5.09](#), any agreement in effect at the time a Person becomes a Subsidiary of the Borrower (including any amendments thereto that are otherwise permitted by the Loan Documents and that are no more materially restrictive with respect to such encumbrances and restrictions than those prior to such amendment or refinancing), so long as such agreement was not entered into in connection with or in contemplation of such person becoming a Subsidiary of Borrower and imposes restrictions only on such Person and its assets; (xi) restrictions on cash or other deposits required by suppliers or landlords or paid by customers under contracts entered into in the ordinary course of business; (xii) without affecting the Loan Parties' obligations under [Section 5.09](#), restrictions imposed solely on Foreign Subsidiaries pursuant to any Swap Agreement entered into by the Borrower or any Subsidiary and permitted pursuant to [Section 6.06](#); ~~and~~ (xiii) customary net worth provisions contained in real property leases or licenses of intellectual property entered into by the Borrower or any of its Subsidiaries; and (xiv) in the case of clauses (a) and (c), customary restrictions or conditions imposed by any agreement related to any Receivables Facility that is on market terms and permitted under this Agreement.

SECTION 6.10 Amendment of Material Documents. No Loan Party will, nor will it permit any Subsidiary:

(a) (i) to, amend, modify or waive any of its rights under its certificate of incorporation, by-laws, operating, management or partnership agreement or other organizational documents or (ii) to, amend, modify or waive any provisions of any Subordinated Indebtedness, in each case, to the extent any such amendment, modification or waiver would be materially adverse to the Administrative Agent or the Lenders; or

(b) to make any material change in its accounting treatment and reporting practices except as required or permitted by GAAP.

SECTION 6.11 Financial Covenants.

(a) Total Leverage Ratio. The Loan Parties will not permit the Total Leverage Ratio, determined for the Reference Period ending on the last day of each fiscal quarter, to be more than (x) in the case of any fiscal quarter ending prior to the Second Amendment Effective Date, 3.00 to 1.00, and (y) in the case of any fiscal quarter ending on or after the Second Amendment Effective Date, 3.50 to 1.00.

(b) Interest Coverage Ratio. The Loan Parties will not permit the Interest Coverage Ratio, determined for the Reference Period ending on the last day of each fiscal quarter ending prior to the Second Amendment Effective Date, to be less than 2.50 to 1.00.

SECTION 6.12 ERISA.

(a) With respect to any Plan, the Borrower shall not (i) engage, or permit any ERISA Affiliate to engage, in any transaction described in Section 4069 of ERISA, (ii) engage, or permit any ERISA Affiliate to engage, in any prohibited transaction described in Section 406 of ERISA or 4975 of the Code for which a statutory or class exemption is not available or a private exemption has not previously been obtained from the U.S. Department of Labor, (iii) adopt or permit any ERISA Affiliate to adopt any employee welfare benefit plan within the meaning of Section 3(1) of ERISA which provides benefits to employees after termination of employment other than as required by Section 601 of ERISA or applicable law, (iv) fail to make any contribution or payment to any Multiemployer Plan which it or any ERISA Affiliate may be required to make under any agreement relating to such Multiemployer Plan, or any law pertaining thereto, or (v) fail, or permit any ERISA Affiliate to fail, to pay any required installment or any other payment required under Section 412 of the Code on or before the due date for such installment or other payment.

(b) The Borrower shall not establish, maintain, contribute to or become obligated to contribute to any Plan, except where such establishment, maintenance, contribution, or obligation could not reasonably be expected to have a Material Adverse Effect.

ARTICLE VII

EVENTS OF DEFAULT

If any of the following events (each an “Event of Default”) shall occur and be continuing:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article VII) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Loan Party or any Subsidiary in or in connection with this Agreement or any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been materially incorrect when made or deemed made;

(d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02(a), 5.03 (with respect to maintaining a Loan Party’s existence), 5.08, 5.09(a) or 5.09(b) or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those which constitute a default under another Section of this Article VII) or any other Loan Document, and such failure shall continue unremedied for a period of thirty (30) days after the earlier of any Loan Party’s knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender);

(f) any Loan Party or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable beyond any applicable grace period;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided, that this clause (g) shall not apply to (i) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (ii) any redemption, repurchase, conversion or settlement with respect to any unsecured Convertible Debt Security pursuant to its terms unless such redemption, repurchase, conversion or settlement results from a default thereunder or (iii) any exercise, early payment requirement or unwinding or termination with respect to any Permitted Call Spread Agreement (that was entered into in connection with the issuance of an unsecured Convertible Debt Security), any Swap Agreement or any Forward Agreement in each case, pursuant to its terms unless such exercise, early payment, unwinding or termination results from a default thereunder;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of a Loan Party or any Material Foreign Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or any Material Foreign Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) any Loan Party or any Material Foreign Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article VII, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Loan Party or Material Foreign Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) any Loan Party or any Subsidiary of any Loan Party shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments, orders or decrees for the payment of money in an aggregate amount in excess of \$5100.0 million (not paid or fully covered by insurance company as to which the relevant insurance company has acknowledged coverage) shall be rendered against any Loan Party, any Subsidiary of any Loan Party or any combination thereof and the same shall not have been paid, vacated or discharged or effectively stayed or bonded pending appeal within thirty (30) days after the entry thereof or enforcement proceedings shall have been commenced by any creditor upon such judgment, order or decree, and such enforcement proceedings have not been effectively stayed, vacated or bonded within thirty (30) days;

(l) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to, individually or in the aggregate, result in liability of the Borrower and its Subsidiaries in excess of \$~~5~~100.0 million;

(m) a Change in Control shall occur;

(n) other than in accordance with the express terms thereof, the Loan Guaranty shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty or any Loan Guarantor shall deny that it has any further liability under the Loan Guaranty to which it is a party, or shall give notice to such effect;

(o) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms) other than in accordance with the express terms hereof or thereof;

(p) any Loan Party is suspended, debarred or excluded in accordance with 21 U.S.C. § 335a, 42 U.S.C. § 1320a-7, or similar provision of Law; or

(q) other than in accordance with the express terms of the applicable subordination agreement, the Obligations shall cease or any Loan Party has asserted in writing that the Obligations cease to constitute senior indebtedness under the subordination provisions of any document or instrument evidencing Subordinated Indebtedness in excess of \$~~5~~10.0 million or any such subordination provision ceases, for any reason, to be a valid, binding and enforceable obligation of the parties hereto.

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article VII), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued and unpaid interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in clause (h) or (i) of this Article VII, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued and unpaid interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Upon the occurrence and the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

ARTICLE VIII

THE ADMINISTRATIVE AGENT

SECTION 8.01 Appointment. Each of the Lenders, on behalf of itself and any of its Affiliates that hold Obligations, and the Issuing Banks hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article VIII are solely for the benefit of the Administrative Agent and the Lenders (including the Issuing Bank), and the Loan Parties shall not have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” as used herein or in any other Loan Documents (or any similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

SECTION 8.02 Rights as a Lender. The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Loan Parties or any Subsidiary of a Loan Party or other Affiliate thereof as if it were not the Administrative Agent hereunder.

SECTION 8.03 Duties and Obligations. The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct as determined by a final nonappealable judgment of a court of competent jurisdiction. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent. None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a “syndication agent,” “documentation agent,” “lead arranger,” “bookrunner” or other similar term shall

have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

SECTION 8.04 Reliance. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05 Actions through Sub-Agents. The Administrative Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

SECTION 8.06 Resignation. Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, the Issuing Banks and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent which shall be a commercial bank or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor, unless otherwise agreed by the Borrower and such successor. Notwithstanding the foregoing, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Banks and the Borrower, whereupon, on the date of effectiveness of such resignation stated in such notice, (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (b) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided, that (i) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (ii) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall also directly be given or made to each Lender and each Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article VIII, Section 2.17(d) and Section 9.03, as well as any exculpatory,

reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) above.

SECTION 8.07 Non-Reliance. Each Lender acknowledges and agrees that the extensions of credit made hereunder are commercial loans and letters of credit and not investments in a business enterprise or securities. Each Lender further represents that it is engaged in making, acquiring or holding commercial loans in the ordinary course of its business and has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder. Each Lender shall, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, any related agreement or any document furnished hereunder or thereunder and in deciding whether or to the extent to which it will continue as a Lender or assign or otherwise transfer its rights, interests and obligations hereunder.

SECTION 8.08 Not Partners or Co-Venturers. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Administrative Agent) authorized to act for, any other Lender. The Administrative Agent shall have the exclusive right on behalf of the Lenders to enforce the payment of the principal of and interest on any Loan after the date such principal or interest has become due and payable pursuant to the terms of this Agreement.

SECTION 8.09 Lenders Not Subject to ERISA.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) ~~(i)~~ such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) ~~(ii)~~ the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) ~~(iii)~~ (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 8414 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) ~~(iv)~~ such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

SECTION 8.10 Syndication Agents. Each Lender and Loan Party party hereto hereby designates Bank of America and HSBC as Syndication Agents and agrees that the Syndication Agents, solely in such capacity, shall have no duties or obligations under any Loan Documents to any Lender or any Loan Party.

SECTION 8.11 Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender, Issuing Bank or any indemnified party hereunder, or any Person who has received funds on behalf of a Lender, Issuing Bank or any indemnified party hereunder (any such Lender, Issuing Bank, indemnified party or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Bank, indemnified party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 8.11 and held in trust for the benefit of the Administrative Agent, and such Lender, Issuing Bank or indemnified party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous

Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuing Bank, indemnified party hereunder or any Person who has received funds on behalf of a Lender, Issuing Bank or indemnified party hereunder (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, Issuing Bank or indemnified party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Bank or indemnified party shall use commercially reasonable efforts to (and shall use commercially reasonable efforts to cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 8.11(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 8.11(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 8.11(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender, Issuing Bank or indemnified party hereunder hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuing Bank or indemnified party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, Issuing Bank or indemnified party under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d) (i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective

behalf)(such unrecovered amount, an “*Erroneous Payment Return Deficiency*”), upon the Administrative Agent’s notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the “*Erroneous Payment Impacted Class*”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “*Erroneous Payment Deficiency Assignment*”) (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Electronic System as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) The Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, Issuing Bank or any indemnified party hereunder, to the rights and interests of such Lender, Issuing Bank or indemnified party, as the case may be) under the Loan Documents with respect to such amount (the “*Erroneous Payment Subrogation Rights*”) (provided that the Loan Parties’ Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in

respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party; provided that this Section 8.11(e) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 8.11 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE IX
MISCELLANEOUS

SECTION 9.01 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case to clause (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, as follows:

(i) if to any Loan Party, to the Borrower at:

Align Technology, Inc.
2820 Orchard Parkway
San Jose, California 95134
Attention:
E-mail Address:

with a copy to:

Wilson Sonsini Goodrich & Rosati, P.C. 650 Page Mill Road
Palo Alto, CA 94304
Attention:
E-mail Address:
Fax Number:

(ii) if to the Administrative Agent or to Citi, in its capacity as Issuing Bank or Swingline Lender, to Citibank, N.A. at:

Citibank, N.A.
388 Greenwich Street
New York, NY 10013
Attention:
E-mail Address:

with a copy to:

Weil, Gotshal & Manges LLP 767 Fifth Avenue
New York, New York 10036 Attention:
E-mail Address:
Fax Number:

(iii) if to any other Lender, to it at its address, e-mail address or fax number set forth in its Administrative Questionnaire.

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, (ii) sent by fax shall be deemed to have been given when sent; provided, that if not given during normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient or (iii) delivered through Electronic Systems to the extent provided in clause (b) below shall be effective as provided in such clause (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by Electronic Systems pursuant to procedures approved by the Administrative Agent; provided, that the foregoing shall not apply to notices pursuant to Article II or to compliance and no Event of Default certificates delivered pursuant to Section 5.01(d) unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems pursuant to procedures approved by it; provided, that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise proscribes, such notices and other communications (i) sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided, that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (b)(i) of notification that such notice or communication is available and identifying the website address therefor; provided, that, for both clauses (i) and (ii) above, if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day of the recipient.

(c) Any party hereto may change its address, fax number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(d) Electronic Systems.

(i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the Issuing Bank and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System.

(ii) Any Electronic System used by the Administrative Agent is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the adequacy of such Electronic Systems and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or any Electronic System. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrower or the other Loan Parties, any Lender, the Issuing Bank or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower’s, any Loan Party’s, or the Administrative Agent’s transmission of communications through an Electronic System. “Communications” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or the Issuing Bank by means of electronic communications pursuant to this Section 9.01, including through an Electronic System.

