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: 001-37844

BIOVENTUS INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**81-0980861**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**
4721 Emperor Boulevard, Suite 100 **Durham, North Carolina**	
(Address of Principal Executive Offices)	**27703** **(Zip Code)**

(919) 474-6700
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**
Class A Common Stock, $0.001 par value per share	BVS	The Nasdaq Global Select Market

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 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 the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐	Smaller reporting company	☐
		Emerging Growth Company	☒

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

Indicate by check mark whether the registrant 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 ☒

As of July 2, 2022, the end of the most recently completed second fiscal quarter, the aggregate market value of Class A common stock held by non-affiliates (based upon the closing price of these shares on the Nasdaq) was approximately $205.6 million.

As of March 16, 2023, there were 62,267,016 shares of Class A common stock outstanding and 15,786,737 shares of Class B common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Certain of the information required to be furnished pursuant to Part III of this Annual Report on Form 10-K will be set forth in, and incorporated by reference from, the registrant's definitive proxy statement for the 2023 annual meeting of stockholders which will be filed with the Securities and Exchange Commission no later than 120 days after the end of the fiscal year ended December 31, 2022.

BIOVENTUS INC.

TABLE OF CONTENTS

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K ("Annual Report") contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended ("Exchange Act"), and Section 27A of the Securities Act of 1933, as amended ("Securities Act"), concerning our business, operations and financial performance and condition, as well as our plans, objectives and expectations for our business operations and financial performance and condition. Any statements contained herein that are not statements of historical facts may be deemed to be forward-looking statements including, without limitation, statements regarding our ability to continue as a going concern, our business strategy, expectations relating to our integration of Misonix and Bioness, potential acquisitions, including any future relationship with CartiHeal, expected expansion of our pipeline and research and development investment, cost savings initiatives, new therapy launches, expected timelines for clinical trial results and other development milestones, expected contractual obligations and capital expenditures, our operations and expected financial performance and condition, and impacts of the COVID-19 pandemic. In some cases, you can identify forward-looking statements by terminology such as "aim," "anticipate," "assume," "believe," "contemplate," "continue," "could," "due," "estimate," "expect," "goal," "intend," "may," "objective," "plan," "predict," "potential," "positioned," "seek," "should," "target," "will," "would" and other similar expressions that are predictions of or indicate future events and future trends, or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these words.

Forward-looking statements are based on management's current expectations, estimates, forecasts and projections about our business and the industry in which we operate, and management's beliefs and assumptions are not guarantees of future performance or development and involve known and unknown risks, uncertainties and other factors that are in some cases beyond our control. As a result, any or all of our forward-looking statements in this Annual Report may turn out to be inaccurate. Furthermore, if the forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all. Important factors that may cause actual results to differ materially from current expectations include, among other things, those described in *Part I, Item 1A. Risk Factors*. You are urged to consider these factors carefully in evaluating these forward-looking statements. These forward-looking statements speak only as of the date hereof. Except as required by law, we assume no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future.

TRADEMARKS, TRADE NAMES AND SERVICE MARKS

This Annual Report includes our trademarks and trade names that we own or license, and our logos. This Annual Report also includes trademarks, trade names and service marks that are the property of other organizations. Solely for convenience, trademarks and trade names referred to in this Annual Report appear without any "™" or "®" symbol, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights to these trademarks, trade names and service marks. We do not intend our use or display of other parties' trademarks, trade names or service marks to imply, and such use or display should not be construed to imply, a relationship with, or endorsement or sponsorship of us by, these other parties.

SUMMARY OF PRINCIPAL RISK FACTORS

We are subject to several risks, including risks that may prevent us from achieving our business objectives or that may adversely affect our business, results of operations, financial condition, and cash flows. You should carefully consider the risks discussed in the section entitled *Part I, Item 1A. Risk Factors*, including the following principal risks:

- there are doubts about our ability to continue as a going concern and if we are unable to continue our business, our Class A common stock might have little or no value;
- our Amended 2019 Credit Agreement contains financial and operating restrictions that may limit our access to credit. If we fail to comply with its financial or other covenants, we may be required to repay the indebtedness on an accelerated basis, which we may be unable to do and may harm our liquidity and operations;
- we maintain our cash at financial institutions, often in balances that exceed federally insured limits;
- we might require additional capital to fund our current financial obligations and support business growth;
- we are currently subject to securities class action litigation and may be subject to similar or other litigation in the future, which will require significant management time and attention, result in significant legal expenses and may result in unfavorable outcomes, which may have a material adverse effect on our business, operating results and financial condition, and negatively affect the price of our common stock;
- if we are unable to fund the remainder of the consideration for the CartiHeal acquisition, we will be unable to complete that transaction and might lose the assets we acquired in the CartiHeal acquisition;
- our business may continue to experience adverse impacts as a result of the COVID-19 pandemic;
- we are highly dependent on a limited number of products;
- our long-term growth depends on our ability to develop, acquire and commercialize new products, line extensions or expanded indications;
- demand for our existing products and any new products, line extensions or expanded indications depends on the continued and future acceptance of our products by physicians, patients, third-party payers and others in the medical community;
- the proposed down-classification of non-invasive bone growth stimulators, including Exogen, by the FDA could increase future competition for bone growth stimulators and otherwise adversely affect our sales of Exogen;
- if we are unable to achieve and maintain adequate levels of coverage and/or reimbursement for our products, the procedures using our products, or any future products we may seek to commercialize, the commercial success of these products may be severely hindered;
- our business may be adversely affected if consolidation in the healthcare industry leads to demand for price concessions or if a Group Purchasing Organization (“GPO”), third-party payers or other similar entities exclude us from being a supplier;
- we may be unable to complete proposed acquisitions or to successfully integrate proposed or recent acquisitions in a cost-effective and non-disruptive manner;
- if we fail to successfully enter into purchasing contracts for our Surgical Solutions products or engage in contract bidding processes internationally, we may not be able to receive access to certain hospital facilities and our sales may decrease;
- we compete and may compete in the future against other companies, some of which have longer operating histories, more established products or greater resources than we do, which may prevent us from achieving increased market penetration or improved operating results;
- the reclassification of our HA products from medical devices to drugs in the United States by the FDA could negatively impact our ability to market these products and may require that we conduct costly additional clinical studies to support current or future indications for use of those products;
- our ability to maintain our competitive position depends on our ability to attract, retain and motivate our senior management team and highly qualified personnel, and our failure to do so could adversely affect our business, results of operations and financial condition;
- our products and operations are subject to extensive governmental regulation, and our failure to comply with applicable requirements could cause our business to suffer;
- the FDA regulatory process is expensive, time-consuming and uncertain, and the failure to obtain and maintain required regulatory clearances and approvals could prevent us from commercializing our products;

- legislative or regulatory reforms, including those currently under consideration by FDA and the EU, could make it more difficult or costly for us to obtain regulatory clearance, approval or certification of any future products and to manufacture, market and distribute our products after clearance, approval or certification is obtained, which could adversely affect our competitive position and materially affect our business and financial results;
- our HCT/P products are subject to extensive government regulation and our failure to comply with these requirements could cause our business to suffer;
- if clinical studies of our future products do not produce results necessary to support regulatory clearance, approval or certification in the United States or elsewhere, we will be unable to expand the indications for or commercialize these products;
- interim, "top-line" and preliminary data from our clinical trials that we announce or publish from time to time may change as more patient data become available and are subject to audit and verification procedures that could result in material changes in the final data;
- we may be subject to enforcement action if we engage in improper marketing or promotion of our products, and the misuse or off-label use of our products may harm our image in the marketplace, result in injuries that lead to product liability suits or result in costly investigations, fines and/or sanctions by regulatory bodies if we are deemed to have engaged in the promotion of these uses, any of which could be costly to our business;
- regulatory reforms, such as the EU Medical Devices Regulation, could limit our ability to market and distribute our products after clearance, approval or certification is obtained and make it more difficult or costly for us to obtain regulatory clearance, approval or certification of any future products, which could adversely affect our competitive position and materially affect our business and financial results;
- recent environmental regulatory actions regarding medical device sterilization facilities could result in disruptions in the supply of certain of our products and could adversely affect our business, results of operations and financial condition;
- if our facilities are damaged or become inoperable, we will be unable to continue to research, develop and manufacture our products and, as a result, our business, results of operations and financial condition may be adversely affected until we are able to secure a new facility;
- we depend on certain technologies that are licensed to us. We do not control the intellectual property rights covering these technologies and any loss of our rights to these technologies or the rights licensed to us could prevent us from selling our products, which could adversely impact our business, results of operations and financial condition; and
- our principal asset is our interest in BV LLC, and, accordingly, we depend on distributions from BV LLC to pay our taxes and expenses, including payments under the Tax Receivable Agreement. BV LLC's ability to make such distributions may be subject to various limitations and restrictions.

PART I

Item 1. Business.

Unless the context requires otherwise, in this Annual Report on Form 10-K ("Annual Report") the terms "we," "us," "our," the "Company," "Bioventus," "Bioventus Inc." and similar references refer to the combined operations of Bioventus Inc. and its consolidated subsidiaries and affiliates, including Bioventus LLC ("BV LLC").

Company overview

We are a global medical device company focused on developing and commercializing clinically differentiated, cost efficient and minimally invasive treatments that engage and enhance the body's natural healing process. We manage our business through two reporting segments, U.S. and International which accounted for 89% and 11%, respectively, of our total net sales during the fiscal year ended December 31, 2022.

Our portfolio of products is grouped into three verticals:

- Pain Treatments is comprised of non-surgical joint pain injection therapies as well as peripheral nerve stimulation ("PNS") products to help the patient get back to their normal activities.
- Surgical Solutions is comprised of bone graft substitutes ("BGS") to fuse and grow bones, improve results following spinal and other orthopedic surgeries as well as minimally invasive ultrasonic medical devices used for precise bone sculpting, removing tumors and tissue debridement, in various surgeries.
- Restorative Therapies is comprised of a bone healing system, skin allografts and products used to support healing of wounds as well as devices designed to help patients regain leg or hand function due to stroke, multiple sclerosis or other central nervous system disorders.

Financial information regarding our reportable business segments is included in *Part II, Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations* and *Part II, Item 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 14. Segments* of this Annual Report. Our verticals and the products within each vertical are described in additional detail below under "Our products."

COVID-19 update and outlook

Refer to *Item 1A. Risk Factors* and *Part II, Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations* for a discussion of the effects of the global COVID-19 pandemic on our business in 2021 and 2022.

Our growth strategy

We intend to pursue the following strategies to build a market-leading and customer-focused company centered on our three verticals, Pain Treatments, Surgical Solutions and Restorative Therapies, and to continue to grow our net sales and Adjusted EBITDA:

- **Continue to expand market share in Hyaluronic Acid ("HA") viscosupplementation**. We intend to increase sales of our HA viscosupplementation therapies and extend our market leadership in this category by building on our unique positioning as the only company to offer a one, three and five injection treatment regimen. We offer the highest molecular weight single injection product known as Durolane®.
- **Introduce new pain treatment products as well as complementary products within sports medicine.** We plan to expand our offering beyond HA viscosupplementation, and nerve stimulation into sports medicine by building a comprehensive portfolio for pain and sports medicine treatments for launch over the next several years.
- **Further develop and commercialize our surgical solutions portfolio.** We intend to grow our presence in the surgical solutions market and expand our reach into the operating room in both ambulatory surgical centers ("ASCs") and hospitals. In the near-term, we plan to maintain and selectively expand our profitable product lines by expanding our direct surgical sales team over time. We intend to launch product line enhancements and invest in the development of next-generation surgical solution therapies to continue to grow our market share.
- **Invest in research and development.** We are focused on internal research and development to broaden our portfolio of Pain Treatments, Surgical Solutions and Restorative Therapies. We rely on a team of highly trained individuals to develop new products, conduct clinical investigations and help educate health care providers using our products. We collaborate with academic centers of excellence, leading contract research organizations and other industry groups to complement and expedite execution of our research and development programs and minimize fixed costs.
- **Opportunistically grow our international markets.** We intend to focus our international business on markets where our existing portfolio can maintain profitable growth over time, either through direct or distributor based channels. We plan to selectively expand to new markets and intend to pursue further opportunities in the Asia Pacific markets.

Our products

We offer a diverse portfolio of products to serve physicians spanning the orthopedic continuum, including sports medicine, total joint reconstruction, hand and upper extremities, foot and ankle, podiatric surgery, trauma, spine and neurosurgery, in the physician's office or clinic, ASCs or in the hospital setting. Our portfolio of products is grouped into three verticals based on clinical use: (i) Pain Treatments, (ii) Surgical Solutions and (iii) Restorative Therapies.

Pain Treatments

Our joint Pain Treatment products include peripheral nerve stimulation ("PNS") and hyaluronic acid-based ("HA") products for knee osteoarthritis. Our HA products are designed to work with the body's biological processes, providing a natural lubricant into the joint, that relieve mild to moderate pain, improves mobility, and helps the patient get back to their normal activities. Our PNS product targets peripheral nerve pain at its source without drugs and its small profile allows the system to be implanted in many locations on the body, depending on patient needs.

Durolane is an FDA-approved sterile, transparent and viscoelastic gel that is a single injection therapy that is indicated in the United States for the symptomatic treatment of OA in the knee in patients who have failed to respond adequately to conservative non-pharmacological therapy and simple analgesics. Durolane is also indicated for the hip, ankle and shoulder, as well as for treatment of other small orthopedic joints outside the United States. Durolane contains high levels of HA and is injected directly into the joints affected by OA to relieve pain and restore lubrication and cushioning. This may improve joint function and help to potentially avoid or delay knee replacement surgery.

Physicians administer Durolane to the affected knee joint in a single injection and it has been observed to provide a benefit for pain reduction in patients with OA in the knee for up to 26 weeks. Durolane's injection schedule results in economic advantages and greater patient convenience and compliance compared to other HA viscosupplementation therapies which require weekly injections over a period of three to five weeks. Durolane is highly purified and based upon a natural and patented non-animal stabilized HA ("NASHA"), expanding use to patients who are allergic to animal derived solutions. We currently market Durolane in the United States and Europe.

GELSYN-3™ is an FDA-approved sterile, buffered solution of highly purified sodium hyaluronate that is administered as a three injection HA viscosupplementation therapy. It is indicated for the treatment of pain due to knee OA in patients who have failed to respond adequately to conservative non-pharmacologic therapy and simple analgesics. The solution treats knee OA by providing temporary replacement for the diseased synovial fluid and restoring lubricity of bearing joint surfaces. Physicians administer GELSYN-3 to the affected knee joint once a week for three consecutive weeks. GELSYN-3 provides relief of knee pain and may help delay the need for total knee replacement surgery. GELSYN-3 is derived from bacterial fermentation, is highly purified and does not involve the use of animal products, thereby reducing the potential risk of an immune response following injection. We currently market GELSYN-3 in the United States.

SUPARTZ™ is an FDA-approved sterile and viscoelastic solution of HA that is administered as a five injection HA viscosupplementation therapy. It is indicated for the treatment of pain in patients with knee OA who failed to adequately respond to conservative nonpharmacological therapy and simple analgesics. The solution treats knee OA by providing temporary replacement for the diseased synovial fluid and restoring the lubricity of the bearing joint surfaces. Physicians administer SUPARTZ FX to the affected knee joint once a week for five consecutive weeks. SUPARTZ FX may also delay the need for total knee replacement. SUPARTZ FX is derived from HA extracted from certified and veterinary inspected chicken combs. We currently market SUPARTZ FX in the United States.

Our StimRouter® Peripheral Nerve Stimulation ("PNS") system is a permanent option that provides relief for chronic peripheral pain including: Nerve Pain, Neuroma, Neuropathic Pain, Post-Stroke Shoulder Pain and Neuralgia. StimRouter is implanted during a minimally invasive outpatient procedure performed under local anesthetic and delivers gentle electrical pulses directly to target peripheral nerve pain at its source. Its small profile allows the system to be implanted in many locations around the body, depending on patient needs. StimRouter is ideally suited for patients with chronic pain of a peripheral origin who are unable to find sustained pain relief with other treatment options such as nerve blocks, nerve ablation, and other temporary treatments. StimRouter is programmed with up to eight different stimulation programs from which the patient is able to select, turn off/on and increase or decrease the stimulation intensity.

Developmental and clinical pipeline for Pain Treatments

The TalisMann® Pulse Generator and Receiver (not yet cleared by FDA) is an accessory to the StimRouter® PNS system and is designed to provide more powerful stimulation to the targeted peripheral nerve, potentially enabling physicians to address chronic pain of a peripheral nerve origin in larger, deeper, or damaged nerves. TalisMann has a small profile and is attached to the StimRouter lead intraoperatively and pocketed under the skin after the StimRouter lead electrodes are placed near the targeted peripheral nerve.

Trice Medical, Inc.

On August 23, 2021, we made a strategic investment in Trice Medical, Inc. ("Trice"). Trice is a privately held company that develops and commercializes minimally invasive technologies for sports medicine and orthopedic surgical procedures. Trice combines its handheld arthroscope and portable ultrasound visualization technologies with its surgical devices to treat a range of sports medicine and orthopedic conditions, including tendinopathy, planter fasciitis and carpel tunnel, in order to improve patient recovery time, reduce pain, minimize scarring and move surgical procedures out of higher cost points of care. Trice's established and growing presence in sports medicine and orthopedics is directly aligned with our strategy of expanding our offerings.

Our investment resulted in exclusive sales and distribution rights to Trice's products outside of the U.S. and a seat on the Trice board of directors. We also entered into a co-development arrangement to explore the integration of Trice technologies with our current and future PNS products in order to accelerate the adoption of both of our products.

Surgical Solutions

Our Surgical Solutions product portfolio is comprised of clinically efficacious and cost-effective bone graft solutions to meet a broad range of patient needs and procedures. Bone grafting is a surgical procedure used to fuse spinal vertebrae, replace missing bones, fix bones that are damaged from trauma or problem joints, or to facilitate growing bones around an implanted device, such as a total knee replacement. Our products are designed to improve bone fusion rates following spinal and other orthopedic surgeries, including trauma and reconstructive foot and ankle procedures. Our portfolio is also comprised of surgical ultrasonic systems. These products are used for precise bone sculpting, removal of soft and hard tumors, and tissue debridement, primarily in the areas of neurosurgery, orthopedic surgery, plastic surgery, wound care and maxillo-facial surgery.

OSTEOAMP® is an allograft-derived bone graft with growth factors used for orthopedic, neurosurgical and reconstructive bone grafting procedures. OSTEOAMP is an allogeneic bone graft that is available in multiple formats (fibers, putty, sponge and granules) that is processed with bone marrow cells to maintain the wide array of growth factors present in native bone. We currently market OSTEOAMP in the United States. We launched OSTEOAMP Flowable in 2021, which is designed to be moldable and easy to use, with a convenient, ready to use syringe. Additionally, a customized cannula-based delivery system is currently in development, which will enhance handling properties of the device further enabling use in minimally invasive surgical procedures. FDA 510K submission for this device is planned for the fourth quarter of 2023.

EXPONENT provides an osteoconductive scaffold with osteoinductive potential while providing optimal handling characteristics indicated for posterolateral spine procedures. EXPONENT is derived from human allograft bone tissue and is combined with a migration-resistant resorbable carrier and formulated into a putty that is ready-to-use out of the syringe. EXPONENT is highly malleable and easy to mold and pack into the surgical defect. Donor bone is sourced from AATB-certified and FDA-registered tissue banks in the United States. All tissues are screened for the standard panel of infectious viruses. We currently market EXPONENT in the United States.

PUREBONE provides a natural osteoconductive scaffold that facilitates cellular ingrowth and revascularization which is indicated for orthopedic, neurosurgical and reconstructive bone grafting procedures. PUREBONE is 100% human bone, and is available as demineralized cortical fibers, demineralized cancellous strips and blocks, and mineralized cancellous chips. Demineralized cortical fibers are easy to mold, shape and pack, and provide osteoinductive potential. The fibers demonstrate high fluid retention and expansion properties, which potentially increases the opportunity for bone-on-bone contact. Demineralized block and strip formats provide interconnected porosity with compressible, sponge-like handling characteristics, and provide osteoinductive potential. Mineralized cancellous chips range from 1-4 mm and 4-10 mm granule size for optimal void packing capabilities. Demineralized PUREBONE formats provide osteoinductive potential to recruit and differentiate bone-forming cells. Donor bone is sourced from AATB-certified and FDA-registered tissue banks in the United States. All tissues are screened for the standard panel of infectious viruses. We currently market PUREBONE in the United States.

SIGNAFUSE contains a synergistic combination of biomaterials that supports new bone formation which is indicated for standalone posterolateral spine, extremities and pelvis, as well as a bone graft extender in the posterolateral spine. SIGNAFUSE is a synthetic bone graft made up of bioglass and a biphasic mineral (60% hydroxyapatite, 40% β-tricalcium phosphate) available in putty and strip formats. Bioactive synthetic bone graft substitute is comprised of a mixture of calcium phosphate granules and bioglass granules suspended in a resorbable polymer carrier that facilitates handling and delivery of the granule components to fill spaces of missing bone. The unique and synergistic combination of biomaterials in SIGNAFUSE is designed to help accelerate cellular activity and kickstart osteogenesis. We currently market SIGNAFUSE in the United States.

INTERFACE is designed to facilitate a rapid biologic response that stimulates the bone healing process and is used for posterolateral spine when mixed with autograft, extremities and pelvis. INTERFACE's patented particle technology is designed for enhanced bone graft performance through irregularly shaped synthetic bioglass granules that provide an osteoconductive scaffold for new osseous ingrowth and tissue generation. The patented bioglass component stimulates the formation of an apatite layer as early as seven days on the surface of the granules. The apatite surface layer that is formed is equivalent in composition and structure to the hydroxyapatite found in bone and provides an osteoconductive bioactive scaffold that supports the generation of new osseous tissue. New bone infiltrates around the granules, allowing the repair of the defect as the granules are absorbed. The patented INTERFACE Bioactive Bone Graft particle size of 210-420 microns is designed for a faster speed of bone fill than glass particles with a broader particle size distribution of 90-710 microns and smaller particles below 210 microns. INTERFACE features consistent composition without variability inherently found in particle size and porosity of tissue based grafts. INTERFACE Bioactive Bone Graft conforms to ASTM specification F1538 for 45S5 bioactive glass. INTERFACE is packed in a sterile, single use vial. We currently market INTERFACE in the United States.

OSTEOMATRIX+ is a synthetic bone graft with exceptional handling, rapid hydration and a biphasic composition for sustained performance used on the posterolateral spine, extremities and pelvis. OSTEOMATRIX+ is a moldable bone graft substitute consisting of biphasic granules designed to produce a reliable, porous scaffold and sustained osteoconductivity throughout bone remodeling. The OSTEOMATRIX+ biphasic granules are composed of 60% hydroxyapatite and 40% beta-tricalcium phosphate ("β-TCP"), a ratio demonstrated to have advantageous bone remodeling properties. The long-term stability of hydroxyapatite and the solubility of β-TCP provide an osteoconductive graft with an optimal resorption profile. Interconnected macropores provide a porous, osteoconductive matrix that mimics a natural scaffold for cellular ingrowth and revascularization. Three-dimensional micropores enhance the flow and circulation of biological fluids. We currently market OSTEOMATRIX+ in the United States.

CELLXTRACT is a bone marrow aspirate without dilution or centrifugation. CELLXTRACT provides high levels of cells and their associated signals to deliver optimum clinical results. Independently reviewed clinical data shows the number of stem cells collected by CELLXTRACT, as counted by fibroblast-like colony-forming units ("CFU-f"), were greater than aspirations from a standard needle of similar volumes and was comparable or greater than final products after centrifugation. Autologous bone marrow aspirate ("BMA") contains the needed cells and growth factors to enhance bone healing. There is no waste of biologic material or discard of viable cells compared to inherent inefficiencies in centrifuge-based systems. We believe potential savings can be realized as compared to the centrifuge-based competitors. Generally, the cost of CELLXTRACT is less than the disposable kit associated with those systems. No additional personnel is needed to operate equipment as no centrifugation is required. The aspirated fluid is not required to leave the sterile field for centrifugation, creating less risk for contamination or infection. Traditional needles require repositioning via an additional insertion point(s) or angling in order to access a fresh channel of BMA increasing the risk of infection, blood loss, and operative time. CELLXTRACT, on the other hand, only requires one insertion point minimizing the risks to the patient. We currently market CELLXTRACT in the United States.

EXTRACTOR is a complementary and cost-effective solution designed to add needed cells and signals to aid in bone healing. EXTRACTOR provides a six-ported cannula with a simplistic design for more flexible positioning and enhanced marrow extraction. The large side port design of EXTRACTOR allows for better access and retrieval of the bone marrow aspirate which contains the cells and signals needed for solid bone formation. The "twin peaks" tip design allows for easy insertion through the hard wall of the cortical bone. An ergonomically designed handle allows the clinician to apply consistent pressure for greater control. We currently market EXTRACTOR in the United States.

Reficio Demineralized Bone Matrix ("Reficio DBM") is a putty comprised of human demineralized bone matrix and a biocompatible bioabsorbable carrier, carboxymethylcellulose, mixed into a putty-like consistency for ease in surgical use. Reficio DBM is indicated for use as a bone void filler and bone graft substitute for voids or gaps that are not intrinsic to the stability to the bony structure, specifically for the treatment of surgically created osseous defects or osseous defects from traumatic injury to the bone. Reficio DBM can be used for extremities, posterolateral spine and pelvis.

The neXus Ultrasonic Surgical System ("neXus") is a next generation integrated ultrasonic surgical platform that combines all the features of our existing solutions, including BoneScalpel, SonicOne and SonaStar, into a single fully integrated system that serves to power future solutions. The neXus platform is driven by a proprietary digital algorithm that results in more power, efficiency, and control for the surgeon. The device incorporates technology that allows for intuitive setup and use. The neXus system allows for safe and efficient resection of hard and soft tissue, limiting collateral damage to adjacent tissue than conventional surgical instruments, and can be used in a variety of different surgical specialties. In addition, neXus' ease of use enables physicians to fully leverage neXus' capabilities via its digital touchscreen display and smart system setup. Our current ultrasonic applications, which include BoneScalpel, BoneScalpel Access™, Sonastar and SonicOne, all work on the neXus generator. This allows a hospital to access all of our product offerings on this all-in-one console. The neXus Ultrasonic Aspirator System has been commercialized successfully in the United States, Canada, Europe and Australia.

The BoneScalpel® is a state of the art, ultrasonic surgical system capable of enabling precise cutsin hard tissue (e.g. bone). The device is also capable of preserving surrounding soft tissue structures because of its ability to differentiate soft tissue from rigid bone. This device can make precise linear or curved cuts, on any plane, with precision not normally associated with powered instrumentation. We believe that BoneScalpel offers the speed and convenience of a powered instrument without the dangers associated with conventional rotary devices. The effect on surrounding soft tissue is limited due to the elastic and flexible structure of healthy tissue. We believe this is a significant advantage in anatomical regions like the spine where patient safety is of primary concern. In addition, the linear motion of the blunt, tissue-impacting tips avoids accidental 'trapping' of soft tissue while largely eliminating the high-speed spinning and tearing associated with rotary power instruments. We believe the BoneScalpel allows surgeons to improve on existing surgical techniques by creating new approaches to bone cutting, sculpting, and removal, leading to substantial time-savings and increased operation efficiencies.

In addition to BoneScalpel, the Company received 510(k) clearance for its neXus® BoneScalpel® Access™ system in December 2021. Specifically, the BoneScalpel Access handpiece and its accessories provides surgeons with a new option for confined spaces during minimally invasive surgery, enabling safe and powerful bone removal with maximum visualization. In addition, BoneScalpel Access allows for en-bloc resection and the shaving and sculpting of bone, with built-in irrigation and aspiration with improved ergonomics for the end user. The BoneScalpel Access handpiece represents best-in-class among ultrasonic surgical platforms, and surgeon feedback following the U.S. market roll out has been positive.

The SonaStar System provides powerful and precise aspiration following the ultrasonic ablation of soft tissue. The SonaStar has been used for a wide variety of surgical procedures applying both open and minimally invasive approaches, including neurosurgery and general surgery. The SonaStar may also be used with OsteoSculpt® probe tips, which enable the precise shaping or shaving of bony structures that prevent open access to partially or completely hidden soft tissue masses.

In addition to SonaStar, the Company received FDA 510K approval in July 2022 for its neXus® SonaStar Elite® handpiece and accessories, which combines all the features of soft and hard (including bone) tissue removal into a single fully integrated platform capable of operating at multiple frequencies, including the newly approved 36 kHz SonaStar Elite Handpiece. While the neXus system can be used in many clinical applications including neurosurgery, the SonaStar Elite handpiece has been cleared for resection of tumors with varying consistencies ranging from soft to firm, including the removal of malignant and benign brain and spinal tumors. The SonaStar Elite handpiece represents the latest innovation in our neXus ultrasonic surgical pipeline. Launch of the product is planned for the fourth quarter of 2023.

Developmental and clinical pipeline for Surgical Solutions (including investments)

As we build the body of clinical evidence supporting our products, we continue to look for and execute on opportunities to innovate in our Surgical Solution portfolio. To meet growing market demand and specifically the needs of surgeons, we continue to develop product extensions on all of our surgical technology platforms, including OsteoAmp and the neXus platform.

Restorative Therapies

Our Restorative Therapies product portfolio is comprised of an Ultrasonic bone healing system and skin allografts and products used to support healing of wounds. Our Restorative Therapies product portfolio is also comprised of Advanced Rehabilitation devices designed to help patients regain leg or hand function due to stroke, multiple sclerosis or other central nervous system disorders.

exogen®
ultrasound bone healing system

EXOGEN® is an ultrasound bone healing system for the non-invasive treatment of established nonunion fractures and certain fresh fractures. A nonunion fracture is considered to be established when the fracture site shows no visibly progressive signs of healing. EXOGEN has been sold commercially for over 25 years and is FDA-approved for the accelerated healing of fresh, closed posteriorly displaced distal fractures of the radius and fresh, closed or grade I open long bone fractures. EXOGEN utilizes low-intensity pulsed ultrasound technology to stimulate the body's natural bone healing process. EXOGEN is used to administer treatment in a location of convenience with an easy to use interface that tracks treatment use and promotes compliance. EXOGEN is indicated in the United States. for the non-invasive treatment of established nonunions, excluding skull and vertebra, and for accelerating the time to a healed fracture for fresh, closed, posteriorly displaced distal radius fractures and fresh, closed or Grade I open long bone fractures in skeletally mature individuals when these fractures are orthopedically managed by closed reduction and cast immobilization. EXOGEN is marketed in the United States., Canada, Europe and Japan. EXOGEN is also approved for marketing in Australia, New Zealand, Saudi Arabia, Turkey and the UAE.

theraskin

TheraSkin® is a biologically active human skin allograft that has all of the relevant characteristics of human skin needed to heal wounds, including living cells, growth factors, and a collagen matrix. TheraSkin is derived from human skin tissue and is an HCT/P. LifeNet processes and supplies TheraSkin to us under a supply and distribution agreement that gives us exclusive rights to sell TheraSkin in the United States. TheraSkin is used on all external skin tissue wounds, including but not limited to difficult to heal diabetic foot ulcers, venous leg ulcers, dehisced surgical wounds, necrotizing fasciitis, burns, Mohs and wounds with exposed structures.

theragenesis®

TheraGenesis® is a Bilayer Wound Matrix and Meshed Bilayer Wound Matrix consisting of a porcine collagen sponge layer and a silicone film layer that provides a scaffold for cellular invasion and capillary growth for management of wounds including partial and full-thickness wounds, chronic wounds, surgical wounds, trauma wounds and draining wounds. We obtain TheraGenesis under an exclusive supply and distribution agreement with Gunze Limited that gives us exclusive rights to distribute the product in the United States.

sonicone®

The SonicOne Ultrasonic Cleansing and Debridement System is a highly innovative, tissue specific approach for the removal of devitalized or necrotic tissue and fibrin deposits while sparing viable, surrounding cellular structures. The tissue specific capability is, in part, due to the fact that healthy and viable tissue structures have a higher elasticity and flexibility than necrotic tissue and are more resistant to destruction from the impact effects of ultrasound. The ultrasonic debridement process separates devitalized tissue from viable tissue layers, allowing for a more defined treatment and, usually, a reduced pain sensation. We believe that SonicOne establishes a new standard in wound bed preparation, the essential first step in the healing process, while contributing to a faster patient healing.

L300 GO is a functional electrical stimulation that produces measurable mobility improvements for patients living with foot drop and thigh weakness. A 3-axis gyroscope and accelerometer are embedded in the Stimulator to monitor user movement in all three kinematic planes and deploy stimulation in 0.01 seconds of detecting a valid gait event. Through an adaptive, learning algorithm, the L300 Go is designed to detect gait events, providing stimulation precisely when needed making it easier for users to clear their foot at different walking speeds, on stairs, ramps, and while navigating uneven terrain.

H200 Wireless is a hand rehabilitation system that supports the wrist in a functioning position, allowing the fingers and thumb to move efficiently while reaching, grasping and pinching. H200 Wireless has two main parts that communicate wirelessly with each other: the functional stimulation support ("orthosis") and the control unit ("microprocessor"). These designed to increase hand function, increase or maintain hand range of motion, reduce muscle spasms, prevent muscle loss, reeducate muscles and/or increase blood circulation. H200 Wireless is programmed by a clinician to stimulate the appropriate nerves and muscles of the forearm and hand. We believe this helps to reeducate electrical brain signals, stimulating weak or paralyzed muscles.

Vector is a body weight support system designed to accelerate physical rehabilitation of patients with severe gait and/or balance impairment. The system unloads a programmed amount of weight to enable the patient to practice walking with less than his or her full body weight. Vector is designed to alleviate the risk of falling and provides a feeling of security, instilling confidence in patients and empowering clinicians to develop effective and challenging rehabilitation regimens. Vector is designed to reduce safety risks so clinicians can remain focused on their patient's execution of an activity. Designed for both physical and occupational therapy, Vector is designed to provide a safe environment and real-world experience for adult and pediatric patients recovering from stroke, amputations, and orthopedic, brain and spinal cord injuries.

The Bioness Integrated Therapy System ("BITS"®) is an affordable and versatile solution for vision, motor and balance training for individuals, including those with deficits resulting from traumatic injuries and movement disorders as well as competitive athletes. BITS is a multi-disciplinary therapy solution designed to motivate patients and enhance clinician efficiency. BITS's interactive touchscreen and diverse program options challenge patients to improve performance through the use of visual motor activities, visual and auditory processing, cognitive skills, endurance and balance training. Standardized assessments and progress reports make documenting outcomes quick and easy. With the large variety of BITS programs, therapists can choose activities that are tailored to each individual. BITS programs can be further modified to accommodate varying degrees of difficulties. With hundreds of possible parameter combinations, BITS can be customized even further to provide a unique therapy experience for each patient. BITS is optimized for occupational therapy, physical therapy and speech language pathology.

Developmental and clinical pipeline for Restorative Therapies

Our expansive direct sales and distribution channel across our product portfolio provides us with broad and differentiated customer reach, and allows us to serve physicians spanning the orthopedic continuum, including sports medicine, total joint reconstruction, hand and upper extremities, foot and ankle, podiatric surgery, trauma, spine and neurosurgery. We believe our products or procedures using our products are widely reimbursed by both public and private health insurers and are sold in the physician's office or clinic, ASCs, and in the hospital setting in the United States and across approximately 65 countries. Our sales team and distributors work directly with our physician customers on a frequent basis.

Product revenue

Products from our Pain Treatments, Restorative Therapies and Surgical Solutions verticals are sold by direct sales teams in the United States and a complementary distributor team for Surgical Solutions. That team is supported by a broad management team in addition to a market access team focused on expanding approvals with IDNs, GPOs and payers. Internationally our products are sold through a mix of direct and indirect sales teams. We support our entire sales organization with extensive training to help them excel, and we have a performance culture built on serving our core orthopedic patient customers and delivering our products to a variety of physicians and care settings.

Competition

The medical device industry is highly competitive, subject to change and significantly affected by activities of industry participants. We believe that the principal competitive factors in our markets are product features, value-added solutions, reliability, clinical evidence, reimbursement coverage, and price. Customer support, reputation, and efficient distribution are also important factors. The speed with which we can develop products, complete clinical testing and regulatory clearance processes and supply commercial quantities of our products to the market are therefore important competitive factors. We compete with many companies having more significant capital resources, larger research laboratories and more extensive distribution systems than we do.

Our Pain Treatments that we own or distribute compete with products from Ferring Pharmaceutical Inc., Fidia Farmaceutici S.p.A., DePuy Orthopaedics, Inc. (Johnson & Johnson), and Sanofi S.A, OrthogenRx Inc. and for peripheral nerve stimulation specifically we compete with SPR Therapeutics, Nalu and Stimwave.

Our Surgical Solution products compete with products from Medtronic, DePuy Orthopaedics, Inc. (Johnson & Johnson), Stryker Corporation, NuVasive, Inc., Orthofix Medical Inc., Zimmer Biomet Holdings, Inc. and Globus Medical Inc., Johnson & Johnson, Integra Life Sciences, Inc., and Söering.

Our Restorative Therapies compete with products marketed by Orthofix Medical Inc., Zimmer Biomet Holdings, Inc., Enovis, MiMedx, Integra Life Sciences, Organogenesis, Hanger Orthopedics, XFT Medical, Rewalk Robotics, Ekso Bionics, Aretech LLC and DIH Medical.

We strive to protect and enhance the proprietary technologies, inventions and improvements that we believe are important to our business, including seeking, maintaining and defending patent rights, whether developed internally or licensed from third-parties. Our policy is to seek to protect our proprietary position by, among other methods, pursuing and obtaining patent protection in the United States and in jurisdictions outside of the United States related to our proprietary technology, inventions and improvements that are important to the development and implementation of our business. We also rely on trademarks, trade secrets and careful monitoring of and contractual obligations with respect to our proprietary information to protect aspects of our business that are not amenable to, or that we do not consider appropriate for, patent protection.

Patents, trade secrets, assignments and licenses

We rely on a combination of patents, trade secrets, assignment and license agreements, and non-disclosure agreements to protect our proprietary intellectual property. We own numerous patents and/or patent applications which relate to our material products. Although in the aggregate our intellectual property is of material importance to our business, we do not believe that any single patent is of material importance to our product portfolio. As of December 31, 2022, we owned 113 issued U.S. patents and nine pending U.S. patent applications relating to our material products. We also owned 161 issued foreign patents and 50 pending foreign patent applications directed to our material products. Our patents and patent applications as of December 31, 2022 directed to our material products are summarized below.

We own three issued U.S. patents and one issued foreign patent in Australia directed to our Exogen system. The U.S. patents are expected to expire between 2025 and 2029, and the foreign patent is expected to expire in 2025.

We own two issued U.S. patents, ten issued foreign patents, and eight pending foreign patent applications directed to our OsteoAMP product, including foreign patents and patent applications in Europe, Asia, Canada and Australia. The issued U.S. patent is expected to expire in 2029. The issued foreign patents are expected to expire in 2029. The pending patent applications, if issued, are expected to expire in 2029, without accounting for potential patent term extensions and adjustments.

We also own one pending U.S. patent application and one pending Patent Cooperation Treaty application directed to MOTYS. Patents issuing from these applications, if any, are expected to expire in 2040, without accounting for potential patent term extensions and adjustments.

We also own ten issued U.S. patents and twelve issued foreign patents in Australia, Canada, Europe, and Japan directed to our StimRouter system. The U.S. patents are expected to expire between 2026 and 2031, and the foreign patents are expected to expire between 2028 and 2030.

We also own twenty-two issued U.S. patents, two pending U.S. patent applications, fifty-one issued foreign patents, and five pending foreign patent applications directed to our L300 system, including foreign patents and patent applications in Australia, Canada, Europe, and Japan. The U.S. patents are expected to expire between 2026 and 2037, and the foreign patents are expected to expire between 2026 and 2037. The pending patent applications, if issued, are expected to expire between 2026 and 2037, without accounting for potential patent term extensions and adjustments.

We also own fourteen issued U.S. patents, three pending U.S. patent applications, sixteen issued foreign patents, and nine pending foreign patent applications directed to our Vector Gait and Safety System, including foreign patents and patent applications in in Australia, Canada, Europe, and Japan. The U.S. patents are expected to expire between 2033 and 2038, and the foreign patents are expected to expire between 2034 and 2036. The pending patent applications, if issued, are expected to expire between 2033 and 2038, without accounting for potential patent term extensions and adjustments.

We also own one issued U.S. patent, one issued foreign patent in Australia and one pending foreign application in Canada directed to our Bioness Integrated Therapy System ("BITS"). The U.S. patent is expected to expire in 2037, and the foreign patent is expected to expire in 2036. The pending patent application, if issued, is expected to expire in 2036, without accounting for potential patent term extensions and adjustments.

We also own one issued U.S. patent and one pending U.S. patent application and four pending foreign patent applications directed to our TalisMann product, including foreign patent applications in Australia, Canada, Europe, Japan and one pending Patent Cooperation Treaty application. The U.S. patent is expected to expire in 2039. The pending patent applications, if issued, are expected to expire between 2039 and 2040, without accounting for potential patent term extensions and adjustments. We also own twenty-four issued U.S. patents and four pending U.S. patent applications directed to our BoneScalpel product.

Our patents and pending patent applications directed to our material products are further detailed in Exhibit 99.1 to this Annual Report.

Trademarks

We own registered trademarks for Bioventus, Bioness, BITS, Bonescalpel, BoneScalpel Access, Cellxtract, Durolane, Exogen, Exponent, Gelsyn-3, LiveOn, L300 Go, Misonix, Ness, Ness L300, neXus, OsteoAMP, Osteofuse, Prohesion, PureBone, SAFHS, Signafuse, Sonastar, SonaStar Elite, StimRouter, TheraSkin, Therion and Vector Gait and Safety System in the United States.

Trade secrets

We may rely on trade secret law to protect some of our technology. Trade secrets, however, can be difficult to protect. We seek to protect our proprietary technology and manufacturing process, in part, by confidentiality and invention assignment agreements with employees, consultants scientific advisors and contractors, under which they are bound to assign to us certain inventions that are made during the course of performing work for us and relate to our business. These agreements further restrict the use and disclosure of proprietary information belonging to any third-party. These agreements further prohibit our employees from using, disclosing, or bringing onto the premises any proprietary information belonging to any third-party.

In addition to patents, trademarks, and trade secrets, we also rely on assignment and license agreements, pursuant to which we may license rights under patents held by third-parties, and non-disclosure agreements, to protect our proprietary intellectual property. We obtain assignments or licenses of varying durations for certain of our products from third-parties. We typically acquire rights under such assignments or licenses in exchange for lump-sum payments or arrangements under which we pay a percentage of sales to the licensor. However, while assignments or licenses to us generally are irrevocable, no assurance can be given that these arrangements will continue to be made available to us on terms that are acceptable to us, or at all. The terms of our license and assignment agreements vary in length from a specified number of years to the life of product patents or the economic life of the product. These agreements generally provide for royalty payments and termination rights in the event of a material breach.

We will continue to seek patent, trademark, and copyright protection as we deem advisable to protect the markets for our products and to support our research and development efforts.

Manufacturing and supply

We largely manufacture and assemble our medical device products at our production facilities located in Cordova, TN, Farmingdale, NY, Valencia, CA and Hod Hasharon, Israel. We believe our manufacturing operations are in compliance with regulations mandated by the FDA. We are an FDA-registered medical device manufacturer. Our manufacturing facilities and processes are subject to periodic inspections and audits by various federal, state and foreign regulatory agencies. Our products include components manufactured by other companies in the United States and elsewhere.

Some of our products and product components are manufactured exclusively by single-source third-party manufacturers, pursuant to multi-year supply agreements and may include minimum order volumes. We work closely with each of our manufacturing partners and provide them with a forecast, which enables them to better capacity plan and sequence their production efficiently.

We may encounter difficulty in obtaining materials, supplies and components adequate for our anticipated short-term needs. In addition, supply disruptions resulting from the COVID-19 pandemic may increase the price of, and make more difficult to obtain, materials, supplies or components. We intend to maintain sufficient supplies of the products and components from these single-source suppliers in the event that one or more of these suppliers were to encounter certain interruptions in supply.

Government regulation

Our products and operations are subject to extensive regulation by the FDA and other federal and state authorities in the United States, as well as comparable authorities in foreign jurisdictions. In the United States, our products and product candidates are regulated as either medical devices under the Federal Food, Drug, and Cosmetic Act ("FDCA"), and its implementing regulations, or as drugs or biological products under the FDCA and the Public Health Service Act ("PHSA"), and their implementing regulations, each as amended and enforced by the FDA. The FDA regulates the development, design, non-clinical and clinical research, manufacturing, safety, efficacy, labeling, packaging, storage, installation, servicing, recordkeeping, premarket clearance or approval, adverse event reporting, advertising, promotion, marketing and distribution, and import and export of medical devices and biological products to ensure that such products distributed domestically are safe and effective for their intended uses and otherwise meet the applicable requirements of the FDCA and PHSA.

U.S. Regulation of Medical Devices

The majority of our products are regulated by the FDA as medical devices in the United States. Unless an exemption applies, each medical device commercially distributed in the United States requires either FDA clearance of a 510(k) premarket notification, or approval of a PMA application. Under the FDCA, medical devices are classified into one of three classes—Class I, Class II or Class III—depending on the degree of risk associated with each medical device and the extent of manufacturer and regulatory control needed to ensure its safety and effectiveness. Devices deemed by the FDA to pose the greatest risks, such as life sustaining, life supporting or some implantable devices, or devices that have a new intended use, or use advanced technology that is not substantially equivalent to that of a legally marketed device, are placed into Class III.

While most Class I devices are exempt from the 510(k) premarket notification requirement, manufacturers of most Class II devices are required to submit to the FDA a premarket notification under Section 510(k) of the FDCA requesting permission to commercially distribute the device. The FDA's permission to commercially distribute a device subject to a 510(k) premarket notification is generally known as 510(k) clearance. Class III devices require approval of a premarket approval application, or PMA, evidencing safety and effectiveness of the device.

To obtain 510(k) clearance, a manufacturer must submit a premarket notification demonstrating to the FDA's satisfaction that the proposed device is "substantially equivalent" to another legally marketed device that itself does not require PMA approval (a predicate device). A predicate device is a legally marketed device that is not subject to premarket approval, i.e., a device that was legally marketed prior to May 28, 1976 (pre-amendments device) and for which a PMA is not required, a device that has been reclassified from Class III to Class II or I, or a device that was found substantially equivalent through the 510(k) process. The FDA's 510(k) clearance process usually takes from three to twelve months, but often takes longer. The FDA may require additional information, including clinical data, to make a determination regarding substantial equivalence. In addition, the FDA collects user fees for certain medical device submissions and annual fees for medical device establishments.

If the FDA agrees that the device is substantially equivalent to a lawfully marketed predicate device, it will grant 510(k) clearance to authorize the device for commercialization. If the FDA determines that the device is "not substantially equivalent," the device is automatically designated as a Class III device. The device sponsor must then fulfill more rigorous PMA requirements, or can request a risk-based classification determination for the device in accordance with the *de novo* classification process, which is a route to market for novel medical devices that are low to moderate risk and are not substantially equivalent to a predicate device.

After a device receives 510(k) clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a major change or modification in its intended use, will require a new 510(k) clearance or, depending on the modification, PMA approval or *de novo* classification. The FDA requires each manufacturer to determine whether the proposed change requires submission of a 510(k), *de novo* classification request or a PMA in the first instance, but the FDA can review any such decision and disagree with a manufacturer's determination. If the FDA disagrees with a manufacturer's determination not to seek a new 510(k) or other form of marketing authorization for the modification to the 510(k)-cleared product, the FDA can require the manufacturer to cease marketing and/or request the recall of the modified device until 510(k) clearance or PMA approval is obtained or a *de novo* classification is granted.

The PMA process is more demanding than the 510(k) premarket notification process. In a PMA, the manufacturer must demonstrate that the device is safe and effective, and the PMA must be supported by extensive data, including data from preclinical studies and human clinical trials. All clinical investigations of devices to determine safety and effectiveness must be conducted in accordance with the FDA's investigational device exemption ("IDE"), regulations which govern investigational device labeling, prohibit promotion of the investigational device, and specify an array of recordkeeping, reporting and monitoring responsibilities of study sponsors and study investigators. If the device presents a "significant risk," to human health, as defined by the FDA, the FDA requires the device sponsor to submit an IDE application to the FDA, which must become effective prior to commencing human clinical trials. A significant risk device is one that presents a potential for serious risk to the health, safety or welfare of a patient and either is implanted, used in supporting or sustaining human life, substantially important in diagnosing, curing, mitigating or treating disease or otherwise preventing impairment of human health, or otherwise presents a potential for serious risk to a subject. In addition, the study must be approved by, and conducted under the oversight of, an Institutional Review Board ("IRB"), for each clinical site. The IRB is responsible for the initial and continuing review of the IDE, and may pose additional requirements for the conduct of the study. If the device presents a non-significant risk to the patient, a sponsor may begin the clinical trial after obtaining approval for the trial by one or more IRBs without separate approval from the FDA, but must still follow abbreviated IDE requirements, such as monitoring the investigation, ensuring that the investigators obtain informed consent, and labeling and record-keeping requirements.

In addition to clinical and preclinical data, the PMA must contain a full description of the device and its components, a full description of the methods, facilities, and controls used for manufacturing, and proposed labeling. Following receipt of a PMA, the FDA determines whether the application is sufficiently complete to permit a substantive review. If the FDA accepts the application for review, it has 180 days under the FDCA to complete its review of a PMA, although in practice, the FDA's review often takes significantly longer, and can take up to several years. An advisory panel of experts from outside the FDA may be convened to review and evaluate the application and provide recommendations to the FDA as to the approvability of the device. The FDA may or may not accept the panel's recommendation. In addition, the FDA will generally conduct a pre-approval inspection of the applicant or its third-party manufacturers' or suppliers' facilities to ensure compliance with the QSR.

The FDA will approve the new device for commercial distribution if it determines that the data and information in the PMA constitute valid scientific evidence and that there is reasonable assurance that the device is safe and effective for its intended use(s). The FDA may approve a PMA with post-approval conditions intended to ensure the safety and effectiveness of the device, including, among other things, restrictions on labeling, promotion, sale and distribution, and collection of long-term follow-up data from patients in the clinical study that supported PMA approval or requirements to conduct additional clinical studies post-approval. The FDA may condition PMA approval on some form of post-market surveillance when deemed necessary to protect the public health or to provide additional safety and efficacy data for the device in a larger population or for a longer period of use. In such cases, the manufacturer might be required to follow certain patient groups for a number of years and to make periodic reports to the FDA on the clinical status of those patients. Failure to comply with the conditions of approval can result in material adverse enforcement action, including withdrawal of the approval. Certain changes to an approved device, such as changes in manufacturing facilities, methods, or quality control procedures, or changes in the design performance specifications, which affect the safety or effectiveness of the device, require submission of a PMA supplement, or in some cases a new PMA.

After a device is cleared or approved or otherwise authorized for marketing, numerous pervasive regulatory requirements continue to apply unless explicitly exempt. These include:

- establishment registration and device listing with the FDA;
- QSR requirements, which require manufacturers, including third-party manufacturers, to follow stringent design, testing, control, documentation and other quality assurance procedures during all aspects of the design and manufacturing process;
- labeling and marketing regulations, which require that promotion is truthful, not misleading, fairly balanced and provide adequate directions for use and that all claims are substantiated, and also prohibit the promotion of products for unapproved or "off-label" uses and impose other restrictions on labeling; FDA guidance on off-label dissemination of information and responding to unsolicited requests for information;
- clearance or approval of product modifications to 510(k)-cleared devices that could significantly affect safety or effectiveness or that would constitute a major change in intended use of one of our cleared devices;
- medical device reporting regulations, which require that a manufacturer report to the FDA if a device it markets may have caused or contributed to a death or serious injury, or has malfunctioned and the device or a similar device that it markets would be likely to cause or contribute to a death or serious injury, if the malfunction were to recur;
- correction, removal and recall reporting regulations, which require that manufacturers report to the FDA field corrections and product recalls or removals if undertaken to reduce a risk to health posed by the device or to remedy a violation of the FDCA that may present a risk to health;

- complying with requirements governing Unique Device Identifiers on devices and also requiring the submission of certain information about each device to the FDA's Global Unique Device Identification Database;
- the FDA's recall authority, whereby the agency can order device manufacturers to recall from the market a product that is in violation of governing laws and regulations; and
- post-market surveillance activities and regulations, which apply when deemed by the FDA to be necessary to protect the public health or to provide additional safety and effectiveness data for the device.

HCT/Ps

Certain of our products are regulated as HCT/P. Section 361 of the PHSA authorizes the FDA to issue regulations to prevent the introduction, transmission or spread of communicable disease. HCT/Ps regulated as "Section 361" HCT/Ps are subject to requirements relating to registering facilities and listing products with the FDA, screening and testing for tissue donor eligibility, current Good Tissue Practices ("cGTPs"), when processing, storing, labeling and distributing HCT/Ps, including required labeling information, stringent record keeping and adverse event reporting, among other applicable requirements and laws. Section 361 HCT/Ps do not require 510(k) clearance, PMA approval, BLAs, or other premarket authorization from the FDA before marketing. However, to be regulated as a Section 361 HCT/P, the product must, among other things, be "minimally manipulated," which for structural tissue products means that the manufacturing processes do not alter the original relevant characteristics of the tissue relating to the tissue's utility for reconstruction, repair, or replacement and for cells or nonstructural tissue products, means that the manufacturing processes do not alter the relevant biological characteristics of cells or tissues. A Section 361 HCT/P must also be intended for "homologous use," which refers to use in the repair, reconstruction, replacement, or supplementation of a recipient's cells or tissues with an HCT/P that performs the same basic function or functions in the recipient as in the donor. HCT/Ps that do not meet the criteria of Section 361 are regulated under Section 351 of the PHSA. Unlike 361 HCT/Ps, HCT/Ps regulated as "351" HCT/Ps are subject to premarket review and/or approval by the FDA, as required.

In November 2017, the FDA released a guidance document entitled "Regulatory Considerations for Human Cells, Tissues, and Cellular and Tissue—Based Products: Minimal Manipulation and Homologous Use—Guidance for Industry and Food and Drug Administration Staff." The guidance outlined the FDA's position that all lyophilized amniotic products are more than minimally manipulated and would therefore require a BLA to be lawfully marketed in the United States. The guidance also indicated that the FDA would exercise enforcement discretion, using a risk-based approach, with respect to the IND application and pre-market approval requirements for certain HCT/Ps that had been marketed without marketing authorization, including, among others, lyophilized amniotic products, for a period of 36 months from the issuance date of the guidance to allow manufacturers to pursue INDs and/or seek marketing authorizations. Under this approach, the FDA indicated that high-risk products and uses could be subject to immediate enforcement action. In July 2020, the FDA extended its period of enforcement discretion to May 31, 2021. The FDA resumed enforcement of IND and premarket approval requirements with respect to these products as of June 1, 2021.

U.S. Regulation of Drugs and biological products

In the United States, the FDA regulates drugs under the FDCA, and its implementing regulations, and biologics under the FDCA and the PHSA and their implementing regulations. The process required by the FDA before a drug or biologic may be marketed in the United States generally involves the following:

- completion of preclinical laboratory tests and animal studies performed in accordance with the FDA's Good Laboratory Practice requirements;
- submission to the FDA of an IND, which must become effective before clinical trials may begin;
- approval by an IRB or ethics committee at each clinical site before the trial is commenced;
- performance of adequate and well-controlled human clinical trials to establish the safety, efficacy, purity and potency of the proposed product candidate for its intended purpose;
- preparation of and submission to the FDA of a BLA for biologics or New Drug Application (NDA) for small molecule drugs after completion of all pivotal clinical trials;
- satisfactory completion of an FDA Advisory Committee review, if applicable;
- a determination by the FDA within 60 days of its receipt of a BLA or NDA to file the application for review;
- satisfactory completion of an FDA pre-approval inspection of the manufacturing facility or facilities at which the proposed product is produced to assess compliance with cGMPs and to assure that the facilities, methods and controls are adequate to preserve the biological product's continued safety, purity and potency, and of selected clinical investigation sites to assess compliance with Good Clinical Practices ("GCPs"); and
- FDA review and approval of the BLA or NDA to permit commercial marketing of the product for particular indications for use in the United States.

Prior to beginning clinical trials of a new drug or biologic product in the United States, an IND must be submitted to the FDA. An IND is a request for authorization from the FDA to administer an investigational new drug product to humans. An IND must become effective before human clinical trials may begin. Assuming successful completion of all required testing in accordance with all applicable regulatory requirements, the results of product development, nonclinical studies and clinical trials are submitted to the FDA as part of an NDA or BLA requesting approval to market the product for one or more indications. The BLA or NDA must include all relevant data available from preclinical and clinical studies, including negative or ambiguous results as well as positive findings, together with detailed information relating to the product's chemistry, manufacturing, controls, and proposed labeling, among other things. The submission of a BLA or NDA requires payment of a substantial application user fee to the FDA, unless a waiver or exemption applies.

After the FDA evaluates a BLA or NDA and conducts inspections of manufacturing facilities where the investigational product and/or its drug substance will be produced and of select clinical trial sites, the FDA may issue an approval letter or a Complete Response Letter ("CRL"). An approval letter authorizes commercial marketing of the product with specific prescribing information for specific indications. A CRL will describe all of the deficiencies that the FDA has identified in the BLA or NDA, except that where the FDA determines that the data supporting the application are inadequate to support approval, the FDA may issue the CRL without first conducting required inspections, testing submitted product lots, and/or reviewing proposed labeling. In issuing the CRL, the FDA may recommend actions that the applicant might take to place the BLA or NDA in condition for approval, including requests for additional information or clarification. The FDA may delay or refuse approval of a BLA or NDA if applicable regulatory criteria are not satisfied, require additional testing or information and/or require post-marketing testing and surveillance to monitor safety or efficacy of a product.

If regulatory approval of a product is granted, such approval will be granted for particular indications and may include limitations on the indicated uses for which such product may be marketed. The FDA also may condition approval on, among other things, changes to proposed labeling or the development of adequate controls and specifications. Once approved, the FDA may withdraw the product approval if compliance with pre- and post-marketing requirements is not maintained or if problems occur after the product reaches the marketplace. The FDA may require one or more post-market studies and surveillance to further assess and monitor the product's safety and effectiveness after commercialization, and may limit further marketing of the product based on the results of these post-marketing studies.

Any drugs or biologics manufactured or distributed pursuant to FDA approvals are subject to pervasive and continuing regulation by the FDA, including, among other things, requirements relating to record-keeping, reporting of adverse experiences, periodic reporting, product sampling and distribution, and advertising and promotion of the product. After approval, most changes to the approved product, such as adding new indications or other labeling claims, are subject to prior FDA review and approval. There also are continuing, annual program fees for any marketed products. Biologic and drug manufacturers and their subcontractors are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with cGMP, which impose certain procedural and documentation requirements upon us and our third-party manufacturers. Changes to the manufacturing process are strictly regulated, and, depending on the significance of the change, may require prior FDA approval before being implemented. FDA regulations also require investigation and correction of any deviations from cGMP and impose reporting requirements upon us and any third-party manufacturers that we may decide to use. Accordingly, manufacturers must continue to expend time, money and effort in the area of production and quality control to maintain compliance with cGMP and other aspects of regulatory compliance.

Post-market Enforcement

The FDA may withdraw marketing authorizations for drugs, biologics (including Section 361 HCT/Ps) or medical devices if compliance with regulatory requirements and standards is not maintained or if problems occur after the product reaches the market. Later discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with manufacturing processes, or failure to comply with regulatory requirements, may result in revisions to the approved labeling to add new safety information, imposition of post-market studies or clinical studies to assess new safety risks, or imposition of distribution restrictions or other restrictions. Other potential consequences include, among other things: complete withdrawal of the product from the market, product recalls, fines, warning letters, untitled letters, clinical holds on clinical studies, refusal of the FDA to approve pending applications or supplements to approved applications, product seizures or detention, refusal to permit the import or export of products, consent decrees, corporate integrity agreements, debarment or exclusion from federal healthcare programs, the issuance of corrective information, injunctions, or the imposition of civil or criminal penalties.

In addition, the FDA closely regulates the marketing, labeling, advertising and promotion of drugs, biologics (including Section 361 HCT/Ps) and medical devices. A company can make only those claims relating to safety and efficacy, purity and potency that are cleared or approved by the FDA and in accordance with the provisions of the authorized label. The FDA and other agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses. Failure to comply with these requirements can result in, among other things, adverse publicity, warning letters, corrective advertising and potential civil and criminal penalties.

International regulation of medical devices

Sales of medical devices outside the United States are subject to foreign government regulations, which vary substantially from country to country. In order to market our products in other countries, we must obtain regulatory approvals or certifications and comply with extensive safety and quality regulations in other countries. The time required to obtain approval or certification by a foreign country may be longer or shorter than that required for FDA approval and the requirements may differ significantly.

EU regulation of medical devices

The European Union ("EU") has adopted specific directives and regulations regulating the design, manufacture, clinical investigation, conformity assessment, labeling and adverse event reporting for medical devices.

Until May 25, 2021, medical devices were regulated by Council Directive 93/42/EEC (the "EU Medical Devices Directive"), which has been repealed and replaced by Regulation (EU) No 2017/745 (the "EU Medical Devices Regulation"). The majority of our current certificates have been granted under the EU Medical Devices Directive described below. However, as of May 26, 2021, some of the EU Medical Devices Regulation requirements apply in place of the corresponding requirements of the EU Medical Devices Directive with regard to registration of economic operators and of devices, post-market surveillance and vigilance requirements. Pursuing marketing of medical devices in the EU will notably require that all of our devices not currently certified under the new requirements set forth in the EU Medical Devices Regulation receive such certification when the current certificates expire.

Medical Devices Directive

Under the EU Medical Devices Directive, all medical devices placed on the market in the EU must meet the relevant essential requirements laid down in Annex I to the EU Medical Devices Directive, including the requirement that a medical device must be designed and manufactured in such a way that it will not compromise the clinical condition or safety of patients, or the safety and health of users and others. In addition, the device must achieve the performance intended by the manufacturer and be designed, manufactured, and packaged in a suitable manner. The European Commission has adopted various standards applicable to medical devices. These include standards governing common requirements, such as sterilization and safety of medical electrical equipment and product standards for certain types of medical devices. There are also harmonized standards relating to design and manufacture. While not mandatory, compliance with these standards is viewed as the easiest way to satisfy the essential requirements as a practical matter as it creates a rebuttable presumption that the device satisfies that essential requirement.

To demonstrate compliance with the essential requirements laid down in Annex I to the EU Medical Devices Directive, medical device manufacturers must undergo a conformity assessment procedure, which varies according to the type of medical device and its (risk) classification. As a general rule, demonstration of conformity of medical devices and their manufacturers with the essential requirements must be based, among other things, on the evaluation of clinical data supporting the safety and performance of the products during normal conditions of use. Specifically, a manufacturer must demonstrate that the device achieves its intended performance during normal conditions of use, that the known and foreseeable risks, and any adverse events, are minimized and acceptable when weighed against the benefits of its intended performance, and that any claims made about the performance and safety of the device are supported by suitable evidence. Except for low-risk medical devices (Class I non-sterile, non-measuring devices), where the manufacturer can self-declare the conformity of its products with the essential requirements (except for any parts which relate to sterility or metrology), a conformity assessment procedure requires the intervention of a notified body. Notified bodies are independent organizations designated by EU member states to assess the conformity of devices before being placed on the market. A notified body would typically audit and examine a product's technical dossiers and the manufacturers' quality system (the notified body must presume that quality systems which implement the relevant harmonized standards – which is ISO 13485:2016 for Medical Devices Quality Management Systems – conform to these requirements). If satisfied that the relevant product conforms to the relevant essential requirements, the notified body issues a certificate of conformity, which the manufacturer uses as a basis for its own declaration of conformity. The manufacturer may then apply the CE mark to the device, which allows the device to be placed on the market throughout the EU.

Throughout the term of the certificate of conformity, the manufacturer will be subject to periodic surveillance audits to verify continued compliance with the applicable requirements. In particular, there will be a new audit by the notified body before it will renew the relevant certificate(s).

Medical Device Regulation

The regulatory landscape related to medical devices in the EU continues to evolve. On April 5, 2017, the EU Medical Devices Regulation was adopted with the aim of ensuring better protection of public health and patient safety. The EU Medical Devices Regulation establishes a uniform, transparent, predictable and sustainable regulatory framework across the EU for medical devices and ensure a high level of safety and health while supporting innovation. Unlike the EU Medical Devices Directive, the EU Medical Devices Regulation is directly applicable in EU member states without the need for member states to implement into national law. This aims at increasing harmonization across the EU.

The EU Medical Devices Regulation became effective on May 26, 2021. The new Regulation among other things:

- strengthens the rules on placing devices on the market (e.g. reclassification of certain devices and wider scope than the EU Medical Devices Directive) and reinforces surveillance once they are available;
- establishes explicit provisions on manufacturers' responsibilities for the follow-up of the quality, performance and safety of devices placed on the market;
- establishes explicit provisions on importers' and distributors' obligations and responsibilities;
- imposes an obligation to identify a responsible person who is ultimately responsible for all aspects of compliance with the requirements of the new regulation;
- improves the traceability of medical devices throughout the supply chain to the end-user or patient through the introduction of a unique identification number, to increase the ability of manufacturers and regulatory authorities to trace specific devices through the supply chain and to facilitate the prompt and efficient recall of medical devices that have been found to present a safety risk;
- sets up a central database (Eudamed) to provide patients, healthcare professionals and the public with comprehensive information on products available in the EU; and
- strengthens rules for the assessment of certain high-risk devices, such as implants, which may have to undergo a clinical evaluation consultation procedure by experts before they are placed on the market.

Devices lawfully placed on the market pursuant to the EU Medical Devices Directive prior to May 26, 2021 may generally continue to be made available on the market or put into service until their EU Medical Devices Directive certificate expires, provided that the requirements of the transitional provisions are fulfilled. In particular, the certificate in question must still be valid. However, even in this case, manufacturers must comply with a number of new or reinforced requirements set forth in the EU Medical Devices Regulation, in particular the obligations described below.

The EU Medical Devices Regulation requires that before placing a device, other than a custom-made device, on the market, manufacturers (as well as other economic operators such as authorized representatives and importers) must register by submitting identification information to the electronic system ("Eudamed"), unless they have already registered. The information to be submitted by manufacturers (and authorized representatives) also includes the name, address and contact details of the person or persons responsible for regulatory compliance. The new Regulation also requires that before placing a device, other than a custom-made device, on the market, manufacturers must assign a unique identifier to the device and provide it along with other core data to the unique device identifier ("UDI") database. These new requirements aim at ensuring better identification and traceability of the devices. Each device – and as applicable, each package – will have a UDI composed of two parts: a device identifier ("UDI-DI") specific to a device, and a production identifier ("UDI-PI") to identify the unit producing the device. Manufacturers are also notably responsible for entering the necessary data on Eudamed, which includes the UDI database, and for keeping it up to date. The obligations for registration in Eudamed will become applicable at a later date (as Eudamed is not yet fully functional). Until Eudamed is fully functional, the corresponding provisions of the EU Medical Devices Directive continue to apply for the purpose of meeting the obligations laid down in the provisions regarding exchange of information, including, and in particular, information regarding registration of devices and economic operators.

All manufacturers placing medical devices into the market in the EU must comply with the EU medical device vigilance system. Under this system, serious incidents and Field Safety Corrective Actions ("FSCAs") must be reported to the relevant authorities of the EU member states. Manufacturers are required to take FSCAs defined as any corrective action for technical or medical reasons to prevent or reduce a risk of a serious incident associated with the use of a medical device that is made available on the market. An FSCA may include the recall, modification, exchange, destruction or retrofitting of the device.

The advertising and promotion of medical devices is subject to some general principles set forth in EU legislation. According to the EU Medical Devices Regulation, only devices that are CE marked may be marketed and advertised in the EU in accordance with their intended purpose. Directive 2006/114/EC concerning misleading and comparative advertising and Directive 2005/29/EC on unfair commercial practices, while not specific to the advertising of medical devices, also apply to the advertising thereof and contain general rules, for example, requiring that advertisements are evidenced, balanced and not misleading. Specific requirements are defined at a national level. EU member states' laws related to the advertising and promotion of medical devices, which vary between jurisdictions, may limit or restrict the advertising and promotion of products to the general public and may impose limitations on promotional activities with healthcare professionals.

Many EU member states have adopted specific anti-gift statutes that further limit commercial practices for medical devices, in particular vis-à-vis healthcare professionals and organizations. Additionally, there has been a recent trend of increased regulation of payments and transfers of value provided to healthcare professionals or entities and many EU member states have adopted national "Sunshine Acts" which impose reporting and transparency requirements (often on an annual basis), similar to the requirements in the United States, on medical device manufacturers. Certain countries also mandate implementation of commercial compliance programs.

The aforementioned EU rules are generally applicable in the European Economic Area ("EEA") which consists of the 27 EU member states plus Norway, Liechtenstein and Iceland. Legislation has been approved to extend the transition dates for the EU MDR to 2027/2028. Despite the extension, the notified bodies that are responsible for implementing the EU MDR guidelines must still adopt these changes into their current framework of procedures, which could take additional time.

Other countries

Many other countries have specific requirements for classification, registration and post marketing surveillance that are independent of the countries already listed. We obtain what we believe are the appropriate clearances for our products and conduct our business in accordance with the applicable laws of each country. This landscape is constantly changing, and we could be found in violation if we interpret the laws incorrectly or fail to keep pace with changes. In the event of either of these occurrences, we could be instructed to recall products, cease distribution and/or be subject to civil or criminal penalties.

Anti-kickback, false claims and other healthcare laws

We are subject to a number of U.S. laws regulating healthcare fraud and abuse including the federal Anti-Kickback Statute and the federal Physician Self-Referral Law (known as the Stark Law), the Civil False Claims Act, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as well as numerous state laws regulating healthcare and insurance. These laws are enforced by, without limitation, CMS, other divisions of the U.S. Department of Health and Human Services ("HHS"), the U.S. Department of Justice and individual U.S. Attorney offices within the Department of Justice, as well as state and local governments. Among other things, these laws and others generally (1) prohibit the provision of anything of value in exchange for the referral of patients or for the purchase, order, or recommendation of any item or service reimbursed by a federal healthcare program, (including Medicare and Medicaid); (2) require that claims for payment submitted to federal healthcare programs be truthful; and (3) require the maintenance of certain government licenses and permits.

Many states have similar fraud and abuse statutes or regulations that may be broader in scope and may apply regardless of payer, in addition to items and services reimbursed under Medicaid and other state programs.

The federal Anti-Kickback Statute ("AKS") prohibits, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration, directly or indirectly, in cash or kind, to induce or reward either the referral of an individual for, or the purchase, order or recommendation of, any good or service, for which payment may be made under federal and state healthcare programs such as Medicare and Medicaid. A person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation. Several courts have interpreted the AKS's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the AKS has been violated. The AKS includes statutory exceptions and regulatory safe harbors that protect certain arrangements. Failure to meet the requirements of an applicable AKS safe harbor, however, does not render an arrangement illegal. Rather, the government may evaluate such arrangements on a case-by-case basis, taking into account all facts and circumstances, including the parties' intent and the arrangement's potential for abuse, and may be subject to greater scrutiny by enforcement agencies.

The Stark Law prohibits a physician who has a financial relationship, or who has an immediate family member who has a financial relationship, with entities providing designated health services ("DHS") from referring Medicare and Medicaid patients to such entities for the furnishing of DHS, unless an exception applies. The Stark Law also prohibits the entity from billing for any such prohibited referral. Unlike the AKS, the Stark Law is violated if the financial arrangement does not meet an applicable exception, regardless of any intent by the parties to induce or reward referrals or the reasons for the financial relationship and the referral.

The Federal False Claims Act ("FCA") prohibits a person from knowingly presenting, or caused to be presented, a false or fraudulent request for payment from the federal government, or from making a false statement or using a false record to have a claim approved. A claim includes "any request or demand" for money or property presented to the United States government. Moreover, the government may assert that a claim including items and services resulting from a violation of the AKS or the Stark Law constitutes a false or fraudulent claim for purposes of the civil False Claims Act. Penalties for a violation of the FCA include fines for each false claim, plus up to three times the amount of damages caused by each false claim. Private individuals also have the ability to bring actions under these false claims laws in the name of the government alleging false and fraudulent claims presented to or paid by the government (or other violations of the statutes) and to share in any amounts paid by the entity to the government in fines or settlement.

Further, the Civil Monetary Penalties Statute authorizes the imposition of civil monetary penalties, assessments and exclusion against an individual or entity based on a variety of prohibited conduct, including, but not limited to offering remuneration to a federal healthcare program beneficiary that the individual or entity knows or should know is likely to influence the beneficiary to order or receive healthcare items or services from a particular provider. Moreover, in certain cases, providers who routinely waive copayments and deductibles for Medicare and Medicaid beneficiaries can also be held liable under the AKS and civil FCA. One of the statutory exceptions to the prohibition is non-routine, unadvertised waivers of copayments or deductible amounts based on individualized determinations of financial need or exhaustion of reasonable collection efforts. The Department of Health and Human Services Office of Inspector General emphasizes, however, that this exception should only be used occasionally to address special financial needs of a particular patient. Although this prohibition applies only to federal healthcare program beneficiaries, the routine waivers of copayments and deductibles offered to patients covered by commercial payers may implicate applicable state laws related to, among other things, unlawful schemes to defraud, excessive fees for services, tortious interference with patient contracts and statutory or common law fraud.

The Health Insurance Portability and Accountability Act ("HIPAA") also established federal criminal statutes that prohibit, among other things, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, including private third-party payers, and knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. Similar to the AKS, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.

We also participate in state government-managed Medicaid programs as well as certain other qualifying federal and state government programs where discounts and mandatory rebates are provided to participating state and local government entities. In connection with several of these government programs, we are required to report prices to various government agencies. Pricing calculations vary among programs. The calculations are complex and are often subject to interpretation by the reporting entities, government agencies and the courts. Government agencies may also make changes in program interpretations, requirements or conditions of participation, some of which may have implications for amounts previously estimated or paid. By way of example, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 ("MMA"), requires that manufacturers report data to CMS on pricing of covered drugs reimbursed under Medicare Part B. These are generally drugs and biologicals, such as injectable products, that are administered "incident to" a physician service and in general are not self-administered. Effective January 1, 2005, ASP became the basis for reimbursement to physicians and suppliers for drugs and biologicals covered under Medicare Part B, replacing the average wholesale price ("AWP"), provided and published by pricing services. In general, we must comply with all reporting requirements for any drug that is separately reimbursable under Medicare. Our SUPARTZ FX, Gelsyn-3 and Durolane products are reimbursed under Medicare Part B and, as a result, we provide ASP data on this product to CMS on a quarterly basis. Several states in which we operate have also adopted similar fraud and abuse laws as described above. The scope of these laws and the interpretations of them vary from state to state and are enforced by state courts and regulatory authorities, each with broad discretion. Some state fraud and abuse laws apply to items or services reimbursed by any payer, including patients, employers and commercial insurers, not just those reimbursed by a federally funded healthcare program.

Violation of any of these laws or any other governmental regulations that apply may result in significant penalties, including, without limitation, administrative civil and criminal penalties, damages, disgorgement, fines, additional reporting requirements and compliance oversight obligations, in the event that a corporate integrity agreement or other agreement is required to resolve allegations of noncompliance with these laws, the curtailment or restructuring of operations, exclusion from participation in government healthcare programs and/or individual imprisonment.

Foreign Corrupt Practices Act

We are subject to the Foreign Corrupt Practices Act of 1977, as amended ("FCPA"). The FCPA prohibits U.S. companies and their representatives from processing, offering, or making payments of money or anything of value to foreign officials with the intent to obtain or retain business or seek a business advantage. In certain countries, the health care professionals we or our distributors regularly interact with may meet the definition of a foreign government official for the purposes of the FCPA. Our international activities create the risk of unauthorized payments or offers of payments by our employees, consultants and agents, including distributors, even though they may not always be subject to our control. Our existing safeguards may prove to be less than effective, and our employees, consultants, and agents may engage in conduct for which we might be held responsible. A determination that our operations or activities are not, or were not, in compliance with U.S. or foreign laws or regulations could result in the imposition of substantial fines, interruptions of business, loss of suppliers, vendor or other third-party relationships, termination of necessary licenses or permits, and legal or equitable sanctions. Other internal or governmental investigations or legal or regulatory proceedings, including lawsuits brought by private litigants, may also follow as a consequence.