SECTION 9.02 Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, any Swingline Lender, any Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, any Swingline Lender, the Issuing Banks and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by clause (b) of this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan (including any Swingline Loan) or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Except as provided in Section 2.14, 2.22 (with respect to any commitment increase) or 2.25, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or, (ii) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the

Required Lenders; provided, that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (ii) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby (other than as a result of any change in the definition, or in any components thereof, of the term “Total Leverage Ratio”, the implementation of Section 2.14 or Section 2.25 or any waiver of any default interest applicable pursuant to Section 2.13(ed)), (iii) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (iv) change Section 2.18(b) or (d) in a manner that would alter the manner in which payments are shared, without the written consent of each Lender (other than any Defaulting Lender), (v) change any of the provisions of this Section 9.02 or the definition of “Required Lenders” or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (other than any Defaulting Lender), (vi) change Section 2.20, without the consent of each Lender (other than any Defaulting Lender) or (vii) release any Loan Guarantor from its obligation under its Loan Guaranty (except as otherwise expressly permitted herein or in the other Loan Documents), without the written consent of each Lender (other than any Defaulting Lender); provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, Swingline Lenders or the Issuing Banks hereunder without the prior written consent of the Administrative Agent, Swingline Lenders or the Issuing Banks, as the case may be (it being understood that any change to Section 2.20 shall require the consent of the Administrative Agent and the Issuing Banks). The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.04.

(c) Subject to Section 9.02(b)(vii), the Lenders hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Loan Guaranty provided by a Subsidiary of a Borrower to the extent 100% of the Equity Interests of such Subsidiary are sold or assigned, in accordance with Section 6.05, to a Person that is not a Loan Party or a Subsidiary of any Loan Party; provided, that to the extent requested by the Administrative Agent the Borrower shall deliver a certificate of a Financial Officer certifying, in form and substance reasonably satisfactory to the Administrative Agent, as to the details of such sale or assignment and that such sale or assignment was in accordance with Section 6.05 (it being agreed that the Administrative Agent may rely conclusively on such certificate). The Administrative Agent shall execute such customary documents as the Borrower may reasonably request in connection with any such release. Any execution and delivery by the Administrative Agent of documents in connection with any such release shall be without recourse to or warranty by the Administrative Agent.

(d) If, in connection with any proposed amendment, waiver or consent requiring the consent of “each Lender” or “each Lender affected thereby,” the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but has not been obtained being referred to herein as a “Non-Consenting Lender”), then the Borrower may elect to replace a Non-Consenting Lender as a Lender party to this Agreement; provided, that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrower, the Administrative Agent and the Issuing Bank shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrower shall pay to such Non-Consenting Lender in same day

funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder to and including the date of termination, including payments due to such Non-Consenting Lender under Sections 2.15 and 2.17, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender. Notwithstanding anything herein to the contrary, each party hereto agrees that any assignment pursuant to the terms of this Section 9.20(d) may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and that the Non-Consenting Lender making such assignment need not be a party thereto.

(e) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency. A copy of any such amendment, modification or supplement shall be promptly delivered by the Administrative Agent to each Lender.

SECTION 9.03 Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Lead Arranger and their respective Affiliates, including the reasonable and documented fees, charges and disbursements of one outside counsel and one local counsel in each relevant jurisdiction for the Administrative Agent and Lead Arranger (and, solely in the case of an actual or perceived conflict of interest, one additional counsel (and, if reasonably necessary, (x) one firm of local counsel in each relevant jurisdiction and (y) any special or regulatory counsel) and any other counsel retained with the Borrower's consent, such consent not to be unreasonably withheld or delayed), in connection with the syndication and distribution (including via the internet or through an Electronic System) of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all documented out-of-pocket expenses incurred by the Administrative Agent, Swingline Lenders, any Issuing Bank or any Lender, including the fees, charges and disbursements of any outside counsel for the Administrative Agent, Swingline Lenders, any Issuing Bank or any Lender, in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, including its rights under this Section 9.03, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. Expenses being reimbursed by the Borrower under this Section 9.03 include, without limiting the generality of the foregoing, costs and expenses incurred in connection with:

(i) taxes, fees and other charges for (A) lien searches and (B) filing financing statements and continuations, and other actions to perfect, protect, and continue the Administrative Agent's Liens;

(ii) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and

(iii) forwarding loan proceeds, collecting checks and other items of payment, and costs and expenses of preserving and protection the cash collateral.

All of the foregoing costs and expenses may be charged to the Borrower as Loans or to another deposit account, all as described in Section 2.18(c).

(b) The Borrower shall indemnify the Administrative Agent, Swingline Lenders, each Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, penalties, liabilities and related expenses (except for Taxes, which shall be covered by Section 2.17), including the reasonable fees, charges and disbursements of one counsel for all Indemnitees (and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant jurisdiction and, solely in the case of an actual or perceived conflict of interest, one additional counsel (and, if reasonably necessary, (x) one firm of local counsel in each relevant jurisdiction and (y) any special regulatory counsel) to each group of affected Indemnitees similarly situated taken as a whole and any other counsel retained with the Borrower’s consent, such consent not to be unreasonably withheld or delayed), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan (including any Swingline Loan) or Letter of Credit or the use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit),

(i) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from any dispute solely among Indemnitees and does not involve any act or omission by any Loan Party or any of their Subsidiaries (other than claims against the Administrative Agent, Swingline Lenders and Issuing Banks in their respective capacities as such).

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent or any Issuing Bank under clause (a) or (b) of this Section 9.03, each Lender severally agrees to pay to the Administrative Agent or such Issuing Bank, as the case may be, such Lender’s Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided, that the unreimbursed expense or indemnified loss, claim, damage, penalty, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or such Issuing Bank in its capacity as such.

(d) To the extent permitted by applicable law, no Loan Party shall assert, and each hereby waives, any claim against any Indemnitee for any damages arising from the use by unintended recipients of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet), except as determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(e) No Indemnitee nor any Loan Party shall be liable on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan (including any Swingline Loan)

or Letter of Credit or the use of the proceeds thereof; provided, that nothing in this clause (e) shall relieve any Loan Party of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(f) All amounts due under this Section 9.03 shall be payable promptly after written demand therefor.

SECTION 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and

(ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04 or as may be required pursuant to Section 2.19 or Section 9.02(d). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in clause (c) of this Section 9.04) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, Swingline Lenders, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in clause (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of:

(A) the Borrower; provided, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof, and provided further that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee;

(B) the Administrative Agent; provided, that no consent of the Administrative Agent shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the Swingline Lenders; provided, that no consent of the Swingline Lenders shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund; and

(D) the Issuing Banks; provided, that no consent of the Issuing Banks shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans (including any Swingline Loans), the amount

of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5.0 million unless each of the Borrower and the Administrative Agent otherwise consent; provided, that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 and the tax forms required by Section 2.17(f); and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

(iii) Subject to acceptance and recording thereof pursuant to clause (b)(iv) of this Section 9.04, from and after the effective date specified in each Assignment and Assumption (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (c) of this Section 9.04.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices located in the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amounts (and stated interest) of the Loans, LC Disbursements and other Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent, the Issuing Banks and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Banks and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender (unless the execution thereof is not required pursuant to Section 2.19 or Section 9.02(d)) and an assignee or (y) to the extent applicable, an agreement incorporating an

Assignment and Assumption by reference pursuant to any applicable electronic platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee and tax forms referred to in clause (b) of this Section 9.04 and any written consent to such assignment required by clause (b) of this Section 9.04, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided, that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05, 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Any Lender may, without the consent of the Borrower, the Administrative Agent, any Issuing Bank of the Swingline Lenders, sell participations to one or more banks or other entities (a "Participant") other than an Ineligible Institution in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including any Swingline Loans) owing to it); provided, that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations (C) the Borrower, the Administrative Agent, the Swingline Lenders, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (D) such Lender shall have provided the Borrower with prior written notice of any such participation. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f)) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 9.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant (1) agrees to be subject to the provisions of Sections 2.18 and 2.19 as if it were an assignee under clause (b) of this Section 9.04; and (2) shall not be entitled to receive any greater payment under Section 2.15 or 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.19(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(d) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement or any other Loan Document (the "Participant Register"); provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's

interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person (other than the Borrower to the extent required in clause (D) of the proviso to clause (c) above) except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) or proposed Section 1.163-5(b) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest; provided, that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 9.05 Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 9.06 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby or thereby shall be

deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 9.07 Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower or such Loan Guarantor against any of and all the Obligations held by such Lender, irrespective of whether or not such Lender shall have made any demand under the Loan Documents and although such obligations may be unmaturing. The applicable Lender shall notify the Borrower and the Administrative Agent of such setoff or application; provided, that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff or application under this Section 9.08. The rights of each Lender under this Section 9.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) The Loan Documents (other than those containing a contrary express choice of law provision) shall be governed by and construed in accordance with the laws of the State of New York.

(b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any U.S. Federal or New York State court sitting in New York, New York in any action or proceeding arising out of or relating to any Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in clause (b) of this Section 9.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10.

SECTION 9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12 Confidentiality. Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' respective officers, directors, employees, legal counsel, independent auditors and other experts or agents who need to know such information in connection with the transactions contemplated hereby and are informed of the confidential nature of such information and instructed to keep such information confidential on substantially similar terms as set forth in this Section 9.12, (b) upon the request or demand of any regulatory authority having jurisdiction over it or any of its Affiliates (in which case (except with respect to any audit or examination conducted by bank accountants or any bank or other regulatory authority exercising examination or regulatory authority) it, to the extent practicable and permitted by law, rule or regulation, agrees to inform the Borrower promptly thereof), (c) pursuant to the order of any court or administrative agency, in any pending legal, judicial or administrative proceeding or as otherwise required by applicable law or regulation or as requested by a governmental authority (in which case (except with respect to any audit or examination conducted by bank accountants or any bank or other regulatory authority exercising examination or regulatory authority) it, to the extent practicable and permitted by law, rule or regulation, agrees to inform the Borrower promptly thereof), (d) to any other party to this Agreement, (e) to the extent necessary or advisable in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 9.12 or otherwise reasonably acceptable to the Borrower, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement (and any of their respective advisors) or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) with the consent of the Borrower, (h) to the extent that such information is independently developed by it or its Affiliates, in each case, so long as not based on information obtained in a manner that would otherwise violate this Section 9.12, (i) for purposes of establishing a "due diligence" defense, (j) deal terms and other customary information to ratings agencies or (k) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 9.12, or (ii) becomes available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis from a source other than the Borrower. For the purposes of this Section 9.12, "Information" means all

information received from the Borrower relating to the Borrower or their business, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrower; provided, that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 9.12 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12 FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS AFFILIATES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

SECTION 9.13 Several Obligations; Nonreliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U of the Board) for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, no Issuing Bank nor any Lender shall be obligated to extend credit to the Borrower in violation of any Requirement of Law.

SECTION 9.14 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act.

SECTION 9.15 Disclosure. Each Loan Party, each Lender and the Issuing Bank hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

SECTION 9.16 [Reserved].

SECTION 9.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 9.17 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.18 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Lenders are arm’s-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Lenders and their Affiliates, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Lenders and their Affiliates is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) no Lender or any of its Affiliates has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except, in the case of a Lender, those obligations expressly set forth herein and in the other Loan Documents; and (iii) each of the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and no Lender or any of its Affiliates has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against each of the Lenders and their Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.19 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured (all such liabilities, the “Covered Liabilities”), may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such Covered Liability arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such Covered Liability, including, if applicable:

(i) A reduction in full or in part or cancellation of any such Covered Liability;

(ii) A conversion of all, or a portion of, such Covered Liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such Covered Liability under this Agreement or any other Loan Document; or

(iii) The variation of the terms of such Covered Liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

SECTION 9.20 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 9.20, the following terms have the following meanings:

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

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

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

ARTICLE X
LOAN GUARANTY

SECTION 10.01 Guaranty. Each Loan Guarantor (other than those that have delivered a separate Guaranty) hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely, unconditionally and irrevocably guarantees to the Credit Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Obligations and all costs and expenses including all court costs and attorneys’ and paralegals’ fees and expenses paid or incurred by the Administrative Agent, the Issuing Banks and the Lenders in endeavoring to collect all or any part of the Obligations from, or in prosecuting any action against, the Borrower, any Loan Guarantor or any other guarantor of all or any part of the Obligations (such costs and expenses, together with the Obligations, collectively the “Guaranteed Obligations”). Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations.

SECTION 10.02 Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Administrative Agent, any Issuing Bank or any Lender to sue the Borrower, any Loan Guarantor, any other guarantor, or any other Person obligated for all or any part of the Guaranteed Obligations (each, an “Obligated Party”), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

SECTION 10.03 No Discharge or Diminishment of Loan Guaranty.