ISO Standards

We also operate and maintain a Quality Management System that is designed to comply with the requirements of International Standards ISO 13485: 2016 Medical Devices – Quality Management Systems. This system encompasses the principles of enhancing customer satisfaction through the effective application of processes for control, monitoring, and continual improvement, which is designed to ensure that we consistently meet or exceed customer expectations and applicable statutory/regulatory requirements

Privacy and data protection laws

We are subject to a number of federal, state and foreign laws and regulations that govern the collection, use, disclosure, and protection of health-related and other personal information, including health information privacy and security laws, data breach notification laws, and consumer protection laws and regulations (e.g., Section 5 of the Federal Trade Commission Act). For example, HIPAA imposes obligations on "covered entities," including certain healthcare providers, such as us, health plans, and healthcare clearinghouses, and their respective "business associates" that create, receive, maintain or transmit individually identifiable health information for or on behalf of a covered entity, as well as their covered subcontractors with respect to safeguarding the privacy, security and transmission of individually identifiable health information. Entities that are found to be in violation of HIPAA, whether as the result of a breach of unsecured protected health information ("PHI"), a complaint about privacy practices, or an audit by HHS, may be subject to significant civil, criminal, and administrative fines and penalties and/or additional reporting and oversight obligations if required to enter into a resolution agreement and corrective action plan with HHS to settle allegations of HIPAA non-compliance.

In addition, certain state and foreign laws, such as the California Consumer Privacy Act ("CCPA") California Privacy Rights Act ("CPRA"), General Data Protection Regulation ("GDPR") and the United Kingdom General Data Protection Regular ("UK GDPR") govern the privacy and security of personal information, including health-related information in certain circumstances, some of which are more stringent than HIPAA and many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

Failure to comply with these laws, where applicable, can result in the imposition of significant civil and/or criminal penalties and private litigation. Privacy and security laws, regulations, and other obligations are constantly evolving, may conflict with each other to complicate compliance efforts, and can result in investigations, proceedings, or actions that lead to significant civil and/or criminal penalties and restrictions on data processing.

Coverage and reimbursement

Our products may be reimbursed by third-party payors, such as government programs, including Medicare and Medicaid, or private insurance plans and healthcare networks. As a result, demand for our products is and will continue to be dependent in part on the coverage and reimbursement policies of these payors. The manner in which reimbursement is sought and obtained varies based upon the type of payor involved and the setting in which the product is furnished and utilized. Reimbursement from Medicare, Medicaid and other third-party payors may be subject to periodic adjustments as a result of legislative, regulatory and policy changes, as well as budgetary pressures. Possible reductions in, or eliminations of, coverage or reimbursement by third-party payors, or denial of, or provision of uneconomical reimbursement for new products may affect our customers' revenue and ability to purchase our products. Any changes in the healthcare regulatory, payment or enforcement landscape relative to our customers' healthcare services have the potential to significantly affect our operations and revenue. The Medicare program is expected to continue to implement a new payment mechanism for certain durable medical equipment, prosthetics, orthotics, and supplies ("DMEPOS") items via the implementation of its competitive bidding program. Bone growth therapy devices are currently exempt from this competitive bidding process.

Outside of the United States, the pricing of medical devices and prescription pharmaceuticals is subject to governmental control in many countries. Some countries provide that products may be marketed only after a reimbursement price has been agreed. Some countries may require the completion of additional studies that compare the cost-effectiveness of a particular therapy to currently available therapies or so called health technology assessments, in order to obtain reimbursement or pricing approval. Other countries may allow companies to fix their own prices for products, but monitor and control prescription volumes and issue guidance to physicians to limit prescriptions.

Consolidated Appropriations Act

In July 2022, in connection with the Consolidated Appropriations Act, 2021 ("CAA"), the Centers for Medicare and Medicaid Services ("CMS") began utilizing new pricing information the Company reported to it pursuant to the newly adopted reporting obligations to adjust the Medicare payment to healthcare providers using our Durolane and Gelsyn-3 products.

Employee and Human Capital Resources

As of December 31, 2022, we had approximately 1,120 employees, none of whom were covered by collective bargaining agreements. Most of these employees are located in the United States with approximately 125 located outside the United States. We believe that our relations with our employees are generally good.

We value our employees and regularly benchmark total rewards we provide, such as short and long term compensation, 401(k) contributions, health, welfare and quality of life benefits, paid time off and personal leave, against our industry peers to ensure we remain competitive and attractive to potential new hires. We seek to create a workplace environment that fosters personal and business successes by offering training and development programs, which further assist our current employees in meeting and exceeding our established standards of performance, and a leadership development program specially designed to help our new leaders be successful in their expanded roles.

Additionally, to build on our culture of treating all individuals fairly and respectfully, we have established a Diversity, Equity and Inclusion ("DE&I") Council and formed several Employee Resource Groups ("ERGs"). The DE&I Council and ERGs are voluntary, employee-led groups of employees who come together in their workplace based on shared characteristics or life experiences. The stated mission of the DE&I Council is to foster a culture and identity that drives diversity, equity and inclusion as we engage and develop current employees and recruit future talent, all working together to build a transformative work environment. Our ERGs are generally intended to provide support, enhance career development, and contribute to personal development in the work environment. The goals of these and other similar initiatives is to encourage broad and diverse viewpoints to achieve the best outcomes for the patients, healthcare providers, and employees we serve.

Our Organizational Structure

Bioventus Inc. is a Delaware corporation formed on December 22, 2015 and functions as a holding company with no direct operations and our principal asset is the equity interest in BV LLC. We are headquartered in Durham, North Carolina. On February 16, 2021, we closed an initial public offering ("IPO"). Our IPO was conducted through what is commonly referred to as an umbrella partnership C corporation ("UP-C") structure. In connection with the IPO and the UP-C structure, we completed a series of organizational transactions including, without limitation, the following:

- the limited liability company agreement of BV LLC was amended and restated ("Bioventus LLC Agreement") to, among other things, (i) provide for a new single class of common membership interests in BV LLC ("LLC Interests"), (ii) exchange all of the then existing membership interests of the holders of BV LLC membership interests ("Original LLC Owners") for LLC Interests and (iii) appoint Bioventus Inc. as the sole managing member of BV LLC; and
- the acquisition, by merger, of certain members of BV LLC ("Former LLC Owners"), for which we issued shares of Class A common stock as merger consideration ("Merger").
- We amended and restated its certificate of incorporation to authorize Class A common stock, Class B common stock and undesignated preferred stock. Class B common stock has voting rights but no economic rights.

We have a majority economic interest, the sole voting interest in, and control the management of, BV LLC. As a result, we will consolidate the financial results of BV LLC and reports a non-controlling interest representing the LLC Interests held by Smith & Nephew, Inc. ("Continuing LLC Owner"). Refer to *Part II, Item 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 1. Organization* of this Annual Report for additional information about the organizational transactions completed as part of the IPO.

Available Information

Our filings with the Securities and Exchange Commission ("SEC"), including our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, Proxy Statements for Meetings of Shareholders, any registration statements, and amendments to those reports, are available free of charge on our website as soon as reasonably practicable after they are filed with, or furnished to, the SEC. Information on our website or connected to our website is not incorporated by reference into this Annual Report. Our website is located at www.bioventus.com. Our SEC filings are also available on the SEC website at www.sec.gov.

Item 1A. Risk Factors.

Described below are certain risks that we believe apply to our business and the industry in which we operate. You should carefully consider each of the following risk factors in conjunction with other information provided in this Annual Report on Form 10-K ("Annual Report") and in our other public disclosures. The risks described below highlight potential events, trends or other circumstances that could adversely affect our business, financial condition, results of operations, cash flows, liquidity or access to sources of financing, and consequently, the market value of our Class A common stock. These risks could cause our future results to differ materially from historical results and from guidance we may provide regarding our expectations of future financial performance. The risks described below are those that we have identified as material and is not an exhaustive list of all the risks we face. There may be others that we have not identified or that we have deemed to be immaterial. All forward-looking statements made by us or on our behalf are qualified by the risks described below.

Risks related to our financial position

There are doubts about our ability to continue as a going concern and if we are unable to continue our business, our Class A common stock might have little or no value.

Based on our current operating plans and potential market and economic conditions, we have concluded there is substantial doubt regarding our ability to continue as a going concern within the next twelve months from the issuance of our consolidated financial statements that are included elsewhere in this Annual Report on Form 10-K, as evaluated under generally accepted accounting principals in the United States. We have relied on our ability to fund our operations primarily through cash flows from operations as well as public and private debt and equity financings, but there can be no assurances that such financing or funding will continue to be available to us on satisfactory terms, or at all. In light of this, we are continuing to actively pursue plans to mitigate these conditions and events; however, there can be no assurances that it is probable these measures will successfully mitigate these conditions and events. Therefore, these measures do not alleviate the substantial doubt about our ability to continue as a going concern. See *Part II, Item 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 1. Organization—Going Concern* of this Annual Report for additional information.

Our fundraising efforts to raise additional funding may divert our management from their day-to-day activities, which may adversely affect our ability to develop and commercialize our products. In addition, we cannot guarantee that financing will be available in sufficient amounts or on terms acceptable to us, if at all. Moreover, the terms of any financing may adversely affect the holdings or the rights of our stockholders and the issuance of additional securities, whether equity or debt, by us, or the possibility of such issuance, may cause the market price of our shares to decline. The sale of additional equity or convertible securities would dilute all of our stockholders. The incurrence of indebtedness would result in increased fixed payment obligations and we may be required to agree to certain restrictive covenants, such as limitations on our ability to incur additional debt, limitations on our ability to acquire, sell or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business. We could also be required to seek funds through arrangements with collaborative partners or otherwise at an earlier stage than otherwise would be desirable and we may be required to relinquish rights to some of our technologies or product candidates or otherwise agree to terms unfavorable to us, any of which may have a material adverse effect on our business, operating results and prospects.If potential collaborators decline to do business with us or potential investors decline to participate in any future financings due to the foregoing concerns, our ability to improve our capital resources may be limited. The perception that we may not be able to continue as a going concern may cause others to choose not to deal with us due to concerns about our ability to meet our contractual obligations.

Moreover, as a result of recent volatile market conditions, the cost and availability of capital has been and may continue to be adversely affected. Concern about the stability of the banking sector has generally led many lenders and institutional investors to reduce, and in some cases, cease to provide credit to businesses and consumers. Continued turbulence in the U.S. market and economy may adversely affect our liquidity and financial condition, including our ability to access the capital markets to meet liquidity needs. In addition, we maintain the majority of our cash and cash equivalents in accounts with major financial institutions, and our deposits at these institutions exceed insured limits. Market conditions can impact the viability of these institutions. In the event of failure of any of the financial institutions where we maintain our cash and cash equivalents, there can be no assurance that we would be able to access uninsured funds in a timely manner or at all. Any inability to access or delay in accessing these funds could adversely affect our business and financial position.

Our Amended 2019 Credit Agreement contains financial and operating restrictions that may limit our access to credit. If we fail to comply with its financial or other covenants, we may be required to repay the indebtedness, which may harm our liquidity.

We are subject to certain covenants under our Credit and Guaranty Agreement dated December 6, 2019 (as amended on October 29, 2021, July 11, 2022 and March 31, 2023, the "Amended 2019 Credit Agreement"), including, but not limited to:

- a minimum interest coverage ratio and a maximum debt leverage ratio requirement as defined in the Amended 2019 Credit Agreement;
- a minimum Liquidity (as defined in the Amended 2019 Credit Agreement) of not less than $10.0 million as of the end of each calendar month through June 30, 2024;
- restrictions on the declaration or payment of certain distributions on or in respect of our equity interests;
- restrictions on acquisitions, investments and certain other payments;
- limitations on the incurrence of new indebtedness;
- limitations on the incurrence of new liens on property or assets;
- limitations on transfers, sales and other dispositions;
- limitations on entering into transactions with affiliates; and
- limitations on making any material change in any of our business objectives that could reasonably be expected to have a material adverse effect on the repayment of our Amended 2019 Credit Agreement.

In the absence of a waiver from our lenders, any failure by us to comply with these covenants in the future might result in the declaration of an event of default, which could adversely affect our business, results of operations and financial position.

In addition, our indebtedness could have significant consequences on our financial position, including:

- requiring a substantial portion of our cash flows to be dedicated to debt service payments instead of funding growth, working capital, capital expenditures, investments or other cash requirements;
- reducing our flexibility to adjust to changing business conditions or obtain additional financing;
- exposing us to the risk of increased interest rates as certain of our borrowings, including borrowings under our term loan, are at variable rates, making it more difficult for us to make payments on our indebtedness;
- restricting us from making strategic acquisitions or causing us to make non-strategic divestitures; and
- limiting our ability to obtain additional financing for working capital, capital expenditures, debt service requirements and general corporate or other purposes.

See *Part II, Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Indebtedness* for further discussion concerning our indebtedness.

We maintain our cash at financial institutions, often in balances that exceed federally insured limits.

We maintain the majority of our cash and cash equivalents in accounts at banking institutions in the United States that we believe are of high quality. Cash held in these accounts often exceed the Federal Deposit Insurance Corporation ("FDIC") insurance limits. If such banking institutions were to fail, we could lose all or a portion of amounts held in excess of such insurance limitations. The FDIC recently took control of two such banking institutions, Silicon Valley Bank ("SVB") on March 10, 2023 and Signature Bank ("Signature Bank") on March 12, 2023. While we did have an account at SVB, we were able to recover all of our deposits when the FDIC stepped in and allowed us to transfer funds held at SVB to another bank without incurring any losses. In the event of failure of any of the financial institutions where we maintain our cash and cash equivalents, there can be no assurance that we would be able to access uninsured funds in a timely manner or at all. Any inability to access or delay in accessing these funds could adversely affect our business and financial position.

We might require additional capital to fund our financial and operating obligations and support business growth.

If our expected cash from operations together with available borrowings under our Amended 2019 Credit Agreement are not sufficient to fund our current financial and operating obligations, we might require additional capital. In addition, we intend to continue to make investments to support our business growth and might require additional funds to respond to business challenges or opportunities, including the need to further develop our current products and any new products, enhance our operating infrastructure, and acquire complementary businesses. Accordingly, we might need to engage in equity or additional debt financings to secure additional funds. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any additional debt financing secured by us could involve restrictive covenants relating to our capital-raising activities and other financial and operational matters, which might make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. In addition, we might not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly limited.

Risks related to our business

We are currently subject to securities class action litigation and may be subject to similar or other litigation in the future, which will require significant management time and attention, result in significant legal expenses and may result in unfavorable outcomes, which may have a material adverse effect on our business, operating results and financial condition, and negatively affect the price of our common stock.

We are, and may in the future become, subject to various legal proceedings and claims that arise in or outside the ordinary course of business. For example, we are currently subject to securities class action claims, which are often pursued against a company following a decline in the market price of its securities. In particular, on January 12, 2023, a stockholder of the Company, Robert Ciarciello, filed a putative class action complaint alleging violations of Sections 10(b) and 20(a) of the Exchange Act and of Sections 11 and 15 of the Securities Act against us and certain of our current and former directors and executives. *Ciarciello v. Bioventus, Inc.*, No. 1:23– CV – 00032-CCE-JEP (M.D.N.C. 2023). The complaint generally alleges that we failed to disclose certain information regarding rebate practices, our business and financial prospects, and the sufficiency of our internal controls regarding financial reporting. The complaint seeks damages in an unspecified amount. The case is in its early stages, and a lead plaintiff has not yet been appointed.

The results of the securities class action lawsuit and any future legal proceedings cannot be predicted with certainty. Also, our assets may be insufficient to cover any claimed amounts that exceed our insurance coverage, and we may have to pay damage awards or otherwise may enter into settlement arrangements in connection with such claims. Any such payments or settlement arrangements in current or future litigation could have a material adverse effect on our business, operating results or financial condition. Even if the plaintiffs' claims are not successful, current or future litigation could result in substantial costs and significantly and adversely impact our reputation and divert management's attention and resources, which could have a material adverse effect on our business, operating results and financial condition, and negatively affect the price of our common stock. In addition, such lawsuits may make it more difficult to finance our operations.

We may be unable to acquire CartiHeal.

On April 4, 2022, we exercised our call option under the Option and Equity Purchase Agreement with CartiHeal 2009 Ltd. ("CartiHeal") to acquire CartiHeal (the "CartiHeal Acquisition"), excluding the ownership interest already owned by us, for approximately $315.0 million with an additional approximately $135.0 million payable contingent upon the achievement of $75.0 million in trailing twelve-month sales. Pursuant to the CartiHeal Amendment entered into on June 17, 2022, we deferred $215.0 million of upfront consideration ("Deferred Amount") otherwise payable to CartiHeal stockholders at the closing of the CartiHeal Acquisition. We closed the acquisition on July 12, 2022 with an upfront payment of $100.0 million. We are required to pay the Deferred Amount in five tranches commencing in 2023 and ending no later than 2027, upon the earlier of the achievement of certain milestones and the occurrence of such installment payment dates.

The first milestone under the Option and Equity Purchase Agreement occurred on February 13, 2023, triggering an obligation to pay to the payment agent for the benefit of the securityholders $50.0 million plus applicable interest (less any applicable setoff). On February 27, 2023, the parties entered into a Settlement Agreement (the "Settlement Agreement") under which they mutually released any further claims under the Option and Equity Purchase Agreement and related transaction documents, including without limitation a release by the securityholders of any rights to enforce the provisions of the Option and Equity Purchase Agreement or make further monetary claims against us or our respective affiliates and representatives.

Concurrently with the execution of the Settlement Agreement, the parties irrevocably instructed the escrow agent to return the escrowed shares in CartiHeal to a trustee (the "Trustee") for the benefit of the securityholders in accordance with the terms of the Settlement Agreement.

The Settlement Agreement also provided BV LLC, at its sole discretion, the right to seek financing sufficient to pay to the securityholders by no later than March 29, 2023 (the "Interim Period") an amount sufficient to extinguish the entire amount of the post-closing tranches and any applicable interest in accordance with the provisions of the Option and Equity Purchase Agreement, in which case the transfer of the escrowed shares to the Trustee would be deemed null and void and the potential Sales Milestone payment will be reinstated. Because we were not able to find a financing solution to fund the payment obligations under the Option and Equity Purchase Agreement on terms we believed to be favorable to the Company and its shareholders, we elected to allow the Interim Period to expire. We can give no assurance that we will be able to obtain the necessary financing or negotiate acceptable terms to reacquire CartiHeal and its assets.

Our business may continue to experience adverse impacts as a result of the COVID-19 pandemic.

In 2020, the COVID-19 pandemic spread around the world and in the United States and, more recently, new variants of the virus have emerged, some of which have shown to be more contagious. The COVID-19 pandemic has had widespread, rapidly evolving and unpredictable impacts on global society, economies, financial markets and business practices. Federal and state governments have implemented measures in an effort to minimize the spread of the virus and ongoing effects of the pandemic, including social distancing, travel restrictions, border closures, limitations on public gatherings, mandatory closure or reduced capacity of business, work from home, supply chain logistical changes and other measures, which have caused global business disruptions and significant volatility in U.S. and international debt and equity markets. Our business, results of operations and financial condition have been, and may continue to be, materially impacted due to the decrease in patient visits and elective procedures and any future temporary cessations of elective procedures and could be further impacted by delays in payments from customers, supply chain interruptions, extended "shelter-in-place" orders or advisories, facility closures or other reasons related to the pandemic. Furthermore, the long-term impact of COVID-19 on our business will depend on many factors, including, but not limited to, the duration and severity of the pandemic, new and ongoing measures taken in response to the pandemic, the availability and effectiveness of vaccines and therapeutics to combat COVID-19, future mutations of the virus, the impact on economic activity from the pandemic and actions taken in response and the resulting impact it has on our partners, patients and communities in which we operate, all of which continue to be uncertain. For example, there has been a decrease in patient visits to hospitals due to risk and fear of exposure to COVID-19, as well as decreases in, or temporary moratoriums on, elective procedures, which may be re-imposed in the future. In addition to lower sales, we experienced certain decreased costs as a result of the pandemic including declines in travel and lower compensation related expenses during 2020. We also implemented other various cost reduction initiatives and measures to safeguard liquidity, refer to *Part II, Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations,* for further details on the impact of COVID-19 on our business.

To the extent the COVID-19 disruptions continue to adversely impact our business, results of operations and financial condition, they may also have the effect of heightening many of the other risks described in *Part I, Item 1A. Risk Factors*, including risks relating to our ability to successfully commercialize new developed or acquired products or therapies, consolidation in the healthcare industry, disruptions in the supply or manufacturing of our products or their components, intensified pricing pressure as a result of changes in the purchasing behavior of hospitals and maintenance of our numerous contractual relationships.

We are highly dependent on a limited number of products.

Our HA products accounted for 42%, 51% and 53% of our total revenue for the years ended December 31, 2022, 2021 and 2020, respectively. We expect that sales of such products will continue to account for a substantial portion of our revenue, and therefore, our ability to execute our growth strategy and maintain profitability will depend upon the continued demand for these products. If the supply and distribution agreements for any of our HA products were terminated, our revenue would be impaired. If our HA products fail to maintain their market acceptance for any reason, our business, results of operations and financial condition may be adversely affected.

Our long-term growth depends on our ability to develop, acquire and commercialize new products, line extensions or expanded indications.

Our industry is highly competitive and subject to rapid change and technological advancements. Therefore, it is important to our business that we continue to introduce new products and/or enhance our existing product offerings through line extensions or expanded indications. Developing, acquiring and commercializing products is expensive, time-consuming and could divert management's attention away from our existing business. Even if we are successful in developing additional products, the success of any new product offering or enhancements to existing products will depend on several factors, including our ability to:

- properly identify and anticipate the needs of healthcare professionals and patients;
- develop and introduce new products, line extensions and expanded indications in a timely manner;
- distinguish our products from those of our competitors;

- avoid infringing upon the intellectual property rights of third-parties and maintain necessary intellectual property licenses from third-parties;
- demonstrate, if required, the safety and efficacy of new products with data from preclinical studies and clinical trials;
- obtain clearance, approval, or certification, if required, from the FDA and other regulatory agencies or notified bodies, for such new products, line extensions and expanded indications, and maintain full compliance with FDA and other regulatory requirements applicable to new devices or products or modifications of existing devices or products;
- provide adequate training to potential users of our products;
- market acceptance of our newly developed or acquired products or therapies;
- receive adequate coverage and reimbursement for our products; and
- maintain an effective and dedicated sales and marketing team.

If we are unsuccessful in developing, acquiring and commercializing new products or enhancing our existing product offerings through line extensions and expanded indications, our ability to increase our net sales may be impaired.

Additionally, our research and development efforts may require a substantial investment of time and resources before we are adequately able to determine the commercial viability of a new product, technology, material or other innovation. Such efforts may not result in the development of a viable product. In addition, even if we are able to successfully develop new active healing products, line extensions and expanded indications, these products may not produce sales in excess of the costs of development and they may be rendered obsolete by changing customer preferences or the introduction by our competitors of products embodying new technologies or features.

Demand for our existing products and any new products, line extensions or expanded indications depends on the continued and future acceptance of our products by physicians, patients, third-party payers and others in the medical community.

We cannot be certain that our existing products and any new products, line extensions or expanded indications that we develop will achieve or maintain market acceptance. Third-party payers may be reluctant to continue to cover our products at their current prices. Further, new injectable therapies or oral medications may become available that help manage OA joint pain in a more convenient and/or cost effective manner than our HA viscosupplementation therapies. With respect to our Surgical Solutions, new allograft, DBMs, synthetics, growth factors, or other enhancements to our existing implants may never achieve broad market acceptance, which can be affected by a lack of clinical acceptance of Surgical Solutions products and technologies, introduction of competitive treatment options which render Surgical Solutions products and technologies too expensive or obsolete and difficulty training surgeons in the use of Surgical Solutions products and technologies. Media reports or other negative publicity concerning both methods of tissue recovery from donors and actual or potential disease transmission from donated tissue may limit widespread acceptance by the medical community of our allografts, growth factor and DBMs, whether directed at these products generally or our products specifically. Unfavorable reports of improper or illegal tissue recovery practices by any participant in the industry, both in the United States and internationally, as well as incidents of improperly processed tissue leading to transmission of disease, may broadly affect the rate of future tissue donation and market acceptance of allograft based technologies by the medical community.

In addition, we believe that even if the medical community generally accepts our existing portfolio of products and any new products, line extensions or expanded indications, acceptance and recommendations by influential members of the medical community will be important to their broad commercial success. If the medical community does not broadly accept our products, we may not remain competitive in the market, which could adversely affect our business, results of operations and financial condition.

The proposed down-classification of non-invasive bone growth stimulators, including Exogen, by the FDA could increase future competition for bone growth stimulators and otherwise adversely affect our sales of Exogen.

In 2020, the FDA published a Federal Register notice announcing its proposal to reclassify non-invasive bone growth stimulators, such as Exogen, from Class III medical devices to Class II with special controls. Class III devices are subject to the most stringent regulatory pathway for approval for medical devices requiring, among other things, rigorous clinical studies and pre-approval manufacturing review. Class II devices may be cleared for marketing by the FDA under the 510(k) pathway if they are determined to be substantially equivalent to a legally marketed predicate device. The 510(k) clearance process does not always require clinical testing, and is generally less onerous than the premarket approval process applicable to Class III devices. Also in 2020, the Orthopaedic and Rehabilitation Devices Panel of the FDA Medical Devices Advisory Committee met and ultimately voted in favor of FDA's proposal to down-classify non-invasive bone growth stimulators.

While the FDA has not yet finalized its proposal to down-classify non-invasive bone growth stimulators, should such down-classification occur now or in the future, we may face additional competition from new market entrants who would be able to pursue marketing authorization through the 510(k) clearance pathway instead of the more onerous and burdensome PMA approval process. Class II devices that qualify as durable medical equipment under the Medicare program may also be eligible for inclusion in Medicare's competitive bidding program for durable medical equipment, prosthetic and orthotic supplies ("DEMPOS"). As a result of down-classification, Exogen could face additional competition or we could receive lower reimbursement amounts, all of which could adversely affect our business, results of operations and financial condition.

If we are unable to achieve and maintain adequate levels of coverage and/or reimbursement for our products, the procedures using our products, or any future products we may seek to commercialize, the commercial success of these products may be severely hindered.

Our products are purchased by healthcare providers and customers who typically bill third-party payers or private insurance plans and healthcare networks, to cover all or a portion of the costs and fees associated with our products. These third-party payers and insurers may deny reimbursement if they determine that a device or product provided to a patient or used in a procedure does not meet applicable payment criteria or if the policyholder's healthcare insurance benefits are limited. Further, limits put on reimbursement by third-party payers, whether foreign or domestic, governmental or commercial, could make it more difficult to buy our products and substantially reduce, or possibly eliminate, patient access to our products. The healthcare industry in the United States has experienced a trend toward cost containment as government and private insurers seek to control rising healthcare costs by imposing lower payment rates and negotiating reduced contract rates with providers and suppliers.

Private payers may adopt coverage decisions and payment amounts determined by the Centers for Medicare and Medicaid Services ("CMS"), the federal agency that administers the Medicare program in the United States, as guidelines in setting their coverage and reimbursement policies. In addition, CMS periodically reviews medical study literature to determine how the literature addresses certain procedures and therapies in the Medicare population. For some governmental programs, such as Medicaid, coverage and reimbursement differs from state to state. Medicaid payments to physicians, facilities and other providers are often lower than payments by other third-party payers and some state Medicaid programs may not pay an adequate amount for the procedures performed with our products, if any payment is made at all. If CMS, other government agencies or private payers lower their reimbursement rates or establish additional limitations on coverage of our products, or if any of the proposed drug pricing executive orders or legislative reforms are enacted, the commercial success of our products may be adversely affected.

Further, legislative or other regulatory reforms that have been adopted or may be adopted in the future may result in additional reductions in Medicare and other healthcare funding, more rigorous coverage criteria, new payment methodologies or other downward pressure on the pricing or reimbursement we or our customers receive for our products. For example, the Consolidated Appropriations Act, 2021 ("CAA") was signed into law on December 27, 2020, and pursuant to implementing regulations promulgated by CMS, expanded price reporting obligations for manufacturers of certain products reimbursed under Medicare Part B beginning January 1, 2022, including all of our HA viscosupplements. In July 2022, CMS began utilizing the new pricing information we reported to it pursuant to these newly adopted reporting obligations to adjust the Medicare payment to healthcare providers using our Durolane and Gelsyn-3 products. As a result, the rates currently available for those products have been reduced from those previously available and will be subject to future reporting and adjustment, which may affect the demand for those products or our ability to sell them profitably. We cannot predict the extent to which this law, or other reimbursement reform proposals or other healthcare cost containment measures that might be enacted in the future, may impact the demand or commercial success of our HA viscosupplements and other products we sell or plan to commercialize in the future.

In addition, due to the manner in which rebates are calculated and paid under certain of our contracts with private payers, changes in the ASP for our HA viscosupplements may result in larger than expected rebates payments for the sale of these products. In addition, we are dependent on these payers to provide timely and accurate invoices for the rebates that we are obligated to pay under these contractual relationships. If the information is not received timely or inaccurate, we may not be able to correctly forecast the amounts due under those agreements, which may adversely affect our operating results and financial condition.

CMS, which administers the Medicare program, has continued efforts to implement a competitive bidding program for selected DEMPOS items paid for by the Medicare program. In this program, Medicare rates are based on bid amounts for certain products in designated geographic areas, rather than the Medicare fee schedule amount. Bone growth stimulation products like Exogen are currently exempt from this competitive bidding process, but may be eligible for inclusion if the FDA's proposed down-classification order becomes effective. We cannot predict which products from any of our businesses may ultimately be affected or whether or when the competitive bidding process may be extended to our businesses.

CMS periodically reviews medical study literature to determine how the literature addresses certain procedures and therapies in the Medicare population. The impact that these assessments could have on Medicare or third-party payer coverage determinations for our products is currently unknown, but we cannot provide assurances that the resulting actions will not restrict Medicare or other insurance coverage for our products. In addition, there can be no assurance that we or our distributors will not experience significant coverage or reimbursement impediments in the future related to these or other programs and policies of CMS. Specifically, drug pricing reform legislation and executive orders, which could negatively affect the reimbursement rates paid for our HA viscosupplements, have been issued by the White House and proposed and enacted by Congress.

Private payers may adopt coverage decisions and payment amounts determined by CMS as guidelines in setting their coverage and reimbursement policies. In addition, for some governmental programs, such as Medicaid, coverage and reimbursement differs from state to state. Medicaid payments to physicians, facilities and other providers are often lower than payments by other third-party payers and some state Medicaid programs may not pay an adequate amount for the procedures performed with our products, if any payment is made at all. If CMS, other government agencies or private payers lower their reimbursement rates, or if any of the proposed drug pricing executive orders or legislative reforms are enacted, the commercial success of our products may be adversely affected.

Our business may be adversely affected if consolidation in the healthcare industry leads to demand for price concessions or if a Group Purchasing Organization ("GPO"), third-party payers or other similar entities exclude us from being a supplier.

Healthcare costs have risen significantly over the past decade, which has resulted in or led to numerous cost reform initiatives by legislators, regulators and third-party payers. Cost reform has triggered a consolidation trend in the healthcare industry to aggregate purchasing power, which may increase requests for pricing concessions or risk vendor exclusion. For example, non-clinical staff at hospitals are increasingly involved in the evaluation of products and product purchasing decisions. In order for us to sell our products, we must convince such staff as well as physicians and hospitals that our products are attractive alternatives to competing products for use in surgical procedures. Additionally, GPOs, independent delivery networks and large single accounts may continue to use their market power to consolidate purchasing decisions for physicians. Third-party payers may also continue to use their market power to reduce the reimbursement for our products by increasing the rebates we are required to pay them when our products are covered, which may negatively impact our results. We expect that market demand, government regulation, third-party coverage and reimbursement policies and societal pressures will continue to change the healthcare industry worldwide, resulting in further business consolidations and alliances among our customers, which may exert further downward pressure on the prices of our products.

We may be unable to complete proposed acquisitions or to successfully integrate proposed or recent acquisitions in a cost-effective and non-disruptive manner.

Our success depends on our ability to enhance and broaden our product offerings in response to changing customer demands, competitive pressures and advances in technologies. We continue to search for viable acquisition candidates or strategic alliances that would expand our market sector and/or global presence, as well as additional products appropriate for current distribution channels. Accordingly, we have previously and may in the future pursue the acquisition of, or joint ventures relating to, new businesses, products or technologies instead of developing them internally. Our future success will depend, in part, upon our ability to manage the expanded business following these acquisitions, including challenges related to the management and monitoring of new operations and associated increased costs and complexity associated with the acquisition of Misonix, Bioness, and other potential acquisitions.

- risks associated with conducting due diligence;
- problems integrating the purchased technologies, products or business operations;
- inability to achieve the anticipated synergies and overpaying for acquisitions or unanticipated costs associated with acquisitions;
- invalid net sales assumptions for potential acquisitions;
- issues maintaining uniform standards, procedures, controls and policies;
- diversion of management's attention from our core business;
- adverse effects on existing business relationships with suppliers, distributors and customers;
- risks associated with entering new markets in which we have limited or no experience;
- potential loss of key employees of acquired businesses; and
- increased legal, accounting and compliance costs.

We compete with other companies for these opportunities, and we may be unable to consummate such acquisitions or joint ventures on commercially reasonable terms, or at all. In addition, acquired businesses may have ongoing or potential liabilities, legal claims (including tort and/or personal injury claims) or adverse operating issues that we fail to discover through due diligence prior to the acquisition. Even if we are aware of such liabilities, claims or issues, we may not be able to accurately estimate the magnitude of the related liabilities and damages. In particular, to the extent that prior owners of any acquired businesses or properties failed to comply with or otherwise violated applicable laws or regulations, failed to fulfill their contractual obligations to their customers, or failed to satisfy legal obligations to employees or third-parties, we, as the successor, may be financially responsible for these violations and failures and may suffer reputational harm or otherwise be adversely affected. Acquisitions also frequently result in the recording of goodwill and other intangible assets which are subject to potential impairment in the future that could harm our financial results. If we were to issue additional equity in connection with such acquisitions, this may dilute our stockholders.

Pricing pressure from our competitors or hospitals may affect our ability to sell our products at prices necessary to support our current business strategies.

Medical device companies, healthcare systems and GPOs have intensified competitive pricing pressure as a result of industry trends and new technologies. Purchasing decisions are gradually shifting to hospitals, IDNs and other hospital groups, with surgeons and other physicians increasingly acting only as "employees." Changes in the purchasing behavior of hospitals or the amount third-party payers are willing to reimburse our customers for procedures using our products, including those as a result of healthcare reform initiatives, could create additional pricing pressure on us. In addition to these competitive forces, we continue to see pricing pressure as hospitals introduce new pricing structures into their contracts and agreements, including fixed price formulas, capitated pricing and episodic or bundled payments intended to contain healthcare costs. If such trends continue to drive down the prices we are able to charge for our products, our profit margins will shrink, adversely affecting our business, results of operations and financial condition.

If we fail to successfully enter into purchasing contracts for our Surgical Solutions products or engage in contract bidding processes internationally, we may not be able to receive access to certain hospital facilities and our sales may decrease.

In the United States, the hospital facilities where physicians treat patients with our Surgical Solution products typically require us to enter into purchasing contracts. The process of securing a satisfactory contract can be lengthy and time-consuming and require extensive negotiations and management time. In certain international jurisdictions, from time to time, certain institutions require us to engage in a contract bidding process in the event that such institutions are considering making purchase commitments that exceed specified cost thresholds, which vary by jurisdiction. These processes are only open at certain periods of time, and we may not be successful in the bidding process. If we do not receive access to hospital facilities through these contracting processes or otherwise, or if we are unable to secure contracts or tender successful bids, our sales may stagnate or decrease and our operating results may be harmed. Furthermore, we may expend significant effort in these time-consuming processes and still may not obtain a purchase contract from such hospitals.

Governments outside the United States may not provide coverage or reimbursement of our products, which may adversely affect our business, results of operations and financial condition.

Acceptance of our products in international markets may depend, in part, upon the availability of coverage and reimbursement within prevailing healthcare payment systems. Reimbursement and healthcare payment systems in international markets vary significantly by country, and include both government-sponsored healthcare and private insurance. Our products may not obtain international coverage and reimbursement approvals in a timely manner, if at all, which may require consumers desiring our products to purchase them directly. Third-party coverage and reimbursement for our products or any of our products in development for which we may receive regulatory approval may not be available or adequate in international markets, which could adversely affect our business, results of operations and financial condition.

Our future growth depends on physician awareness of the distinctive characteristics, benefits, safety, clinical efficacy and cost-effectiveness of our products.

We focus our sales, marketing and training efforts on physicians, surgeons and other health care professionals. The acceptance of our products depends in part on our ability to educate physicians as to the distinctive characteristics, benefits, safety, clinical efficacy and cost-effectiveness of our products compared to alternative products, procedures and therapies. If physicians, surgeons or other healthcare professionals are not properly trained, they may misuse or ineffectively use our products, which may result in unsatisfactory patient outcomes, patient injury, negative publicity or lawsuits against us. In addition, a failure to educate physicians, surgeons or other healthcare professionals regarding our products may impair our ability to achieve market acceptance of our products.

We compete and may compete in the future against other companies, some of which have longer operating histories, more established products or greater resources than we do, which may prevent us from achieving increased market penetration or improved operating results.

The medical device industry is characterized by intense competition, subject to rapid change and is significantly affected by market activities of industry participants, new product introductions and other technological advancements. We believe that our competitors have historically dedicated and will continue to dedicate significant resources to promote their products or to develop new products. We have competitors in the United States and internationally, including major medical device and pharmaceutical companies, biotechnology companies and universities and other research institutions.

These companies and other industry participants may develop alternative treatments, products or procedures that compete directly or indirectly with our products. If alternative treatments are, or are perceived to be, superior to our products, sales of our products could be adversely affected and our results of operations could suffer. Our competitors may also develop and patent processes or products earlier than we can or obtain regulatory clearances, approvals or certifications for competing products more rapidly than we can, which could impair our ability to develop and commercialize similar processes or products.

Many of our current and potential competitors are major medical device and pharmaceutical companies that have substantially greater financial, technical and marketing resources than we do, and they may succeed in developing products that would render our products obsolete or noncompetitive. It is also possible that our competition will be able to leverage their large market share to set prices at a level below that which is profitable for us.

Some of our competitors have several competitive advantages over us, including:

- greater financial, human and other resources for product research and development, sales and marketing and litigation;
- significantly greater name recognition;
- control of intellectual property and more expansive portfolios of intellectual property rights, which could impact future products under development;
- greater experience in obtaining and maintaining regulatory clearances, approvals or certifications for products and product enhancements;
- established relationships with hospitals and other healthcare providers, physicians, suppliers, customers and third-party payers;
- additional lines of products, and the ability to bundle products to offer greater incentives to gain a competitive advantage; and
- more established sales, marketing and worldwide distribution networks.