(a) Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the infeasible payment in full in cash of the Guaranteed Obligations (other than Unliquidated Obligations), and the cash collateralization of all Unliquidated Obligations in a manner satisfactory to each affected Lender), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of the Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party, or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which any Loan Guarantor may have at any time against any Obligated Party, the Administrative Agent, any Issuing Bank, any Lender, or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or

regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) The obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, any Issuing Bank or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection, or invalidity of any indirect or direct security for the obligations of the Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent, any Issuing Bank or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of the Guaranteed Obligations).

SECTION 10.04 Defenses Waived. To the fullest extent permitted by applicable law, each Loan Guarantor hereby waives any defense based on or arising out of any defense of the Borrower or any Loan Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of the Borrower, any Loan Guarantor or any other Obligated Party, other than the payment in full in cash of the Guaranteed Obligations (other than Unliquidated Obligations). Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party, or any other Person. Each Loan Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Administrative Agent may compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations (other than Unliquidated Obligations) have been fully paid in cash. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party.

SECTION 10.05 Rights of Subrogation. No Loan Guarantor will assert any right, claim or cause of action, including a claim of subrogation, contribution or indemnification that it has against any Obligated Party, or any collateral, until the Commitments have terminated and the Loan Parties and the Loan Guarantors have fully performed all their Obligations (other than Unliquidated Obligations) to the Administrative Agent, the Issuing Banks and the Lenders.

SECTION 10.06 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of the Borrower or otherwise (including pursuant to any settlement entered into by any Credit Party in its discretion), each Loan Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent, the Issuing Banks and the Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, all such amounts otherwise subject to acceleration under the

terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Loan Guarantors forthwith on demand by the Administrative Agent.

SECTION 10.07 Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that neither the Administrative Agent nor any Issuing Bank nor any Lender shall have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

SECTION 10.08 [Reserved].

SECTION 10.09 [Reserved].

SECTION 10.10 Maximum Liability. Notwithstanding any other provision of this Loan Guaranty, the amount guaranteed by each Loan Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law. In determining the limitations, if any, on the amount of any Loan Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Loan Guarantor may have under this Loan Guaranty, any other agreement or applicable law shall be taken into account.

SECTION 10.11 Contribution.

(a) To the extent that any Loan Guarantor shall make a payment under this Loan Guaranty (a "Guarantor Payment") which, taking into account all other Guarantor Payments then previously or concurrently made by any other Loan Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Loan Guarantor if each Loan Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Loan Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Loan Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following payment in full in cash of the Guarantor Payment and the Guaranteed Obligations (other than Unliquidated Obligations), and all Commitments and Letters of Credit have terminated or expired or, in the case of all Letters of Credit, are fully collateralized on terms reasonably acceptable to the Administrative Agent and the Issuing Bank, and this Agreement has terminated, such Loan Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Loan Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the "Allocable Amount" of any Loan Guarantor shall be equal to the excess of the fair saleable value of the property of such Loan Guarantor over the total liabilities of such Loan Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Loan Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Loan Guarantors as of such date in a manner to maximize the amount of such contributions.

(c) This Section 10.11 is intended only to define the relative rights of the Loan Guarantors, and nothing set forth in this Section 10.11 is intended to or shall impair the obligations of the Loan

Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Loan Guaranty.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Loan Guarantor or Loan Guarantors to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Loan Guarantors against other Loan Guarantors under this Section 10.11 shall be exercisable upon the full payment of the Guaranteed Obligations in cash (other than Unliquidated Obligations) and the termination or expiry (or, in the case of all Letters of Credit, full cash collateralization), on terms reasonably acceptable to the Administrative Agent and the Issuing Bank, of the Commitments and all Letters of Credit issued hereunder and the termination of this Agreement.

SECTION 10.12 Liability Cumulative. The liability of each Loan Party as a Loan Guarantor under this Article X is in addition to and shall be cumulative with all liabilities of each Loan Party to the Administrative Agent, the Issuing Banks and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the day and year first above written.

BORROWER:

ALIGN TECHNOLOGY, INC., a Delaware corporation

By: _____ Name:
Title:

SIGNATURE PAGE TO ALIGN TECHNOLOGY CREDIT AGREEMENT

CITIBANK, N.A., individually as a Lender, as Administrative Agent,
Swingline Lender and an Issuing Bank

By: _____Name:
Title:

SIGNATURE PAGE TO ALIGN TECHNOLOGY CREDIT AGREEMENT

HSBC BANK USA, N.A., individually as a Lender

By: ____ Name: Title:

SIGNATURE PAGE TO ALIGN TECHNOLOGY CREDIT AGREEMENT

COMMITMENT SCHEDULE

Lender	Total Commitment
CITIBANK, N.A.	\$120,000,000
BANK OF AMERICA, N.A.	\$90,000,000
HSBC BANK USA, N.A.	\$90,000,000
Total	\$300,000,000

Exhibit B

AMENDED FORM OF BORROWING REQUEST

(See attached.)

[FORM OF] BORROWING REQUEST

__, 20__

Citibank, N.A.
388 Greenwich Street, 26th Floor New York, NY 10013
Attention: []

Ladies and Gentlemen:

This borrowing request (this "Borrowing Request") is furnished pursuant to Section 2.03 of that certain Credit Agreement, dated as of July 21, 2020 (as amended by that certain First Amendment to Credit Agreement, dated as of April 21, 2022, and by that certain Second Amendment to Credit Agreement, dated as of December 23, 2022, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among, *inter alios*, ALIGN TECHNOLOGY, INC., a Delaware corporation (the "Borrower"), the other Loan Parties party thereto, the Lenders from time to time party thereto, and Citibank, N.A. as Administrative Agent for the Lenders. Unless otherwise defined herein, capitalized terms used in this Borrowing Request have the meanings ascribed thereto in the Credit Agreement.

The Borrower hereby notifies the Administrative Agent of its request for the following Borrowing (the "Proposed Borrowing"):

- (1) Aggregate principal amount of Borrowing: \$[]¹.
- (2) The Borrowing shall be a []².
- (3) The date of the Proposed Borrowing (must be a Business Day): []³.
- (4) If a Term SOFR Borrowing, the duration of Interest Period shall be: []⁴.

The Borrower hereby directs the Administrative Agent to disburse all proceeds of the Proposed Borrowing on the Borrowing Date specified above by wire transfer to the account indicated on Schedule 1 hereto.

¹ Subject to Section 2.02(c) of the Credit Agreement.

² State whether a Term SOFR Borrowing or ABR Borrowing. If no Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing.

³ The Administrative Agent must be notified in writing by hand delivery, fax or other electronic transmission (including ".pdf" or ".tif") not later than (a) in the case of a Term SOFR Borrowing, not later than 12:00 p.m., New York City time, three Business Days before the date of the Proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 12:00 p.m., New York City time, on the date of the Proposed Borrowing.

⁴ Must be a period contemplated by the definition of "Interest Period". If no Interest Period is specified, then the Interest Period shall be of one- month's duration.

The Borrower certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Borrowing:

(a) The representations and warranties of the Borrower set forth in the Credit Agreement are true and correct in all material respects on and as of the date of the Proposed Borrowing with the same effect as though such representations and warranties had been made on and as of the date of such Borrowing, except that (i) to the extent that such representations and warranties specifically refer to an earlier date, such representations and warranties are true and correct in all material respects as of such earlier date, and (ii) any representation and warranty that is qualified as to “materiality” or “Material Adverse Effect” are true and correct in all respects.

At the time of and immediately after giving effect to the Proposed Borrowing, no Default has occurred and is continuing.

ALIGN TECHNOLOGY, INC.

By: _____
Name:
Title:

SCHEDULE 1 TO BORROWING REQUEST

PAYEE:	WIRE INSTRUCTIONS	AMOUNT
		\$[]
TOTAL		\$[]

Exhibit C

AMENDED FORM OF NOTICE OF CONTINUATION/CONVERSION

(See attached.)

[FORM OF] NOTICE OF CONTINUATION/CONVERSION

___, 20__

Citibank, N.A.
 388 Greenwich Street, 26th Floor New York, NY 10013
 Attention: []

Ladies and Gentlemen:

Reference is hereby made to that certain Credit Agreement, dated as of July 21, 2020 (as amended by that certain First Amendment to Credit Agreement, dated as of April 21, 2022, and by that certain Second Amendment to Credit Agreement, dated as of December 23, 2022, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among, *inter alios*, ALIGN TECHNOLOGY, INC., a Delaware corporation (the "Borrower"), the other Loan Parties party thereto, the Lenders from time to time party thereto and Citibank, N.A., as administrative agent (the "Administrative Agent"). Capitalized terms used but not defined herein shall have the meanings given such terms in the Credit Agreement.

The Borrower hereby notifies the Administrative Agent of an interest rate election and in that connection sets forth below the terms thereof:

(1) [on ___, 20_(which is a Business Day), the Borrower will convert \$[●]¹ of the aggregate outstanding principal amount of the Loans, bearing interest at the [Alternate Base Rate] [Term SOFR Reference Rate], into a [Term SOFR][ABR] Loan [and, in the case of a [Term SOFR] Loan, having an Interest Period of [●] month(s)]²; and][.]

(2) [on ___, 20_(which is a Business Day), the Borrower will continue \$[●] of the aggregate outstanding principal amount of the Loans bearing interest at the [Term SOFR Reference Rate], as [Term SOFR] Loans having an Interest Period of [●] month(s)].³

ALIGN TECHNOLOGY, INC.

By: _____ Name:
 Title:

¹ Subject to Section 2.02(c) of the Credit Agreement.

² Must be a period contemplated by the definition of "Interest Period."

³ Must be a period contemplated by the definition of "Interest Period."

GOLDMAN SACHS & CO. LLC | 200 WEST STREET | NEW YORK, NEW YORK 10282-2198 | TEL: 212-902-1000

Opening Transaction

To: Align Technology, Inc.
410 N. Scottsdale Road, Suite 1300
Tempe, Arizona 85281

A/C: _____
Goldman Sachs & Co. LLC

From: _____
Fixed Dollar Accelerated Share Repurchase Transaction

Re: _____

Date: October 28, 2022

Dear Sir/Madam:

The purpose of this letter agreement (this “Confirmation”) is to confirm the terms and conditions of the Transaction entered into between Goldman Sachs & Co. LLC (“Dealer”) and Align Technology, Inc. (“Issuer”) on the Trade Date specified below (the “Transaction”). This confirmation constitutes a “Confirmation” as referred to in the Agreement specified below.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (as published by the International Swaps and Derivatives Association, Inc. (“ISDA”)) (the “Equity Definitions”) are incorporated into this Confirmation. The Transaction is a Share Forward Transaction for purposes of the Equity Definitions. Any reference to a currency shall have the meaning contained in Section 1.7 of the 2006 ISDA Definitions, as published by ISDA.

1. This Confirmation evidences a complete and binding agreement between Dealer and Issuer as to the terms of the Transaction to which this Confirmation relates and shall supersede all prior or contemporaneous written or oral communications with respect thereto. This Confirmation shall be subject to an agreement (the “Agreement”) in the form of the 2002 ISDA Master Agreement as if Dealer and Issuer had executed an agreement in such form without any Schedule but with the elections set forth in this Confirmation (and (1) the election of USD as the Termination Currency, (2) the election that subparagraph (ii) of Section 2(c) will not apply to the Transactions and (3) the election that the “Cross Default” provisions of Section 5(a)(vi) shall apply to Dealer, with a “Threshold Amount” of 3% of Dealer shareholders’ equity for Dealer (provided that (a) the phrase “or becoming capable at such time of being declared” shall be deleted from clause (1) of such Section 5(a)(vi) of the Agreement and (b) the following sentence shall be added to the end thereof: “Notwithstanding the foregoing, a default hereunder shall not constitute an Event of Default if (i) the default was caused solely by error or omission of an administrative or operational nature; (ii) funds were available to enable the party to make the payment when due; and (iii) the payment is made within two Local Business Days of such party’s receipt of written notice of its failure to pay”).

The Transaction shall be the only transaction under the Agreement. If there exists any ISDA Master Agreement between Dealer and Issuer or any confirmation or other agreement between Dealer and Issuer pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Issuer, then, notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Issuer are parties, the Transaction shall not be considered a transaction under, or otherwise governed by, such existing or deemed to be existing ISDA Master Agreement.

If there is any inconsistency between the Agreement, this Confirmation and the Equity Definitions, the following will prevail for purposes of the Transaction in the order of precedence indicated: (i) this Master Confirmation; (ii) the Equity Definitions; and (iii) the Agreement.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

GENERAL TERMS:

Trade Date:	As specified in Schedule I
Buyer:	Issuer
Seller:	Dealer
Shares:	Common Stock, par value USD 0.0001 per share, of Issuer (Ticker: ALGN)
Forward Price:	A price per Share (as determined by the Calculation Agent) equal to the greater of (A) (i) the arithmetic mean (not a weighted average, subject to "Market Disruption Event" below) of the 10b-18 VWAP on each Observation Date that is a Trading Day during the Calculation Period <u>minus</u> (ii) the Discount and (B) \$5.00.
Discount:	As specified in Schedule I
10b-18 VWAP:	On any Trading Day, a price per Share equal to the volume- weighted average price of the Rule 10b-18 eligible trades in the Shares for the entirety of such Trading Day as determined by the Calculation Agent by reference to the screen entitled "ALGN <Equity> AQR SEC" or any successor page as reported by Bloomberg L.P. or any successor (excluding (i) trades that do not settle regular way, (ii) opening (regular way) reported trades in the consolidated system on such Scheduled Trading Day (including, for the avoidance of doubt, the first reported trade on the Exchange following the scheduled open of trading on the Exchange), (iii) trades that occur in the last ten minutes before the scheduled close of trading on the Exchange on such Scheduled Trading Day and ten minutes before the scheduled close of the primary trading in the market where the trade is effected, and (iv) trades on such Scheduled Trading Day that do not satisfy the requirements of Rule 10b-18(b)(3) of the Securities Exchange Act of 1934, as amended (the " Exchange Act ") on such Trading Day) or, if the price displayed on such screen is clearly erroneous, as determined by the Calculation Agent in good faith and in a commercially reasonable manner.
Observation Dates:	As specified in Schedule I
Calculation Period:	The period from, and including, the first Observation Date that is a Trading Day that occurs on or after the Prepayment Date to, but excluding, the relevant Valuation Date; <u>provided, however</u> , that if the Valuation Date is the Scheduled Valuation Date, then the Valuation Date shall be included in the Calculation Period; <u>provided further</u> that in no event shall any Scheduled Valuation Date be postponed to a date later than the Final Termination Date.

Final Termination Date: As specified in Schedule I; provided that if a Market Disruption Event has occurred pursuant to Section 7 of this Confirmation, such Final Termination Date shall be postponed by one Trading Day for every Trading Day that is a Disrupted Day as a result of such Merger Transaction during the Calculation Period

Trading Day: Any Exchange Business Day that is not a Disrupted Day in whole

Initial Shares: As specified in Schedule I; provided that if Dealer is unable to borrow or otherwise acquire a number of Shares equal to the Initial Shares for delivery to Issuer on the Initial Share Delivery Date, the Initial Shares delivered on the Initial Share Delivery Date shall be reduced to such number of Shares that Dealer is able to so borrow or otherwise acquire, and thereafter Dealer shall continue to use commercially reasonable efforts to borrow or otherwise acquire a number of Shares, at a stock borrow cost no greater than the Initial Stock Loan Rate, equal to the shortfall in the Initial Shares and to deliver such additional Shares as soon as reasonably practicable. For the avoidance of doubt, the aggregate of all shares delivered to Dealer in respect of the Transaction pursuant to this paragraph shall be the "Initial Shares" for purposes of determining the "Settlement Amount" below.

Initial Share Delivery Date: One Exchange Business Day following the Trade Date. On the Initial Share Delivery Date, Seller shall deliver to Buyer a number of Shares equal to the Initial Shares in accordance with Section 9.4 of the Equity Definitions, with the Initial Share Delivery Date being deemed to be a "Settlement Date" for purposes of such Section 9.4.

Prepayment: Applicable

Prepayment Amount: As specified in Schedule I

Prepayment Date: One Exchange Business Day following the Trade Date. On the Prepayment Date, Buyer shall pay to Seller the Prepayment Amount.

Exchange: The Nasdaq Global Select Market

Related Exchange: All Exchanges; provided that Section 1.26 of the Equity Definitions shall be amended to add the words "United States" before the word "exchange" in the tenth line of such Section.

Market Disruption Event:

The definition of “Market Disruption Event” in Section 6.3(a) of the Equity Definitions is hereby amended by deleting the words “at any time during the one-hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be,” starting in the third line thereof.

Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term “Scheduled Closing Time” in the fourth line thereof.

Notwithstanding anything to the contrary in the Equity Definitions, if any Exchange Business Day in the Calculation Period or the Buyer Settlement Valuation Period is a Disrupted Day, the Calculation Agent shall have the option, in its reasonable discretion, to take one or more of the following actions in a good faith and commercially reasonable manner: (i) determine that such Exchange Business Day is a Disrupted Day in part, in which case the Calculation Agent shall (x) determine the 10b-18 VWAP on such Exchange Business Day based on Rule 10b-18 eligible trades in the Shares on such day taking into account the nature and duration of the relevant Market Disruption Event and (y) determine the Forward Price or Buyer Settlement Price, as applicable, using an appropriately weighted average of 10b-18 VWAPs instead of an arithmetic mean, and/or (ii) elect to (x) postpone the Scheduled Valuation Date (in the case of a Disrupted Day during the Calculation Period) or (y) extend the Buyer Settlement Valuation Period (in the case of a Disrupted Day during the Buyer Settlement Valuation Period) by up to one Observation Date for every Observation Date that is a Disrupted Day during the Calculation Period or Buyer Settlement Valuation Period, as applicable; provided that in no event shall any Scheduled Valuation Date be postponed to a date later than the Final Termination Date. For the avoidance of doubt, if the Calculation Agent takes the action described in clause (i) above, then such Disrupted Day shall be a Trading Day for purposes of calculating the Forward Price or Buyer Settlement Price, as applicable.

Any Exchange Business Day on which, as of the date hereof, the Exchange is scheduled to close prior to its normal close of trading shall be deemed not to be an Exchange Business Day; if a closure of the Exchange prior to its normal close of trading on any Exchange Business Day is scheduled following the date hereof, then such Exchange Business Day shall be deemed to be a Disrupted Day in full.

If a Disrupted Day occurs during the Calculation Period or the Buyer Settlement Valuation Period and each of the nine immediately following Scheduled Trading Days is a Disrupted Day, then the Calculation Agent may, in its good faith and commercially reasonable discretion, deem such ninth Scheduled Trading Day to be an Exchange Business Day that is not a Disrupted Day and determine the 10b-18 VWAP for such ninth Scheduled Trading Day using its good faith and commercially reasonable estimate of the value of the Shares on such ninth Scheduled Trading Day based on the volume, historical trading patterns and trading price of the Shares.

VALUATION:

Valuation Date: The earlier of (i) the Scheduled Valuation Date and (ii) any earlier accelerated Valuation Date as a result of Dealer's election in accordance with the immediately succeeding paragraph.

Dealer shall have the right, in its absolute discretion but subject to the limitation set forth in the immediately succeeding paragraph, to accelerate the Valuation Date, in whole or in part (an "**Acceleration**"), to any Exchange Business Day that is on or after the Lock-Out Date and prior to the Scheduled Valuation Date by notice (each such notice, an "**Acceleration Notice**") to Issuer by 9:00 p.m., New York City time, on the Exchange Business Day immediately following the accelerated Valuation Date; provided that if at any time after the Lock-Out Date Dealer expects the Settlement Amount to be a negative number, then Dealer shall provide Issuer notice of any such expectation.

Dealer shall specify in each Acceleration Notice the portion of the Prepayment Amount that is subject to acceleration (which may be less than the full Prepayment Amount, but only so long as such portion is not less than USD 50,000,000). If the portion of the Prepayment Amount that is subject to acceleration is less than the full Prepayment Amount, then the Calculation Agent shall adjust the terms of the Transaction as appropriate in order to take into account the occurrence of such accelerated Valuation Date (including cumulative adjustments to take into account all prior accelerated Valuation Dates).

On each Valuation Date, the Calculation Agent shall calculate the Settlement Amount.

Scheduled Valuation Date: As specified in Schedule I, subject to postponement in accordance with "Market Disruption Event" above

Lock-Out Date: As specified in Schedule I

SETTLEMENT TERMS:

Physical Settlement: Applicable.

On the Settlement Date, Seller shall deliver to Buyer a number of Shares equal to (a) (i) the Prepayment Amount divided by (ii) the Forward Price minus (b) the Initial Shares (such number of Shares, the "**Settlement Amount**"), rounded to the nearest whole number of Shares; provided, however, that if the Settlement Amount is less than zero, then the Buyer Settlement Provisions in Annex A hereto shall apply.

Settlement Currency: USD

Settlement Date: The date that falls one Settlement Cycle after the relevant Valuation Date.

Other Applicable Provisions: The last sentence of Section 9.2, Sections 9.8, 9.9, 9.10 and 9.11 (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws arising as a result of the fact that Buyer is the issuer of the Shares) and Section 9.12 of the Equity Definitions will be applicable to the Transaction.

SHARE ADJUSTMENTS:

Potential Adjustment Event: Notwithstanding anything to the contrary in Section 11.2(e) of the Equity Definitions, an Extraordinary Dividend shall not constitute a Potential Adjustment Event.

It shall constitute a Potential Adjustment Event if a Disrupted Day occurs or, pursuant to Section 9 below, is deemed to occur (in whole or in part) on any Trading Day on or prior to the Valuation Date.

The parties agree, for the avoidance of doubt, that (1) Permitted Purchases (as defined below) shall not be considered a Potential Adjustment Event and (2) any repurchase of Shares pursuant to this Transaction shall not be considered a Potential Adjustment Event.

Extraordinary Dividend: Any dividend or distribution on the Shares with an ex-dividend date occurring during the period from, and including, the Trade Date to, and including, the last day of the Potential Purchase Period (as defined below) (other than any dividend or distribution of the type described in Section 11.2(e)(i), Section 11.2(e)(ii)(A) or Section 11.2(e)(ii)(B) of the Equity Definitions).

Method of Adjustment: Calculation Agent Adjustment; provided that the parties hereto agree that any Share repurchases by the Issuer, whether pursuant to Rule 10b-18 of the Exchange Act, Rule 10b5-1 of the Exchange Act on customary terms, at prevailing market prices, or VWAP (subject to any discounts thereto) shall not be considered Potential Adjustment Events; provided further that adjustments for any Potential Adjustment Event (other than pursuant to any Potential Adjustment Event defined in Sections 11.2(e)(i), 11.2(e)(ii)(A) and 11.2(e)(iii) of the Equity Definitions) may be made to account for changes in volatility, stock loan rate or liquidity relevant to the Shares or the Transaction.

EXTRAORDINARY EVENTS:

Consequences of Merger Events:

Share-for-Share:

Share-for-Other:

Share-for-Combined:

Tender Offer:

Modified Calculation Agent Adjustment

Cancellation and Payment on that portion of the Other Consideration that consists of cash; Modified Calculation Agent Adjustment on the remainder of the Other Consideration

Component Adjustment

Applicable; provided that the definition of "Tender Offer" in Section 12.1 of the Equity Definitions will be amended by replacing the phrase "greater than 10% and less than 100% of the outstanding voting shares of the Issuer" in the third and fourth line thereof with "(a) greater than 15% and less than 100% of the outstanding Shares of the Issuer in the event that such Tender Offer is being made by any entity or person other than the Issuer or any subsidiary thereof or (b) greater than 20% and less than 100% of the outstanding Shares of the Issuer in the event that such Tender Offer is being made by the Issuer or any subsidiary thereof".

Consequences of Tender Offers:

Share-for-Share: Modified Calculation Agent Adjustment
Share-for-Other: Modified Calculation Agent Adjustment
Share-for-Combined: Modified Calculation Agent Adjustment

New Shares: In the definition of New Shares in Section 12.1(i) of the Equity Definitions, the text in clause (i) thereof shall be deleted in its entirety and replaced with “publicly quoted, traded or listed on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)”.

For purposes of the Transaction,

- (i) the definition of Merger Date in Section 12.1(c) of the Equity Definitions shall be amended to add “each of the Announcement Date and” immediately following the word “means”;
- (ii) the definition of Tender Offer Date in Section 12.1(e) of the Equity Definitions shall be amended to add “each of the Announcement Date and” immediately preceding the words “the date”; and
- (iii) the definition of “Announcement Date” in Section 12.1(l) of the Equity Definitions is hereby amended by (a) replacing the words “a firm” with the word “any bona fide” in the second and fourth lines thereof, (b) replacing the word “leads to the” with the words “, if completed, would lead to a” in the third and the fifth lines thereof, (c) replacing the words “voting shares” with the word “Shares” in the fifth line thereof, (d) inserting the words “by any bona fide entity that is reasonably likely to be a party to the transaction” after the word “announcement” in the second and the fourth lines thereof, (e) inserting the words “or to explore the possibility of engaging in” after the words “engage in” in the second line thereof and (f) inserting the words “or to explore the possibility of purchasing or otherwise obtaining” after the word “obtain” in the fourth line thereof.