The potential introduction by competitors of products that compete with our existing or planned products may also make it difficult to market or sell our products. In addition, the entry of multiple new products and competitors may lead some of our competitors to employ pricing strategies that could adversely affect the pricing of our products and pricing in the market generally.

As a result, our ability to compete successfully will depend on our ability to develop proprietary products that reach the market in a timely manner, receive adequate coverage and reimbursement from third-party payers, and are safer, less invasive and more effective than alternatives available for similar purposes. If we are unable to do so, our sales or margins could decrease, which would adversely affect our business, results of operations and financial condition.

The reclassification of our HA products from medical devices to drugs in the United States by the FDA could negatively impact our ability to market these products and may require that we conduct costly additional clinical studies to support current or future indications for use of those products.

On December 18, 2018, the FDA published notice in the Federal Register announcing its intention to reconsider the appropriate classification of HA intra-articular products intended for the treatment of pain in OA of the knee. Although HA products intended for this use have previously been regulated as medical devices, in its notice the FDA stated that current published scientific literature supports that HA products achieve their primary intended purpose of treatment of pain in OA of the knee through biological action in the body which would require such products being classified as drugs. The FDA has encouraged organizations intending to submit applications for changes in indications for use, formulation, or route of administration of their HA products to obtain from the FDA an informal or formal classification and jurisdiction determination as a drug or device through a pre-request for designation or request for designation, respectively, prior to submission of such application. However, the FDA to date has taken no action to reclassify HA products from medical devices to drugs, or indicated what the potential ramifications would be for currently marketed HA products if a reclassification were to occur.

If the reclassification of HA products were to occur, the FDA may not allow us to continue to market our HA products without submitting additional clinical trial data, obtaining approval of a NDA for these products, or without otherwise complying with new conditions or limitations on how those products are marketed. Clinical testing can take years to complete, can be expensive and carries uncertain outcomes, and there is no guarantee that would be able to successfully obtain and maintain any required regulatory approvals. These new regulatory obligations could result in increased regulation and would subject our HA products to a new set of regulatory requirements to which they have not been previously subject. These changes could ultimately increase our costs, change levels of coverage and/or reimbursement for our HA products and adversely impact our business, results of operations and financial condition if they were to be implemented. See *Part I, Item 1A. Risk Factors—Risks related to our business—If we are unable to achieve and maintain adequate levels of coverage and/or reimbursement for our products, the procedures using our products, or any future products we may seek to commercialize, the commercial success of these products may be severely hindered*.

Our ability to maintain our competitive position depends on our ability to attract, retain and motivate our senior management team and highly qualified personnel, and our failure to do so could adversely affect our business, results of operations and financial condition.

We believe that our continued success depends to a significant extent upon the skill, experience and performance of members of our senior management team, who have been critical to the management of our operations and implementation of our strategy, as well as our ability to continue to attract, retain and motivate additional executive officers, and other key employees and consultants, such as those individuals who are engaged in our research and development efforts. The replacement of any of our key personnel likely would involve significant time and costs and may significantly delay or prevent the achievement of our business objectives and could therefore adversely affect our business, results of operations and financial condition. In addition, we do not carry any "key person" insurance policies that could offset potential loss of service under applicable circumstances.

Competition for experienced employees in the medical device industry can be intense. To attract, retain and motivate qualified employees, we may utilize equity-based incentive awards such as employee stock options. If the value of such equity incentive awards does not appreciate as measured by the performance of the price of our Class A common stock, as seen in current market conditions, and ceases to be viewed as a valuable benefit, our ability to attract, retain and motivate our employees could be adversely impacted, which could adversely affect our business, results of operations and financial condition and/or require us to increase the amount we expend on cash and other forms of compensation.

If we fail to properly manage growth, our business could suffer.

We may, in the future, experience periods of rapid growth and expansion, which could place a significant additional strain on our limited personnel, information technology systems and other resources. In particular, our sales force and distributor network require significant management, training, financial and other supporting resources. Any failure by us to manage our growth effectively could have an adverse effect on our ability to achieve our development and commercialization goals.

To achieve our long-term revenue goals, we also will need to successfully increase supply of our products to meet expected customer demand. In the future, we may experience difficulties with yields, quality control, component supply and shortages of qualified personnel, among other problems. These problems could result in delays in product availability and increases in expenses which could adversely affect our ability to generate revenue.

Future growth will also impose significant added responsibilities on management, including the need to identify, recruit, train and integrate additional employees. In addition, rapid and significant growth will place a strain on our administrative and operational infrastructure.

In order to manage our operations during any growth period, we will need to continue to improve our operational and management controls, reporting and information technology systems and financial internal control procedures. If we are unable to manage our growth effectively, it may be difficult for us to execute our business strategy and our operating results and business could suffer.

We may not be able to strengthen our brand and the brands associated with our products.

We believe that strengthening the Bioventus brand and the brands associated with our products is critical to achieving widespread acceptance of our products, particularly because of the rapidly developing nature of the market for active healing products as well as the expansion of our product portfolio due to our recent acquisitions. Promoting and positioning our brand will depend largely on the success of our marketing efforts and the reliability of our products. Historically, our efforts to build our brand have involved marketing expenses, and it is likely that our future marketing efforts will require us to incur additional expenses. These brand promotion activities may not yield increased sales and, even if they do, any sales increases may not offset the expenses we incur to promote our brand and our products. If we fail to successfully promote and maintain our brand, or if we incur substantial expenses in an unsuccessful attempt to promote and maintain our brand and the brands of our products, our products may not be accepted by healthcare providers, which would cause our sales to decrease and would adversely affect our business, results of operations and financial condition.

We face the risk of product liability claims that could be expensive, divert management's attention and harm our reputation and business. We may not be able to maintain adequate product liability insurance.

Our business exposes us to the risk of product liability claims that are inherent in the testing, manufacturing and marketing of our products. This risk exists even if a product is cleared, approved or certified for commercial sale by the FDA, foreign regulatory authorities or notified bodies and manufactured in facilities regulated by the FDA or an applicable foreign regulatory authority. Our products are designed to affect, and any future products will be designed to affect, important bodily functions and processes. Any side effects, manufacturing defects, misuse or abuse associated with our products or our products in development could result in patient injury or death. The medical device industry has historically been subject to extensive litigation over product liability claims, and we cannot assure you that we will not face product liability claims. We may be subject to product liability claims if our products or products in development cause, or merely appear to have caused, patient injury or death, even if such injury or death was as a result of supplies or components that are produced by third-party suppliers. Product liability claims may be brought against us by consumers, healthcare providers or others selling or otherwise coming into contact with our products, among others. If we cannot successfully defend ourselves against product liability claims, we will incur substantial liabilities and reputational harm. In addition, regardless of merit or eventual outcome, product liability claims may result in:

- costs of litigation;
- distraction of management's attention from our primary business;
- the inability to commercialize existing or new products;
- decreased demand for our products or, if cleared or approved, products in development;
- damage to our business reputation;
- product recalls or withdrawals from the market;
- withdrawal of clinical trial participants;
- substantial monetary awards to patients or other claimants; and
- loss of net sales.

While we have attempted and may continue to attempt to manage our product liability exposure by proactively recalling or withdrawing from the market any defective products, any recall or market withdrawal of our products may delay the supply of those products to our customers and may impact our reputation. For example, we have in the past instituted a voluntary recall for certain of our products. We cannot assure you that we will be successful in initiating appropriate market recall or market withdrawal efforts that may be required in the future or that these efforts will have the intended effect of preventing product malfunctions and the accompanying product liability that may result. Such recalls and withdrawals may also be used by our competitors to harm our reputation for product safety or be perceived by patients as a safety risk when considering the use of our products, either of which could adversely affect our business, results of operations and financial condition.

In addition, although we have product liability and clinical study liability insurance that we believe is appropriate, this insurance is subject to deductibles and coverage limitations. Our current product liability insurance may not continue to be available to us on acceptable terms, if at all, and, if available, coverage may not be adequate to protect us against any future product liability claims. If we are unable to obtain insurance at an acceptable cost or on acceptable terms or otherwise protect against potential product liability claims, we could be exposed to significant liabilities. A product liability claim, recall or other claim with respect to uninsured liabilities or for amounts in excess of insured liabilities could adversely affect our business, results of operations and financial condition.

Fluctuations in the demand for our products or our inability to forecast demand accurately may influence the ability of our suppliers to meet our delivery needs or result in excess product inventory.

We are required by some of our contracts with suppliers of our products to forecast future product demand or meet minimum purchase requirements. Our HA product supply agreements are subject to minimum volumes based in part on forecasts, annual minimum purchase requirements and purchase amounts based on rolling annual forecasts. Our forecasts are based on multiple assumptions of product and market demand, which may cause our estimates to be inaccurate. If we underestimate demand, we may not have adequate supplies and could have reduced control over pricing, availability and delivery schedules with our suppliers, which could prevent us from meeting increased customer or consumer demand and harm our business. However, if we overestimate our demand, we may have underutilized assets and may experience reduced margins. If we do not accurately align our supplies with demand and/or fail to meet contractual minimum purchase requirements, our business, results of operations and financial condition may be adversely affected.

We may face issues with respect to the supply of our products or their components, including increased costs, disruptions of supply, shortages, contamination or mislabeling.

We are dependent on a limited number of suppliers for our products and components used in the manufacturing process of our products. Our top three single-source third-party manufacturers supply us with our HA products and constituted 42%, 51% and 53% of total net sales for the years ended December 31, 2022, 2021 and 2020, respectively. Exogen undergoes final assembly with components procured from various suppliers, including a transducer, which is a key component that is supplied by a single source supplier. Many of the acquired Bioness and Misonix products are also dependent on a limited number of suppliers for these products and their components. We may not be able to renew or enter into new contracts with our existing suppliers following the expiration of such contracts on commercially reasonable terms, or at all. Additionally, our PNS, advanced rehabilitation and Surgical Ultrasonic devices require circuit boards and other electronic components that are periodically in short supply. The unavailability of such components from our suppliers may impact our ability to meet the customer demand for these products.

The success of certain Surgical and Wound solution products depends on our suppliers continuing to have access to donated human cadaveric tissue, as well as the maintenance of high standards in their processing methodology. The supply of such donors can fluctuate over time. We cannot be certain that our current suppliers who rely on allograft bone, skin and amniotic tissue, plus any additional sources that our suppliers identify in the future, will be sufficient to meet our product needs. Our dependence on a limited number of third-party suppliers and the challenges that they may face in obtaining adequate supplies of allograft bone tissue involve several risks, including limited control over pricing, availability, quality and delivery schedules. We may be unable to find an alternative supplier in a reasonable time period or on commercially reasonable terms, if at all, which would adversely affect our business, results of operations and financial condition.

If any of our products or the components used in our products are alleged or proven to include quality or product defects, including as a result of improper methods of tissue recovery from donors and disease transmission from donated tissue or illegal harvesting, we may need to find alternate supplies, delay production of our products, discard or otherwise dispose of our products, or engage in a product recall, all of which may adversely affect our business, results of operations and financial condition. If our products or the components in our products are affected by adverse prices or quality or other concerns, we may not be able to identify alternate sources of components or other supplies that meet our quality controls and standards to sustain our sales volumes or on commercially reasonable terms, or at all.

We rely on a limited number of third-party manufacturers to manufacture certain of our products.

Third-party manufacturers generally manufacture our HA products, Exogen components, certain Surgical Solutions products, PNS and our rehabilitation devices. We have developed in-house assembly capabilities for our Exogen system. We and our third-party manufacturers are required to comply with the QSR which is a set of FDA regulations that establishes cGMP requirements for medical devices and covers the methods and documentation of the design, testing, production, control, quality assurance, labeling, packaging, sterilization, storage and shipping of such devices. Moreover, certain of our products may be re-classified as drugs, and we are planning to seek approval of a product pursuant to the BLA pathway. In each case, such products would be required to comply with the cGMP requirements that apply to drugs and biologics, respectively.

There are a limited number of suppliers and third-party manufacturers that operate under FDA's QSR requirements and that have the necessary expertise and capacity to manufacture our products or components for our products. As a result, it may be difficult for us to locate manufacturers for our anticipated future needs, and our anticipated growth could strain the ability of our current suppliers and third-party manufacturers to deliver products, materials and components to us. Upon expiration of our existing agreements with these third-party manufacturers, we may not be able to renegotiate the terms of our agreements with these third-party manufacturers on a commercially reasonable basis, or at all.

If we or our third-party manufacturers fail to maintain facilities in accordance with the FDA's QSR, the noncomplying party could lose the ability to manufacture our products on a commercial scale. Loss of this manufacturing capability would limit our ability to sell some of our products.

The manufacturing of our products may not be easily transferable to other sites in the event that any of our third-party manufacturers experience breakdown, failure or substandard performance of equipment, disruption of supply or shortages of, or quality issues with, components of our products and other supplies, labor problems, power outages, adverse weather conditions, natural disasters, global pandemics, such as COVID-19, or the need to comply with environmental and other directives of governmental agencies. From time to time, a third-party manufacturer may experience financial difficulties, bankruptcy or other business disruptions, which could disrupt our supply of finished goods or require that we incur additional expense by providing financial accommodations to the third-party manufacturer or taking other steps to seek to minimize or avoid supply disruption, such as establishing a new third-party manufacturing arrangement with another provider. The loss of any of these third-party manufacturers or the failure for any reason of any of these third-party manufacturers to fulfill their obligations under their agreements with us, including a failure to meet our quality controls and standards, may result in disruptions to our supply of finished goods. We may be unable to locate an additional or alternate third-party manufacturing arrangement that meets our quality controls and standards in a timely manner or on commercially reasonable terms, if at all. If this occurs, our business, results of operations and financial condition will be adversely affected.

If we fail to maintain our numerous contractual relationships, our business, results of operations and financial condition could be adversely affected.

We are party to numerous contracts in the normal course of our business, including our supply and distribution agreements. We have contractual relationships with suppliers, distributors and agents, as well as service providers. In the aggregate, these contractual relationships are necessary for us to operate our business. From time to time, we amend, terminate or negotiate our contracts. We may also periodically be subject to, or make claims of breach of contract, or threaten legal action relating to our contracts. These actions may result in litigation. At any one time, we have a number of negotiations under way for new or amended commercial agreements. We devote substantial time, effort and expense to the administration and negotiation of contracts involved in our business. However, these contracts may not continue in effect past their current term or we may not be able to negotiate satisfactory contracts in the future with current or new business partners, which may adversely affect our business, results of operations and financial condition.

Actual or attempted breaches of security, unauthorized disclosure of information, denial of service attacks or the perception that personal and/or other sensitive or confidential information in our possession or control is not secure, could result in a material loss of business, substantial legal liability or significant harm to our reputation.

We receive, collect, process, use and store a large amount of information, including personally identifiable information, protected health information and other sensitive and confidential information. This data is often accessed by us through transmissions over public and private networks, including the Internet. The secure transmission of such information over the Internet and other mechanisms is essential to maintain confidence in our information technology systems. Despite the privacy and security measures we have in place to comply with applicable laws, regulations and contractual requirements, our facilities and systems, and those of our third-party vendors and service providers, are vulnerable to privacy and security incidents including, but not limited to, computer hacking, breaches, acts of vandalism or theft, computer viruses and other malware, including ransomware or other forms of cyber-attack, misplaced or lost data, programming and/or human errors or other similar events. A party, whether internal or external, that is able to circumvent our security measures could, among other things, misappropriate or misuse sensitive or confidential information, user information or other proprietary information, or cause significant interruptions in our operations. Internal or external parties have and will continue to attempt to circumvent our security systems, and we expect that we may in the future continue to experience, among other things, external attacks on our network, and attempts to gain unauthorized access to sensitive and confidential information, such as reconnaissance probes, denial of service attempts, malware attacks, malicious software attacks and phishing attacks, such as an external phishing incident that occurred in January 2023, targeting an employee with plausible-sounding prompts to send information to Company leadership. This security incident did not expose protected health information, or affect any of the company's systems, and was reported to authorities in the relevant regions.

Because the techniques used to circumvent security systems can be highly sophisticated and change frequently, and often are not recognized until launched against a target and may originate from less regulated and remote areas around the world, we may be unable to proactively address all possible techniques or implement adequate preventive measures for all situations. Attacks upon information technology systems are also increasing in their frequency, level of persistence, and sophistication, and are being conducted by sophisticated and organized groups and individuals with a wide range of motives and expertise. We may also face increased cybersecurity risks due to our reliance on internet technology and the number of our employees who are working remotely, which may create additional opportunities for cybercriminals to exploit vulnerabilities. Furthermore, because the techniques used to obtain unauthorized access to, or to sabotage, systems change frequently and often are not recognized until launched against a target, we may be unable to anticipate these techniques or implement adequate preventative measures. We may also experience security breaches that may remain undetected for an extended period. Recent, well-publicized attacks of prominent companies have resulted in the theft of significant amounts of sensitive and confidential information and demonstrate the sophistication of the threat actors and magnitude of the threat posed to companies across the nation, including the health care industry.

If someone is able to gain unauthorized access to our systems, they could access, acquire, or alter any information located therein or cause interruptions to our operations. Security breaches and attempted security breaches thereof could also damage our reputation and expose us to a risk of monetary loss and/or litigation, fines, sanctions, and reputational damage. We also face risks associated with security breaches affecting third parties that conduct business with us or our customers and others who interact with our data. While we maintain insurance that covers certain security and privacy breaches, we may not carry or maintain sufficient coverage to compensate for all potential liability. Additionally, the costs incurred to remediate any data security or privacy incident could be substantial.

We cannot assure you that our third-party service providers with access to our or our customers', suppliers', trial patients', and employees' personally identifiable and other sensitive or confidential information in relation to which we are responsible will not breach contractual obligations imposed by us, or that they will not experience data security breaches, cyber-attacks or other incidents negatively impacting the privacy or security of sensitive or confidential information or our service providers' ability to provide services to us, which could have a corresponding effect on our business including putting us in breach of our obligations under privacy laws and regulations and/or which could in turn adversely affect our business, results of operations and financial condition. While we attempt to address the associated risks by performing security assessments and detailed due diligence, we cannot assure you that these contractual measures and our own privacy and security-related due diligence safeguards will protect us from the risks associated with the processing, storage and transmission of such information by service providers and others acting on our behalf.

Failure of a key information technology and communication system, process or site could adversely affect our business, results of operations and financial condition.

We rely extensively on information technology and communication systems and software and hardware products, including those of external providers, to conduct business. These systems and software and hardware impact, among other things, ordering and managing components of our products from suppliers, shipping products to customers on a timely basis, processing transactions, coordinating our sales activities across all of our products, summarizing and reporting results of operations, complying with regulatory, legal or tax requirements, data security and other processes necessary to manage our business.

Despite any precautions we may take, our systems and software and hardware could be exposed to damage or interruption from circumstances beyond our control, such as fire, natural disasters, systems failures, power outages, cyber-attacks, terrorism, energy loss, telecommunications failure, security breaches and attempts thereof, computer viruses and similar disruptions affecting the global Internet. Although we have taken steps to prevent system failures and have back-up systems and procedures to prevent or reduce disruptions, such steps may not prevent an interruption of services and our disaster recovery planning may not be adequate or account for all contingencies. Additionally, our insurance may not adequately compensate us for all losses or failures that may occur. If our systems or software and hardware are damaged or cease to function properly and our business continuity plans do not effectively compensate on a timely basis, we may suffer interruptions in our operations, which could adversely affect our business, results of operations and financial condition.

We will need to improve and upgrade our systems and infrastructure as our operations grow in scale in order to maintain the reliability and integrity of our systems and infrastructure. The expansion of our systems and infrastructure will require us to commit substantial financial, operational and technical resources before the volume of our business increases, with no assurance that the volume of business will increase. Any service outages or delays due to the installation of any new or upgraded technology (and customer issues therewith), or the impact on the reliability of our data from any new or upgraded technology could adversely affect our business, results of operations and financial condition.

Our business subjects us to economic, political, regulatory and other risks associated with international sales and operations that could adversely affect our business, results of operations and financial condition.

Since we sell our products in many different jurisdictions outside the United States, our business is subject to risks associated with conducting business internationally. We anticipate that net sales from international operations will continue to represent a portion of our total net sales. In addition, a number of our third-party manufacturing facilities and suppliers of our products are located outside the United States. Accordingly, our future results could be harmed by a variety of factors, including:

- economic weakness, including inflation, or political instability in particular foreign economies and markets;
- foreign currency fluctuations, which could result in increased operating expenses and reduced revenue, and other obligations incident to doing business in another country;
- customers in some foreign countries potentially having longer payment cycles;
- exposure of our foreign operations to liability under U.S. laws and regulations, including the U.S. Foreign Corrupt Practices Act ("FCPA"), regulations of the U.S. Office of Foreign Assets Controls, and U.S. anti-money laundering regulations, as well as disadvantages of competing against companies from countries that are not subject to these regulatory regimes;
- training of third-parties on our products and the procedures in which they are used;
- reduced protection for and greater difficulty enforcing our intellectual property rights;
- unexpected changes in tariffs, trade barriers and regulatory requirements, export licensing requirements or other restrictive actions by foreign governments;
- difficulty in staffing and managing widespread operations, including compliance with tax, employment, immigration and labor laws for employees living or traveling abroad;
- foreign taxes, including withholding of payroll taxes;
- workforce uncertainty in countries where labor unrest is more common than in the United States;
- exposure to liability under a variety of local, national and multinational laws and regulations in multiple jurisdictions, including data privacy laws, healthcare and pharmaceutical laws, antitrust and competition laws, anti-bribery and anti-corruption laws and international trade laws;
- international regulators and third-party payers requiring additional clinical studies prior to approving or allowing reimbursement for our products;
- complexities associated with managing multiple payer reimbursement regimes, government payers or patient self-pay systems;
- production shortages resulting from any events affecting material supply or manufacturing capabilities abroad; and
- business interruptions resulting from geopolitical actions, including war and terrorism, global pandemics or natural disasters including earthquakes, hurricanes, floods and fires. If the current conflict between Russia and Ukraine escalates or spills over to or otherwise impacts additional regions, it could heighten many of the other risk factors included in this Item 1A.

In addition, further expansion into new international markets may require significant resources and the efforts and attention of our management and other personnel, which may divert resources from our existing business operations. As we expand our business internationally, our success will depend, in large part, on our ability to anticipate and effectively manage these and other risks associated with our operations outside of the United States.

We are exposed to foreign currency risks, which may adversely affect our business, results of operations and financial condition.

External events such as the withdrawal by the United Kingdom from the EU, global pandemics, the ongoing uncertainty regarding actual and potential shifts in U.S. and foreign trade, economic and other policies and the passage of U.S. taxation reform legislation have caused, and may continue to cause, significant volatility in currency exchange rates. Because some of our revenue, expenses, assets and liabilities are denominated in foreign currencies, we are subject to exchange rate and currency risks. Our financial statements are presented in U.S. dollars which may result in currency gain or loss, the outcome of which we cannot predict. Furthermore, to the extent that we incur expenses or earn revenue in currencies other than in U.S. dollars, any change in the values of those foreign currencies relative to the U.S. dollar could cause our profits to decrease or our products to be less competitive against those of our competitors. To the extent that our current assets denominated in foreign currency are greater or less than our current liabilities denominated in foreign currencies, we face potential foreign exchange exposure.

To minimize such exposures, we have entered, and may in the future enter, into derivative instruments related to forecasted foreign currency transactions or currency hedges from time to time. Losses from changes in the value of the Euro or other foreign currencies relative to the U.S. dollar could adversely affect our business, results of operations and financial condition.

International tariffs applied to goods traded between the United States and China for restrictions on goods imported from certain regions of China may adversely affect our business, results of operations and financial condition.

International tariffs, including tariffs applied to goods traded between the United States and China, may adversely affect our business, results of operations and financial condition. Since the beginning of 2018, there has been increasing discussion, in some cases coupled with legislative or executive action, from several U.S. and foreign leaders regarding the possibility of instituting tariffs against foreign imports of certain materials. The institution of trade tariffs both globally and between the U.S. and China specifically carries the risk of adversely affecting overall economic condition, which could have a negative impact on us as imposition of tariffs could cause an increase in the cost of our products and the components for our products, specifically with respect to our Exogen system, which may adversely affect our business, results of operations and financial condition. In addition, the U.S. has previously enacted, and it or other countries may in the future enact legislation that limits or prohibits the use of foreign manufactured equipment or supplies from China, such as the Uyghur Forced Labor Prevention Act, which imposes a ban on virtually all imports from the Xinjiang region of China unless companies are able to prove that the products were not made with forced labor, which is expected to have an adverse effect on our ability to conduct our business and our results of operations.

Uncertainty relating to the LIBOR calculation process and potential phasing out of LIBOR in the future may adversely affect our financing costs.

Our Amended 2019 Credit Agreement utilizes the London Interbank Offered Rate ("LIBOR"), or various alternative methods to calculate interest on any borrowings, which may be subject to regulatory guidance and/or reform that could cause interest rates under our current or future debt agreements to perform differently than in the past or cause other unanticipated consequences. Some tenors of LIBOR were discontinued on December 31, 2021. Although we expect that the capital and debt markets will cease to use LIBOR as a benchmark in the near future and the administrator of LIBOR has announced its intention to extend the publication of most tenors of LIBOR for U.S. dollars through June 30, 2023, we cannot predict whether or when LIBOR will actually cease to be available, whether the Secured Overnight Funding Rate ("SOFR"), will become the market benchmark in its place or what impact such a transition may have on our business, financial condition and results of operations.

Risks related to government regulation

The risk factors listed below describe the risks we face related to government regulation. The companies who manufacture or produce certain of the products we distribute face similar risks with respect to government regulation relating to such products. If such suppliers are unable to comply with government regulations, they may not be able to continue to supply us with products, which could adversely affect our business, results of operations and financial condition.

Our products and operations are subject to extensive governmental regulation, and our failure to comply with applicable requirements could cause our business to suffer.

The healthcare industry, and in particular the medical device industry, are regulated extensively by governmental authorities, principally the FDA and corresponding state and foreign regulatory agencies and authorities. The FDA and other U.S. and foreign governmental agencies and authorities regulate and oversee, among other things:

- design, development and manufacturing;
- testing, labeling, content and language of instructions for use and storage;
- clinical trials;
- product safety;
- marketing, sales and distribution;
- premarket clearance, approval and certification;
- conformity assessment procedures;
- record-keeping procedures;
- advertising and promotion;
- recalls and other field safety corrective actions;
- post market surveillance, including reporting of deaths or serious injuries and malfunctions that, if they were to recur, could lead to death or serious injury;
- post market studies; and
- product import and export.

The regulations to which we are subject are complex and have tended to become more stringent over time. Regulatory changes could result in restrictions on our ability to carry on or expand our operations, higher than anticipated costs or lower than anticipated sales.

The failure to comply with applicable regulations could jeopardize our ability to sell our products and result in enforcement actions such as:

- administrative or judicially imposed sanctions;
- unanticipated expenditures to address or defend such actions;
- injunctions, consent decrees or the imposition of civil penalties or fines;
- recall or seizure of our products;
- total or partial suspension of production or distribution;
- refusal to grant pending or future clearances, approvals or certifications for our products;
- withdrawal or suspension of regulatory clearances, approvals or certifications;
- clinical holds;
- untitled letters or warning letters;
- refusal to permit the import or export of our products; and
- criminal prosecution of us or our employees.

Any of these sanctions could result in higher than anticipated costs or lower than anticipated sales and harm our reputation, business, results of operations and financial condition.

Moreover, governmental authorities outside the United States have become increasingly stringent in their regulation of medical devices, and our products may become subject to more rigorous regulation by non U.S. governmental authorities in the future. U.S. or non-U.S. government regulations may be imposed in the future that adversely affect our business, results of operations and financial condition. The European Commission has harmonized national regulations for the control of medical devices through European Medical Device Regulations with which manufacturers must comply. Under these new regulations, manufacturing plants must have received a full Quality Assurance Certification from a "Notified Body" in order to be able to sell products within the member states of the EU. This certification allows manufacturers to stamp the products of certified plants with a "CE" mark. Products covered by European Commission regulations that do not bear the CE mark cannot be sold or distributed within the EU. Refer to *Part I, Item 1A. Risk Factors—Risks related to government regulation—Regulatory reforms, such as the EU Medical Devices Regulation, could limit our ability to market and distribute our products after clearance, approval or certification is obtained and make it more difficult or costly for us to obtain regulatory clearance, approval or certification of any future products, which could adversely affect our competitive position and materially affect our business and financial results.*

We may be subject to enforcement action if we engage in improper claims submission practices and resulting audits or denials of our claims by government agencies could reduce our net sales or profits and could lead to significant civil or criminal penalties and other liability.

In connection with our Exogen system, we submit claims directly to, and receive payments directly from, the Medicare and Medicaid programs and private payers. Therefore, we are subject to extensive government regulation, including detailed requirements for submitting claims under appropriate codes and maintaining certain documentation, including evidence that all medical necessity requirements are met to support our claims. Billing for our Exogen system is complex, time-consuming and expensive, particularly for items and services provided to government healthcare program beneficiaries, such as Medicare and Medicaid. Reimbursement claims may be adversely affected by improper completion of the Certificates of Medical Necessity ("CMN") required in connection with Medicare claims for the Exogen system and we may be subject to investigations by governmental authorities or third-party payers and required to prove the validity of the claims or the authenticity of the signatures on the CMNs under investigation. Reimbursement claims may also be adversely affected by the promotion of our devices for unapproved or off-label uses or assistance with the reimbursement process that could result in false or fraudulent claims for reimbursement being submitted to government or private payers. Depending on the billing arrangement and applicable law, we bill various payers, all of which may have different prior authorization, patient qualification and medical necessity requirements, as well as patients for any applicable co-payments or co-insurance amounts. In addition, we may also face increased risk in our collection efforts, including potential write-offs of doubtful accounts and long collection cycles, any of which could adversely affect our business, results of operations and financial condition.

We are also required to implement compliance procedures and to oversee, train and monitor our employees' compliance with those procedures, appeal coverage and payment denials, and perform internal audits periodically to assess compliance with applicable laws and regulations as well as internal compliance policies and procedures. We are required to report and return any overpayments received from government payers within 60 days of identification and exercise of reasonable diligence to investigate credible information regarding potential overpayments. Failure to identify and return such overpayments exposes the provider or supplier to liability under federal false claims laws. For example, in February 2021 we entered into a settlement agreement with the United States Attorney's Office for the Middle District of North Carolina and the Office of Inspector General of the U.S. Department of Health and Human Services ("OIG") to resolve potential liabilities associated with a self-disclosure we made to the OIG in November 2018 regarding violations of certain Medicare claim submission requirements. See *Part I, Item 1A Risk Factors—Risks related to government regulation—We are subject to federal, state and foreign laws and regulations relating to our healthcare business, and could face substantial penalties if we are determined not to have fully complied with such laws, which would adversely affect our business, results of operations and financial condition.* Moreover, Medicare contractors and state Medicaid agencies periodically conduct pre- and post-payment reviews and other audits of claims and are under increasing pressure to more closely scrutinize healthcare claims and supporting documentation. We may be subject to prepayment and post-payment reviews, as well as audits of claims in the future. Private payers may from time to time conduct similar reviews and audits. Any third-party payer reviews and audits of our claims could result in material delays in payment, material recoupments, overpayments, claim denials, fines, revocations of billing privileges, bars on re-enrollment in federal or state healthcare programs, cancellation of our agreements or damage to our reputation, any of which would reduce our net sales and profitability.

The FDA regulatory process is expensive, time-consuming and uncertain, and the failure to obtain and maintain required regulatory clearances and approvals could prevent us from commercializing our products.

Before we can market or sell a new medical device or other product or a new use of or a claim for or significant modification to an existing medical device in the United States, we must obtain either clearance from the FDA under 510(k) pathway or approval of a Pre-Market Approval ("PMA"), unless an exemption applies. In the United States, we have obtained 510(k) clearance from the FDA to market certain of our products such as Signafuse Bioactive Bone Graft Putty, Interface Bioactive Bone Graft and Signafuse Mineralized Collagen Scaffold. Our Pain Treatment products, including Durolane, GELSYN-3 and SUPARTZ FX, and our Exogen system, have an obtained PMA. In the 510(k) clearance process, the FDA must determine that a proposed device is "substantially equivalent" to a legally-marketed predicate device. To be "substantially equivalent," the proposed device must have the same intended use as the predicate device, and either have the same technological characteristics as the predicate device or have different technological characteristics and not raise different questions of safety or effectiveness than the predicate device. In the PMA process, the FDA must determine that a proposed product is safe and effective for our intended use based, in part, on extensive data, including, but not limited to, technical, preclinical, clinical trial, manufacturing and labeling data. The PMA process is typically required for products that are deemed to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices.

Both the PMA approval and the 510(k) clearance process can be expensive, lengthy and uncertain. The FDA's 510(k) clearance process usually takes from three to twelve months, but can last longer. The process of obtaining a PMA is much more costly and uncertain than the 510(k) clearance process and generally takes from six to eighteen months, or even longer, from the time the application is filed with the FDA. In addition, a PMA generally requires the performance of one or more clinical trials. Despite the time, effort and cost, we cannot assure you that any particular device will be approved or cleared by the FDA. Any delay or failure to obtain necessary regulatory approvals could harm our business.

Any modification to one of our 510(k) cleared products that would constitute a major change in its intended use, or any change that could significantly affect the safety or effectiveness of the device would require us to obtain a new 510(k) marketing clearance and may even, in some circumstances, require the submission of a PMA application, if the change raises complex or novel scientific issues or the product has a new intended use. The FDA requires every manufacturer to make the determination regarding the need for a new 510(k) submission in the first instance, but the FDA may review any manufacturer's decision. We may make changes to our 510(k)-cleared products in the future that we may determine do not require a new 510(k) clearance or PMA approval. If the FDA disagrees with our decision not to seek a new 510(k) or PMA approval for changes or modifications to existing devices and requires new clearances or approvals, we may be required to recall and stop marketing our products as modified, which could require us to redesign our products, conduct clinical trials to support any modifications, and pay significant regulatory fines or penalties. If there is any delay or failure in obtaining required clearances or approvals or if the FDA requires us to go through a lengthier, more rigorous examination for future products or modifications to existing products than we had expected, our ability to introduce new or enhanced products in a timely manner would be adversely affected, which in turn would result in delayed or no realization of revenue from such product enhancements or new products and could also result in substantial additional costs which could decrease our profitability.

The FDA can delay, limit or deny clearance or approval of a device for many reasons, including:

- if we are unable to demonstrate to the FDA's satisfaction that the product or modification is substantially equivalent to the proposed predicate device or safe and effective for its intended use;
- if the data from our preclinical studies and clinical trials may be insufficient to support clearance or approval, where required; and
- if the manufacturing process or facilities we use may not meet applicable requirements.

In addition, the FDA may change its clearance and approval policies, adopt additional regulations or revise existing regulations, or take other actions, which may prevent or delay approval or clearance of our future products under development or impact our ability to modify our currently cleared or approved products on a timely basis. Even after clearance or approval for our products is obtained, we and the products are subject to extensive post market regulation by the FDA, including with respect to advertising, marketing, labeling, manufacturing, distribution, import, export, and clinical evaluation.

We are also required to timely file various reports with regulatory agencies. If these reports are not timely filed, regulators may impose sanctions and sales of our products may suffer, and we may be subject to product liability or regulatory enforcement actions, all of which could harm our business. In addition, if we initiate a correction or removal for one of our devices, issue a safety alert, or undertake a field action or recall to reduce a risk to health posed by the device, we may be required to submit a report to the FDA, and in many cases, to other regulatory agencies. Such reports could lead to increased scrutiny by the FDA, other international regulatory agencies and our customers regarding the quality and safety of our devices and to negative publicity, including FDA alerts, press releases, or administrative or judicial actions. Furthermore, the submission of these reports has been and could be used by competitors against us in competitive situations and cause customers to delay purchase decisions or cancel orders, which would harm our reputation and business.

The FDA, state and foreign authorities have broad enforcement powers. Our failure to comply with applicable regulatory requirements could result in enforcement action by the FDA, state or foreign regulatory agencies, which may include any of the following sanctions:

- adverse publicity, warning letters, untitled letters, fines, injunctions, consent decrees and civil penalties;
- repair, replacement, refunds, recalls, termination of distribution, administrative detention or seizures of our products;
- operating restrictions, partial suspension or total shutdown of production;
- customer notifications or repair, replacement or refunds;
- refusing our requests for 510(k) clearance or PMA approvals or foreign regulatory approvals of new products, new intended uses or modifications to existing products;
- withdrawals of current 510(k) clearances or PMAs or foreign regulatory approvals, resulting in prohibitions on sales of our products;
- FDA refusal to issue certificates to foreign governments needed to export products for sale in other countries; and
- criminal prosecution.

Any of these sanctions could also result in higher than anticipated costs or lower than anticipated sales and adversely affect our business, results of operations and financial condition.

In addition, the FDA's and other regulatory authorities' policies may change and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our product candidates. We also cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative or executive action, either in the United States or abroad. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance as a result of a changing regulatory landscape, we may lose any marketing approvals or clearances that we have already obtained or fail to obtain new marketing approvals or clearances, and we may not be able to achieve or sustain profitability, which would adversely affect our business, prospects, financial condition and results of operations.

Legislative or regulatory reforms, including those currently under consideration by FDA and the EU, could make it more difficult or costly for us to obtain regulatory clearance, approval or certification of any future products and to manufacture, market and distribute our products after clearance, approval or certification is obtained, which could adversely affect our competitive position and materially affect our business and financial results.

From time to time, legislation is introduced that could significantly change the statutory provisions and regulations governing the approval, manufacture and marketing of regulated products or the reimbursement thereof. In addition, FDA may change its clearance and approval policies, adopt additional regulations or revise existing regulations, propose new reclassification orders, or take other actions, which may prevent or delay approval or clearance of our future products under development or impact our ability to market or modify our currently cleared products on a timely basis. For example, over the last several years, the FDA has proposed reforms to its 510(k) clearance process, and such proposals could include increased requirements for clinical data and a longer review period, or could make it more difficult for manufacturers to utilize the 510(k) clearance process for their products. For example, in November 2018, FDA officials announced steps that the FDA intended to take to modernize the 510(k) premarket notification pathway, including plans to potentially sunset certain older devices that were used as predicates under the 510(k) clearance pathway. In September 2019, the FDA also issued revised final guidance establishing a "Safety and Performance Based Pathway" for "manufacturers of certain well-understood device types" allowing manufacturers to rely on objective safety and performance criteria recognized by the FDA to demonstrate substantial equivalence, obviating the need for manufacturers to compare the safety and performance of their medical devices to specific predicate devices in the clearance process. The FDA has developed and maintains a list of device types appropriate for the "safety and performance based" pathway and continues to develop product-specific guidance documents that identify the performance criteria and recommended testing methodologies for each such device type, where feasible. Some of these proposals have not yet been finalized or adopted, and the FDA announced that it would seek public feedback prior to publication of any such proposals, and may work with Congress to implement such proposals through legislation. Accordingly, it is unclear the extent to which any changes could impose additional regulatory requirements on us that could delay our ability to obtain clearances, increase the costs of compliance, or restrict our ability to maintain our current clearances, or otherwise create competition that may negatively affect our business.