Composition of Combined Consideration: Not Applicable

Nationalization, Insolvency or Delisting: Cancellation and Payment; provided that in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it shall constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Market or The NASDAQ Global Select Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:

Change in Law:	Applicable; <u>provided</u> that (i) any determination as to whether (A) the adoption of or any change in any applicable law or regulation (including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute) or (B) the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a “Change in Law” shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (ii) Section 12.9(a)(ii) of the Equity Definitions is hereby amended by replacing the parenthetical beginning after the word “regulation” in the second line thereof the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute)” and (iii) by, immediately following the word “Transaction” in clause (x) thereof, adding the phrase “in the manner contemplated by the Hedging Party on the Trade Date”. Notwithstanding anything to the contrary in the Equity Definitions, a Change in Law described in clause (Y) of Section 12.9(a)(ii) of the Equity Definitions shall not constitute a Change in Law and instead shall constitute an Increased Cost of Hedging as described in Section 12.9(a)(vi) of the Equity Definitions.
Failure to Deliver:	Applicable
Insolvency Filing:	Applicable
Hedging Disruption:	Not Applicable
Increased Cost of Hedging:	Not Applicable; <i>provided</i> that a Change in Law described in clause (Y) of Section 12.9(a)(ii) of the Equity Definitions shall constitute an Increased Cost of Hedging to which the consequences described in Section 12.9(b)(vi) of the Equity Definitions shall apply.
Loss of Stock Borrow:	Applicable
Maximum Stock Loan Rate:	200 bps
Increased Cost of Stock Borrow:	Applicable
Initial Stock Loan Rate:	25 bps
Determining Party:	For all applicable events, Dealer.
Hedging Party:	For all applicable events, Dealer
Non-Reliance:	Applicable
Agreements and Acknowledgements Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable
3. <u>Calculation Agent</u> :	Dealer.

4. Account Details and Notices:

(a) Account for delivery of Shares to Issuer:

Shares to be delivered to:
Computershare 250 Royal Street
Canton, MA 02021
ATTN: Client Operations (Align Technology, Inc)

(b) Account for payments to Issuer:

Bank of America Acct: provided
ABA: provided

(c) Account for payments to Dealer:

Chase Manhattan Bank New York
For A/C Goldman Sachs & Co. LLC
A/C # provided
ABA: provided

For purposes of this Confirmation:

(i) Address for notices or communications to Issuer:

Align Technology, Inc.
410 N. Scottsdale Road, Suite 1300
Tempe, Arizona 85281
Attn: Legal Department

(ii) Address for notices or communications to Dealer:

Goldman Sachs & Co. LLC
200 West Street
New York, NY 10282-2198
Attention: Michael Voris, Equity Capital Markets
Telephone: provided
Facsimile: provided
Email: provided

With a copy to:

Attention: Blair Seideman, Equity Capital Markets
Telephone: provided
Facsimile: provided
Email: provided

And email notification to the following address: provided

5. Amendments to the Equity Definitions and Agreement.

(a) Section 9.2(a)(iii) of the Equity Definitions is hereby amended by deleting the words “the Excess Dividend Amount, if any, and”.

(b) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words “a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “a material economic effect on the relevant Transaction”.

(c) The first sentence of Section 11.2(c) of the Equity Definitions, prior to clause (A) thereof, is hereby amended to read as follows: ‘(c) If “Calculation Agent Adjustment” is specified as the Method of Adjustment in the related Confirmation of a Share Option Transaction or Share Forward Transaction, then, following the announcement or occurrence of any Potential Adjustment Event, the Calculation Agent will determine in its commercially reasonable judgment whether such Potential Adjustment Event has a material economic effect on the Transaction and, if so, will (i) make appropriate adjustment(s), if any, to any one or more of:’ and the portion of such sentence immediately preceding clause (ii) thereof is hereby amended by replacing the words “diluting or concentrative” with the words “material economic”.

(d) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “any other corporate event involving the Issuer that in the commercially reasonable judgment of the Calculation Agent has a material economic effect on the relevant Transaction”.

(e) Section 12.6(c)(ii) of the Equity Definitions is hereby amended by replacing the words “the Transaction will be cancelled,” in the first line with the words “Dealer will have the right to cancel the Transaction,”.

(f) Section 12.9(b)(iv) of the Equity Definitions is hereby amended by (A) deleting (1) subsection (A) in its entirety, (2) the phrase “or (B)” following subsection (A) and (3) the phrase “in each case” in subsection (B); and (B) deleting the phrase “neither the Non-Hedging Party nor the Lending Party lends Shares in the amount of the Hedging Shares or” in the penultimate sentence.

(g) Section 12.9(b)(v) of the Equity Definitions is hereby amended by (A) adding the word “or” immediately before subsection “(B)” and deleting the comma at the end of subsection (A); and (B)(1) deleting subsection (C) in its entirety, (2) deleting the word “or” immediately preceding subsection (C) and (3) replacing in the penultimate sentence the words “either party” with “the Hedging Party” and (4) deleting clause (X) in the final sentence.

(h) Section 2(a)(iii) of the Agreement is hereby amended by deleting the words “or Potential Event of Default” in clause (1) of such Section and deleting the word “and” immediately before subsection (3) and deleting clause “(3)” in its entirety.

(h) “Indemnifiable Tax” as defined in Section 14 of the Agreement, shall not include (i) any tax imposed on payments treated as dividends from sources within the United States under Section 871(m) of the Internal Revenue Code of 1986, as amended (the “Code”) or any regulations issued thereunder or (ii) any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the Code, any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “FATCA Withholding Tax”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement.

6. Alternative Termination Settlement.

Notwithstanding anything to the contrary herein, or in the Equity Definitions, if at any time (i) an Early Termination Date occurs or (ii) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event (other than (i) an Insolvency, a Nationalization, a Merger Event or a Tender Offer, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash or (ii) an Event of Default in which Issuer is the Defaulting Party or a Termination Event in which Issuer is an Affected Party, which Event of Default or Termination Event resulted from an event or events within Issuer's control), if either party would owe any amount to the other party pursuant to Section 6(d)(ii) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a "**Payment Amount**"), then such payment shall be paid as set forth under the Agreement or Equity Definitions, as the case may be, unless Issuer makes an election to the contrary no later than the Early Termination Date or the date on which such Transaction is terminated or cancelled, in which case Issuer or Dealer, as the case may be, shall deliver to the other party a number of Shares (or a number of units, each comprising the number or amount of the securities or property that a hypothetical holder of one Share would receive in the case of a Nationalization, Insolvency or Merger Event, as the case may be (each such unit, an "**Alternative Delivery Unit**")), with a value equal to the Payment Amount, as determined by the Calculation Agent. In determining the number of Shares (or Alternative Delivery Units) required to be delivered under this provision, the Calculation Agent may take into account a number of factors, including, without limitation, the market price of the Shares (or Alternative Delivery Units) on the Early Termination Date or the date of early cancellation or termination, as the case may be. Additionally, if such delivery is made by Dealer, the Calculation Agent shall take into account the prices at which Dealer purchases Shares (or Alternative Delivery Units) to fulfill its delivery obligations under this Section 6; provided that in determining the composition of any Alternative Delivery Unit, if the relevant Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash. If delivery of Shares or Alternative Delivery Units, as the case may be, pursuant to this Section 6 is to be made by Issuer, paragraphs 2 through 8 of Annex A hereto shall apply as if (A) such delivery were a settlement of the Transaction to which Net Share Settlement applied, (B) the Buyer Cash Settlement Payment Date were the Early Termination Date or the date of early cancellation or termination, as the case may be, and (C) the Forward Cash Settlement Amount were equal to (x) zero *minus* (y) the Payment Amount owed by Issuer.

7. Special Provisions for Merger Transactions. Notwithstanding anything to the contrary herein or in the Equity Definitions:

(a) Issuer agrees that:

(i) Issuer will use its commercially reasonable efforts such that Issuer will not during the term of the Transaction make, or, to the extent within its control, permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act of 1933, as amended (the "**Securities Act**")) of any Merger Transaction or potential Merger Transaction unless such public announcement is made prior to the open or after the close of the regular trading session on the Exchange for the Shares.

(ii) To the extent that an announcement of a potential Merger Transaction occurs during the term of the Transaction and Dealer has not provided notice to Issuer as promptly as reasonably practicable following such announcement that Dealer will cause the Transaction to be cancelled or terminated in whole pursuant to "Extraordinary Events" in Section 2 above, then as soon as practicable following such announcement (but in any event prior to the next opening of the regular trading session on the Exchange), Issuer shall provide Dealer with written notice specifying (x) Issuer's average daily "Rule 10b-18 purchases" (as defined in Rule 10b-18) during the three full calendar months immediately preceding the Announcement Date that were not effected through Dealer or its affiliates and (y) the number of Shares purchased pursuant to the block purchase proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the Announcement Date. Such written notice shall be deemed to be a certification by Issuer to Dealer that such information is true and correct. Issuer understands that Dealer

will use this information in calculating the trading volume for purposes of Rule 10b-18. In addition, Issuer shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. Issuer acknowledges that any such public announcement may trigger the provision set forth in Section 9 below.

Accordingly, Issuer acknowledges that its actions in relation to any such announcement or transaction must comply with the standards set forth in Section 11(b) below.

(b) Upon the occurrence of any public announcement of a Merger Transaction, Dealer may in a good faith and commercially reasonable manner elect either to (i) apply the provisions of Section 9 below or (ii) treat the occurrence of such announcement as an Additional Termination Event with respect to which the Transaction shall be the sole Affected Transaction, Issuer shall be the sole Affected Party and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement (a “**Merger Termination Event**”). In the event that the Dealer elects to treat the Merger Transaction as a Merger Termination Event under this Section 7(b), then neither the provisions of “Extraordinary Events: Consequences of Merger Events” set forth above in this Confirmation nor the provisions of Section 8 below shall apply.

“**Merger Transaction**” means any merger, acquisition or similar transaction involving a recapitalization of Issuer as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

8. Special Provisions for Acquisition Transaction Announcements.

(a) If an Acquisition Transaction Announcement occurs on or prior to the final Valuation Date, then the Calculation Agent shall make such adjustment, in a commercially reasonable manner, to the Discount as the Calculation Agent determines appropriate, at such time or times as the Calculation Agent determines appropriate, to account for the economic effect of such Acquisition Transaction Announcement on the Transaction (including, without limitation, adjustments to account for changes in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares or to the Transaction within a commercially reasonable period of time (as determined by the Calculation Agent) before or after such Acquisition Transaction Announcement); *provided* that in no event will the Discount be less than zero. If an Acquisition Transaction Announcement occurs after the Trade Date but prior to the Lock-Out Date, the Lock-Out Date shall be deemed to be the date of such Acquisition Transaction Announcement.

(b) “**Acquisition Transaction Announcement**” means (i) the announcement of an Acquisition Transaction, (ii) an announcement that Issuer or any of its subsidiaries has entered into an agreement, a letter of intent or an understanding designed to result in an Acquisition Transaction, (iii) the announcement of the intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, an Acquisition Transaction, or (iv) any announcement subsequent to an Acquisition Transaction Announcement relating to a material amendment, a material extension, withdrawal or other material change to the subject matter of the previous Acquisition Transaction Announcement. For the avoidance of doubt, the term “announcement” as used in the definition of Acquisition Transaction Announcement refers to any public announcement whether made by Issuer or any subsidiary or agent thereof or by a bona fide third party that is reasonably likely to be a party to the Acquisition Transaction.

(c) “**Acquisition Transaction**” means (i) any Merger Event (for purposes of this definition, the definition of Merger Event shall be read with the references therein to “100%” being replaced by “25%” and to “50%” by “75%” and without reference to the clause beginning immediately following the definition of Reverse Merger therein to the end of such definition), Tender Offer or Merger Transaction or any other transaction involving the merger of Issuer with or into any third party, (ii) the sale or transfer of all or substantially all of the assets or liabilities of Issuer, (iii) a recapitalization, reclassification, binding share exchange or other similar transaction or (iv) any acquisition, lease, exchange, transfer, disposition (including by way of spin-off or distribution) of assets or liabilities (including any capital stock or other ownership interests in subsidiaries) or other similar event by Issuer or any of its subsidiaries where the

aggregate consideration transferable or receivable by or to Issuer or its subsidiaries exceeds 25% of the market capitalization of Issuer.

9. Dealer Adjustments.

In the event that Dealer determines, in a good faith and commercially reasonable manner that, based on advice of legal counsel, it is appropriate with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer, and including, without limitation, Rule 10b-18, Rule 10b-5, Regulations 13D-G and Regulations 14 D-E under the Exchange Act; provided that such requirements, policies and procedures relate to legal and regulatory issues and are generally applicable in similar situations and applied in a consistent manner in similar transactions), for Dealer to refrain from purchasing Shares or engaging in other market activity or to purchase fewer than the number of Shares or to engage in fewer or smaller other market transactions Dealer would otherwise purchase or engage in on any Trading Day on or prior to the last day of the Potential Purchase Period, then Dealer may, in its reasonable discretion, elect that a Market Disruption Event shall be deemed to have occurred on such Trading Day. Dealer shall notify Issuer upon the exercise of Dealer's rights pursuant to this Section 9 and the Trading Days affected by it and shall subsequently notify Issuer on the day Dealer believes that the circumstances giving rise to such exercise have changed.