In addition, FDA regulations and guidance are often revised or reinterpreted by the FDA in ways that may significantly affect our business and our products. Any new statutes, regulations or revisions or reinterpretations of existing regulations may impose additional costs or lengthen review times of any future products or make it more difficult to obtain clearance or approval for, manufacture, market or distribute our products. We cannot determine what effect changes in regulations, statutes, legal interpretation or policies, when and if promulgated, enacted or adopted may have on our business in the future. Such changes could, among other things, require: additional testing prior to obtaining clearance or approval; changes to manufacturing methods; recall, replacement or discontinuance of our products; or additional record keeping.

Our HCT/P products are subject to extensive government regulation and our failure to comply with these requirements could cause our business to suffer.

In the United States, we sell human tissue-derived Surgical Solutions products, which are referred to by the FDA as human cells, tissues and cellular or tissue-based products ("HCT/Ps"). In the United States, we are marketing our HCT/Ps pursuant to Section 361 of the PHSA and 21 CFR Part 1271 of FDA's regulations. We do not manufacture these HCT/P products, but serve as a distributor for them. Section 361 HCT/Ps are not currently subject to the FDA requirements to obtain marketing authorizations as long as they meet certain criteria provided in FDA's regulations. HCT/Ps regulated as "361 HCT/Ps" are currently subject to requirements relating to registering facilities and listing products with the FDA, screening and testing for tissue donor eligibility, cGTP, when processing, storing, labeling and distributing HCT/Ps, including required labeling information, stringent record keeping and adverse event reporting. If we or our suppliers fail to comply with these requirements, we could be subject to FDA enforcement action, including, for example, warning letters, fines, injunctions, product recalls or seizures, and, in the most serious cases, criminal penalties. To be regulated as Section 361 HCT/Ps, these products must meet FDA's criteria to be considered "minimally manipulated" and intended for "homologous use," among other requirements. HCT/Ps that do not meet the criteria to be considered Section 361 HCT/Ps are subject to the FDA's regulatory requirements applicable to medical devices, biologics or drugs. Device, biologic or drug HCT/Ps must comply both with the requirements exclusively applicable to Section 361 HCT/Ps and, in addition, with other requirements, including requirements for marketing authorization, such as 510(k) clearance or PMA or BLA approvals before marketing. Except as described below with regard to MOTYS, we believe our HCT/Ps are regulated solely under Section 361 of the PHSA, and therefore, we have not sought or obtained 510(k) clearance, PMA approval, or licensure through a BLA for such HCT/Ps.

The FDA could disagree with our determination that these human tissue products are Section 361 HCT/Ps and could determine that these products are biologics requiring a BLA or medical devices requiring 510(k) clearance or PMA approval, and could require that we cease marketing such products and/or recall them pending appropriate clearance, approval or licensure from the FDA. If we have to cease marketing and/or have to recall any of our Surgical Solutions products our net sales would decrease, which would adversely affect our business, results of operations and financial condition.

HCT/Ps that do not meet the criteria of Section 361 are regulated under Section 351 of the PHSA. HCT/Ps regulated as "351" HCT/Ps are subject to premarket review and approval by the FDA. In November 2017, the FDA released a guidance document entitled "Regulatory Considerations for Human Cells, Tissues, and Cellular and Tissue—Based Products: Minimal Manipulation and Homologous Use—Guidance for Industry and Food and Drug Administration Staff." The guidance outlined the FDA's position that all lyophilized amniotic products are more than minimally manipulated and would therefore require a BLA to be lawfully marketed in the United States. The FDA resumed enforcement of IND and premarket approval requirements with respect to these products as of June 1, 2021.

In addition, the FDA may in the future modify the scope of its enforcement discretion with respect to Section 361 HCT/Ps or change its position on which current or future products qualify as Section 361 HCT/Ps, or determine that some or all of our HCT/P products may not be lawfully marketed under the FDA's policy of enforcement discretion. Any regulatory changes could have adverse consequences for us and make it more difficult or expensive for us to conduct our business by requiring pre-market clearance or approval and compliance with additional post-market regulatory requirements with respect to those products.

If clinical studies of our future products do not produce results necessary to support regulatory clearance, approval or certification in the United States or elsewhere, we will be unable to expand the indications for or commercialize these products.

We will likely need to conduct additional clinical studies in the future to support new indications for our products or for clearances, approvals or certifications of new product lines, or for the approval or certification of the use of our products in some foreign countries. Clinical testing can take many years, can be expensive and carries uncertain outcomes. The initiation and completion of any of these studies may be prevented, delayed, or halted for numerous reasons. Conducting successful clinical studies requires the enrollment of large numbers of patients, and suitable patients may be difficult to identify and recruit. Patient enrollment in clinical trials and completion of patient participation and follow-up depends on many factors, including the size of the patient population, the nature of the trial protocol, the attractiveness of, or the discomforts and risks associated with, the treatments received by enrolled subjects, the availability of appropriate clinical trial investigators and support staff, proximity of patients to clinical sites, patient ability to meet the eligibility and exclusion criteria for participation in the clinical trial and patient compliance. For example, patients may be discouraged from enrolling in our clinical trials if the trial protocol requires them to undergo extensive post-treatment procedures or follow-up to assess the safety and effectiveness of our products or if they determine that the treatments received under the trial protocols are not attractive or involve unacceptable risks or discomforts. Patients may also not participate in our clinical trials if they choose to participate in contemporaneous clinical trials of competitive products. In addition, patients participating in clinical trials may die before completion of the trial or suffer adverse medical events unrelated to investigational products.

Clinical failure can occur at any stage of testing. Our clinical studies may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical and non-clinical studies in addition to those we have planned. In addition, failure to adequately demonstrate the safety and efficacy of any of our devices would prevent receipt of regulatory clearance, approval or certification and, ultimately, the commercialization of that device or indication for use. Even if our future products are cleared in the United States, commercialization of our products in foreign countries would require approval or certification by regulatory authorities or notified bodies in those countries. Approval and certification procedures vary among jurisdictions and can involve requirements and administrative review periods different from, and greater than, those in the United States, including additional preclinical studies or clinical trials. Any of these occurrences could adversely affect our business, results of operations and financial condition.

Interim, "top-line" and preliminary data from our clinical trials that we announce or publish from time to time may change as more patient data become available and are subject to audit and verification procedures that could result in material changes in the final data.

From time to time, we may publish interim, "top-line" or preliminary data from our clinical trials. Interim, top-line, or preliminary data from clinical trials that we may complete are subject to the risk that one or more of the clinical outcomes may materially change as patient enrollment continues and more patient data become available. Preliminary, "top-line," or interim data also remain subject to audit and verification procedures that may result in the final data being materially different from the preliminary data we previously published. As a result, interim, "top-line," and preliminary data should be viewed with caution until the final data are available. Differences between preliminary, interim, or "top-line" data and final data could significantly harm our business prospects and may cause the trading price of our common stock to fluctuate significantly.

Further, others, including regulatory agencies, may not accept or agree with our assumptions, estimates, calculations, conclusions or analyses or may interpret or weigh the importance of data differently, which could impact the value of the particular program, the approvability or commercialization of the particular product candidate or product and our business in general. In addition, the information we choose to publicly disclose regarding a particular study or clinical trial is based on what is typically extensive information, and you or others may not agree with what we determine is the material or otherwise appropriate information to include in our disclosure, and any information we determine not to disclose may ultimately be deemed significant with respect to future decisions, conclusions, views, activities or otherwise regarding a particular product candidate or our business. If the interim, "top-line," or preliminary data that we report differ from actual results, or if others, including regulatory authorities, disagree with the conclusions reached, our ability to obtain approval for and commercialize our product candidates, our business, operating results, prospects or financial condition may be harmed.

We may be subject to enforcement action if we engage in improper marketing or promotion of our products, and the misuse or off-label use of our products may harm our image in the marketplace, result in injuries that lead to product liability suits or result in costly investigations, fines and/or sanctions by regulatory bodies if we are deemed to have engaged in the promotion of these uses, any of which could be costly to our business.

Certain products that we currently market have been cleared, approved or certified by the FDA and other foreign regulatory authorities and notified bodies for specific treatments. We cannot prevent a physician from using our products outside of such cleared or approved indications for use, known as off-label uses. While we do not analyze the ordering practices of physicians with respect to off-label uses, we are aware of certain off-label uses of our EXOGEN product. As a result, we could be subject to regulatory or enforcement actions if we are determined to have engaged in promotion of our products for off-label uses, or otherwise determined to have made false or misleading statements about our products. There may be increased risk of injury to patients if physicians attempt to use our products off-label. Furthermore, the use of our products for indications other than those cleared, approved or certified by the FDA or any foreign regulatory authority or notified body may not effectively treat such conditions, which could harm our reputation in the marketplace among physicians and patients.

In addition, physicians may misuse our products or use improper techniques if they are not adequately trained, potentially leading to injury and an increased risk of product liability. If our products are misused or used with improper technique, we may become subject to costly litigation by our customers or their patients. Product liability claims could divert management's attention from our core business, be expensive to defend and result in sizeable damage awards against us that may not be covered by insurance.

Further, our promotional materials and training methods must comply with FDA and other applicable laws and regulations, including the prohibition of the promotion of off-label use. If the FDA or any foreign regulatory body determines that our promotional materials or training constitute promotion of an off-label use, the FDA could request that we modify our training, promotional materials or subject us to regulatory or enforcement actions, including the issuance of an untitled letter, a warning letter, injunction, seizure, civil fine or criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider our business activities to constitute promotion of an off-label use, which could result in significant penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement. Such enforcement actions may include, but are not limited to, criminal, civil and administrative penalties, treble damages, fines, disgorgement, exclusion from participation in government healthcare programs, additional reporting requirements and oversight if we become subject to a corporate integrity agreement or similar agreement to resolve allegations of non-compliance with these laws and the curtailment or restructuring of our operations.

Our products may cause or contribute to adverse medical events that we are required to report to the FDA, and if we fail to do so, we would be subject to sanctions that could materially harm our business.

Some of our marketed products are subject to medical device reporting obligations, which require that we report to the FDA any incident in which our products may have caused or contributed to a death or serious injury, or in which our products malfunctioned and, if the malfunction were to recur, it could likely cause or contribute to a death or serious injury. The timing of our obligation to report under the MDR regulations is triggered by the date we become aware of the adverse event as well as the nature of the event. We may fail to report adverse events of which we become aware within the prescribed timeframe. We may also fail to recognize that we have become aware of a reportable adverse event, especially if it is not reported to us as an adverse event or if it is an adverse event that is unexpected or removed in time from the use of our products. If we fail to comply with our reporting obligations, the FDA could take action including warning letters, untitled letters, administrative actions, criminal prosecution, imposition of civil monetary penalties, revocation of our device clearances, seizure of our products, or delay in clearance of future products.

We and our third-party manufacturers and suppliers are subject to various governmental regulations related to the manufacturing of our products.

Our products and the manufacturing processes, reporting requirements, post-approval clinical data and promotional activities for such products, will be subject to continued regulatory review, oversight and periodic inspection by the FDA and other domestic and foreign regulatory bodies. In particular, the methods used in, and the facilities used for, the manufacture of the products that we own and distribute that are regulated as medical devices must comply with the FDA's Quality System Regulation ("QSR"), which covers the procedures and documentation of the design, testing, production, control, quality assurance, labeling, packaging, sterilization, storage and shipping of medical devices. The FDA enforces the QSR through periodic announced or unannounced inspections of manufacturing facilities, and both we and our third-party manufacturers and suppliers are subject to such inspections. Similarly, the devices we distribute on behalf of third-party manufacturers that are regulated as Section 361 HCT/Ps must be manufactured in compliance with cGTP requirements and other related requirements. Moreover, should any of our HA products be re-classified as drugs, such products would be required to comply with a different set of manufacturing requirements under FDA's cGMP requirements for drugs. The need to comply with different manufacturing requirements may require us to seek new suppliers.

Failure to comply with applicable FDA requirements, or later discovery of previously unknown problems with our products or the manufacturing processes of our third-party manufacturers and suppliers, including any failure to take satisfactory corrective action in response to an adverse regulatory inspection, can result in, among other things:

- administrative or judicially imposed sanctions;
- injunctions or the imposition of civil penalties or fines;
- recall or seizure of our products;
- total or partial suspension of production or distribution;
- refusal to grant pending or future clearances, approvals or certifications for our products;
- withdrawal or suspension of regulatory clearances, approvals or certifications;
- clinical holds;
- untitled letters or warning letters;
- refusal to permit the import or export of our products; and
- criminal prosecution of us or our employees.

Any of these actions could prevent or delay us from marketing, distributing or selling our products and would likely harm our business. Furthermore, our suppliers may not currently be or may not continue to be in compliance with all applicable regulatory requirements, which could result in our failure to produce our products on a timely basis and in the required quantities, if at all.

Our products may be subject to product recalls. A recall of our products, either voluntarily or at the direction of the FDA or another governmental authority, or the discovery of serious safety issues with our products, could adversely affect us.

The FDA and similar foreign governmental authorities have the authority to require the recall of commercialized drugs, devices and similar products in the event of material deficiencies or defects in their design or manufacture. For example, the FDA's authority to require a recall for medical devices must be based on a finding that there is reasonable probability that the device would cause serious injury or death. In addition, we have in the past and may in the future decide to voluntarily recall our products if certain deficiencies are found. For example, we are currently undertaking a voluntary Class II recall of certain vials of ultrasound gel that we provide with our Exogen system due to particulates, which were microbial in nature, found in the gel. The gel is manufactured by a third-party supplier, and we have discontinued the use of that suppliers' gel and have replaced that gel with that of another manufacturer. We have identified the affected lots and have notified patients to discard gel bottles from those lots. A government-mandated or voluntary recall could occur as a result of an unacceptable risk to health, component failures, malfunctions, manufacturing errors, design or labeling defects or other deficiencies and issues. Recalls of any of our products would divert managerial and financial resources and could adversely affect our reputation and business, which could impair our ability to produce our products in a cost-effective and timely manner in order to meet our customers' demands. We may also be subject to liability claims, be required to bear other costs, or take other actions that could adversely affect our business, results of operations and financial condition.

Companies are required to maintain certain records of recalls and corrections, even if they are not reportable to the FDA or foreign regulatory authorities. We may initiate voluntary recalls or corrections for our products in the future that we determine do not require notification of the FDA or foreign regulatory authorities. If the FDA or foreign regulatory authorities disagree with our determinations, they could require us to report those actions as recalls and we may be subject to enforcement action.

As we conduct clinical studies designed to generate long-term data on some of our existing products, the data we generate may not be consistent with our existing data and may demonstrate less favorable safety or efficacy. Data we generate may ultimately not be favorable, or could even hurt the commercial prospects for our products.

We are currently collecting and plan to continue collecting long-term clinical data regarding the quality, safety and effectiveness of some of our existing products. The clinical data collected and generated as part of these studies will further strengthen our clinical evaluation concerning safety and performance of these products. If the results of these clinical studies are negative, these results could reduce demand for our products and significantly reduce our ability to achieve expected net sales. Surgeons and physicians could be less likely to purchase our products than competing products for which longer-term clinical data are available. Also, we may not choose or be able to generate the comparative data that some of our competitors have or are generating and we may be subject to greater regulatory and product liability risks. If we are unable to or unwilling to collect sufficient long-term clinical data supporting the quality, safety and effectiveness of our existing products, our business, results of operations and financial condition could be adversely affected.

We may rely on third-parties to conduct our clinical studies and to assist us with preclinical development and if they fail to perform as contractually required or expected, we may not be able to obtain regulatory clearance, approval or certification to commercialize our products.

We have relied upon and may continue to rely upon third-parties, such as contract research organizations ("CROs"), medical institutions, clinical investigators and contract laboratories to assist in conducting our clinical studies, which must be conducted in accordance with applicable regulations, including GCP and our preclinical development activities. We rely on these parties for execution of our studies, and control only certain aspects of their activities. Nevertheless, we are responsible for ensuring that each of our clinical studies is conducted in accordance with the applicable protocol, legal, regulatory, and scientific standards, and our reliance on these third-parties does not relieve us of our regulatory responsibilities. GCPs are regulations and guidelines enforced by the FDA and other regulatory authorities for products in clinical development. Regulatory authorities enforce these GCPs through periodic inspections of trial sponsors, principal investigators, trial sites, and CROs. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials comply with GCP regulations. In addition, our clinical trials must be conducted with product produced under applicable manufacturing requirements.

If these third-parties fail to successfully carry out their contractual duties, comply with applicable regulatory obligations, including GCP requirements, or meet expected deadlines, or if these third-parties must be replaced, or if the quality or accuracy of the data they obtain is compromised due to the failure to adhere to clinical protocols or applicable regulatory requirements or for other reasons, our pre-clinical development activities or clinical studies may be extended, delayed, suspended or terminated. Under these circumstances we may not be able to obtain regulatory clearance, approval or certification for, or successfully commercialize, our products on a timely basis, if at all, and our business, results of operations and financial condition may be adversely affected.

If any of our relationships with these third-parties terminate, we may not be able to enter into arrangements with alternative third-parties or to do so on commercially reasonable terms. In addition, our third-parties are not our employees, and except for remedies available to us under our agreements with them, we cannot control whether or not they devote sufficient time and resources to our on-going clinical, nonclinical and preclinical programs. Switching or adding additional third-parties involves additional cost and requires management time and focus. In addition, there is a natural transition period when a new CRO or other third-party vendor commences work. As a result, delays occur, which can materially impact our ability to meet our desired development timelines. Though we carefully manage our relationships with our third-party vendors including CROs, there can be no assurance that we will not encounter similar challenges or delays in the future or that these delays or challenges will not have a material adverse impact on our business, financial condition and prospects.

Healthcare regulatory reform may affect our ability to sell our products profitably and could adversely affect our business, results of operations and financial condition.

In the United States and in certain foreign jurisdictions, there have been a number of legislative and regulatory proposals to change the regulatory and healthcare systems in ways that could prevent or delay marketing approval or certification of our products in development, restrict or regulate post-approval or certification activities of our products and impact our ability to sell our products profitably. In the United States in recent years, new legislation has been proposed and adopted at the federal and state level that is effecting major changes in the healthcare system. In addition, new regulations and interpretations of existing healthcare statutes and regulations are frequently adopted.

By way of example, the Affordable Care Act ("ACA") substantially changed the way healthcare is financed by both governmental and private insurers, encourages improvements in the quality of healthcare items and services and significantly impacts the medical device industry. Among other things, the ACA:

- increased the statutory minimum rebates a manufacturer must pay under the Medicaid Drug Rebate Program;

- created a new methodology by which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for drugs that are inhaled, infused, instilled, implanted or injected;
- extended manufacturers' Medicaid rebate liability to individuals enrolled in Medicaid managed care organizations;
- expanded eligibility criteria for Medicaid programs;
- established a new Patient-Centered Outcomes Research Institute to oversee and identify priorities in comparative clinical effectiveness research in an effort to coordinate and develop such research; and
- implemented payment system reforms including a national pilot program on payment bundling to encourage hospitals, physicians and other providers to improve the coordination, quality and efficiency of certain healthcare services through bundled payment models.

Since its enactment, there have been judicial, executive and Congressional challenges to certain aspects of the ACA. On June 17, 2021, the U.S. Supreme Court dismissed the most recent judicial challenge to the ACA brought by several states without specifically ruling on the constitutionality of the ACA. Prior to the Supreme Court's decision, President Biden issued an executive order to initiate a special enrollment period for purposes of obtaining health insurance coverage through the ACA marketplace, from February 15, 2021 through August 15, 2021. The executive order also instructed certain governmental agencies to review and reconsider their existing policies and rules that limit access to healthcare, including among others, reexamining Medicaid demonstration projects and waiver programs that include work requirements, and policies that create unnecessary barriers to obtaining access to health insurance coverage through Medicaid or the ACA. Efforts to reform the marketplace for healthcare services is ongoing, and we cannot predict with certainty what impact any U.S. federal and state health reforms will have on us, but such changes could impose new and/or more stringent regulatory requirements on our activities or result in reduced reimbursement for our products, any of which could adversely affect our business, results of operations and financial condition.

In addition, other legislative changes have been proposed and adopted since the ACA was enacted. The Budget Control Act of 2011, among other things, reduced Medicare payments to providers by 2% per fiscal year, effective on April 1, 2013 and, due to subsequent legislative amendments to the statute, will remain in effect through 2030, with the exception of a temporary suspension from May 1, 2020, through March 31, 2022, unless additional Congressional action is taken. Additionally, the American Taxpayer Relief Act of 2012, among other things, further reduced Medicare payments to several providers, including hospitals, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. Third-party payers also regularly update payments to physicians and hospitals where our products are used. By way of example, the Medicare Access and CHIP Reauthorization Act of 2015, or MACRA, enacted on April 16, 2015, repealed the formula by which Medicare made annual payment adjustments to physicians and replaced the former formula with fixed annual updates and a new system of incentive payments that are based on various performance measures and physicians' participation in alternative payment models such as accountable care organizations. Legislative and regulatory reforms intended to reduce the costs of prescription drugs and medical devices are also ongoing in the United States and abroad. It is unclear what effect new quality and payment programs, such as MACRA, may have on our business, financial condition, results of operations or cash flows. These and other payment updates could directly impact the demand for our products or any products we may develop in the future, if cleared or approved.

We expect that other healthcare reform measures that may be adopted in the future, could result in additional reductions in Medicare and other healthcare funding, more rigorous coverage criteria, new payment methodologies and in additional downward pressure on the price that we receive for any cleared or approved products. Furthermore, we believe that many individuals who have obtained insurance coverage through the health insurance exchanges which arose as a result of the ACA have done so with policies that have significantly higher deductibles than policies they may have obtained prior to its enactment. Because the out-of-pocket costs of undergoing certain procedures for patients who have not met their deductible for a given year would be significantly higher than they historically would have been, these patients may be discouraged from undergoing certain procedures due to the cost. Any reluctance on the part of patients to undergo procedures utilizing our products due to cost could impact our ability to expand sales of our products and could adversely impact our business, results of operations and financial condition.

We are subject to federal, state and foreign laws and regulations relating to our healthcare business, and could face substantial penalties if we are determined not to have fully complied with such laws, which would adversely affect our business, results of operations and financial condition.

Both in our capacity as a pharmaceutical and medical device manufacturer and/or as a supplier of covered items and services to federal health care program beneficiaries, with respect to which items and services we submit claims for reimbursement from such programs, we are subject to healthcare fraud and abuse regulation and enforcement by federal, state and foreign governments, which could adversely impact our business, results of operations and financial condition. Healthcare fraud and abuse and health information privacy and security laws potentially applicable to our operations include:

- the federal Anti-Kickback Statute ("AKS"), which prohibits the knowing and willful offer, payment, solicitation or receipt of any bribe, kickback, rebate or other remuneration for referring an individual, in return for ordering, leasing, purchasing or recommending or arranging for or to induce the referral of an individual or the ordering, purchasing or leasing of items or services covered, in whole or in part, by any federal healthcare program, such as Medicare and Medicaid. A person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation;
- the federal physician self-referral law, the Stark Law, which, subject to certain enumerated statutory and regulatory exceptions, prohibits physicians from referring Medicare or Medicaid patients to an entity for the provision of certain designated health services, or "DHS", if the physician or a member of such physician's immediate family has a direct or indirect financial relationship (including an ownership interest or a compensation arrangement) with the entity, and prohibits the entity from billing Medicare or Medicaid for such DHS;
- the False Claims Act, or "FCA", which imposes civil and criminal liability on individuals or entities that knowingly submit false or fraudulent claims for payment to the government or knowingly make, or cause to be made, a false statement in order to have a false claim paid, including qui tam or whistleblower suits. In addition, the government may assert that a claim including items or services resulting from a violation of the AKS or Stark Law constitutes a false or fraudulent claim for purposes of the FCA;
- the Civil Monetary Penalties Law, which prohibits, among other things, an individual or entity from offering remuneration to a federal healthcare program beneficiary that the individual or entity knows or should know is likely to influence the beneficiary to order or receive healthcare items or services from a particular provider;
- the criminal healthcare fraud provisions of Health Insurance Portability and Accountability Act, or "HIPAA", and related rules that prohibit knowingly and willfully executing a scheme or artifice to defraud any healthcare benefit program or falsifying, concealing or covering up a material fact or making any material false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. Similar to the AKS, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation;
- the federal Physician Payments Sunshine Act, which requires certain applicable manufacturers of drugs, devices, biologics and medical supplies for which payment is available under certain federal healthcare programs, to monitor and report to CMS, certain payments and other transfers of value to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), certain other healthcare providers (physician assistants, nurse practitioners, clinical nurse specialists, anesthesiologist assistants, certified registered nurse anesthetists, anesthesiology assistants and certified nurse midwives) and teaching hospitals, and applicable manufacturers and group purchasing organizations, to report annually ownership and investment interests held by such physicians and their immediate family members;
- federal consumer protection and unfair competition laws, which broadly regulate marketplace activities and activities that potentially harm customers;
- federal government price reporting laws; and
- analogous state law equivalents of each of the above federal laws, state anti-kickback and false claims laws; state laws requiring device companies to comply with specific compliance standards, restrict payments made to healthcare providers and other potential referral sources, and report information related to payments and other transfers of value to healthcare providers or marketing expenditures; and state laws related to insurance fraud in the case of claims involving private insurers.

The risk of us being found in violation of these laws and regulations is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. We are unable to predict what additional federal, state or foreign legislation or regulatory initiatives may be enacted in the future regarding our business or the healthcare industry in general, or what effect such legislation or regulations may have on us. Federal, state or foreign governments may impose additional restrictions or adopt interpretations of existing laws that could adversely affect us.

Because of the breadth of these laws and the narrowness of the statutory exceptions and safe harbors available under such laws, it is possible that some of our business activities, including certain sales and marketing practices and financial arrangements with physicians and other healthcare providers, some of whom recommend, use, prescribe or purchase our products, and other customers, could be subject to challenge under one or more of such laws. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. If our operations are found to be in violation of any of the laws described above or any other governmental regulations that apply to us, we may be subject to substantial penalties, including administrative, civil and criminal penalties, damages, fines, additional reporting requirements and oversight if we become subject to a Corporate Integrity Agreement or similar agreement to resolve allegations of non-compliance with these laws, exclusion from governmental healthcare programs, disgorgement and related overpayment obligations, contractual damages, reputational harm, diminished profits and future earnings, and the curtailment or restructuring of our operations, any of which could adversely impact our business, results of operations and financial condition.

In 2018, we identified non-compliance with certain U.S. federal statutes and requirements governing the Medicare program in related to improper completion of Certificate for Medical Necessity ("CMN") forms. In November 2018, we made a voluntary self-disclosure to the Office of Inspector General of the U.S. Department of Health and Human Services ("OIG") pursuant to the OIG's Provider Self-Disclosure Protocol related to this matter. After settlement discussions with the Office of the United States Attorney in the Middle District of North Carolina ("USAO") and OIG, on February 22, 2021, we entered into a formal settlement agreement, which included releases from associated False Claims Act liability and further Civil Monetary Penalties that are customary in self-disclosures of this type, and agreed to pay $3.6 million.

We are subject to governmental regulation and other legal obligations, particularly related to privacy, data protection and information security, and we are subject to consumer protection laws that regulate our marketing practices and prohibit unfair or deceptive acts or practices. Our actual or perceived failure to comply with such obligations could harm our business.

We are subject to diverse laws and regulations relating to privacy and data security, including, in the United States, HIPAA and, in the EU, the GDPR. New privacy rules are being enacted in the United States, particularly at the state level and globally, and existing ones are being updated and strengthened. Complying with these numerous, complex and often changing regulations is expensive and difficult. We strive to comply with all applicable laws and other legal obligations relating to privacy, data security, and data protection. However, given that the scope, interpretation, and application of these laws and regulations are often uncertain and may be conflicting, it is possible that these obligations may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and/or in a manner that conflicts our practices. Failure or perceived failure by us or our service providers to comply with any privacy, data security, or data protection laws or other obligations, or any security incident or data breach experienced by us, one of our service providers, or another party, could adversely affect our business. Such impacts include but are not limited to: investigation costs, legal fees, fines and penalties; compensatory, special, punitive, and statutory damages; enforcement actions; litigation; reputational damage; consent orders regarding our privacy and security practices; requirements that we provide consumer notices, credit monitoring services and/or credit restoration services or other relevant services to individuals impacted by a data breach; adverse actions against our licenses to do business; and injunctive relief.

In the United States, HIPAA, as amended, and regulations implemented thereunder (collectively referred to as "HIPAA") imposes, among other things, certain standards relating to the privacy, security, transmission and breach reporting of individually identifiable health information on certain healthcare providers, health plans, and healthcare clearinghouses, known as covered entities, as well as their business associates that perform certain services that involve creating, receiving, maintaining or transmitting protected health information ("PHI") for or on behalf of such covered entities, and their covered subcontractors. HIPAA requires covered entities, such as us, as well as business associates to develop and maintain policies with respect to the protection of, use and disclosure of PHI, including the adoption of administrative, physical and technical safeguards to protect such information, and certain notification requirements in the event of a breach of unsecured PHI.

Additionally, under HIPAA, covered entities must report breaches of unsecured PHI to affected individuals without unreasonable delay, not to exceed 60 days following discovery of the breach by a covered entity or its agents. Notification also must be made to the U.S. Department of Health and Human Services Office for Civil Rights and, in certain circumstances involving large breaches, to the media. Business associates must report breaches of unsecured PHI to covered entities within 60 days of discovery of the breach by the business associate or its agents. All states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands have enacted data breach notification laws. Some of these breach notification laws impose notification obligations that are in addition to, or inconsistent with, the HIPAA Breach Notification Rule, which can present compliance challenges.

Entities that are found to be in violation of HIPAA as the result of a breach of unsecured PHI, a complaint about privacy practices or an audit by the U.S. Department of Health and Human Services ("HHS"), may be subject to significant civil, criminal and administrative fines and penalties and/or additional reporting and oversight obligations if required to enter into a resolution agreement and corrective action plan with HHS to settle allegations of HIPAA non-compliance. The HHS Office for Civil Rights actively enforces HIPAA and frequently issues significant fines and penalties. HIPAA also authorizes state Attorneys General to file suit on behalf of their residents. Courts may award damages, costs and attorneys' fees related to violations of HIPAA in such cases. While HIPAA does not create a private right of action allowing individuals to sue us in civil court for violations of HIPAA, its standards have been used as the basis for duty of care in state civil suits such as those for negligence or recklessness in the misuse or breach of PHI.

Certain states have also adopted comparable privacy and security laws and regulations, some of which may be more stringent than HIPAA. Such laws and regulations will be subject to interpretation by various courts and other governmental authorities, thus creating potentially complex compliance issues for us and our future customers and strategic partners. For example, the California Consumer Privacy Act ("CCPA") went into effect on January 1, 2020. The CCPA creates individual privacy rights for California consumers and increases the privacy and security obligations of entities handling certain personal information. The CCPA provides for civil penalties for violations, as well as a private right of action for data breaches that is expected to increase data breach litigation. Further, the California Privacy Rights Act ("CPRA") took effect on January 1, 2023. The CPRA imposes additional data protection obligations on covered businesses, including additional consumer rights processes, limitations on data uses, new audit requirements for higher risk data, and opt-out rights for certain uses of sensitive data. It will also create a new California data protection agency authorized to issue substantive regulations and could result in increased privacy and information security enforcement. Similar laws have passed in Virginia, Colorado, Connecticut and Utah and have been proposed in other states and at the federal level, reflecting a trend toward more stringent privacy legislation in the United States. Additional compliance investment and potential business process changes may be required, and the enactment of new laws could have potentially conflicting requirements that would make compliance challenging and burdensome.

The Federal Trade Commission ("FTC") and many state Attorneys General also continue to enforce federal and state consumer protection laws against companies for online collection, use, dissemination and security practices that appear to be unfair or deceptive. For example, according to the FTC, failing to take appropriate steps to keep consumers' personal information secure can constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the FTC Act. The FTC expects a company's data security measures to be reasonable and appropriate in light of the sensitivity and volume of consumer information it holds, the size and complexity of its business, and the cost of available tools to improve security and reduce vulnerabilities. A recent FTC decision imposed personal civil liability on a company's CEO, marking the first time the agency has held a company officer personally liable for a privacy or security violation.

In Europe, the GDPR imposes strict requirements for processing the personal data of individuals within the EEA. Companies that must comply with the GDPR face increased compliance obligations and risk, including more robust regulatory enforcement of data protection requirements and potential fines for noncompliance of up to €20 million or 4% of the annual global revenues of the noncompliant company, whichever is greater. Among other requirements, the GDPR regulates transfers of personal data subject to the GDPR to third countries that have not been found to provide adequate protection to such personal data, including the United States, and the efficacy and longevity of current transfer mechanisms between the EU and the United States remains uncertain. For example, in 2016, the EU and United States agreed to a transfer framework for data transferred from the EU to the United States, called the Privacy Shield. In July 2020, the Court of Justice of the EU ("CJEU") limited how organizations could lawfully transfer personal data from the EU/EEA to the United States by invalidating the Privacy Shield for purposes of international transfers and imposing further restrictions on the use of standard contractual clauses ("SCCs"). The European Commission issued revised SCCs on June 4, 2021 to account for the decision of the CJEU and recommendations made by the European Data Protection Board ("EDPB"). In light of guidance issued by the EDPB, there is some uncertainty around whether the revised clauses will serve as an appropriate data transfer mechanism in certain contexts, including certain transfers to the United States. Additionally, the Biden Administration proposed a new international transfer network to replace the Privacy Shield. The European Commission is currently reviewing the proposed framework to determine if it is adequate under the GDPR. As supervisory authorities issue further guidance on personal data export mechanisms, including circumstances where the SCCs cannot be used, and take additional enforcement actions, we could suffer additional costs, complaints and/or regulatory investigations or fines, and/or if we are otherwise unable to transfer personal data between and among countries and regions in which we operate, it could affect the manner in which we provide our services, the geographical location or segregation of our relevant systems and operations, and could adversely affect our financial results.

Additionally, from January 1, 2021, following the United Kingdom's departure from the EU, we have had to comply with the GDPR and the UK GDPR (i.e. the GDPR as implemented into UK law). Failure to comply with the UK GDPR can result in fines up to the greater of £17.5 million (approximately $21 million), or 4% of global revenue. However, the relationship between the United Kingdom and the European Union in relation to certain aspects of data protection law remains unclear. The European Commission has adopted an adequacy decision in favor of the United Kingdom, enabling data transfers from EU member states to the United Kingdom without additional safeguards. However, the UK adequacy decision will automatically expire in June 2025 unless the European Commission extends that decision.

Failure to comply with the FCPA and laws associated with our activities outside the United States could adversely affect our business, results of operations and financial condition.

We are subject to the FCPA and other anti-bribery legislation around the world. The FCPA generally prohibits covered entities and their intermediaries from engaging in bribery or making other prohibited payments, offers or promises to foreign officials for the purpose of obtaining or retaining business or other advantages. In addition, the FCPA imposes recordkeeping and internal controls requirements on publicly traded corporations and their foreign affiliates, which are intended, among other things, to prevent the diversion of corporate funds to the payment of bribes and other improper payments, and to prevent the establishment of "off books" slush funds from which such improper payments can be made. As we conduct our business in jurisdictions outside of the United States, we face significant risks if we fail to comply with the FCPA and other laws that prohibit improper payments, offers or promises of payment to foreign governments and their officials and political parties by us and other business entities for the purpose of obtaining or retaining business or other advantages. In many foreign countries, it may be a local custom that businesses operating in such countries engage in business practices that are prohibited by the FCPA or other laws and regulations. Although we have implemented a company policy requiring our employees and consultants to comply with the FCPA and similar laws, such policy may not be effective at preventing all potential FCPA or other violations. Although our agreements with our international distributors clearly state our expectations for our distributors' compliance with U.S. laws, including the FCPA, and provide us with various remedies upon any non-compliance, including the ability to terminate the agreement, we also cannot guarantee our distributors' compliance with U.S. laws, including the FCPA. Therefore, there can be no assurance that our employees and agents, or those companies to which we outsource certain of our business operations, have not and will not take actions that violate our policies or applicable laws, for which we may be ultimately held responsible. Any violation of the FCPA and related policies could result in severe criminal or civil sanctions, which could adversely affect our business, results of operations and financial condition.

Furthermore, we are subject to the export controls and economic embargo rules and regulations of the United States, including, but not limited to, the Export Administration Regulations and trade sanctions against embargoed countries, which are administered by the Office of Foreign Assets Control within the Department of the Treasury, as well as the laws and regulations administered by the Department of Commerce and the Department of State. These regulations limit our ability to market, sell, distribute or otherwise transfer our products or technology to prohibited countries or persons, or for prohibited end-uses. A determination that we have failed to comply, whether knowingly or inadvertently, may result in substantial penalties, including fines, enforcement actions, civil and/or criminal sanctions, the disgorgement of profits, the imposition of a court-appointed monitor, as well as the denial of export privileges, and may adversely affect our business, results of operations and financial condition.

If we fail to meet Medicare accreditation and surety bond requirements or DMEPOS supplier standards, it could adversely affect our business, results of operations and financial condition.

Our Exogen system is classified by CMS and third-party payers as durable medical equipment. Suppliers of Medicare durable medical equipment, prosthetics, orthotics and supplies ("DMEPOS") must be accredited by an approved accreditation organization as meeting DMEPOS quality standards adopted by CMS and are required to meet surety bond requirements. In addition, Medicare DMEPOS suppliers must comply with Medicare supplier standards in order to obtain and retain billing privileges, including meeting all applicable federal and state licensure and regulatory requirements. CMS periodically expands or otherwise clarifies the Medicare DMEPOS supplier standards, and states periodically change licensure requirements, including licensure rules imposing more stringent requirements on out-of-state DMEPOS suppliers. We believe we are currently in compliance with these requirements. If we fail to maintain our Medicare accreditation status and/or do not comply with Medicare surety bond or supplier standard requirements or state licensure requirements in the future, or if these requirements are changed or expanded, it could adversely affect our business, results of operations and financial condition.