10. Covenants.

Issuer covenants and agrees that:

(a) Until the end of the Potential Purchase Period (as defined below), neither it nor any of its affiliated purchasers (as defined in Rule 10b-18 under the Exchange Act) shall directly or indirectly (which shall be deemed to include the writing or purchase of any cash-settled or other derivative or structured Share repurchase transaction with a hedging period, calculation period or settlement valuation period or similar period that overlaps with the Transaction) purchase, offer to purchase, place any bid or limit order relating to a purchase of or commence any tender offer relating to Shares (or any security convertible into or exchangeable for Shares) without the prior written approval of Dealer or take any other action that would cause the purchase by Dealer of any Shares in connection with this Confirmation not to qualify for the safe harbor provided in Rule 10b-18 under the Exchange Act (assuming for the purposes of this paragraph that such safe harbor were otherwise available for such purchases); provided that this Section 10(a) shall not (i) limit the Issuer's ability, pursuant to its employee incentive plan or dividend reinvestment program to re-acquire Shares in connection with the related equity transactions, (ii) limit the Issuer's ability to withhold shares to cover tax liabilities associated with such equity transactions, (iii) limit the Issuer's ability to grant stock and options to "affiliated purchasers" (as defined in Rule 10b-18) or the ability of such affiliated purchasers to acquire such stock or options, provided that in connection with any such purchase Issuer will be deemed to represent to Dealer that such purchase does not constitute a "Rule 10b-18 Purchase" (as defined in Rule 10b-18) (any such incentive or compensatory plan, program or policy of Issuer, a "**Compensatory Plan**"), (iv) limit any purchases by Issuer or affiliated purchasers (as defined in Rule 10b-18) of the Issuer in an amount, in aggregate, not to exceed 5% of ADTV (as defined in Rule 10b-18) for such Exchange Business Day, which purchases shall be executed by Dealer (or its affiliate) and made pursuant to documentation and terms reasonably acceptable to Dealer and Issuer or (v) limit any purchases on November 2, 2022 by affiliated purchasers (as defined in Rule 10b-18) of the Issuer ("**Permitted Purchases**"). "**Potential Purchase Period**" means the period from, and including, the Trade Date to, and including, the latest of (i) the last day of any Buyer Settlement Valuation Period, (ii) the earlier of (A) the date ten Exchange Business Days immediately following the last day of the Calculation Period and (B) the Scheduled Valuation Date and (iii) if an Early Termination Date occurs or the Transaction is cancelled pursuant to Article 12 of the Equity Definitions, a date determined by Dealer in its commercially reasonable discretion and communicated to Issuer no later than the Exchange Business Day immediately following such date.

(b) Without limiting the generality of Section 13.1 of the Equity Definitions, it is not relying, and has not relied, upon Dealer or any of its representatives or advisors with respect to the legal, accounting, tax or other implications of this Agreement and that it has conducted its own analyses of the legal, accounting, tax and other implications of this Agreement, and that Dealer and its affiliates may from time to time effect transactions for their own account or the account of customers and hold positions in securities or options on securities of Issuer and that Dealer and its affiliates may continue to conduct such transactions during the term of this Agreement. Without limiting the generality of the foregoing, Issuer acknowledges that Dealer is not making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under any accounting standards including ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, or ASC Topic 480, *Distinguishing Liabilities from Equity* and ASC 815-40, *Derivatives and Hedging - Contracts in Entity's Own Equity* (or any successor issue statements) or under FASB's Liabilities & Equity Project.

(c) Neither it nor any affiliates shall take any action that would cause a restricted period (as defined in Regulation M under the Exchange Act ("**Regulation M**")) to be applicable to any purchases of Shares, or of any security for which Shares is a reference security (as defined in Regulation M), by Issuer or any affiliated purchasers (as defined in Regulation M) of Issuer during the Potential Purchase Period.

(d) It will not make any election or take any other action in connection with the Transaction while aware of any material nonpublic information regarding Issuer or the Shares.

(e) It shall not declare or pay any Extraordinary Dividend until the Exchange Business Day immediately following the last day of the Potential Purchase Period.

(f) Issuer represents and warrants that it and any of its subsidiaries has not applied, and shall not, until after the first date on which no portion of the Transaction remains outstanding following any final exercise and settlement, cancellation or early termination of the Transaction, apply, for a loan, loan guarantee, direct loan (as that term is defined in the Coronavirus Aid, Relief and Economic Security Act (the "**CARES Act**")) or other investment, or to receive any financial assistance or relief under any program or facility (collectively "**Financial Assistance**") that (a) is established under applicable law (whether in existence as of the Trade Date or subsequently enacted, adopted or amended), including without limitation the CARES Act and the Federal Reserve Act, as amended, and (b) (i) requires under applicable law (or any regulation, guidance, interpretation or other pronouncement of a governmental authority with jurisdiction for such program or facility) as a condition of such Financial Assistance, that the Issuer comply with any requirement not to repurchase, or otherwise agree, attest, certify or warrant that it has not, as of the date specified in such condition, repurchased, or will not repurchase, any equity security of Issuer, and that Issuer has not, as of the date specified in the condition, made a capital distribution or will not make a capital distribution, or (ii) where the terms of the Transaction would cause Issuer to fail to satisfy any condition for application for or receipt or retention of the Financial Assistance (collectively "**Restricted Financial Assistance**"); provided, that Issuer or any of its subsidiaries may apply for Restricted Financial Assistance if Issuer either (a) determines based on the advice of outside counsel of national standing that the terms of the Transaction would not cause Issuer or any of its subsidiaries to fail to satisfy any condition for application for or receipt or retention of such Financial Assistance based on the terms of the program or facility as of the date of such advice or (b) delivers to Dealer evidence or other guidance from a governmental authority with jurisdiction for such program or facility that the Transaction is permitted under such program or facility (either by specific reference to the Transaction or by general reference to transactions with the attributes of the Transaction in all relevant respects).

11. Representations, Warranties and Acknowledgments.

(a) Issuer hereby represents and warrants to Dealer on the date hereof and on and as of the Initial Share Delivery Date that:

(i) (A) None of Issuer and its officers and directors is aware of any material nonpublic information regarding Issuer or the Shares, and is entering into the Transaction in good faith and not as part of a plan or scheme to evade the prohibitions of federal securities laws, including, without limitation, Rule 10b-5 under the Exchange Act and (B) Issuer agrees not to alter or deviate from the terms of this Confirmation or enter into or alter a corresponding or hedging transaction or position with respect to the Shares (including, without limitation, with respect to any securities convertible or exchangeable into the Shares) during the term of this Confirmation. Without limiting the generality of the foregoing, all reports and other documents filed by Issuer with the Securities and Exchange Commission pursuant to the Exchange Act when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents) do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(ii) The transactions contemplated by this Confirmation have been authorized under Issuer's publicly announced program to repurchase Shares.

(iii) Issuer is not entering into this Confirmation to facilitate a distribution of the Shares (or any security convertible into or exchangeable for Shares) or in connection with a future issuance of securities.

(iv) Issuer is not entering into this Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) in violation of the federal securities laws.

(v) There have been no purchases of Shares in Rule 10b-18 purchases of blocks pursuant to the once-a-week block exception contained in Rule 10b-18(b)(4) by or for Issuer or any of its affiliated purchasers during each of the four calendar weeks preceding the Trade Date and during the calendar week in which the Trade Date occurs ("Rule 10b-18 purchase", "blocks" and "affiliated purchaser" each being used as defined in Rule 10b-18).

(vi) Issuer is as of the date hereof and after giving effect to the transactions contemplated hereby will be, Solvent. As used in this paragraph, the term "Solvent" means, with respect to a particular date, that on such date (A) the present fair market value (or present fair saleable value) of the assets of Issuer is not less than the total amount required to pay the liabilities of Issuer on its total existing debts and liabilities (including contingent liabilities) as they become absolute and matured, (B) Issuer is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and commitments as they mature and become due in the normal course of business, (C) assuming consummation of the transactions as contemplated by this Confirmation, Issuer is not incurring debts or liabilities beyond its ability to pay as such debts and liabilities mature, (D) Issuer is not engaged in any business or transaction, and does not propose to engage in any business or transaction, for which its property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which Issuer is engaged, (E) Issuer is not a defendant in any civil action that could reasonably be expected to result in a judgment that Issuer is or would become unable to satisfy, (F) Issuer is not "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "Bankruptcy Code")) and (G) Issuer would be able to purchase Shares with an aggregate purchase price equal to the Prepayment Amount in compliance with the corporate laws of the jurisdiction of its incorporation.

(vii) Issuer is not, and after giving effect to the transactions contemplated hereby will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

(viii) No state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of Dealer or its affiliates owning or holding (however defined) Shares other than any such law, rule, regulation or regulatory order that applies (A) to the beneficial ownership of Shares under the Exchange Act or (B) solely as a result of the business, identity, place of business or jurisdiction of organization of Dealer or any such affiliate.

(b) Issuer acknowledges and agrees that the Initial Shares may be sold short to Issuer. Issuer further acknowledges and agrees that Dealer may purchase Shares in connection with the Transaction, which Shares may be used to cover all or a portion of such short sale or may be delivered to Issuer. Such purchases and any other market activity by Dealer will be conducted independently of Issuer by Dealer as principal for its own account. All of the actions to be taken by Dealer in connection with the Transaction shall be taken by Dealer independently and without any advance or subsequent consultation with Issuer. It is the intent of the parties that the Transaction comply with the requirements of Rule 10b5-1(c)(1)(i)(B) of the Exchange Act, and the parties agree that this Confirmation shall be interpreted to comply with the requirements of such Rule, and Issuer shall not take any action that results in the Transaction not so complying with such requirements. Without limiting the generality of the preceding sentence, Issuer acknowledges and agrees that (A) Issuer does not have, and shall not attempt to exercise, any influence over how, when or whether Dealer effects any market transactions in connection with the Transaction and (B) neither Issuer nor its officers or employees shall, directly or indirectly, communicate any information regarding Issuer or the Shares to any employee of Dealer or its Affiliates that have been identified by Dealer to Issuer in writing as employees responsible for executing market transactions in connection with the Transaction. Issuer also acknowledges and agrees that any amendment, modification, waiver or termination of this Confirmation must be effected in accordance with the requirements for the amendment or termination of a “plan” as defined in Rule 10b5-1(c) under the Exchange Act. Without limiting the generality of the foregoing, any such amendment, modification, waiver or termination shall be made in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5 under the Exchange Act, and no such amendment, modification or waiver shall be made at any time at which Issuer or any officer or director of Issuer is aware of any material nonpublic information regarding Issuer or the Shares.

(c) Each of Issuer and Dealer represents and warrants to the other that it is an “eligible contract participant” as defined in the U.S. Commodity Exchange Act, as amended.

(d) Each of Issuer and Dealer acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act by virtue of Section 4(2) thereof. Accordingly, it represents and warrants to the other party that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (ii) it is an “accredited investor” as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof and (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws.

(e) In addition to the representations, warranties and covenants in the Agreement, Dealer represents warrants and covenants to Issuer that:

(i) In addition to the covenants in the Agreement and herein, Dealer agrees to use commercially reasonable efforts, during the Calculation Period and any Buyer Settlement Valuation Period for the Transaction, to make all purchases of Shares in connection with

such Transaction in a manner that would comply with the limitations set forth in clauses (b)(1), (b)(2), (b)(3) and (b)(4) and (c) of Rule 10b-18, as if such rule were applicable to such purchases and taking into account any applicable Securities and Exchange Commission no-action letters as appropriate, and subject to any delays between the execution and reporting of a trade of the Shares on the Exchange and other circumstances beyond Dealer's control; *provided* that, during the Calculation Period, the foregoing agreement shall not apply to purchases made to dynamically hedge for Dealer's own account or the account of its affiliate(s) the optionality arising under the Transaction (including, for the avoidance of doubt, timing optionality); *provided further* that, without limiting the generality of this Section, Dealer shall not be responsible for any failure to comply with Rule 10b-18(b)(3) to the extent any transaction that was executed (or deemed to be executed) by or on behalf of Issuer or an "affiliated purchaser" (as defined under Rule 10b-18) pursuant to a separate agreement is not deemed to be an "independent bid" or an "independent transaction" for purposes of Rule 10b-18(b)(3).

- (ii) Dealer hereby represents and covenants to Issuer that it has implemented policies and procedures, taking into consideration the nature of its business, reasonably designed to ensure that (A) individuals making investment decisions related to the Transaction do not have access to material nonpublic information regarding Issuer or the Shares and (B) individuals of Dealer that are in possession of material nonpublic information regarding the Issuer or the Shares have not, while in possession of such material nonpublic information, participated in any offsetting transaction(s) in respect of such Transaction.
- (iii) Within one Exchange Business Day of purchasing any Shares on behalf of Issuer pursuant to the once-a-week block exception set forth in paragraph (b)(4) of Rule 10b-18, Dealer shall notify Issuer of the total number of Shares so purchased.
- (iv) On the first Exchange Business Day of each week, Dealer shall provide weekly reports (the "**Weekly Reports**") in connection with the Transaction to the Issuer and to such other persons or agents of the Issuer as the Issuer shall reasonably designate in writing, by electronic mail to the Issuer or its designee. Each Weekly Report shall include the ADTV (as defined in Rule 10b-18) in the Shares for each Scheduled Trading Day during the immediately preceding week (as defined and determined in accordance with Rule 10b-18, as defined herein), the 10b-18 VWAP for each such Scheduled Trading Day and the high and low price on each such Scheduled Trading Day. For the avoidance of doubt and notwithstanding anything to the contrary in the two immediately preceding sentences, the 10b-18 VWAP for purposes of this Master Confirmation shall be determined pursuant the language opposite the caption "10b-18 VWAP" in Section 1 of this Confirmation and not on the basis of, or by reference to, the 10b-18 VWAP set forth in any Weekly Report.

(f) Each party agrees to deliver a complete and accurate United States Internal Revenue Service Form W-9 to the other party upon execution of this Confirmation.

(g) For purposes of Section 3(f) of the Agreement, (i) Issuer represents that it is a U.S. person, and it is a corporation organized under the laws of the State of Delaware and (ii) Dealer represents it is a "U.S. person" (as that term is defined in Section 7701(a)(30) of the Code and used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for U.S. federal income tax purposes, or a disregarded entity of such a U.S. person for U.S. federal income tax purposes.

12. Acknowledgements of Issuer.

(a) Issuer agrees, understands and acknowledges that:

(i) during the period from (and including) the Trade Date to (and including) the Settlement Date, Dealer and its Affiliates may buy or sell Shares or other securities or buy or sell options or

futures contracts or enter into swaps or other derivative transactions in order to adjust its Hedge Position with respect to the Transaction;

(ii) Dealer and its Affiliates also may be active in the market for the Shares or options, futures contracts, swaps or other derivative transactions relating to the Shares other than in connection with hedging activities in relation to the Transaction;

(iii) Dealer shall make its own determination as to whether, when and in what manner any hedging or market activities in Issuer's securities or other securities or transactions shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Transaction; and

(iv) any such market activities of Dealer and its Affiliates may affect the market price and volatility of the Shares, including the 10b-18 VWAP and the Forward Price, each in a manner that may be adverse to Issuer.

(b) Issuer:

(i) is an "institutional account" as defined in FINRA Rule 4512(c);

(ii) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, and will exercise independent judgment in evaluating the recommendations of Dealer or its associated persons, unless it has otherwise notified Dealer in writing; and

(iii) will notify Dealer if any of the statements contained in clause (i) or (ii) of this Section 12(b) ceases to be true.

13. Delivery of Cash.

For the avoidance of doubt, other than payment of the Prepayment Amount by Issuer, nothing in this Confirmation shall be interpreted as requiring Issuer to cash settle the Transaction hereunder, except in circumstances where cash settlement is within Issuer's control or in those circumstances in which holders of the Shares would also receive cash.

14. Other Provisions.

(a) Issuer agrees and acknowledges that Dealer is a "financial institution" and "financial participant" within the meaning of Sections 101(22) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge that it is the intent of the parties that (A) this Confirmation is a "securities contract," as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "settlement payment," within the meaning of Section 546 of the Bankruptcy Code, and (B) Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(o), 546(e), 555 and 561 of the Bankruptcy Code.

(b) Dealer and Issuer hereby agree and acknowledge that Dealer has authorized Issuer to disclose the Transaction to any and all persons, and there are no express or implied agreements, arrangements or understandings to the contrary, and authorizes Issuer to use any information that Issuer receives or has received with respect to the Transaction in any manner.

(c) In the event Issuer becomes the subject of proceedings ("**Bankruptcy Proceedings**") under the Bankruptcy Code or any other applicable bankruptcy or insolvency statute, any rights or claims

of Dealer hereunder in respect of the Transaction shall rank for all purposes no higher than, but on a parity with, the rights or claims of holders of Shares, and Dealer hereby agrees that its rights and claims hereunder shall be subordinated to those of all parties with claims or rights against Issuer (other than common stockholders) to the extent necessary to assure such ranking. Without limiting the generality of the foregoing, after the commencement of Bankruptcy Proceedings, the claims of Dealer hereunder shall for all purposes have rights equivalent to the rights of a holder of a percentage of the Shares equal to the aggregate amount of such claims (the “**Claim Amount**”) taken as a percentage of the sum of (i) the Claim Amount and (ii) the aggregate fair market value of all outstanding Shares on the record date for distributions made to the holders of such Shares in the related Bankruptcy Proceedings. Notwithstanding any right it might otherwise have to assert a higher priority claim in any such Bankruptcy Proceedings, Dealer shall be entitled to receive a distribution solely to the extent and only in the form that a holder of such percentage of the Shares would be entitled to receive in such Bankruptcy Proceedings, and, from and after the commencement of such Bankruptcy Proceedings, Dealer expressly waives (i) any other rights or distributions to which it might otherwise be entitled in such Bankruptcy Proceedings in respect of its rights and claims hereunder and (ii) any rights of setoff it might otherwise be entitled to assert in respect of such rights and claims.

(d) Notwithstanding any provision of this Confirmation or any other agreement between the parties to the contrary, neither the obligations of Issuer nor the obligations of Dealer hereunder are secured by any collateral, security interest, pledge or lien.

(e) Each party waives any and all rights it may have to set off obligations arising under the Agreement and the Transaction against other obligations between the parties, whether arising under any other agreement, applicable law or otherwise.

(f) Notwithstanding anything to the contrary herein, Dealer may, by prior notice to Issuer, satisfy its obligation to deliver any Shares or other securities on any date due (an “**Original Delivery Date**”) by making separate deliveries of Shares or such securities, as the case may be, at more than one time on or prior to such Original Delivery Date, so long as the aggregate number of Shares and other securities so delivered on or prior to such Original Delivery Date is equal to the number required to be delivered on such Original Delivery Date.

(g) It shall constitute an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Issuer is the sole Affected Party and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement if, at any time on or prior to the Valuation Date, the price per Share on the Exchange, as determined by the Calculation Agent, is at or below the Threshold Price (as specified in Schedule I).

(h) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Issuer, Dealer may designate any of its affiliates (a “**Designated Affiliate**”) to purchase, sell, receive or deliver such Shares or other securities and otherwise to perform Dealer’s obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Issuer to the extent that such Designated Affiliate performs in full all of the obligations of Dealer designated by Dealer to such Designated Affiliate under this Transaction.

(i) Dealer agrees and covenants that it shall use reasonable efforts to timely provide Issuer with any information required to be included in any filing of Form SR under the Exchange Act to the extent that Issuer reasonably determines based on the advice of counsel that such filing is required or advisable in connection with the Transaction pursuant to effective and applicable final rules promulgated by the Securities and Exchange Commission.

15. Transfer and Assignment.

Dealer may transfer or assign its rights and obligations hereunder and under the Agreement (“**Transfer**”), in whole or in part, to any of its Affiliates that have a credit rating that is not lower than the credit rating of Dealer immediately prior to the proposed time of such Transfer (or whose obligations are guaranteed by an entity of equivalent credit quality) without the consent of Issuer; *provided* that, at the time of such Transfer (i) Issuer will not be required to pay (including a payment in kind) to the transferee any amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) of the Agreement greater than the amount in respect of which Issuer would have been required to pay to Dealer in the absence of such Transfer; and (ii) Issuer will not receive any payment (including a payment in kind) from which an amount had been withheld or deducted, on account of a Tax under Section 2(d)(i) of the Agreement, in excess of that which Dealer would have been required to so withhold or deduct in the absence of such Transfer, except to the extent that the transferee will be required to make additional payments pursuant to Section 2(d)(i)(4) of the Agreement in respect of such excess. Dealer will provide prompt written notice of any such transfer to Issuer.

16. Calculations and Adjustments.

Following any calculation, adjustment or other determination made by the Calculation Agent, the Hedging Party or the Determining Party hereunder, within five Local Business Days of receipt of Issuer’s written request (which may be by electronic mail), the Calculation Agent, the Hedging Party or the Determining Party, as the case may be, will provide by electronic mail to Issuer a written statement showing, in reasonable detail (and, if practicable, in a commonly used file format for the storage and manipulation of financial data), such calculation, adjustment or other determination and the basis therefor (including any quotations, market data and information from internal or external sources used in making such calculation, adjustment or other determination), it being understood that Dealer (in any capacity) shall have no obligation to disclose proprietary or confidential information or models. All calculations, adjustments and determinations made by the Calculation Agent, Determining Party, or Hedging Party shall be made in good faith, and all such calculations and adjustments shall be made in a commercially reasonable manner taking into account and reflecting the effect of any commercially reasonable Hedge Positions acquired, established, re-established, substituted, maintained, unwound, adjusted or disposed of by Dealer in connection with the relevant event. Following the occurrence of an Event of Default pursuant to Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, Issuer shall have the right to designate a nationally recognized third-party dealer in over-the-counter corporate equity derivatives to act, during the period commencing on the date such Event of Default occurred and ending on the Early Termination Date with respect to such Event of Default, as the Calculation Agent.

17. US Resolution Stay.

(a) Recognition of the U.S. Special Resolution Regimes.

(i) In the event that Dealer becomes subject to a proceeding under (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder or (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder (a “**U.S. Special Resolution Regime**”) the transfer from Dealer of this Confirmation, and any interest and obligation in or under, and any property securing, this Confirmation, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Confirmation, and any interest and obligation in or under, and any property securing, this Confirmation were governed by the laws of the United States or a state of the United States.

(ii) In the event that Dealer or an Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Rights (as defined in 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable (“**Default Right**”)) under this Confirmation that may be exercised against Dealer are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special

Resolution Regime if this Confirmation were governed by the laws of the United States or a state of the United States.

(b) Limitation on Exercise of Certain Default Rights Related to an Affiliate's Entry Into Insolvency Proceedings. Notwithstanding anything to the contrary in this Confirmation, the parties expressly acknowledge and agree that:

(i) Issuer shall not be permitted to exercise any Default Right with respect to this Confirmation or any Affiliate Credit Enhancement that is related, directly or indirectly, to an Affiliate of Dealer becoming subject to receivership, insolvency, liquidation, resolution, or similar proceeding (an "**Insolvency Proceeding**"), except to the extent that the exercise of such Default Right would be permitted under the provisions of 12 C.F.R. 252.84, 12 C.F.R. 47.5 or 12 C.F.R. 382.4, as applicable; and

(ii) Nothing in this Confirmation shall prohibit the transfer of any Affiliate Credit Enhancement, any interest or obligation in or under such Affiliate Credit Enhancement, or any property securing such Affiliate Credit Enhancement, to a transferee upon or following an Affiliate of Dealer becoming subject to an Insolvency Proceeding, unless the transfer would result in the Issuer being the beneficiary of such Affiliate Credit Enhancement in violation of any law applicable to the Issuer.

(iii) For the purpose of this paragraph:

(A) "**Affiliate**" is defined in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

(B) "**Credit Enhancement**" means any credit enhancement or credit support arrangement in support of the obligations of Dealer under or with respect to this Confirmation, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin or any similar arrangement.

(c) U.S. Protocol. If Issuer has previously adhered to, or subsequently adheres to, the ISDA 2018 U.S. Resolution Stay Protocol as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018 (the "**ISDA U.S. Protocol**"), the terms of the ISDA U.S. Protocol shall be incorporated into and form a part of this Confirmation and the terms of the ISDA U.S. Protocol shall supersede and replace the terms of this section. For purposes of incorporating the ISDA U.S. Protocol, Dealer shall be deemed to be a Regulated Entity, Issuer shall be deemed to be an Adhering Party, and this Confirmation shall be deemed to be a Protocol Covered Agreement. Capitalized terms used but not defined in this paragraph shall have the meanings given to them in the ISDA U.S. Protocol.

(d) Pre-existing In-Scope Agreements. Dealer and Issuer agree that to the extent there are any outstanding "in-scope QFCs," as defined in 12 C.F.R. § 252.82(d), that are not excluded under 12 C.F.R. § 252.88, between Dealer and Issuer that do not otherwise comply with the requirements of 12 C.F.R. § 252.2, 252.81–8 (each such agreement, a "**Preexisting In-Scope Agreement**"), then each such Preexisting In-Scope Agreement is hereby amended to include the foregoing provisions in this section, with references to "this Confirmation" being understood to be references to the applicable Preexisting In-Scope Agreement.