Our operations involve the use of hazardous and toxic materials, and we must comply with environmental, health and safety laws and regulations, which can be expensive, and could adversely affect our business, results of operations and financial condition.

We are subject to a variety of federal, state, local and foreign laws and regulations relating to the protection of the environment or of human health and safety, including laws pertaining to the use, handling, storage, disposal and human exposure to hazardous and toxic materials. Liability under environmental laws can be imposed on a joint and several basis (which could result in an entity paying more than its fair share) and without regard to comparative fault, and environmental laws are likely to become more stringent over time, imposing greater compliance costs and increasing risks and penalties associated with violations, which could adversely affect our business, results of operations and financial condition.

Our employees, independent distributors, independent contractors, suppliers and other third-parties may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could expose us to liability and hurt our reputation.

We are exposed to the risk that our employees, independent distributors, independent contractors, suppliers and others may engage in fraudulent conduct or other illegal activity. Misconduct by these parties could include intentional, reckless and/or negligent conduct or disclosure of unauthorized activities to us that violates: (1) FDA laws and regulations, including those laws that require the reporting of true, complete and accurate information to the FDA, (2) manufacturing standards, (3) healthcare fraud and abuse laws, or (4) laws that require the true, complete and accurate reporting of financial, billing, and claims information or data. Activities subject to these laws also involve the improper use or misrepresentation of information obtained in the course of clinical trials, creating fraudulent data in our preclinical studies or clinical trials or illegal misappropriation of product, which could result in regulatory sanctions and cause serious harm to our reputation. It is not always possible to identify and deter misconduct by employees and other third-parties, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. Additionally, we are subject to the risk that a person or government could allege such fraud or other misconduct, even if none occurred.

If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and financial results, including, without limitation, the imposition of significant civil, criminal and administrative penalties, damages, monetary fines, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, reputational harm, diminished profits and future earnings, and curtailment of our operations, any of which could adversely affect our business, results of operations and financial condition.

Regulatory reforms, such as the EU Medical Devices Regulation, could limit our ability to market and distribute our products after clearance, approval or certification is obtained and make it more difficult or costly for us to obtain regulatory clearance, approval or certification of any future products, which could adversely affect our competitive position and materially affect our business and financial results.

The EU Medical Devices Regulation, which became effective in May 2021, was adopted with the aim of ensuring better protection of public health and patient safety. Among other things, the EU Medical Devices Regulation ("MDR") imposed changes in the clinical evidence for medical devices, post-market clinical follow-up evidence, annual reporting of safety information for Class III products, and bi-annual reporting for Class II products, Unique Device Identification ("UDI") for all products, submission of core data elements to a European UDI database prior to placement of a device on the market, reclassification of medical devices, and multiple other labeling changes.

While we are able to continue marketing our currently CE-marked products in the Europe after the effective date of the EU MDR until the associated CE mark certificates expire, securing renewals of our existing CE mark certificates to allow for continued marketing of the product after CE mark expiration or obtaining certifications for new products requires the performance of certain conformity assessment procedures by a notified body. Notified bodies are independent organizations designated by EU member states which are responsible for, among other things, auditing and examining a product's technical dossiers and the manufacturers' quality system. If satisfied that the relevant product conforms to the relevant essential requirements, the notified body issues a certificate of conformity, which allows the manufacturer to place the CE mark on the device and for it to be marketed throughout the EU. Given the additional requirements of the MDR, the renewal of our existing CE mark certificates once they expire or obtaining certifications for new products is more challenging, time consuming and costly.

For example, technical documentation for certain of our products requiring recertification, such as our single injection HA treatment Durolane®, and EXOGEN Bone Healing System have been submitted to our notified body. While we are actively engaged with our notified body to renew the CE marks for these and our other products, CE mark renewals for these products are still pending. Our inability to timely review and obtain CE mark certificates for these and other of our products could prohibit their distribution and marketing in EU member states, which would adversely affect our business, prospects, financial condition and results of operations.

Recent environmental regulatory actions regarding medical device sterilization facilities could result in disruptions in the supply of certain of our products and could adversely affect our business, results of operations and financial condition.

Our disposable products that are used with our neXus® Ultrasonic Surgical Aspirator System require sterilization using ethylene oxide prior to sale. Ethylene oxide sterilization is a common and scientifically proven sterilization method that is widely used in the medical device industry. We contract with third-party sterilizers to perform this service. Concerns about unsafe levels of ethylene oxide emissions in the air around some sterilization facilities have resulted in certain state environmental protection agency actions against those facilities that have impacted medical device manufacturers' ability to use the ethylene oxide process to sterilize their devices. For example, recently the operations of certain of our contracted sterilization providers were temporarily suspended by the supplier as a voluntary response to a state environmental agency investigation. While such actions have not disrupted our ability to supply products and the previously shut down facilities have been permitted to resume certain operations after implementation of increased emissions controls, it is uncertain as to whether these facilities will be shut down again for environmental, health and safety concerns, or whether any other sterilization facilities we may contract with in the future will be required to shut down for environmental, health and safety concerns, especially given the increased scrutiny on the use and emission of ethylene oxide for sterilization. To the extent that our third-party sterilizers are unable to sterilize our products, whether due to these regulatory or other limitations (such as capacity, reductions in operations, or availability of materials for sterilization), we may be unable to transition to other third-party sterilizers, sterilizer locations or sterilization methods in a timely or cost effective manner, or at all, which could have a material adverse impact on our results of operations and financial condition.

If our facilities are damaged or become inoperable, we will be unable to continue to research, develop and manufacture our products and, as a result, our business, results of operations and financial condition may be adversely affected until we are able to secure a new facility.

We do not have redundant manufacturing facilities. Our other facilities and equipment would be costly to replace and could require substantial lead-time to repair or replace. Our facilities may be harmed or rendered inoperable by natural or man-made disasters, including, but not limited to, tornadoes, flooding, fire and power outages. Such disasters may render it difficult or impossible to manufacture and commercialize our products and conduct our research and development activities for new products, line extensions and expanded indications. The inability to perform those activities, combined with our limited inventory of supplies, components and finished product, may result in the inability to continue manufacturing or supplying our products during such periods and the loss of customers or harm to our reputation. Although we possess insurance for damage to our facilities and the disruption of our business, this insurance may not be sufficient to cover all of our potential losses and this insurance may not continue to be available to us on acceptable terms, or at all.

Risks related to intellectual property matters

Protection of our intellectual property rights may be difficult and costly, and our inability to protect our intellectual property could adversely affect our competitive position.

Our success depends in part on our ability to protect our proprietary rights to the technologies and inventions used in, or embodied by, our products. To protect our proprietary technology, we rely on patent protection, as well as a combination of copyright, trade secret and trademark laws, as well as nondisclosure, confidentiality and other contractual restrictions in our consulting and employment agreements. These legal means afford only limited protection, however, and may not adequately protect our rights or permit us to gain or keep any competitive advantage. Our existing confidentiality and/or invention assignment agreements with employees, contractors, and others who participate in IP development activities could be breached, or we may not enter into sufficient and adequate agreements with those individuals in the first instance, and we may not have adequate remedies for such breaches. Furthermore, we may be subject to, and forced to defend against, third-party claims of ownership to our intellectual property. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or rights to use, valuable intellectual property. Such an outcome could adversely affect our business, results of operations and financial condition. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees.

The process of applying for patent protection is time-consuming and expensive and we cannot assure you that all of our patent applications will issue as patents or that, if issued, they will issue in a form that will be advantageous to us. The rights granted to us under our patents may not be meaningful or provide us with any commercial advantage, and they could be opposed, contested, narrowed, or circumvented by our competitors or declared invalid or unenforceable in judicial or administrative proceedings. We may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. It is also possible that we will fail to identify patentable aspects of our research and development output before it is too late to obtain patent protection. As a result, some of our products are not, and in the future may not be, protected by patents. We generally apply for patents in those countries where we intend to make, have made, use, offer for sale, or sell products and where we assess the risk of infringement to justify the cost of seeking patent protection. However, we do not seek protection in all countries where we sell products and we may not accurately predict all the countries where patent protection would ultimately be desirable. If we fail to timely file a patent application in any such country or major market, we may be precluded from doing so at a later date. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and, further, may export otherwise infringing products to territories in which we have patent protection but where such protection may not be sufficient to terminate infringing activities. Furthermore, we may not have the right to control the preparation, filing and prosecution of patent applications, or to maintain the rights to patents licensed to us by third-parties. Therefore, these patents and applications may not be prosecuted or enforced in a manner consistent with the best interests of our business. If such licensors fail to maintain such patents, or lose rights to those patents, the rights we have licensed may be reduced or eliminated, which could also adversely affect our business, results of operations and financial condition.

The rights granted to us under these patents, including prospective rights sought in our pending patent applications, could be opposed, contested or circumvented by our competitors or other third-parties or declared invalid or unenforceable in judicial or administrative proceedings. If any of our patents are challenged, invalidated or legally circumvented by third-parties, and if we do not own other enforceable patents protecting our products, competitors could market products and use processes that are substantially similar to, superior to, or otherwise competitive with those of ours, and our business could suffer. In addition, the patents we own or have licenses to may not be of sufficient scope or strength to provide us with any meaningful protection or commercial advantage, and competitors may be able to design around our patents or develop products that provide outcomes comparable to those of ours without infringing on our intellectual property rights.

Further, our patents may not be drafted or interpreted sufficiently broadly to prevent others from marketing products and services similar to ours or designing around our patents. Third-parties may assert that we or our licensors were not the first to make the inventions covered by our issued patents or pending patent applications. The claims of our issued patents or patent applications when issued may not cover our commercial technology or the future products and services that we develop. We may not have freedom to operate unimpeded by the patent rights of others. Third-parties may have dominating, blocking or other patents relevant to our technology of which we are not aware. In addition, because patent applications in the United States and many foreign jurisdictions are typically not published until eighteen months after the filing of certain priority documents (or, in some cases, are not published until they issue as patents) and because publications in the scientific literature often lag behind actual discoveries, we cannot be certain that others have not filed patent applications or published information which could invalidate our patents or a portion of the claims of our patents. Any such patent applications may have priority over our patent applications or issued patents, which could require us to obtain rights from third-parties to issued patents or pending patent applications covering such technologies to allow us to commercialize our technology. If another party has filed a U.S. patent application on inventions similar to ours, depending on when the timing of the filing date falls under certain patent laws, we may have to participate in a priority contest (such as an interference proceeding) declared by the USPTO to determine priority of invention in the United States. Further, we may not develop additional proprietary technologies and, even if we do, they may not be patentable.

In addition, patent reform legislation may pass in the future that could lead to additional uncertainties and increased costs surrounding the prosecution, enforcement, and defense of our patents and applications. We may be subject to a third-party preissuance submission of prior art to the USPTO, or become involved in opposition, derivation, reexamination, inter partes review, post-grant review or other patent office proceedings or litigation, in the United States or elsewhere, challenging our patent rights. An adverse determination in any such submission, proceeding or litigation could reduce the scope of, or invalidate, our patent rights, allow third-parties to commercialize our technology or products and compete directly with us, without payment to us, or result in our inability to manufacture or commercialize products without infringing third-party patent rights.

Moreover, the USPTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. In addition, periodic maintenance fees on issued patents often must be paid to the USPTO and foreign patent agencies over the lifetime of the patent. In some cases, noncompliance with such requirements can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. Non-compliance events that could result in abandonment or lapse of a patent or patent application include, but are not limited to, failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents. If we or our licensors fail to maintain the patents and patent applications covering our products or procedures, we may not be able to stop a competitor from marketing products that are the same as or similar to our products, which would adversely affect our business, results of operations and financial condition.

Filing, prosecuting and defending patents on our products in all countries throughout the world would be prohibitively expensive. The requirements for patentability may differ in certain countries, particularly developing countries, and the breadth of patent claims allowed can be inconsistent. In addition, the laws of some foreign countries may not protect our intellectual property rights to the same extent as laws in the United States. Consequently, we may not be able to prevent third-parties from practicing our inventions in all countries outside the United States. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and, further, may export otherwise infringing products to territories in which we have patent protection that may not be sufficient to terminate infringing activities.

Furthermore, we do not have patent rights in certain foreign countries in which a market may exist in the future. We may need to expend additional resources to protect or defend our intellectual property rights in these countries, and the inability to protect or defend the same could impair our brand or adversely affect the growth of our business internationally. For example, we may not be able to stop a competitor from marketing and selling in foreign countries products that are the same as, similar to, or competitive with our products.

Patents have a limited lifespan, and the protection patents affords is limited. In the United States, if all maintenance fees are timely paid, the natural expiration of a patent is generally 20 years from its earliest U.S. non-provisional filing date. Even if patents covering our products are obtained, once the patent life has expired for patents covering a product, we may be open to competition from competitive products and services. As a result, our patent portfolio may not provide us with sufficient rights to exclude others from commercializing product candidates similar or identical to ours.

Trademarks

We rely on our trademarks as one means to distinguish our products from the products of our competitors, and have registered or applied to register many of these trademarks. However, we may not be able to successfully secure trademark registrations for all such applications. Third-parties may oppose our trademark applications, or otherwise challenge our use of both registered and unregistered trademarks. In the event that our trademarks are successfully challenged, we could be forced to rebrand our products, which could result in loss of brand recognition and could require us to devote resources to advertising and marketing new brands. Our competitors may infringe our trademarks and we may not have adequate resources to enforce our trademarks. Over the long term, if we are unable to establish name recognition based on our trademarks, then we may not be able to compete effectively and our business, results of operations and financial condition may be adversely affected.

Trade secrets and know-how

We may not be able to prevent the unauthorized disclosure or use of our technical knowledge or other trade secrets by consultants, vendors, former employees or current employees, despite the existence generally of confidentiality agreements and other contractual restrictions. Monitoring unauthorized uses and disclosures of our intellectual property is difficult, and we do not know whether the steps we have taken to protect our intellectual property will be effective. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how. For example, the FDA, as part of its Transparency Initiative, is currently considering whether to make additional information publicly available on a routine basis, including information that we may consider to be trade secrets or other proprietary information, and it is not clear at the present time how the FDA's disclosure policies may change in the future, if at all. Our competitors could use any of the information we may be required to disclose by the FDA to develop independently technology similar to ours. Competitors could purchase our products and attempt to replicate some or all of the competitive advantages we derive from our development efforts, willfully infringe our intellectual property rights, design around our protected technology or develop their own competitive technologies that fall outside of our intellectual property rights. If our intellectual property is not adequately protected so as to protect our market against competitors' products and methods, our competitive position could be adversely affected, as could our business, results of operations and financial condition. If we were to enforce a claim that a third-party had illegally obtained, misappropriated or was using our trade secrets, it would be expensive and time consuming, and the outcome would be unpredictable. In addition, courts outside the United States may be less willing to protect trade secrets. If any of the technology or information that we protect as trade secrets were to be independently developed by a competitor, we would have no right to prevent them from using that technology or information to compete with us. Misappropriation or unauthorized disclosure of our trade secrets could impair our competitive position and may adversely affect our business, results of operations and financial condition. Additionally, if the steps taken to maintain our trade secrets are deemed inadequate, we may have insufficient recourse against third-parties for misappropriating the trade secret.

We depend on certain technologies that are licensed to us. We do not control the intellectual property rights covering these technologies and any loss of our rights to these technologies or the rights licensed to us could prevent us from selling our products, which could adversely impact our business, results of operations and financial condition.

We are a party to license agreements under which we are granted rights to intellectual property that is material to our business, and we may need to enter into additional license agreements in the future. Our rights to use these technologies and the inventions claimed in the licensed patents are subject to the continuation of and our compliance with the terms of those licenses. Our existing license agreements impose, and we expect that future license agreements will impose on us, various diligence obligations, payment of milestones or royalties and other obligations. If we fail to comply with our obligations under these agreements, or we are subject to a bankruptcy, the licensor may have the right to terminate the license, in which case we would not be able to market products covered by the license, which would adversely affect our business, results of operations and financial condition.

As we have done previously, we may need to obtain licenses from third-parties to advance our research or allow commercialization of our products and technologies. We may fail to obtain any of these licenses on commercially reasonable terms, if at all. Even if we are able to obtain a license, it may be non-exclusive, thereby giving our competitors access to the same technologies licensed to us. In the event that we are not able to acquire a license, we may be required to expend significant time and resources to develop or license replacement technology. If we are unable to do so, we may be unable to develop or commercialize the affected products and technologies, which could materially harm our business. In addition, the third-parties owning such intellectual property rights could seek either an injunction prohibiting our sales, or, with respect to our sales, an obligation on our part to pay royalties or other forms of compensation and damages.

In some cases, we may not have the right to control the prosecution, maintenance, or filing of the patents that are licensed to us, or the enforcement of these patents against infringement by third-parties. Some of our patents and patent applications were not filed by us, but were either acquired by us or are licensed from third-parties. Thus, these patents and patent applications were not drafted by us or our attorneys, and we did not control or have any input into the prosecution of these patents and patent applications prior to our acquisition of, or our entry into a license with respect to, such patents and patent applications. We cannot be certain that the drafting or prosecution of the patents and patent applications licensed to us will result or has resulted in valid and enforceable patents. Further, we do not always retain complete control over our ability to enforce our licensed patent rights against third-party infringement. In those cases, we cannot be certain that our licensor will elect to enforce these patents to the extent that we would choose to do so, or in a way that will ensure that we retain the rights we currently have under our license. If our licensor fails to properly enforce the patents subject to our license in the event of third-party infringement, our ability to retain our competitive advantage with respect to our products may be materially and adversely affected.

Licensing of intellectual property is an important part of our business and involves complex legal, business and scientific issues. Disputes may arise between us and our licensors regarding intellectual property that is subject to a license agreement, including:

- the scope of rights granted under the license agreement and other interpretation-related issues;
- whether and the extent to which our technology and processes infringe on intellectual property of the licensor that is not subject to the license agreement;
- our right to sublicense patent and other rights to third-parties under collaborative development relationships;
- our diligence obligations with respect to the use of the licensed technology in relation to our development and commercialization of our products and technologies, and what activities satisfy those diligence obligations; and
- the ownership of inventions and know-how resulting from the joint creation or use of intellectual property by our licensors and us and our partners.

In addition, we may become the owner of intellectual property that was obtained through assignments which may be subject to re-assignment back to the original assignor upon our failure to prosecute or maintain such intellectual property, upon our breach of the agreement pursuant to which such intellectual property was assigned, or upon our bankruptcy. If disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on acceptable terms, or if intellectual property is re-assigned back to the original assignor, we may be unable to successfully develop and commercialize the affected products and technologies.

Our intellectual property agreements with third-parties may be subject to disagreements over contract interpretation, which could narrow the scope of our rights to the relevant intellectual property or technology.

Certain provisions in our intellectual property agreements may be susceptible to multiple interpretations. The resolution of any contract interpretation disagreement that may arise could affect the scope of our rights to the relevant intellectual property or technology, or affect financial or other obligations under the relevant agreement, either of which could adversely affect our business, results of operations and financial condition.

In addition, while it is our policy to require our employees and contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who in fact conceives or develops intellectual property that we regard as our own. Our assignment agreements may not be self-executing or may be breached, and we may be forced to bring claims against third-parties, or defend claims they may bring against us, to determine the ownership of what we regard as our intellectual property.

We may in the future be a party to patent and other intellectual property litigation and administrative proceedings that could be costly and could interfere with our ability to successfully market our products.

The medical device industry has been characterized by frequent and extensive intellectual property litigation and is highly competitive. Our competitors or other patent holders may assert that our products and/or the methods employed in our products are covered by their patents or that we are infringing, misappropriating, or misusing their trademark, copyright, trade secret, and/or other proprietary rights.

If our products or methods are found to infringe, we could be prevented from manufacturing or marketing our products. In the event that we become involved in such a dispute, we may incur significant costs and expenses and may need to devote resources to resolving any claims, which would reduce the cash we have available for operations and may be distracting to management and other employees, including those involved in the development of intellectual property. We do not know whether our competitors or potential competitors have applied for, will apply for, or will obtain patents that will prevent, limit or interfere with our ability to make, use, sell, import or export our products. Because patent applications can take many years to issue, third-parties may have currently pending patent applications which may later result in issued patents that our products and technologies may infringe, or which such third-parties claim are infringed by the use of our products or technologies. There is no guarantee that patents will not issue in the future from currently pending applications that may be infringed by our technology or products. In addition, identification of third-party patent rights that may be relevant to our technology is difficult because patent searching is imperfect due to differences in terminology among patents, incomplete databases, and difficulty in assessing the meaning of patent claims. We cannot assure you that we will prevail in such actions, or that other actions alleging misappropriation or misuse by us of third-party trade secrets or infringement by us of third-party patents, copyrights, trademarks or other rights or challenging the validity of our patents, copyrights, trademarks or other rights will not be asserted against us.

We may also initiate litigation against third-parties to enforce our patent and proprietary rights or to determine the scope, enforceability or validity of the proprietary rights of others. Our intellectual property has not been tested in litigation. If we initiate litigation to protect our rights, we run the risk of having our patents and other proprietary rights invalidated, canceled or narrowed, which could undermine our competitive position. Further, if the scope of protection provided by our patents or patent applications or other proprietary rights is threatened or reduced as a result of litigation, it could discourage third-parties from entering into collaborations with us that are important to the commercialization of our products.

We may be subject to ownership disputes relating to intellectual property, including disputes arising from conflicting obligations of consultants or others who are involved in developing our product. Furthermore, if a license to necessary technology is terminated, the licensor may initiate litigation claiming that our processes or products infringe or misappropriate its patent or other intellectual property rights and/or that we breached our obligations under the license agreement, and we and our collaborators would need to defend against such proceedings.

These lawsuits and proceedings, regardless of merit, are time-consuming and expensive to initiate, maintain, defend or settle, and could divert the time and attention of managerial and technical personnel, which could materially adversely affect our business, results of operations and financial condition. Any such claim could also force use to do one or more of the following:

- incur substantial monetary liability for infringement or other violations of intellectual property rights, which we may have to pay if a court decides that the product, service, or technology at issue infringes or violates the third-party's rights, and if the court finds that the infringement was willful, we could be ordered to pay treble damages and the third-party's attorneys' fees;
- pay substantial damages to our customers or end users to discontinue use or replace infringing technology with non-infringing technology;
- stop manufacturing, offering for sale, selling, using, importing, exporting or licensing the product or technology incorporating the allegedly infringing technology or stop incorporating the allegedly infringing technology into such product, service, or technology;
- obtain from the owner of the infringed intellectual property right a license, which may require us to pay substantial upfront fees or royalties to sell or use the relevant technology and which may not be available on commercially reasonable terms, or at all;
- redesign our products, services, and technology so they do not infringe or violate the third-party's intellectual property rights, which may not be possible or may require substantial monetary expenditures and time;
- enter into cross-licenses with our competitors, which could weaken our overall intellectual property position;
- lose the opportunity to license our technology to others or to collect royalty payments based upon successful protection and assertion of our intellectual property against others;
- find alternative suppliers for non-infringing products and technologies, which could be costly and create significant delay; or
- relinquish rights associated with one or more of our patent claims, if our claims are held invalid or otherwise unenforceable.

Some of our competitors may be able to sustain the costs of complex intellectual property litigation more effectively than we can. In addition, intellectual property litigation, regardless of its outcome, may cause negative publicity, adversely impact prospective customers, cause product shipment delays, divert the time, attention and resources of management, or prohibit us from manufacturing, marketing or otherwise commercializing our products, services and technology. Any uncertainties resulting from the initiation and continuation of any litigation could adversely affect our ability to raise additional funds or otherwise adversely affect our business, results of operations and financial condition.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. In addition, during the course of this kind of litigation, there could be public announcements of the results of hearings, motions or other interim proceedings or developments. If these results are perceived to be negative, the price of our Class A common stock could be adversely affected.

In addition, certain of our agreements with suppliers, distributors, customers and other entities with whom we do business may require us to defend or indemnify these parties to the extent they become involved in infringement claims relating to our technologies or products, or rights licensed to them by us. If we are required or agree to defend or indemnify any of these third-parties in connection with any infringement claims, we could incur significant costs and expenses that could adversely affect our business, results of operation and financial condition.

We may be subject to damages resulting from claims that we or our employees have wrongfully used or disclosed alleged trade secrets of our competitors or former employers or are in breach of non-competition or non-solicitation agreements with our competitors or former employers.

We could in the future be subject to claims that we or our employees have inadvertently or otherwise used or disclosed alleged trade secrets or other proprietary information of former employers or competitors. In addition, we may in the future be subject to claims that we caused an employee to breach the terms of his or her non-competition or non-solicitation agreement. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and could be a distraction to management. If our defense to those claims fails, in addition to paying monetary damages, a court could prohibit us from using technologies or features that are essential to our products, if such technologies or features are found to incorporate or be derived from the trade secrets or other proprietary information of the competitors or former employers. An inability to incorporate technologies or features that are important or essential to our products could adversely affect our business, results of operations and financial condition, and may prevent us from selling our products. In addition, we may lose valuable intellectual property rights or personnel. Any litigation or the threat thereof may adversely affect our ability to hire employees or contract with independent sales representatives. A loss of key personnel or their work product could hamper or prevent our ability to commercialize our products, which could adversely affect our business, results of operations and financial condition.

Any product candidates that we develop as biologics subject to the BLA pathway may be subject to competition sooner than anticipated.

The Biologics Price Competition and Innovation Act of 2009 (“BPCIA”) was enacted as part of the Affordable Care Act to establish an abbreviated pathway for the approval of biosimilar and interchangeable biological products. The regulatory pathway establishes legal authority for the FDA to review and approve biosimilar biologics, including the possible designation of a biosimilar as “interchangeable” based on its similarity to an approved biologic. Under the BPCIA, an application for a biosimilar product cannot be approved by the FDA until 12 years after the reference product was approved under a BLA. The law is complex and is still being interpreted and implemented by the FDA. As a result, its ultimate impact, implementation, and meaning are subject to uncertainty. While it is uncertain when processes intended to implement BPCIA may be fully adopted by the FDA, any of these processes could have a material adverse effect on the future commercial prospects for our biological products.

We believe that any of the product candidates we develop that is approved in the United States as a biological product under a BLA should qualify for the 12-year period of exclusivity. However, there is a risk that this exclusivity could be shortened due to congressional action or otherwise, or that the FDA will not consider the subject product candidates to be reference products for competing products, potentially creating the opportunity for generic competition sooner than anticipated. Moreover, the extent to which a biosimilar, once approved, will be substituted for any one of the reference products in a way that is similar to traditional generic substitution for non-biological products is not yet clear, and will depend on a number of marketplace and regulatory factors that are still developing.

In addition, the approval of a biologic product biosimilar to one of our products could have a material adverse impact on our business as it may be significantly less costly to bring to market and may be priced significantly lower than our products.

Intellectual property rights do not necessarily address all potential threats to our business.

Once granted, patents may remain open to invalidity challenges including opposition, interference, re-examination, post-grant review, inter partes review, nullification or derivation action in court or before patent offices or similar proceedings for a given period after allowance or grant, during which time third-parties can raise objections against such grant. In the course of such proceedings, which may continue for a protracted period of time, the patent owner may be compelled to limit the scope of the allowed or granted claims thus attacked, or may lose the allowed or granted claims altogether.

In addition, the degree of future protection afforded by our intellectual property rights is uncertain because even granted intellectual property rights have limitations, and may not adequately protect our business, provide a barrier to entry against our competitors or potential competitors or permit us to maintain our competitive advantage. Moreover, if a third-party has intellectual property rights that cover the practice of our technology, we may not be able to fully exercise or extract value from our intellectual property rights.

The following examples are illustrative:

- others may be able to develop and/or practice technology that is similar to our technology or aspects of our technology, but that are not covered by the claims of the patents that we own or control, assuming such patents have issued or do issue;
- we or our licensors or any future strategic partners might not have been the first to conceive or reduce to practice the inventions covered by the issued patent or pending patent application that we own or have exclusively licensed;
- we or our licensors or any future strategic partners might not have been the first to file patent applications covering certain of our inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing our intellectual property rights;
- our pending patent applications may not lead to issued patents;
- issued patents that we own or exclusively license may not provide us with any competitive advantage, or may be held invalid or unenforceable, as a result of legal challenges by our competitors;
- our competitors might conduct research and development activities in countries where we do not have patent rights and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- third-parties performing manufacturing or testing for us using our products or technologies could use the intellectual property of others without obtaining a proper license;
- parties may assert an ownership interest in our intellectual property and, if successful, such disputes may preclude us from exercising exclusive rights over that intellectual property;
- we may not develop or in-license additional proprietary technologies that are patentable;
- we may not be able to obtain and maintain necessary licenses on commercially reasonable terms, or at all; and
- the patents of others may adversely affect our business.

Should any of these events occur, they could adversely affect our business, results of operations and financial condition.

Risks related to our organizational structure and the Tax Receivable Agreement

Our principal asset is our interest in BV LLC, and, accordingly, we depend on distributions from BV LLC to pay our taxes and expenses, including payments under the Tax Receivable Agreement. BV LLC's ability to make such distributions may be subject to various limitations and restrictions.

We are a holding company and have no material assets other than our ownership of LLC Interests of BV LLC. As such, we have no independent means of generating net sales or cash flow, and our ability to pay our taxes and operating expenses or declare and pay dividends in the future, if any, will be dependent upon the financial results and cash flows of BV LLC and its subsidiaries and distributions we receive from BV LLC. There can be no assurance that BV LLC and its subsidiaries will generate sufficient cash flow to distribute funds to us or that applicable state law and contractual restrictions, including negative covenants in our debt instruments, will permit such distributions.

BV LLC will continue to be treated as a partnership for U.S. federal income tax purposes and, as such, generally will not be subject to any entity-level U.S. federal income tax. Instead, taxable income will be allocated to holders of LLC Interests, including us. Accordingly, we will incur income taxes on our allocable share of any net taxable income of BV LLC. Under the terms of the Bioventus LLC Agreement, BV LLC will be obligated to make tax distributions to holders of LLC Interests, including us, subject to any limitations or restrictions in our debt arrangements. In addition to tax expenses, we will also incur expenses related to our operations, including payments under the Tax Receivable Agreement ("TRA"), which we expect could be significant. See *Part III, Item 13. Certain Relationships and Related Transactions, and Director Independence-Tax Receivable Agreement* in this Annual Report for further information. We intend, as its managing member, to cause BV LLC to make cash distributions to the owners of LLC Interests, including us, in an amount sufficient to (i) fund their or our tax obligations in respect of allocations of taxable income from BV LLC and (ii) cover our operating expenses, including payments under the TRA. However, BV LLC's ability to make such distributions may be subject to various limitations and restrictions, such as restrictions on distributions that would either violate any contract or agreement to which BV LLC is then a party, including debt agreements, or any applicable law, or that would have the effect of rendering BV LLC insolvent. If we do not have sufficient funds to pay taxes or other liabilities or to fund our operations, we may have to borrow funds, which could materially adversely affect our liquidity and financial condition and subject us to various restrictions imposed by any such lenders. To the extent that we are unable to make payments under the TRA for any reason, such payments generally will be deferred and will accrue interest until paid; provided, however, that nonpayment for a specified period may constitute a material breach of a material obligation under the TRA and therefore accelerate payments due under the TRA. In addition, if BV LLC does not have sufficient funds to make distributions, our ability to declare and pay cash dividends will also be restricted or impaired.

The TRA with the Continuing LLC Owner requires us to make cash payments to it in respect of certain tax benefits to which we are or may become entitled, and we expect that the payments we will be required to make could be significant.

We are a party to a TRA with Smith & Nephew, Inc. ("Continuing LLC Owner"). Under the TRA, we are required to make cash payments to the Continuing LLC Owner equal to 85% of the tax benefits, if any, that we actually realize, or in certain circumstances are deemed to realize, as a result of (1) increases in the tax basis of assets of BV LLC resulting from (a) any future redemptions or exchanges of LLC Interests and (b) certain distributions (or deemed distributions) by BV LLC and (2) certain other tax benefits arising from payments under the TRA. We expect the amount of the cash payments that we will be required to make under the TRA will be significant. The actual amount and timing of any payments under the TRA will vary depending upon a number of factors, including the timing of redemptions or exchanges by the Continuing LLC Owner, the amount of gain recognized by the Continuing LLC Owner, the amount and timing of the taxable income we generate in the future, and the federal tax rates then applicable. Any payments made by us to the Continuing LLC Owner under the TRA will generally reduce the amount of overall cash flow that might have otherwise been available to us. To the extent that we are unable to make timely payments under the TRA for any reason, the unpaid amounts will be deferred and will accrue interest until paid by us. Furthermore, our obligation to make payments under the TRA could make us a less attractive target for an acquisition, particularly in the case of an acquirer that cannot use some or all of the tax benefits that are the subject of the TRA.

Payments under the TRA are not conditioned on the Continuing LLC Owner's continued ownership of LLC Interests or our Class A common stock. The amounts we will be required to pay under the TRA will depend on, among other things, the timing of subsequent redemptions or exchanges of LLC Interests by the Continuing LLC Owner, the price of our shares of Class A common stock at the time of each such redemption or exchange, and the amounts and timing of our future taxable income, and may be significantly different from the amounts described in the preceding sentence. Additionally, in certain cases such payments may be accelerated or significantly exceed the actual benefits we realize. Moreover, our organizational structure, including the TRA, confers certain tax benefits upon the Continuing LLC Owner that may not benefit the holders of our Class A common stock to the same extent as they will benefit the Continuing LLC Owner. Refer to risk factor—*In certain cases, payments under the TRA to the Continuing LLC Owners may be accelerated or significantly exceed the actual benefits we realize in respect of tax attributes subject to the TRA*.

In certain cases, payments under the TRA to the Continuing LLC Owner may be accelerated or significantly exceed the actual benefits we realize in respect of the tax attributes subject to the TRA.

The TRA provides that if (i) we materially breach any of our material obligations under the TRA, (ii) we undertake certain mergers, assets sales, other forms of business combinations or other changes of control or (iii) we elect an early termination of the TRA, then our obligations or our successor's obligations under the TRA to make payments thereunder would be based on certain assumptions, including an assumption that we would have sufficient taxable income to fully utilize all potential future tax benefits that are subject to the TRA (or, in the case of certain mergers, assets sales, other forms of business combinations or other charges of control, that we would have taxable income at least equal to four times the highest taxable income in any of the four fiscal quarters ending prior to the closing date of such transaction (increased by 10% for each taxable year beginning with the second taxable year following the closing date)). As a result of the foregoing, (i) we could be required to make payments under the TRA that are greater than the specified percentage of the actual benefits we ultimately realize in respect of the tax benefits that are subject to the TRA and (ii) if we materially breach any of our material obligations under the TRA or if we elected to terminate the TRA early, we would be required to make an immediate cash payment equal to the present value of the anticipated future tax benefits that are the subject of the TRA, which payment may be made significantly in advance of the actual realization, if any, of such future tax benefits.

In these situations, our obligations under the TRA could have a substantial negative impact on our liquidity and could have the effect of delaying, deferring or preventing certain mergers, asset sales, other forms of business combinations or other changes of control. There can be no assurance that we will be able to fund or finance our obligations under the TRA. We may elect to completely terminate the TRA early only with the written approval of a majority of our directors other than any directors that have been appointed or designated by the Continuing LLC Owner or any of such person's affiliates.

We may make payments to the Continuing LLC Owner under the TRA that exceed the tax benefits actually realized by us in the event that any tax benefits are disallowed by a taxing authority.

Payments under the TRA are be based on the tax reporting positions that we determine, and the Internal Revenue Service ("IRS") or another tax authority may challenge all or part of the tax basis increases, as well as other related tax positions we take, and a court could sustain such challenge. Pursuant to the TRA, the Continuing LLC Owner is required to reimburse us for any cash payments previously made to it under the TRA in the event that any tax benefits actually realized by us and for which payment has been made under the TRA are subsequently challenged by a taxing authority and are ultimately disallowed. In addition, but without duplication of any amounts previously reimbursed by the Continuing LLC Owner, any excess cash payments made by us to the Continuing LLC Owner will be netted against any future cash payments that we might otherwise be required to make to the Continuing LLC Owner under the terms of the TRA. However, we might not determine that we have effectively made an excess cash payment to the Continuing LLC Owner for a number of years following the initial time of such payment. Moreover, there can be no assurance that any excess cash payments for which the Continuing LLC Owner has a reimbursement obligation under the TRA will be repaid to us. As a result, payments could be made under the TRA in excess of the tax savings that we realize in respect of the tax attributes with respect to the Continuing LLC Owner that are the subject of the TRA.

Unanticipated changes in effective tax rates or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our results of operations and financial condition.

We are subject to taxes by the U.S. federal, state, local and foreign tax authorities, and our tax liabilities will be affected by the allocation of expenses to differing jurisdictions. Our future effective tax rates could be subject to volatility or adversely affected by a number of factors. In addition, we may be subject to audits of our income, sales and other transaction taxes by U.S. federal, state, local and foreign taxing authorities. Outcomes from these audits could adversely affect our business, results of operations and financial condition.

If we were deemed to be an investment company under the Investment Company Act of 1940, as amended, or the 1940 Act, as a result of our ownership of BV LLC, applicable restrictions could make it impractical for us to continue our business as contemplated and could adversely affect our business, results of operations and financial condition.

As the sole managing member of BV LLC, we control and operate BV LLC. On that basis, we believe that our interest in BV LLC is not an "investment security" as that term is used in the 1940 Act. However, if we were to cease participation in the management of BV LLC, our interest in BV LLC could be deemed an "investment security" for purposes of the 1940 Act.

We and BV LLC intend to conduct our operations so that we will not be deemed an investment company. However, if we were to be deemed an investment company, restrictions imposed by the 1940 Act, including limitations on our capital structure and our ability to transact with affiliates, could make it impractical for us to continue our business as contemplated and could adversely affect our business, results of operations and financial condition.

Bioventus is controlled by the Original LLC Owners, whose interests may differ from those of our public stockholders.