18. Governing Law; Jurisdiction; Waiver.

THIS CONFIRMATION AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS CONFIRMATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE

UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.

EACH PARTY HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS OF THE OTHER PARTY OR THE OTHER PARTY'S AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

Remainder of Page Intentionally Blank

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning an original or electronic copy in accordance with the notice provisions set forth in Section 4.

Confirmed as of the date first written above:

ALIGN TECHNOLOGY, INC

By: /s/ John Morici

Name: John Morici

Title: CFO and SVP, Global Finance

GOLDMAN SACHS & CO. LLC

By: /s/ Mike Voris

Name: Mike Voris

Title: Partner

BUYER SETTLEMENT PROVISIONS

1. The following Buyer Settlement Provisions shall apply to the Transaction to the extent indicated under the Confirmation:

Settlement Currency: USD

Settlement Method Election: Applicable; provided that (i) Section 7.1 of the Equity Definitions is hereby amended by deleting the word “Physical” in the sixth line thereof and replacing it with the words “Net Share” and (ii) the Electing Party may make a settlement method election only if the Electing Party represents and warrants to Dealer in writing on the date it notifies Dealer of its election that, as of such date, the Electing Party is not aware of any material nonpublic information concerning Issuer or the Shares and is electing the settlement method in good faith and not as part of a plan or scheme to evade compliance with the federal securities laws.

Electing Party: Buyer

Settlement Method

Election Date: In respect of any Valuation Date, the earlier of (i) the Scheduled Valuation Date and (ii) the third Exchange Business Day immediately following the Valuation Date designated in an Acceleration (if any) (in which case the election under Section 7.1 of the Equity Definitions shall be made no later than 10 minutes prior to the open of trading on the Exchange on such second Exchange Business Day), as the case may be.

Default Settlement Method: Cash Settlement

Forward Cash Settlement

Amount: The Settlement Amount *multiplied by* the Buyer Settlement Price.

Buyer Settlement Price: The average of the 10b-18 VWAPs for the Observation Dates that are Trading Days in the Buyer Settlement Valuation Period, subject to the provisions opposite the caption “Market Disruption Event” in the Confirmation, plus USD 0.05 (in each case, plus interest on such amount during the Buyer Settlement Valuation Period at the rate of interest for Issuer’s long term, unsecured and unsubordinated indebtedness, as determined in good faith and in a commercially reasonable manner by the Calculation Agent).

Buyer Settlement

Valuation Period: A number of Scheduled Trading Days selected by Dealer in its commercially reasonable discretion, beginning on the Scheduled Trading Day immediately following the earlier of (i) the Scheduled Valuation Date or (ii) the Exchange Business Day immediately following the Valuation Date.

Cash Settlement: If Cash Settlement is applicable, then Buyer shall pay to Seller the absolute value of the Forward Cash Settlement Amount on the Buyer Cash Settlement Payment Date.

Buyer Cash Settlement

Payment Date: The date one Settlement Cycle following the last day of the Buyer Settlement Valuation Period.

Net Share Settlement

Procedures: If Net Share Settlement is applicable, Net Share Settlement shall be made in accordance with paragraphs 2 through 8 below.

2. Net Share Settlement shall be made by delivery on the Buyer Cash Settlement Payment Date of a number of Shares satisfying the conditions set forth in paragraph 3 below (the “**Registered Settlement Shares**”), or a number of Shares not satisfying such conditions (the “**Unregistered Settlement Shares**”), in either case with a value equal to the absolute value of the Forward Cash Settlement Amount, with such Shares’ value based on the value thereof to Dealer (which value shall, in the case of Unregistered Settlement Shares, take into account a commercially reasonable illiquidity discount), in each case, as determined by the Calculation Agent in good faith and in a commercially reasonable manner.

3. Buyer may deliver Registered Settlement Shares pursuant to paragraph 2 above only if:

(a) a registration statement covering public resale of the Registered Settlement Shares by Dealer (the “**Registration Statement**”) shall have been filed with the Securities and Exchange Commission under the Securities Act and been declared or otherwise become effective on or prior to the date of delivery, and no stop order shall be in effect with respect to the Registration Statement; and a printed prospectus relating to the Registered Settlement Shares (including any prospectus supplement thereto, the “**Prospectus**”) shall have been delivered to Dealer, in such quantities as Dealer shall reasonably have requested, on or prior to the date of delivery;

(b) the form and content of the Registration Statement and the Prospectus (including, without limitation, any sections describing the plan of distribution) shall be reasonably satisfactory to Dealer;

(c) as of or prior to the date of delivery, Dealer and its agents shall have been afforded a reasonable opportunity to conduct a due diligence investigation with respect to Buyer customary in scope for underwritten offerings of equity securities for companies of a similar size and in a similar industry and the results of such investigation are satisfactory to Dealer, in its discretion; and

(d) as of the date of delivery, an agreement (the “**Underwriting Agreement**”) shall have been entered into with Dealer in connection with the public resale of the Registered Settlement Shares by Dealer substantially similar to underwriting agreements customary for underwritten offerings of equity securities for companies of a similar size and in a similar industry, in form and substance commercially reasonably satisfactory to Dealer, which Underwriting Agreement shall include, without limitation,

provisions substantially similar to those contained in such underwriting agreements relating, without limitation, to the indemnification of, and contribution in connection with the liability of, Dealer and its affiliates and the provision of customary opinions, accountants' comfort letters and lawyers' negative assurance letters.

4. If Buyer delivers Unregistered Settlement Shares pursuant to paragraph 2 above:

(a) all Unregistered Settlement Shares shall be delivered to Dealer (or any affiliate of Dealer designated by Dealer) pursuant to the exemption from the registration requirements of the Securities Act provided by Section 4(a)(2) thereof;

(b) as of or prior to the date of delivery, Dealer and any potential purchaser of any such shares from Dealer (or any affiliate of Dealer designated by Dealer) identified by Dealer shall be afforded a commercially reasonable opportunity to conduct a due diligence investigation with respect to Buyer customary in scope for private placements of equity securities for companies of a similar size and in a similar industry (including, without limitation, the right to have made available to them for inspection all financial and other records, pertinent corporate documents and other information reasonably requested by them subject to customary confidentiality agreements);

(c) as of the date of delivery, Buyer shall enter into an agreement (a "**Private Placement Agreement**") with Dealer (or any affiliate of Dealer designated by Dealer) in connection with the private placement of such shares by Buyer to Dealer (or any such affiliate) and the private resale of such shares by Dealer (or any such affiliate), substantially similar to private placement purchase agreements customary for private placements of equity securities for companies of a similar size and in a similar industry, in form and substance commercially reasonably satisfactory to Dealer, which Private Placement Agreement shall include, without limitation, provisions substantially similar to those contained in such private placement purchase agreements for companies of a similar size and in a similar industry relating, without limitation, to the indemnification of, and contribution in connection with the liability of, Dealer and its affiliates and the provision of customary opinions, accountants' comfort letters and lawyers' negative assurance letters, and shall provide for the payment by Buyer of all reasonable fees and expenses in connection with such resale, including all reasonable fees and expenses of counsel for Dealer, and shall contain representations, warranties, covenants and agreements of Buyer reasonably necessary or advisable to establish and maintain the availability of an exemption from the registration requirements of the Securities Act for such resales; and

(d) in connection with the private placement of such shares by Buyer to Dealer (or any such affiliate) and the private resale of such shares by Dealer (or any such affiliate), Buyer shall, if so requested by Dealer, prepare, in cooperation with Dealer, a private placement memorandum in form and substance reasonably satisfactory to Dealer.

5. Dealer, itself or through an affiliate (the "**Selling Agent**") or any underwriter(s), will sell all, or such lesser portion as may be required hereunder, of the Registered Settlement Shares or Unregistered Settlement Shares and any Makewhole Shares (as defined below) (together, the "**Settlement Shares**") delivered by Buyer to Dealer pursuant to paragraph 6 below commencing on the Buyer Cash Settlement Payment Date and continuing until the date on which the aggregate Net Proceeds (as such term is defined below) of such sales, as determined by Dealer, is equal to the absolute value of the Forward Cash Settlement Amount (such date, the "**Final Resale Date**"). If the proceeds of any sale(s) made by Dealer, the Selling Agent or any underwriter(s), net of any fees and commissions (including, without limitation, underwriting or placement fees) customary for similar transactions under the circumstances at the time of the offering, together with carrying charges and expenses incurred in connection with the offer and sale of the Shares (including, but without limitation to, the covering of any over-allotment or short position (syndicate or otherwise)) (the "**Net Proceeds**") exceed the absolute value of the Forward Cash Settlement Amount, Dealer will refund, in USD, such excess to Buyer on the date that is two (2) Currency Business

Days following the Final Resale Date, and, if any portion of the Settlement Shares remains unsold, Dealer shall return to Buyer on that date such unsold Shares.

6. If the Calculation Agent determines that the Net Proceeds received from the sale of the Registered Settlement Shares or Unregistered Settlement Shares or any Makewhole Shares, if any, pursuant to this paragraph 6 are less than the absolute value of the Forward Cash Settlement Amount (the amount in USD by which the Net Proceeds are less than the absolute value of the Forward Cash Settlement Amount being the “**Shortfall**” and the date on which such determination is made, the “**Deficiency Determination Date**”), Buyer shall, on the Exchange Business Day next succeeding the Deficiency Determination Date (the “**Makewhole Notice Date**”), deliver to Dealer, through the Selling Agent, a notice of Buyer’s election that Buyer shall either (i) pay an amount in cash equal to the Shortfall on the day that is one (1) Currency Business Day after the Makewhole Notice Date, or (ii) deliver additional Shares. If Buyer elects to deliver to Dealer additional Shares, then Buyer shall deliver additional Shares in compliance with the terms and conditions of paragraph 3 or paragraph 4 above, as the case may be (the “**Makewhole Shares**”), on the first Clearance System Business Day that is also an Exchange Business Day following the Makewhole Notice Date in such number as the Calculation Agent reasonably believes would have a market value on that Exchange Business Day equal to the Shortfall. Such Makewhole Shares shall be sold by Dealer in accordance with the provisions above; provided that if the sum of the Net Proceeds from the sale of the originally delivered Shares and the Net Proceeds from the sale of any Makewhole Shares is less than the absolute value of the Forward Cash Settlement Amount then Buyer shall, at its election, either make such cash payment or deliver to Dealer further Makewhole Shares until such Shortfall has been reduced to zero.

7. Notwithstanding the foregoing, in no event shall the aggregate number of Settlement Shares for the Transaction be greater than the Share Cap (as specified in Schedule I). Buyer represents and warrants (which shall be deemed to be repeated on each day that the Transaction is outstanding) that the Share Cap is equal to or less than the number of Shares determined according to the following formula:

$$A - B$$

Where A = the number of authorized but unissued shares of Buyer that are not reserved for future issuance on the date hereof; and

B = the maximum number of Shares required to be delivered to third parties if Buyer elected Net Share Settlement of all transactions in the Shares (other than the Transaction) with all third parties that are then currently outstanding and unexercised.

Subsidiaries of Align Technology, Inc.

The registrant's principal subsidiary as of December 31, 2022, are as follows:

Entity
Align Technology Switzerland GmbH, Switzerland

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (No. 333-258449, No. 333-214493, No. 333-190351, No. 333-143319, No. 333-134477, No. 333-125586, No. 333-161054, No. 333-176134, No. 333-168548, No. 333-116912) of Align Technology, Inc. of our report dated February 27, 2023 relating to the financial statements, financial statement schedule and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP
San Jose, California
February 27, 2023

CERTIFICATION

I, Joseph M. Hogan, certify that:

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

Date: February 27, 2023

/s/ JOSEPH M. HOGAN

Joseph M. Hogan

President and Chief Executive Officer

CERTIFICATION

I, John F. Morici, certify that:

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

Date: February 27, 2023

/s/ JOHN F. MORICI

John F. Morici

Chief Financial Officer and Executive Vice President, Global Finance

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

In connection with the Annual Report of Align Technology, Inc. (the "Company") on Form 10-K for the period ending December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

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

Date:	February 27, 2023	By:	/s/ JOSEPH M. HOGAN
		Name:	<u>Joseph M. Hogan</u>
		Title:	<i>President and Chief Executive Officer</i>

In connection with the Annual Report of Align Technology, Inc. (the "Company") on Form 10-K for the period ending December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

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

Date:	February 27, 2023	By:	/s/ JOHN F. MORICI
		Name:	<u>John F. Morici</u>
		Title:	<i>Chief Financial Officer and Executive Vice President, Global Finance</i>