As of March 16, 2023, the Original LLC Owners control approximately 45.1% of the combined voting power of our common stock through their ownership of both Class A common stock and Class B common stock. The Original LLC Owners will, for the foreseeable future, have the ability to substantially influence us through their ownership position over corporate management and affairs, and will be able to control virtually all matters requiring stockholder approval. The Original LLC Owners are able to, subject to applicable law, and the voting arrangements, elect a majority of the members of our Board, control actions to be taken by us and our Board, including amendments to our certificate of incorporation and bylaws and approval of significant corporate transactions, including mergers and sales of substantially all of our assets. The directors so elected will have the authority, subject to the terms of our indebtedness and applicable rules and regulations, to issue additional stock, implement stock repurchase programs, declare dividends and make other decisions. It is possible that the interests of the Original LLC Owners may in some circumstances conflict with our interests and the interests of our other stockholders, including you. For example, the Continuing LLC Owner may have different tax positions from us, especially in light of the TRA that could influence our decisions regarding whether and when to dispose of assets, whether and when to incur new or refinance existing indebtedness, and whether and when Bioventus should terminate the TRA and accelerate its obligations thereunder. In addition, the determination of future tax reporting positions and the structuring of future transactions may take into consideration the Continuing LLC Owner's tax or other considerations, which may differ from the considerations of us or our other stockholders.

Risks related to our ownership of our Class A common stock

Our stock price may be volatile or may decline regardless of our operating performance, and you may not be able to resell your shares of Class A common stock at or above the price at which you purchase them.

The stock market historically has experienced extreme price and volume fluctuations. As a result of this volatility, you might not be able to sell your Class A common stock common stock at or above the price at which you purchase it. From our initial public offering in February 2021 through March 16, 2023, the per share trading price of our Class A common stock has been as high as $19.94 and as low as $1.37. It might continue to fluctuate significantly in response to various factors, some of which are beyond our control. These factors include:

a. our operating performance and the operating performance of similar companies;
b. the overall performance of the equity markets;
c. any major change in our management;
d. changes in laws or regulations relating to our products;
e. announcements by us or our competitors of acquisitions, business plans, or commercial relationships;
f. threatened or actual litigation;
g. publication of research reports or news stories about us, our competitors, or our industry, or positive or negative recommendations;
h. general political and economic conditions.

Additionally, securities class action litigation has often been instituted against companies following periods of volatility in the overall market and in the market price of a company's securities. This litigation, if instituted against us, could result in substantial costs, divert our management's attention and resources, and harm our business, operating results, and financial condition.

Our amended and restated certificate of incorporation, to the extent permitted by applicable law, contains provisions renouncing our interest and expectation to participate in certain corporate opportunities identified or presented to certain of our Original LLC Owners.

Certain of the Original LLC Owners are in the business of making or advising on investments in companies and these Original LLC owners may hold, and may, from time to time in the future, acquire interests in or provide advice to businesses that directly or indirectly compete with certain portions of our business or the business of our suppliers. Our amended and restated certificate of incorporation provides that, to the fullest extent permitted by law, none of the Original LLC Owners or any director who is not employed by us or his or her affiliates will have any duty to refrain from engaging in a corporate opportunity in the same or similar lines of business as us. The Original LLC Owners may also pursue acquisitions that may be complementary to our business, and, as a result, those acquisition opportunities may not be available to us. As a result, these arrangements could adversely affect our business, results of operations, financial condition or prospects if attractive business opportunities are allocated to any of the Original LLC Owners instead of to us.

Certain anti-takeover provisions in our governing documents and under Delaware law could make an acquisition of our Company more difficult, limit attempts by our stockholders to replace or remove our current management, and depress the market price of our common stock.

Certain provisions of our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law could render more difficult, delay or prevent transactions that stockholders consider favorable, including transactions in which you might otherwise receive a premium for your shares of our common stock. These provisions might also prevent or frustrate attempts by our stockholders to replace or remove management, and include provisions that:

- authorize the issuance of "blank check" preferred stock that could be issued by our Board to increase the number of outstanding shares and thwart a takeover attempt;
- establish a classified Board so that not all members of our Board are elected at one time;
- provide the removal of directors only for cause;
- prohibit the use of cumulative voting for the election of directors;
- limit the ability of stockholders to call special meetings or amend our bylaws;
- require all stockholder actions to be taken at a meeting of our stockholders; and
- establish advance notice and duration of ownership requirements for nominations for election to the Board or for proposing matters that can be acted upon by stockholders at stockholder meetings.

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our management, which could in turn limit the opportunity for our stockholders to receive a premium for their shares of our common stock and affect the price that some investors are willing to pay for our common stock.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware will be, to the fullest extent permitted by law, the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.

Our amended and restated certificate of incorporation provides that, unless we consent to the selection of an alternative forum, the Court of Chancery of the State of Delaware, or the Court of Chancery, will be, to the fullest extent permitted by law, the sole and exclusive forum for: (a) any derivative action, suit or proceeding brought on our behalf; (b) any action, suit or proceeding asserting a claim of breach of fiduciary duty owed by any of our directors, officers or stockholders to us or to our stockholders; (c) any action, suit or proceeding arising pursuant to any provision of the DGCL, our amended and restated certificate of incorporation or amended bylaws (as either may be amended from time to time); or, (d) any action, suit or proceeding asserting a claim governed by the internal affairs doctrine; provided that the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. The choice of forum provision in our amended and restated certificate of incorporation does not designate the Court of Chancery as the exclusive forum for any claim for which the applicable statute creates exclusive jurisdiction in another forum and, accordingly, does not apply to any claims brought to enforce any liability or duty created by the Exchange Act. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees. Alternatively, if a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, results of operations and financial condition.

Failure to establish and maintain effective internal controls in accordance with Section 404 of the Sarbanes-Oxley Act could adversely affect our business and stock price.

We are required to comply with the SEC's rules implementing Sections 302 and 404 of the Sarbanes-Oxley Act, which require management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of internal controls over financial reporting. Though we are required to disclose changes made in our internal controls and procedures on a quarterly basis and assess our internal control over financial reporting pursuant to Section 404, our independent registered public accounting firm will not be required to formally attest to the effectiveness of our internal control over financial reporting pursuant to Section 404 until we are no longer an emerging growth company pursuant to the provisions of the JOBS Act. At such time, our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our controls are documented, designed or operating.

To comply with the requirements of being a public company, we have undertaken various actions, and may need to take additional actions, such as implementing new internal controls and procedures and hiring additional accounting or internal audit staff. We cannot assure you that the measures we have taken to date, and actions we may take in the future, will be sufficient to prevent or avoid potential future material weaknesses and we have identified material weaknesses in the past. As previously reported in our Quarterly Report on Form 10-Q for the quarter ended October 1, 2022, we identified a material weakness in our internal control over financial reporting related to the accounting for rebates from third-party payers. If we identify any additional material weaknesses in the future, the accuracy and timing of our financial reporting may be adversely affected. Testing and maintaining internal controls can also divert our management's attention from other matters that are important to the operation of our business. Additionally, when evaluating our internal controls over financial reporting, we may identify material weaknesses that we may not be able to remediate in time to meet the applicable deadline imposed upon us for compliance with the requirements of Section 404. If we identify any material weaknesses in our internal controls over financial reporting or are unable to comply with the requirements of Section 404 in a timely manner or assert that our internal controls over financial reporting is effective, or if our independent registered public accounting firm is unable to express an opinion as to the effectiveness of our internal controls over financial reporting once we are no longer an emerging growth company, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our Class A common stock could be adversely affected, and we could become subject to investigations by the stock exchange on which our securities are listed, the SEC or other regulatory authorities, which could require additional financial and management resources.

We are an emerging growth company and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our Class A common stock less attractive to investors.

We continue to qualify as an "emerging growth company" pursuant to the provisions of the JOBS Act. For as long as we are an "emerging growth company," we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not "emerging growth companies," including, but not limited to, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, reduced disclosure obligations relating to the presentation of financial statements in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section and exemptions from the requirements of holding advisory "say-on-pay" votes on executive compensation and shareholder advisory votes on golden parachute compensation. We have availed ourselves of the reduced reporting obligations and executive compensation disclosure in our SEC filings and expect to continue to avail ourselves of the reduced reporting obligations available to emerging growth companies in future SEC filings. We cannot predict if investors will find our Class A common stock less attractive because we rely on these exemptions. If some investors find our Class A common stock less attractive as a result, there may be a less active trading market for our Class A common stock and our stock price may be more volatile.

In addition, an emerging growth company can delay its adoption of certain accounting standards until those standards would otherwise apply to private companies. However, we have chosen to "opt out" of such extended transition period, and as a result, we plan to comply with any new or revised accounting standards on the relevant dates on which non-emerging growth companies must adopt such standards. Section 107 of the JOBS Act provides that our decision to opt out of the extended transition period for complying with new or revised accounting standards is irrevocable.

We will continue to qualify as an emerging growth company until the earliest of:

a. The last day of our fiscal year following the fifth anniversary of the date of our IPO;
b. The last day of our fiscal year in which have annual gross revenues of $1.07 billion or more;
c. The date on which we have, during the previous three-year period, issued more than $1.0 billion in non-convertible debt;
d. The date on which we are deemed to be a "large accelerated filer," as such terms is defined in the Exchange Act rules.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

Our principal executive offices are located on leased property in Durham, North Carolina. We also occupy leased office and manufacturing space in Cordova, Tennessee, Farmingdale, New York, Newport News, Virginia and Valencia, California. In addition, our international operations occupy leased office spaces in Hoofddorp, Netherlands, Mississauga, Canada and Hod Hasharon, Israel. We believe that our facilities are sufficient to meet our current needs and that suitable additional space will be available as and when needed on acceptable terms.

Item 3. Legal Proceedings.

On January 12, 2023, the Company and certain of its current and former directors and officers were named as defendants in a putative class action lawsuit filed in the Middle District of North Carolina, *Ciarciello v. Bioventus, Inc.*, No. 1:23– CV – 00032-CCE-JEP (M.D.N.C. 2023). The complaint asserts violations of Sections 10(b) and 20(a) of the Exchange Act and of Sections 11 and 15 of the Securities Act and generally alleges that the Company failed to disclose certain information regarding rebate practices, its business and financial prospects, and the sufficiency of internal controls regarding financial reporting. The complaint seeks damages in an unspecified amount. The case is in its early stages, and a lead plaintiff has not yet been appointed. The Company believes the claims alleged lack merit and intends to file a motion to dismiss. The outcome of the litigation is not presently determinable, and any loss is neither probable nor reasonable estimable.

On June 15, 2022, the Company, through its subsidiary Bioness, filed a lawsuit in the United States District Court for the Eastern District of Virginia against Aretech, LLC ("Aretech") alleging infringement by Aretech of various patents related to our Vector Gait and Safety Support System®. On August 8, 2022, Aretech filed an answer to the lawsuit denying infringement and asserting various affirmative defenses and counterclaims to the Bioness complaint. Bioness filed a motion to dismiss the defendant's counterclaims on September 28, 2022. In response to Bioness' motion to dismiss the counterclaims, on October 19, 2022, Aretech filed an amended answer and counterclaims. On November 16, 2022, Bioness filed a partial motion to dismiss certain of the amended counterclaims. On January 23, 2023, the court granted-in-part Bioness's motion dismissing Aretech's antitrust and inventorship-related counterclaims, but allowed certain of Aretech's counterclaims to proceed. The parties are presently finalizing a joint discovery plan and timeline. On March 23, 2023 the parties entered into a settlement and license agreement that provides for a payment by Aretech to us of $1.5 million to resolve all claims in the litigation. The agreement also provides cross licenses to the parties for certain of their respective patents relevant to the claims asserted in the litigation.

On March 23, 2017, Misonix's former distributor in China, Cicel (Beijing) Science & Technology Co., Ltd., filed a lawsuit against Misonix and certain of its officers and directors in the United States District Court for the Eastern District of New York. The complaint alleged that Misonix improperly terminated its contract with the former distributor. The complaint sought various remedies, including compensatory and punitive damages, specific performance and preliminary and post judgment injunctive relief, and asserted various causes of action, including breach of contract, unfair competition, tortious interference with contract, fraudulent inducement, and conversion. On October 7, 2017, the court granted Misonix's motion to dismiss each of the tort claims asserted against Misonix, and also granted the individual defendants' motion to dismiss all claims asserted against them. On January 23, 2020, the court granted Cicel's motion to amend its complaint, to include claims for alleged defamation and theft of trade secrets in addition to the breach of contract claim. Discovery in the matter ended on August 5, 2021. On January 20, 2022, the court granted Misonix's summary judgment motion on Cicel's breach of contract and defamation claims. Cicel's motion for reconsideration of the court's summary judgment ruling in Misonix's favor was dismissed by the court on April 29, 2022. On July 18, 2022, Cicel voluntarily dismissed the remaining claim for trade secret theft and later filed an appeal in the United States Court of Appeals for the Second Circuit. We believe that we have various legal and factual defenses to these claims and intend to vigorously defend the appeal of the lower court's summary judgement rulings in our favor.

Prior to the closing of our acquisition of Bioness, Bioness had been named as a defendant in a lawsuit, for which we are indemnified under the indemnification provisions contained in the Bioness Merger Agreement. The case relates to an action brought in February 2021 in the Delaware State Court of Chancery by a former minority shareholder and director of Bioness, seeking a temporary restraining order contesting our acquisition of Bioness. While the complaint to block the Bioness acquisition was dismissed by the court, a separate action was brought against the Company under the indemnification provisions of the Bioness Certificate of Incorporation to recover approximately $3.0 million in attorney fees and other expenses incurred by the director and shareholder in connection with the matter.

On August 19, 2021, the court issued a ruling granting, in part, plaintiff's motion for summary judgment, awarding plaintiff attorney's fees and related expenses incurred in connection with performance of the plaintiff's directorial duties, and denying fees and expenses incurred in a non-director capacity. In its ruling, the court's order also directed the parties to agree upon a process that was to govern the payment of and challenges to plaintiff's payment requests and required Bioness to pay 50% of the demanded amount into escrow if more than 50% of the total invoiced amount was in dispute. Pursuant to the court's order, Bioness paid approximately $1.3 million into escrow. On November 1, 2022, at a hearing before Delaware State Court of Chancery, the court ruled in favor of the former Bioness director awarding attorney's fees in connection with the underlying pre-merger litigation and the advancement action in the amounts claimed, less approximately $50,000. On December 23, 2022, Bioness and the plaintiff entered into a settlement agreement resolving the matter for the aggregate sum of $2.5 million payable to the plaintiff. The settlement was satisfied by releasing the $1.3 million previously paid by Bioness and held in escrow and by an additional payment of $1.2 million. Pursuant to the indemnification obligations under the Bioness Merger Agreement, this subsequent payment was made on behalf of Bioness on December 28. 2022, by the selling majority shareholder under that agreement. Bioness subsequently recovered the $1.3 million paid into escrow from the selling Bioness shareholders pursuant an indemnification request under the Bioness Merger Agreement. An order dismissing the case was entered by the court on January 27, 2023.

On February 8, 2022, the above referenced minority shareholder of Bioness filed another action in the Delaware State Court of Chancery in connection with our acquisition of Bioness. This action names the former Bioness directors, the Alfred E. Mann Trust (Trust), which was the former majority shareholder of Bioness, the trustees of the Trust and Bioventus as defendants. The complaint alleges, among other things, that the individual directors, the Trust, and the trustees breached their fiduciary duty to the plaintiff in connection with their consideration and approval of our transaction. The complaint also alleges that we aided and abetted the other defendants in breaching their fiduciary duties to the plaintiff and that we breached the Merger Agreement by failing to pay the plaintiff its pro rata share of the merger consideration. We believe that we are indemnified under the indemnification provisions contained in the Bioness Merger Agreement for these claims. On July 20, 2022, we filed a motion to dismiss all claims made against us on various grounds, as did all the other named defendants in the suit. A hearing on the Bioness and other defendant's motions was held before the Court of Chancery on January 19, 2023. The court has not yet issued its ruling on any of these motions. We believe that there are various legal and factual defenses to the claims plaintiff made against us and intend to defend ourselves vigorously.

On September 15, 2021, a purported stockholder of Misonix filed an action in the United States District Court for the Eastern District of New York, captioned Stein v. Misonix, Inc., et al., Case No. 2:21-cv-05127 (E.D.N.Y.) (the Stein Complaint). The Stein Complaint named Misonix and members of its board of directors as defendants. The Stein Complaint was dismissed on April 6, 2022. On September 16, 2021, a purported stockholder of Misonix filed an action in the United States District Court for the Southern District of New York, captioned Ciccotelli v. Misonix, Inc. et al., Case No. 1:21-cv-07773 (S.D.N.Y.) (the Ciccotelli Complaint) against Misonix, members of its board of directors, the Company, and its subsidiaries, Merger Sub I and Merger Sub II, as defendants. Plaintiff voluntarily dismissed the Ciccotelli Complaint on November 10, 2021. On October 12, 2021, another purported stockholder of Misonix filed an action in the United States District Court for the Eastern District of New York, captioned Rubin v. Misonix, Inc. et al., Case No. 1:21-cv-05672 (S.D.N.Y.) (the Rubin Complaint) and on October 15, 2021, another purported stockholder of Misonix filed an action in the United States District Court for the Southern District of New York, captioned Taylor v. Misonix, Inc. et al., Case No. 1:21-cv-08513 (S.D.N.Y.) (the Taylor Complaint). The Rubin Complaint and the Taylor Complaint name Misonix and members of its board of directors as defendants. Plaintiffs voluntarily dismissed the Rubin and Taylor Complaints on January 21, 2022 and February 18, 2022, respectively.

Each of the complaints relating to the Misonix Acquisition asserted claims under Section 14(a) and Section 20(a) of the Exchange Act and SEC Rule 14a-9, challenging the adequacy of disclosures in the proxy statement/prospectus filed with the SEC on September 8, 2021 or the Definitive Proxy Statement filed with the SEC on September 24, 2021, regarding Misonix and/or Bioventus' projections and J.P. Morgan's financial analysis. The complaints sought, among other relief, (i) injunctive relief preventing the parties from proceeding with the merger; (ii) rescission in the event that the merger is consummated; and (iii) an award of costs, including attorneys' and experts' fees.

Please refer to *Part II, Item 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 12. Commitments and contingencies* of this Annual Report for information pertaining to legal proceedings. In addition, we are party to legal proceedings incidental to our business. While our management currently believes the ultimate outcome of these proceedings, individually and in the aggregate, will not have a material adverse effect on our consolidated financial statements, litigation is subject to inherent uncertainties. Were an unfavorable ruling to occur, there exists the possibility of a material adverse impact on our financial condition and results of operations.

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

On February 11, 2021, we closed an initial public offering ("IPO") and our Class A common stock began trading on the Nasdaq Global Select Market under the symbol "BVS." Prior to that time, there was no public market for our stock. There is no established public trading market for our Class B common stock. As of March 16, 2023, we had 1 holder of record of our Class B common stock.

As of March 16, 2023, we had approximately 193 holders of record of our Class A common stock. This amount does not take into account shareholders whose shares are held in "street name" by brokerage houses or other intermediaries. The closing price of our common stock on March 16, 2023 was $1.42.

Dividends

We do not anticipate declaring or paying any cash dividends to holders of our Class A common stock in the foreseeable future. We currently intend to retain all available funds and any future earnings to finance the growth of our business. If we decide to pay cash dividends in the future, the declaration and payment of such dividends will be at the sole discretion of our board of directors (Board) and may be discontinued at any time. Holders of our Class B common stock are not entitled to participate in any dividends declared by our Board. In determining the amount of any future dividends, our Board will take into account any legal or contractual limitations, our actual and anticipated future earnings, cash flow, debt service and capital requirements and other factors that our Board may deem relevant.

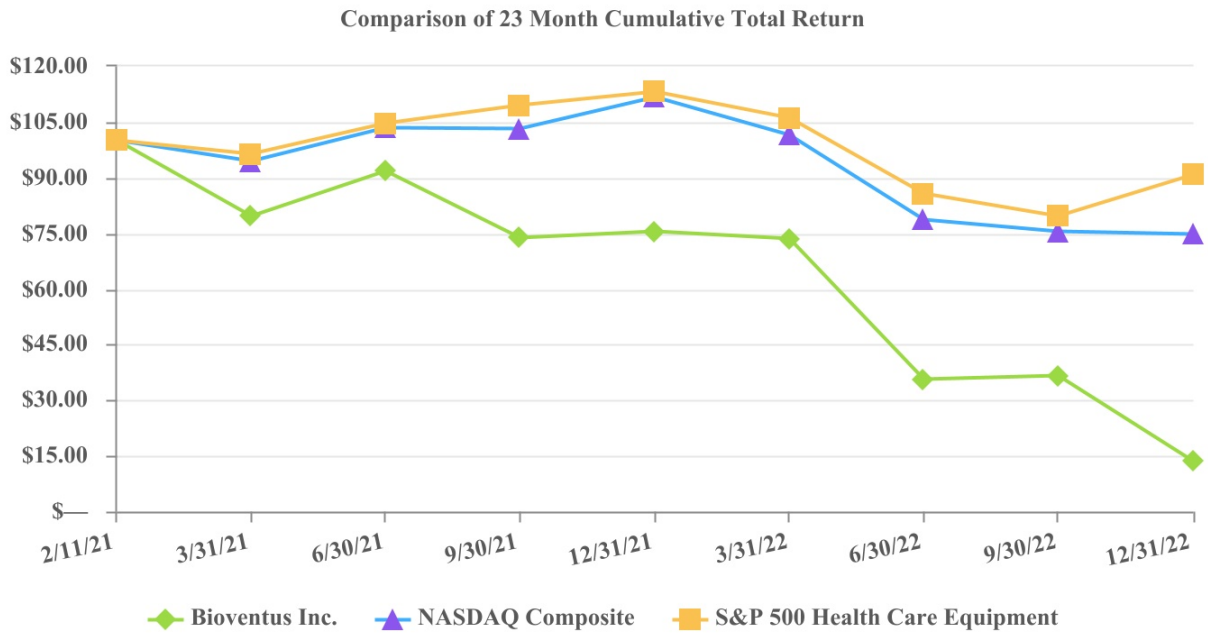
In the event Bioventus Inc. declares any cash dividend, we intend to cause Bioventus LLC ("BV LLC") to make distributions to Bioventus Inc., in an amount sufficient to cover such cash dividends declared by us. If BV LLC makes such distributions to Bioventus Inc., the Class B common stock owner will also be entitled to receive the respective equivalent pro rata distributions in accordance with the percentages of their respective LLC Interests.

In addition, the terms of our financing arrangements contain covenants that may restrict BV LLC and its subsidiaries from paying such distributions, subject to certain exceptions. Any financing arrangements that we enter into in the future may include restrictive covenants that limit our ability to pay dividends. In addition, BV LLC is generally prohibited under Delaware law from making a distribution to a member to the extent that, at the time of the distribution, after giving effect to the distribution, liabilities of BV LLC (with certain exceptions) exceed the fair value of its assets. Subsidiaries of BV LLC are generally subject to similar legal limitations on their ability to make distributions to BV LLC.

Performance Graph

The following performance graph is not deemed to be "soliciting material" or to be "filed" with the SEC or subject to Regulation 14A or 14C or to the liabilities of Section 18 of the Exchange Act. This information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent we specifically incorporate this information by reference.

The following performance graph compares the cumulative 23 months cumulative total return to stockholders on our Class A common stock relative to the cumulative total returns on the Nasdaq Composite Index and the S&P 500 Health Care Equipment Index for the period commencing on February 11, 2021 (the date our Class A common stock commenced trading on Nasdaq) through December 31, 2022 assuming an initial investment of $100. Nasdaq Composite Index and S&P 500 Health Care Equipment Index will not be deemed incorporate by reference into any other filings under the Exchange Act or the Securities Act, except to the extent we specifically incorporate. Note that historic stock price performance is not necessarily indicative of future stock price performance.



	2/11/21	3/31/21	6/30/21	9/30/21	12/31/21	3/31/22	6/30/22	9/30/22	12/31/22
Bioventus Inc.	$ 100.00	$ 79.54	$ 91.62	$ 73.71	$ 75.43	$ 73.40	$ 35.50	$ 36.44	$ 13.59
NASDAQ Composite	$ 100.00	$ 94.45	$ 103.41	$ 103.01	$ 111.54	$ 101.39	$ 78.63	$ 75.40	$ 74.62
S&P 500 Health Care Equipment	$ 100.00	$ 96.27	$ 104.57	$ 109.55	$ 113.11	$ 106.11	$ 85.61	$ 79.47	$ 90.75

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 in conjunction with Part I, Item 1A, Risk Factors and our consolidated financial statements and the related notes to those statements included elsewhere in this Annual Report on Form 10-K ("Annual Report"). In addition to historical consolidated financial information, the following discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. Some of the numbers included herein have been rounded for the convenience of presentation. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of many factors, including those discussed under Part 1, Item 1A. Risk Factors and elsewhere in this Annual Report. A discussion of the year ended December 31, 2021 compared to the year ended December 31, 2020 has been reported previously in our 10-K for the fiscal year ended December 31, 2021, filed with the SEC on March 11, 2022, under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations."

Executive Summary

We are a global medical device company focused on developing and commercializing clinically differentiated, cost efficient and minimally invasive treatments that engage and enhance the body's natural healing process. We operate our business through two reportable segments, U.S. and International, and our portfolio of products is grouped into three verticals:

- Pain Treatments is comprised of non-surgical joint pain injection therapies as well as peripheral nerve stimulation ("PNS") products to help the patient get back to their normal activities.
- Surgical Solutions is comprised of bone graft substitutes ("BGS") to fuse and grow bones, improve results following spinal and other orthopedic surgeries as well as minimally invasive ultrasonic medical devices used for precise bone sculpting, removing tumors and tissue debridement, in various surgeries.

- Restorative Therapies is comprised of a bone healing system, skin allografts and products used to support healing of wounds as well as devices designed to help patients regain leg or hand function due to stroke, multiple sclerosis or other central nervous system disorders.

As further discussed below, there are conditions and events that raise substantial doubt about the Company's ability to continue as a going concern. In light of this, the Company is actively pursuing plans to mitigate these conditions and events; however, there can be no assurances that it is probable these plans will be successfully implemented or that they will successfully mitigate these conditions and events.

For additional information, see *Going Concern* section below and *Part I, Item 1A. Risk Factors*.

The following table sets forth total net sales, net (loss) income and Adjusted EBITDA for the periods presented:

	Years Ended December 31,	
(in thousands, except for loss per share)	2022	2021
Net sales	$ 512,117	$ 430,898
Net (loss) income	$ (213,391)	$ 9,586
Adjusted EBITDA[(1)]	$ 66,309	$ 80,759
Loss per share - basic and diluted	$ (2.59)	$ (0.15)

(1) See below under Results of Operations-Adjusted EBITDA for a reconciliation of net (loss) income to Adjusted EBITDA.

Significant transactions

CartiHeal

On July 12, 2022, we acquired 100% of CartiHeal (2009) Ltd. ("CartiHeal"), a privately held company headquartered in Israel and the developer of the proprietary Agili-C implant for the treatment of joint surface lesions in traumatic and osteoarthritic joints. We purchased CartiHeal ("CartiHeal Acquisition") for an aggregate purchase price of approximately $315.0 million and an additional $135.0 million, becoming payable after closing upon the achievement of a certain sales milestone (Sales Milestone Consideration). We paid $100.0 million of the aggregate purchase price upon closing, consisting of a $50.0 million escrow deposit and $50.0 million from a financing arrangement. We also paid approximately $8.6 million of CartiHeal's transaction-related fees and expenses and deferred $215.0 million ("Deferred Amount") of the aggregate purchase price otherwise due at closing until the earlier of the achievement of certain milestones or the occurrence of certain installment payment dates. We recognized a gain of $23.7 million due to the change in fair value of our equity method investment in CartiHeal as a result of the purchase. The gain was recognized in other income within the consolidated statement of operations and comprehensive (loss) income.

We previously entered into an Option and Equity Purchase Agreement with CartiHeal ("Option Agreement") in July 2020. The Option Agreement provided us with an exclusive option to acquire 100% of CartiHeal's shares ("Call Option"), and provided CartiHeal with a put option that would require us to purchase 100% of CartiHeal's shares under certain conditions. In August 2021, CartiHeal achieved pivotal clinical trial success, as defined in the Option Agreement, for the Agili-C implant. In order to preserve our Call Option, in accordance with the Option Agreement and upon approval of the Board of Directors ("BOD"), we deposited $50.0 million into escrow in August 2021 for the potential acquisition of CartiHeal, which was included in restricted cash on the consolidated balance sheet at December 31, 2021.

In April 2022, we exercised our Call Option to acquire all of the remaining shares of CartiHeal, excluding shares we already owned. Our decision to exercise the Call Option followed the FDA's March 29, 2022 premarket approval of CartiHeal's Agili-C implant. On June 17, 2022 the Company entered into an amendment to the Option Agreement with CartiHeal ("CartiHeal Amendment") and Elron Ventures Limited, in its capacity as the shareholder representative, that provided for deferred payment of the consideration for CartiHeal to be paid in multiple tranches, one of which was $50.0 million due upon the earliest to occur — the publication in a peer-reviewed orthopedic journal of an article that presents the results of the pivotal clinical trial ("First Paper Milestone") or July 1, 2023.

Pursuant to the CartiHeal Amendment, we agreed to pay interest on each tranche of the Deferred Amount at a rate of 8.0% annually, until such tranche is paid.

The First Paper Milestone under the Option Agreement occurred on February 13, 2023, triggering our obligation to make the first $50.0 million payment, plus applicable interest, under the Option Agreement.

On February 27, 2023, we entered into a settlement agreement (the "Settlement Agreement") with Elron Ventures Ltd. ("Elron" and together with the Company, the "Parties") as representative of CartiHeal's selling securityholders under the Option Agreement collectively, the "Former Securityholders"). Pursuant to the Settlement Agreement, Elron, on behalf of the Former Securityholders, have agreed to forbear from initiating any legal action or proceedings relating to non-payment of any obligations arising under the Option Agreement during a period of 30 calendar days (the "Interim Period") in exchange for (i) a one-time non-refundable amount of $10.0 million and (ii) a one-time non-refundable payment of $0.2 million to Elron to be used in accordance with the expense fund provisions of the Option Agreement. The Interim Period expired on March 29, 2023 and we did not exercise our right to extend the Interim Period. In addition, the Parties mutually released any further claims under the Option Agreement and related transaction documents, including without limitation a release by the Former Securityholders of any rights to enforce the provisions of the Option Agreement or make further monetary claims against us and/or our respective affiliates and representatives.

Upon execution of the Settlement Agreement, we transferred 100% of our shares in CartiHeal to a trustee (the "Trustee") for the benefit of the Former Securityholders. This transfer is irrevocable, unless and until the Former Securityholders receive the entire amount of the aggregate purchase price and corresponding milestones and any interest to be accrued thereon in accordance with the provisions of the Option Agreement prior to the expiration of the Interim Period.

We have no ownership interest and no voting rights during the Interim Period. We have concluded that upon execution of the Settlement Agreement, the Company ceased to control CartiHeal for accounting purposes, and therefore, have deconsolidated CartiHeal (the "Deconsolidation", or "Disposal") effective February 27, 2023. We also concluded that this disposal will be treated as a discontinued operation. The loss upon disposal is estimated to be $60.6 million and will be recorded within loss from discontinued operations due at closing.

Amended 2019 Credit Agreement

On July 11, 2022, we amended our Credit and Guaranty Agreement, dated as of December 6, 2019 (as amended on October 29, 2021, July 11, 2022 and March 31, 2023, the "Amended 2019 Credit Agreement") in conjunction with the CartiHeal Acquisition to, among other things, provide for an $80.0 million term loan facility ("Term Loan Facility"). On March 31, 2023, we further amended our Amended 2019 Credit Agreement to, among other things, modify certain financial covenant provisions, waive the noncompliance at December 31, 2022 and increase the applicable interest rate. Refer to *Liquidity and Capital Resources—Credit Facilities* for further information.

B.O.N.E.S. Trial

We submitted a premarket approval ("PMA") supplement to the FDA in December 2020 seeking approval of an expanded indication for EXOGEN, specifically, for the adjunctive treatment of acute and delayed metatarsal fractures to reduce the risk of non-union. This PMA supplement was based on and supported by clinical data in metatarsal fractures from the ongoing B.O.N.E.S. study. In April 2021, we received a letter from the FDA identifying certain deficiencies in the PMA supplement that must be addressed before the FDA can complete its review of the PMA supplement. The deficiencies include concerns about the data and endpoints from the B.O.N.E.S. study, and requests for re-analyses of certain data and provision of other information to support the findings. In December 2021, we completed the follow-up of all patients in the scaphoid B.O.N.E.S. study. In October 2022, we elected to withdraw our PMA submission on metatarsal fractures. Presently, we are in the process of finalizing our PMA supplement for the scaphoid indication. In the scaphoid study analysis plan, the applicable feedback received from the FDA in the prior metatarsal submission was applied prospectively and as such we believe this second filing will address the FDA's concerns on the study design. Assuming positive outcome with the FDA of the scaphoid review, we would consider resubmitting the metatarsal data at a later date. We can, however, give no assurance that the scaphoid review will be accepted by the FDA of, if accepted, that we will be able to resolve the deficiencies in the PMA supplements identified by the FDA in a timely manner, or at all. Consequently, the FDA's decision on the PMA supplements might be delayed beyond the time originally anticipated. Moreover, if our responses do not satisfy the FDA's concerns, the FDA might not approve our PMA supplements seeking to expand the indications for use of EXOGEN in scaphoid and metatarsal fractures as proposed.

MOTYS Update

During the second quarter of 2022, prior to obtaining the results from our Phase 2 trial, we elected to discontinue the development of MOTYS, to focus our resources on other priorities, including the integration of our acquisitions and our expanded R&D and product development portfolio we inherited with these acquisitions. We incurred $4.3 million during the year ended December 31, 2022, and we expect to incur approximately $5.0 million to $6.0 million exclusively to fulfill our remaining regulatory obligations related to our Phase 2 trial ("MOTYS Costs").

Consolidated Appropriations Act

In July 2022, in connection with the Consolidated Appropriations Act, 2021 ("CAA"), the Centers for Medicare and Medicaid Services ("CMS") began utilizing new pricing information the Company reported to it pursuant to the newly adopted reporting obligations to adjust the Medicare payment to healthcare providers using our Durolane and Gelsyn-3 products.

COVID-19 pandemic impact

Our business, results of operations and financial condition have been and may continue to be materially impacted by fluctuations in patient visits and elective procedures and any future temporary cessations of elective procedures as a result of the COVID-19 pandemic and could be further impacted by delays in payments from customers, supply chain interruptions, "shelter-in-place" orders or advisories, facility closures or other reasons related to the pandemic. As of the date of these financial statements, the extent to which COVID-19 could materially impact our financial conditions, liquidity or results of operations is uncertain.

To the extent COVID-19 disruptions continue to adversely impact our business, results of operations and financial condition, it might also have the effect of heightening risks relating to our ability to successfully commercialize newly developed or acquired products or therapies, consolidation in the healthcare industry, intensified pricing pressure as a result of changes in the purchasing behavior of hospitals and maintenance of our numerous contractual relationships.

Components of our results of operations

Net sales

We generate net sales from a portfolio of active healing products that serve physicians spanning the orthopedic continuum, including sports medicine, total joint reconstruction, hand and upper extremities, foot and ankle, podiatric surgery, trauma, spine and neurosurgery. We report sales net of contractual allowances, rebates and returns.

We sell our products primarily through our direct sales team, who manage and maintain the sales relationship with healthcare providers, distribution centers or specialty pharmacies. Certain surgical products are sold through independent distributors to hospitals so our neurosurgeon and orthopedic spine surgeon customers can use them in procedures. In certain international markets, we also sell to independent distributors on prearranged business terms, who manage or maintain the sales relationship with their physician customers. Refer to *Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 2. Summary of significant accounting policies* for further information.

We generally recognize revenue at the point in time when control is transferred to the customer, for example, when the product is shipped to the customer, when the patient has accepted the product or upon consumption in a surgical procedure.

Cost of sales

Our cost of sales primarily consists of costs of products purchased from our third-party suppliers, direct labor and allocated overhead associated with manufacturing and assembly, excess and obsolete inventory charges, shipping, inspection and related costs incurred in making our products available for sale or use. In addition, cost of sales includes depreciation related to production as well as amortization of product-related intellectual property and distribution rights associated with commercialized products. Certain products are manufactured by or obtained from third-party suppliers primarily located in Japan, Switzerland, Sweden and the United States. We receive the components for our Exogen system from suppliers and assemble each system in-house at our Cordova, Tennessee facility. In the future, we expect our cost of sales to increase due to increased sales volume.

Gross profit and gross margin

Gross profit consists of net sales less cost of sales. We calculate gross margin as gross profit divided by net sales. Our gross margin has been and will continue to be affected by a variety of factors, including costs of products purchased from our third-party suppliers, manufacturing costs, product mix and implementation over time of cost-reduction strategies. We expect net sales and product mix to vary quarter by quarter and therefore our gross profit will likely fluctuate from quarter to quarter.

Selling, general and administrative expense

Selling, general and administrative expense primarily consists of salaries, benefits and other related costs, including equity-based compensation, for personnel employed in sales, marketing, finance, legal, compliance, administrative, information technology, medical education and training, quality and human resource departments. Selling, general and administrative expense also includes third-party marketing, supply chain and distribution, product recall costs, information technology, legal, human resources, insurance and facilities expenses, selling, general and administrative expenses also include commissions, generally based on a percentage of sales, to our direct sales team and independent distributors. We expect our selling, general and administrative expenses will increase with the continued expansion of our sales organization and commercialization of our current and pipeline products. We plan to hire more personnel to support the growth of our business. However, over time, as we grow our net sales, we expect selling, general and administrative expenses to decline as a percentage of net sales.

Research and development expense

Research and development expense primarily consists of employee compensation, equity compensation and related expenses, as well as contract research organization service expenses related to clinical trials. We expense internal research and development costs as incurred and research and development costs incurred by third-parties as they perform contracted work. Our research and development expenses may vary substantially from period to period based on the timing of research and development activities. We are focused on internal research and development to broaden our product portfolio across all verticals and undertake clinical research to support commercialization of all of our products. As a result, we expect our research and development expenses to vary from low to the mid-single digits as a percentage of net sales as we introduce new products, extend existing product lines and expand indications. We see significant opportunity to develop innovative and clinically differentiated products in-house with our experienced research and development team. Clinical and preclinical development timelines, the probability of success and development costs can differ materially from expectations.

Restructuring costs

We have restructured portions of our operations and future restructuring activities are possible. Identifying and calculating the cost to exit operations requires certain assumptions to be made, the most significant of which are anticipated future liabilities. Although our estimates have been reasonably accurate in the past, significant judgment is required, and these estimates and assumptions may change as additional information becomes available and facts or circumstances change. Restructuring costs are recorded at estimated fair value. Key assumptions in determining the restructuring costs include negotiated terms and payments to terminate contractual obligations.

Restructuring costs primarily consist of employee severance, legal, consulting and temporary labor expenses. Restructuring costs recorded in 2022 are the result of: i) aligning our organizational and management cost structure to improve profitability and cash flow and ii) headcount reductions related to 2021 acquisitions. Restructuring costs recorded in 2021 were the result of headcount reductions related to acquisitions. Restructuring costs recorded in 2020 relate to efforts in our international business to improve operating efficiency.

Depreciation and amortization

Depreciation expense primarily consists of depreciation of computer equipment and software as well as demonstration and consignment inventory, leasehold improvements, furniture, fixtures, machinery and equipment. Amortization expense primarily consists of amortization expense related to customer relationships and other intangible assets.

Interest expense

Interest expense primarily consists of interest on our indebtedness, which currently consists of our term loan and revolving credit facility, which was incurred pursuant to the Amended 2019 Credit Agreement. We have previously entered into interest rate swaps to limit our exposure to changes in the variable interest rate on our term loan. Interest expense includes any fair value gain or losses on these swaps. Interest expense also includes the revaluation for the liability related to our Equity Participation Right (EPR) Unit. The EPR Unit's entitlement is 0.55% of available distributions arising from a distribution event as defined in the Bioventus LLC Agreement and was settled in cash as part of our IPO.

Other expense (income)

Other expense (income) primarily consists of foreign currency transaction and remeasurement gains and losses on transactions denominated in currencies other than our functional currency. Our foreign currency transaction and remeasurement gains and losses are primarily related to foreign currency denominated cash, liabilities and intercompany receivables and payables. Other expense (income) may also include certain nonrecurring items.

Income tax expense

The Company's subsidiary Bioventus LLC ("BV LLC") is a partnership for U.S. federal tax purposes. Accordingly, the members include the profits and losses of BV LLC in their income tax returns. Certain wholly-owned subsidiaries of BV LLC are taxable entities for U.S. or foreign tax purposes and file tax returns in their local jurisdictions. Bioventus Inc. is subject to U.S. federal, state and local income taxes at the prevailing corporate tax rates with respect to our taxable income. In addition to tax expenses, we are obligated to make payments under the TRA, which could be significant. The TRA obligates us to pay to the Continuing LLC Owner 85% of the amount of any realized tax benefits (or in some circumstances are deemed to realize) resulting from (i) increases in the tax basis of assets of BV LLC as a result of (a) any future redemptions or exchanges of LLC Interests and (b) certain distributions (or deemed distributions) by BV LLC and (ii) certain other tax benefits arising from our making payments under the TRA. For more information, see *Item 8. Financial Statements and Supplementary Data—Notes to Consolidated Financial Statements—Note 11. Income taxes* for additional information.

Income tax expense includes U.S. federal, state and international income taxes, including certain taxes applicable to BV LLC. Certain income and expense items in income tax returns are not reported in the same year as financial statements. We report the income tax effects of these differences as deferred income taxes. Valuation allowances recognized reduce the related deferred tax assets to an amount which will, more likely than not, be realized. We recognize interest and penalties related to unrecognized tax benefits as a component of income tax expense.

Non-GAAP Financial Measures - Adjusted EBITDA

We present Adjusted EBITDA, a non-GAAP financial measure, because we believe it is a useful indicator that management uses as a measure of operating performance as well as for planning purposes, including the preparation of our annual operating budget and financial projections. We believe that Adjusted EBITDA is useful to our investors because it is frequently used by securities analysts, investors and other interested parties in their evaluation of the operating performance of companies in industries similar to ours. We define Adjusted EBITDA as net (loss) income from continuing operations before depreciation and amortization, provision of income taxes and interest expense, net, adjusted for the impact of certain cash, non-cash and other items that we do not consider in our evaluation of ongoing operating performance. These items include acquisition and related costs, remeasurement gains and losses on investments, impairments on goodwill, restructuring and succession charges, equity compensation expense, equity loss in unconsolidated investments, foreign currency impact, and other items. Adjusted EBITDA by segment is comprised of net sales and costs directly attributable to a segment, as well as an allocation of corporate overhead costs primarily based on a ratio of net sales by segment to total consolidated net sales.

Non-GAAP financial measures have limitations as an analytical tool and should not be considered in isolation or as a substitute for, or superior to, the financial information prepared and presented in accordance with U.S. GAAP. These measures might exclude certain normal recurring expenses. Therefore, these measures might not provide a complete understanding of the Company's performance and should be reviewed in conjunction with the U.S. GAAP financial measures. Additionally, other companies might define their non-GAAP financial measures differently than we do. Investors are encouraged to review the reconciliation of the non-GAAP measure provided in this Annual Report, including in the table above, to its most directly comparable U.S. GAAP measure.

Results of Operations

The following table sets forth components of our consolidated statements of operations as a percentage of net sales for the periods presented:

	Years Ended December 31,	
	2022	2021
Net sales	100.0 %	100.0 %
Cost of sales (including depreciation and amortization)	35.4 %	29.7 %
Gross profit	64.6 %	70.3 %
Selling, general and administrative expense	64.9 %	59.0 %
Research and development expense	5.1 %	4.4 %
Restructuring costs	1.3 %	0.6 %
Change in fair value of contingent consideration	1.3 %	0.2 %
Depreciation and amortization	4.1 %	2.0 %
Impairment of goodwill	36.9 %	— %
Impairment of variable interest entity assets	— %	1.3 %
Operating (loss) income	(49.0 %)	2.8 %

The following table presents a reconciliation of net (loss) income to Adjusted EBITDA for the periods presented:

(in thousands)	Years Ended December 31, 2022	2021
Net (loss) income	**$ (213,391)**	**$ 9,586**
Interest expense, net	25,795	1,112
Income tax benefit	(50,508)	(1,966)
Depreciation and amortization[a]	66,803	34,875
Acquisition and related costs[b]	27,081	22,964
Remeasurement gain on equity method investment[c]	(23,709)	—
Restructuring and succession charges[d]	7,453	3,717
Equity compensation[e]	17,585	(4,512)
Equity loss in unconsolidated investments[f]	1,003	1,868
Foreign currency impact[g]	250	132
Impairment of goodwill[h]	189,197	—
Asset impairment charges[i]	10,285	—
Impairments related to variable interest entity[j]	—	7,043
Other items[k]	8,465	5,940
Adjusted EBITDA	**$ 66,309**	**$ 80,759**

(a) Includes for the years ended December 31, 2022 and 2021, respectively, depreciation and amortization of $45,622 and $26,471 in cost of sales and $21,181 and $8,404 in operating expenses presented in the consolidated statements of operations and comprehensive (loss) income.

(b) Includes acquisition and integration costs related to completed acquisitions, amortization of inventory step-up associated with acquired entities, and changes in fair value of contingent consideration.

(c) Represents the gain on remeasurement of the Company's equity method investment in CartiHeal based upon the fair value of consideration transferred for the CartiHeal Acquisition.

(d) Costs incurred were the result of adopting restructuring plans to reduce headcount, reorganize management structure, and to consolidate certain facilities, and costs related to executive transitions.

(e) The year ended December 31, 2022 includes compensation expense resulting from awards granted under the Company's equity-based compensation plans in effect after its initial public offering ("IPO"). The year ended December 31, 2021 also includes the expense and the change in fair value of the liability-classified awards granted under the compensation plans in effect prior to the Company's IPO.

(f) Represents CartiHeal equity investment losses.

(g) Includes realized and unrealized gains and losses from fluctuations in foreign currency.

(h) Represents a non-cash impairment charge due to the decline in the Company's market capitalization.

(i) Represents an asset impairment charge of our investment in Trice Medical, Inc.

(j) Represents the loss on impairment of Harbor Medtech Inc.'s ("Harbor") long-lived assets and the Company's investment in Harbor.

(k) Other items primarily includes charges associated with strategic transactions, such as potential acquisitions; public company preparation costs, which primarily includes accounting and legal fees; and MOTYS Costs. During the second quarter of 2022, prior to obtaining the results from our Phase 2 trial, we elected to discontinue the development of MOTYS, to focus our resources on other priorities, including the integration of our acquisitions and our expanded R&D and product development portfolio we inherited with these acquisitions. We incurred $4.3 million during the year ended December 31, 2022 and we expect to incur approximately $5.0 million to $6.0 million exclusively to fulfill our remaining MOTYS Costs.

Net sales

(in thousands, except for percentage)	Years Ended December 31, 2022	2021	Change $	%
U.S.				
Pain Treatments	$ 194,830	$ 201,068	$ (6,238)	(3.1 %)
Restorative Therapies	134,214	103,009	31,205	30.3 %
Surgical Solutions	126,207	83,476	42,731	51.2 %
Total U.S. net sales	455,251	387,553	67,698	17.5 %
International				
Pain Treatments	21,495	20,539	956	4.7 %
Restorative Therapies	20,420	18,563	1,857	10.0 %
Surgical Solutions	14,951	4,243	10,708	NM
Total International net sales	56,866	43,345	13,521	31.2 %
Total net sales	$ 512,117	$ 430,898	$ 81,219	18.8 %

(NM = Not Meaningful)

U.S.

Net sales increased $67.7 million, or 17.5%, of which acquisitions contributed $65.3 million. Changes by vertical were: (i) Pain Treatments—slightly declined due to more treatments being sold under contracts with major insurers resulting from higher than expected rebate claims and price competition within osteoarthritic joint pain treatment market, partially offset with an increase in sales volume; ii) Restorative Therapies—$31.2 million net sales increase due to acquisitions, partially offset with a volume decline; and (iii) Surgical Solutions—$42.7 million net sales increase due to acquisitions and volume growth.

International

Net sales increased $13.5 million, or 31.2%, due to acquisitions. Net sales also slightly increased due to volume growth as sales during the first quarter of 2021 were negatively affected by the economic impact of the COVID-19 pandemic.

Gross profit and gross margin

(in thousands, except for percentage)	Years Ended December 31, 2022	2021	Change $	%
U.S.	$ 296,782	$ 273,690	$ 23,092	8.4 %
International	34,298	29,016	5,282	18.2 %
Total	$ 331,080	$ 302,706	$ 28,374	9.4 %

	Years Ended December 31, 2022	2021	Change
U.S.	65.2 %	70.6 %	(5.5 %)
International	60.3 %	66.9 %	(6.6 %)
Total	64.6 %	70.3 %	(5.6 %)

U.S.

Gross profit increased $23.1 million, or 8.4%, primarily due to the increase in net sales. Gross margin decreased due to product mix including products introduced as a result of acquisitions.

International

Gross profit increased $5.3 million, or 18.2%, primarily due to the increase in net sales. Gross margin decreased due to product mix including products introduced as a result of acquisitions.

Selling, general and administrative expense

(in thousands, except for percentage)	Years Ended December 31, 2022	2021	Change $	%
Selling, general and administrative expense	$ 332,606	$ 254,253	$ 78,353	30.8 %

Selling, general and administrative expenses increased $78.4 million, or 30.8%, primarily due to: (i) an increase in compensation related expenses of $38.2 million, partially driven by acquisitions; (ii) an increase in equity-based compensation of $20.9 million, which includes a $23.4 million decrease in fair market value during 2021 of accrued equity-based compensation resulting from the difference between the pricing from the anticipated offering price of the IPO and the actual offering price; and (iii) an increase in consulting and travel related expenses of $13.6 million.

Research and development expense

	Years Ended December 31,		Change	
(in thousands, except for percentage)	2022	2021	$	%
Research and development expense	$ 25,941	$ 19,039	$ 6,902	36.3 %

Research and development expense increased by $6.9 million, or 36.3%, primarily due to: (i) an increase of $2.8 million in compensation related expenses partially driven by acquisitions; (ii) an increase of $2.1 million in consulting costs; and (iii) an increase in equity-based compensation of $1.2 million, which includes a $1.8 million decrease in fair market value during 2021 of accrued equity-based compensation resulting from the difference between the anticipated public offering price of the IPO and the actual offering price.

Restructuring costs

	Years Ended December 31,		Change	
(in thousands, except for percentage)	2022	2021	$	%
Restructuring costs	$ 6,779	$ 2,487	$ 4,292	172.6 %

Restructuring costs for the year ended December 31, 2022 primarily included costs incurred as a result of an initiative to align the Company's organizational and management cost structure to improve profitability and cash flow through headcount reduction and cutting third-party related costs. Restructuring in 2022 also included costs to reduce headcount and to reorganize management structure for acquired businesses.

Costs incurred for the year ended December 31, 2021 included costs to reduce headcount, reorganize management structure and to consolidate certain facilities for acquired businesses.

Change in fair value of contingent consideration

	Years Ended December 31,		Change	
(in thousands, except for percentage)	2022	2021	$	%
Change in fair value of contingent consideration	$ 6,452	$ 829	$ 5,623	NM

The increase in expense due to the change in fair value of contingent consideration during the year ended December 31, 2022 compared to the prior year was primarily due to the $5.4 million of expense stemming from the contingent consideration generated by the CartiHeal Acquisition.

Depreciation and amortization

	Years Ended December 31,		Change	
(in thousands, except for percentage)	2022	2021	$	%
Depreciation and amortization	$ 21,153	$ 8,363	$ 12,790	152.9 %

Depreciation and amortization increased during the year ended December 31, 2022 compared with the prior year primarily due to acquisitions, partially offset by lower amortization expense in the current year as certain assets became fully amortized.

Impairment of goodwill

We incurred a $189.2 million non-cash goodwill impairment charge during the year ended December 31, 2022 due to the decline in our market capitalization. The non-cash goodwill impairment charge removed all of the goodwill associated with the U.S. segment.

Impairment of variable interest entity assets

We terminated the Collaboration Agreement with Harbor on June 8, 2021 resulting in a $5.7 million impairment on Harbor's long-lived asset balances, of which $5.2 million was recorded in loss attributable to noncontrolling interest. Refer to *Item 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 4. Acquisitions and investments* of this Annual Report for further details concerning the impairment and deconsolidation of Harbor.

Other (income) expense

(in thousands, except for percentage)	Years Ended December 31, 2022	2021	Change $	Change %
Interest expense, net	$ 25,795	$ 1,112	$ 24,683	NM
Other (income) expense	$ (12,944)	$ 3,329	$ (16,273)	NM

Interest expense, net increased $24.7 million due to: (i) an increase of 13.5 million for interest on the Deferred Amount related to the CartiHeal Acquisition; (ii) an increase of $2.9 million for interest associated with our October 2021 debt refinancing; (iii) an increase in interest of $4.9 million due to higher interest rates; (iv) an increase of $2.7 million on the additional debt used to partially fund the CartiHeal Acquisition; (v) an increase of $2.3 million due to higher margin rates; and (vi) the settlement of our equity participation right (EPR) liability in 2021 resulting in interest income of $2.8 million. These changes were partially offset by a $3.7 million increase in interest income resulting from the change in the fair value of our interest rate swap.

Other (income) expense changed $16.3 million due to: (i) the $23.7 million fair market value remeasurement gain on the CartiHeal equity investment in 2022; (ii) an impairment of our Harbor investment of $1.4 million in 2021; and (iii) less equity losses of $0.9 million in 2022 as CartiHeal was acquired in July 2022. These gains were partially offset with an asset impairment charge of $10.3 million on our investment in Trice Medical, Inc. in 2022.

Income tax (benefit) expense

(in thousands, except for percentage)	Years Ended December 31, 2022	2021	Change $	Change %
Income tax (benefit) expense	$ (50,508)	$ (1,966)	$ (48,542)	NM
Effective tax rate	19.1 %	25.8 %		(6.7 %)

Income tax benefit for the year ended December 31, 2022 was primarily due to net losses and uncertain tax positions. The income tax benefit for the year ended December 31, 2021 resulted from our IPO and associated Up C partnership structure.

Noncontrolling interest

(in thousands, except for percentage)	Years Ended December 31, 2022	2021	Change $	Change %
Continuing LLC Owner	$ 54,240	$ 4,124	$ 50,116	NM
Other noncontrolling interest	447	5,665	(5,218)	(92.1 %)
Total	$ 54,687	$ 9,789	$ 44,898	

Subsequent to the IPO and related transactions, we are the sole managing member of BV LLC in which we own 79.7%. We have a majority economic interest, the sole voting interest in, and control the management of BV LLC. As a result, we consolidate the financial results of BV LLC and report a non-controlling interest representing the 20.3% that is owned by the Continuing LLC Owner.

The decline in losses associated with other noncontrolling interest resulted from our deconsolidation of Harbor upon the termination of the Collaboration Agreement during the second quarter of 2021. We incurred an impairment charge of $5.7 million as a result of which $5.2 million was attributable to noncontrolling interest.

Segment Adjusted EBITDA

Adjusted EBITDA for each of our reportable segments is as follows:

(in thousands, except for percentage)	Years Ended December 31, 2022	2021	Change $	Change %
U.S.	$ 56,231	$ 70,640	$ (14,409)	(20.4 %)
International	$ 10,078	$ 10,119	$ (41)	(0.4) %

U.S.

Adjusted EBITDA decreased $14.4 million, or 20.4%, primarily due to an increase in compensation related charges as previously discussed as well as higher public company costs, partially offset by an increase in gross profit.

International

Adjusted EBITDA slightly decreased primarily due to acquisitions and increases in consulting and travel related expenses. These increases were mostly offset with an increase in gross profit resulting from larger net sales.

Liquidity and Capital Resources

Sources of liquidity

Our principal liquidity needs have historically been for acquisitions, working capital, research and development, clinical trials, and capital expenditures. We expect these needs to continue as we develop and commercialize new products and further our expansion into international markets.

We have implemented previously announced restructuring initiatives to enhance our current financial position and sources of liquidity. These restructuring efforts are expected to result in $9.0 million to $10.0 million in cost savings on an annualized basis upon completion. Refer to *Item 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 10. Restructuring* for further details regarding these cost cutting efforts.

We anticipate that to the extent that we require additional liquidity, we will obtain funding through additional equity financings or the incurrence of other indebtedness or a combination of these potential sources of liquidity. We may explore divestiture opportunities for non-core assets to improve our liquidity position. In addition, we may raise additional funds to finance future cash needs through receivables or royalty financings or corporate collaboration and licensing arrangements. If we raise additional funds by issuing equity securities or convertible debt, our stockholders will experience dilution. The covenants under the Amended 2019 Credit Agreement limit our ability to obtain additional debt financing. Debt financing, if allowed under the Amended 2019 Credit Agreement and if available, would result in increased payment obligations and might involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, or making capital expenditures. If we raise additional funds through collaboration and licensing arrangements with third-parties, it might be necessary to relinquish valuable rights to our products, future revenue streams or product candidates, or to grant licenses on terms that might not be favorable to us. We cannot be certain that additional funding will be available on acceptable terms, or at all. Any failure to raise capital in the future might have a negative impact on our financial condition and our ability to pursue our business strategies.

Going Concern

The accompanying consolidated financial statements have been prepared under the going concern basis of accounting, which presumes that the Company's liquidation is not imminent; however, certain conditions and events raise substantial doubt about the Company's ability to continue as a going concern.

As of December 31, 2022, we were not in compliance with the maximum debt leverage requirement under the Amended 2019 Credit Agreement. On March 31, 2023, we entered into an amendment to the Amended 2019 Credit Agreement to modify certain financial covenants and to avoid an event of default by waiving the noncompliance at December 31, 2022. For additional information regarding this amendment, see *Indebtedness* below.

Although management has concluded that there is substantial doubt regarding our ability to continue as a going concern, this conclusion is based on our analysis under generally applicable accounting principles. If the Company's current operating projections are met, the Company believes that it should be able to meet its obligations as they come due within the twelve month period after the date the financial statements contained herein are issued. However, we have based this estimate on assumptions of revenues and operating costs that may prove to be wrong. Moreover, given the risks associated with employee turnover and retention of key talent, and the previously disclosed material weaknesses in internal controls over financial reporting, there is substantial risk that we might not meet our projections. If we do not meet our projections, there is substantial risk that we might not be able to meet our obligations as they come due within the twelve month period after the date the financial statements were issued. It is therefore probable that there is substantial doubt about our ability to continue as a going concern, despite the covenant relief from our lenders.

In light of this, we are continuing to actively pursue plans to mitigate these conditions and events, including seeking covenant waivers or amendments from our lenders, and other potential actions such as implementing various cost cutting measures and exploring divestiture opportunities for non-core assets; however, there can be no assurances that it is probable these measures will successfully mitigate these conditions and events. Therefore, these plans do not alleviate the substantial doubt about our ability to continue as a going concern.

However, if mitigating steps are not taken or are not successful, we are at substantial risk of failing to comply with the financial covenants in the Amended 2019 Credit Agreement in the second quarter of 2024. A breach of a financial covenant under the Amended 2019 Credit Agreement could accelerate repayment of our obligations under the agreement. Refer to I*tem 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 5. Financial instruments* for further discussion concerning the Company's long-term debt obligations.

As part of efforts to improve our financial condition, on February 27, 2023, we reached an agreement to return the assets and liabilities of CartiHeal (2009) Ltd. ("CartiHeal"), a wholly-owned subsidiary of the Company, to its former securityholders. The deconsolidation of CartiHeal relieved deferred consideration liabilities and milestone obligations related to the acquisition of CartiHeal. See *Strategic Transactions – CartiHeal* above as well as *Item 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 4. Acquisitions and investments* and *Note 15. Subsequent events* for further information regarding the acquisition and subsequent deconsolidation of CartiHeal. In addition, we announced a restructuring plan in December 2022 to align our organizational and management cost structure to improve profitability and cash flow. Refer to *Item 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 10. Restructuring costs* for further information.

Interest rate swap

On October 28, 2022, we terminated our non-designated interest rate swap agreement and subsequently received a settlement of $7.7 million.

Initial public offering

On February 16, 2021, in connection with our IPO, we issued and sold 9,200,000 shares of our Class A common stock at a price to the public of $13.00 per share, resulting in gross proceeds to us of approximately $119.6 million, before deducting the underwriting discount, commissions and estimated offering expenses payable by us. Bioventus Inc. is a holding company and has no material assets other than the ownership of LLC Interests in BV LLC and has no independent means of generating revenue. Deterioration in the financial condition, earnings, or cash flow of BV LLC and its subsidiaries for any reason could limit or impair their ability to pay such distributions. In addition, the terms of our financing arrangements, including the Amended 2019 Credit Agreement, contain covenants that may restrict BV LLC and its subsidiaries from paying such distributions, subject to certain exceptions. Further, BV LLC is generally prohibited under Delaware law from making a distribution to a member to the extent that, at the time of the distribution, after giving effect to the distribution, liabilities of BV LLC (with certain exceptions), as applicable, exceed the fair value of its assets. Subsidiaries of BV LLC are generally subject to similar legal limitations on their ability to make distributions to BV LLC. Bioventus Inc., as the managing member, causes BV LLC to make cash distributions to the owners of LLC Interests in an amount sufficient to (i) fund tax obligations in respect of allocations of taxable income from BV LLC; and (ii) cover Bioventus Inc. operating expenses, including payments under the Tax Receivable Agreement ("TRA").

Future cash requirements

The following table summarizes certain estimated future cash requirements under our various contractual obligations committed to as of December 31, 2022 in total and disaggregated into current and long-term obligations.

	Current	Long-Term	Total
Long-term debt[(a)]	$ 33,056	$ 387,656	$ 420,712
Interest payments on long-term debt obligations[(a)]	30,452	74,841	105,293
Operating lease liabilities[(b)]	3,728	14,797	18,525
Purchase commitments[(c)]	24,820	31,646	56,466
	$ 92,056	$ 508,940	$ 600,996

(a) Refer to *Item 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 5. Financial instruments* in this Annual Report for further information regarding long-term debt obligations. Does not reflect the increase to margin applicable for our interest payments that became effective as of March 31, 2023

(b) Refer to *Item 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 12. Commitments and contingencies* in this Annual Report for further information regarding operating lease liabilities.

(c) Amounts that are contractually committed to as of December 31, 2022 related to multi-year exclusive supply agreements. Generally, our purchase obligations under these supply agreements are based on forecasted requirements, subject in some cases to an annual contractual minimum.

Other cash requirements

We enter into contracts in the normal course of business with various third-parties for development, collaboration and other services for operating purposes. These contracts provide for termination upon notice. Payments due upon cancellation generally consist only of payments for services provided or expenses incurred, including non-cancellable obligations of our service providers, up to the date of cancellation. Certain agreements include contingent events that upon occurrence would require payment. For information regarding Commitments and Contingencies, refer to *Item 8. Financial Statements and Supplementary Data* in this Annual Report.

Tax Receivable Agreement

The BV LLC Agreement provides for the payment of certain distributions to the Continuing LLC Owner in amounts sufficient to cover the income taxes imposed with respect to the allocation of taxable income from BV LLC as well as obligations within the TRA. Under the TRA, we are required to make cash payments to the Continuing LLC Owner equal to 85% of the tax benefits, if any, that we actually realize (or in certain circumstances are deemed to realize), as a result of (1) increases in the tax basis of assets of BV LLC resulting from (a) any future redemptions or exchanges of LLC Interests, and (b) certain distributions (or deemed distributions) by BV LLC and (2) certain other tax benefits arising from payments under the TRA. We expect the amount of the cash payments required to be made under the TRA will be significant. The actual amount and timing of any payments under the TRA will vary depending upon a number of factors, including the timing of redemptions or exchanges by the Continuing LLC Owner, the amount of gain recognized by the Continuing LLC Owner, the amount and timing of the taxable income we generate in the future, and the federal tax rates then applicable. Any payments made by us to the Continuing LLC Owner under the TRA will generally reduce the amount of overall cash flow that might have otherwise been available to us. To the extent that we are unable to make payments under the TRA for any reason, such payments generally will be deferred and will accrue interest until paid; provided, however, that nonpayment for a specified period may constitute a material breach of a material obligation under the TRA and therefore accelerate payments due under the TRA.

Indebtedness

Our Amended 2019 Credit Agreement, as in effect from October 29, 2021 to July 11, 2022, consisted of a $360.8 million term loan (“Term Loan”) and a $50.0 million revolving credit facility (the “Revolver”). On July 11, 2022, we amended the Amended 2019 Credit Agreement in conjunction with the CartiHeal Acquisition to provide for an incremental $80.0 million term loan facility (together with the Term Loan, the “Term Loan Facilities”) to be used in part to fund the CartiHeal Acquisition.

The Company was not in compliance with certain of its covenants under the 2019 Credit Agreement as of December 31, 2022. As a result, on March 31, 2023 (the “Closing Date”), we entered into another amendment to the Amended 2019 Credit Agreement to, among other things, modify certain financial covenants, waive the noncompliance at December 31, 2022 and to modify interest rates applicable to borrowings under the agreement. With respect to Term Loan Facilities and the Revolver outstanding as of the Closing Date, we may elect either SOFR or Base Rate interest rate options for the entire amount or certain portions of the loans and have interest rates equal to a formula driven base interest rate plus a margin, tied to a leverage ratio. The leverage ratio is the ratio of debt to Consolidated Adjusted EBITDA as defined in the Amended 2019 Credit Agreement for four consecutive quarters as of the end of each period. Pursuant to the Amended 2019 Credit Agreement, the margin at each applicable leverage ratio will be increased by 1.00% per annum. SOFR loans and base rate loans had a margin of 3.25% and 2.25%, respectively, subsequent to July 12, 2022 and prior to the Closing Date. As of the Closing Date, SOFR loans and base rate loans had a margin of 4.25% and 3.25%, respectively. All obligations under the Amended 2019 Credit Agreement are guaranteed by the Company and certain wholly owned subsidiaries where substantially all the assets of the Company collateralize the obligations.

The Term Loan Facilities will mature on October 29, 2026. The Revolver will mature on October 29, 2025.

The Amended 2019 Credit Agreement contains customary affirmative and negative covenants, including those related to financial reporting and notification, restrictions on the declaration or payment of certain distributions on or in respect of Bioventus LLC's equity interests, restrictions on acquisitions, investments and certain other payments, limitations on the incurrence of new indebtedness, limitations on transfers, sales and other dispositions of assets of Bioventus LLC and its subsidiaries, as well as limitations on making changes to the business and organizational documents of Bioventus LLC and its subsidiaries. Financial covenant requirements include (i) a maximum debt leverage ratio of not greater than 6.84 to 1.00 for the testing period ending March 31, 2023, 6.50 to 1.00 for the testing period ending June 30, 2023, 7.26 to 1.00 for the testing period ending September 30, 2023, 5.64 for the testing period ending December 31, 2023, 5.65 to 1.00 for the testing period ending March 31, 2024, 4.25 for the testing period ending June 30, 2024, 4.25 to 1.00 for the testing period ending September 30, 2024, and 4.00 to 1.00 for the testing period ending December 31, 2024 and each testing period thereafter, and, beginning with the testing period ending December 31, 2024, to be subject to a temporary increase to 4.50 to 1.00 upon certain events, and (ii) an interest coverage ratio not less than 2.25 to 1.00 for the testing period ending March 31, 2023, 2.21 to 1.00 for the testing period ending June 30, 2023, 1.70 to 1.00 for the testing period ending September 30, 2023, 1.98 to 1.00 for the testing period ending December 31, 2023, 2.25 to 1.00 for the testing period ending March 31, 2024, 2.25 to 1.00 for the testing period ending June 30, 2024, 2.25 to 1.00 for the testing period ending September 30, 2024 and 3.00 to 1.00 for the testing period ending December 31, 2024 and each testing period thereafter. In addition, during the period commencing on the Closing Date and ending upon the satisfaction of certain conditions occurring not prior to the delivery of financial statements of the Company for the fiscal quarter ending June 30, 2024, the Company will be subject to certain additional requirements and covenants, including a requirement to maintain Liquidity (as defined in the Amended 2019 Credit Agreement) of not less than $10,000 as of the end of each calendar month during such period.

During January and February 2023, the Company borrowed $49,000 on its Revolver for working capital needs. However, on the Closing Date of the amendment to the Amended 2019 Credit Agreement, as part of the closing conditions, the Company repaid $20,000 of these borrowings. Additionally, the Company paid $1,250 in closing fees, and will be required to pay an additional $600 by December 31, 2023 unless the Total Net Leverage Ratio as at September 30, 2023 is below 5.25 to 1.00.

Refer to *Item 9B. Other Information* and *Item 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 1. Organization* for further details on the Company's covenant compliance and *Note 5. Financial instruments* in this Annual Report for further details on the Company's indebtedness.

Information regarding cash flows

Cash, cash equivalents and restricted cash as of December 31, 2022 totaled $31.8 million, compared to $99.2 million as of December 31, 2021. The decrease in cash was primarily due to the following:

	Years Ended December 31,		Change	
(in thousands, except for percentage)	2022	2021	$	%
Net cash from operating activities	$ (13,537)	$ 22,991	$ (36,528)	(158.9 %)
Net cash from investing activities	(116,436)	(283,760)	167,324	(59.0 %)
Net cash from financing activities	62,076	273,371	(211,295)	(77.3 %)
Effect of exchange rate changes on cash	521	(228)	749	NM
Net change in cash, cash equivalents and restricted cash	$ (67,376)	$ 12,374	$ (79,750)	NM

NM = Not Meaningful

Operating Activities

Net cash from operating activities decreased $36.5 million, primarily due to completed acquisitions and the resulting integration costs, higher employee compensation, increased operating expenses and a rise in interest payments. These outflows were partially offset by increased collections from higher sales.

Investing Activities

Cash flows from investing activities increased $167.3 million, primarily due to the $262.9 million acquisition of Bioness and Misonix in 2021 and $12.0 million less in other investments and distribution rights during 2022. These changes in cash were partially offset with the $104.8 million acquisition of CartiHeal and an increase of $2.7 million in capital expenditures.

Financing Activities

Cash flows provided by financing activities decreased $211.3 million, primarily due to the $107.8 million in net proceeds from the issuance of Class A common stock sold during our 2021 IPO and $177.8 million less in proceeds from the issuance of long-term debt in 2022 compared with 2021. These decreases in cash were partially offset by $71.2 million less in payments on long-term debt in 2022 compared to 2021.

Recently Issued Accounting Pronouncements

There were no recently issued accounting pronouncements that are expected to materially impact our financial statements at December 31, 2022.

Critical Accounting Estimates

The preparation of the consolidated financial statements requires us to make assumptions, estimates and judgments that affect the reported amounts of assets and liabilities, the disclosures of contingent assets and liabilities as of the date of the consolidated financial statements, and the reported amounts of sales and expenses during the reporting periods. Certain of our more critical accounting policies require the application of significant judgment by management in selecting the appropriate assumptions for calculating financial estimates. By their nature, these judgments are subject to an inherent degree of uncertainty. On an ongoing basis, we evaluate our judgments, including those related to inventories, recoverability of long-lived assets and the fair value of our common stock. We use historical experience and other assumptions as the basis for our judgments in making these estimates. Because future events and their effects cannot be determined with precision, actual results could differ significantly from these estimates. Any changes in these estimates will be reflected in our consolidated financial statements as they occur. Refer to *Item 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 1. Organization and basis of presentation of financial information* for a further description of our significant accounting policies, however, we believe that the following accounting estimates are considered critical to our business in order to obtain a full understanding and to evaluate our reported financial results. The critical accounting estimates addressed below reflect our most significant judgments and estimates used in the preparation of our consolidated financial statements.

Revenue recognition estimates

Variable consideration estimates

We recognize revenue generally at a point in time upon transfer of control of the promised product to customers in an amount that reflects the consideration we expect to receive in exchange for those products. We exclude taxes collected from customers and remitted to governmental authorities from revenues.

Revenues are recorded at the transaction price, which is determined as the contracted price net of estimates of variable consideration resulting from discounts, rebates, returns, chargebacks, contractual allowances, estimated third-party payer settlements, and certain distribution and administration fees offered in customer contracts and other indirect customer contracts relating to the sale of products. We establish reserves for the estimated variable consideration based on the amounts earned or eligible for claim on the related sales. Where appropriate, these estimates take into consideration a range of possible outcomes, which are probability-weighted for relevant factors such as our historical experiences, current contractual requirements, specific known market events and trends, industry data and forecasted customer buying and payment patterns. The amount of variable consideration is included in the transaction price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. We regularly review all reserves and update them at the end of each reporting period as needed. There were no significant adjustments arising from the change in estimates of variable consideration for the years ended December 31, 2022 and 2021.

Accounts receivable allowances for credit losses

We maintain allowances for credit losses to provide for receivables we do not expect to collect. We base the allowance on an assessment of customer creditworthiness, historical payment experience, the age of outstanding receivables and other information as applicable.

Fair value

We record certain assets and liabilities at fair value. Fair value is defined as the price that would be received from selling an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. A three-level fair value hierarchy that prioritizes the inputs used to measure fair value is described below. This hierarchy requires entities to maximize the use of observable inputs and minimize the use of unobservable inputs. Assets and liabilities are categorized based on the lowest level that is significant to the valuation.

The three levels of inputs used to measure fair value are as follows:

- Level 1—Quoted prices in active markets for identical assets or liabilities;
- Level 2—Observable inputs other than quoted prices included within Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data; and

- Level 3—Unobservable inputs that are supported by little or no market data. This includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

Business combinations

We record identifiable assets acquired, liabilities assumed and any noncontrolling interest in an acquiree resulting from a business combination at their estimated fair values on the date of the acquisition. We generally have third-party valuations completed for intangible assets in a business combination using a discounted cash flow analysis, incorporating various assumptions. Goodwill represents the excess of the purchase price over the estimated fair value of the net assets acquired, including the amount assigned to identifiable intangible assets. The most significant estimates and assumptions inherent in a discounted cash flow analysis include the amount and timing of projected future cash flows, discount rate used to measure the risks inherent in the future cash flows, assessment of the asset's life cycle, and competitive and other trends impacting the asset, including consideration of technical, legal, regulatory, economic and other factors. Each of these factors and assumptions can significantly affect the value of the intangible asset.

Acquired in-process research and development ("IPR&D") is the fair value of projects for which the related products have not received regulatory approval and have no alternative future use and is capitalized as an indefinite-lived intangible asset. Due to inherent uncertainty related to research and development, actual results could differ materially from the assumptions used in the discounted cash flow model. Additionally, there are risks including, but not limited to, delay or failure to receive regulatory requirements to conduct clinical trials, required market clearances, or patent issuance, and that the research and development project does not result in a successful commercial product.

Contingent consideration

We recognize contingent consideration liabilities resulting from business combinations at estimated fair value on the acquisition date, and at each subsequent reporting period. Significant judgment is employed in determining the appropriateness of the estimates and assumptions as of the acquisition date and in post-acquisition periods. The Company initially values contingent consideration related to business combinations using a probability-weighted calculation of potential payment scenarios discounted at rates reflective of the risks associated with the expected future cash flows. Significant estimates and assumptions required for these valuations include the probability of achieving regulatory approval under specified time frames, product sales projections under various scenarios and discount rates used to calculate the present value of the estimated payments. After the initial valuation, the Company will use its best estimate to measure contingent consideration at each subsequent reporting period. Gains and losses are recorded with selling, general and administrative expenses within the consolidated statements of operations and comprehensive (loss) income.

Impairment of goodwill and indefinite-lived intangible assets

We evaluate goodwill for impairment annually during the fourth quarter, or more frequently if events or changes in circumstances indicate that the asset might be impaired. We analyze all other indefinite-lived intangible assets qualitatively to determine if it is more likely than not that an impairment exists. If we meet the criteria, we perform a quantitative analysis to determine if an impairment exists. Our reporting units are U.S. and International and we analyze each reporting unit separately in our impairment evaluations.

Our impairment process includes applying a quantitative impairment analysis to the fair value of the reporting unit and comparing it to its carrying value. We used independent third-party valuation specialists in 2022 and 2021 using year-to-date October data in each year to assist management in performing our annual impairment evaluation. We also utilized valuation specialists in April 2020 as we believed COVID-19 represented a triggering event that might indicate impairment. The specialists assist management in the determination of fair value of reporting units based upon inputs and assumptions provided by management, which management uses for its impairment assessment. We determine the fair value of U.S. and International reporting units based primarily on an income approach, which incorporates the use of a discounted free cash flow analysis. The discounted free cash flow analysis is based on significant judgments, including the current operating budgets, estimated long-term growth projections and future forecasts for each reporting unit. We discount future cash flows based on a market comparable weighted average cost of capital rate for each reporting unit. The discount rates used in the discounted free cash flow analyses reflect the risks inherent in the expected future cash flows generated by the respective intangible assets. Market risk, industry risk and a small company premium has an impact on the discount rate. The value of each reporting unit is determined on a stand-alone basis from the perspective of a market participant and represents the price we estimate we would receive in a sale of the reporting unit in an orderly transaction between market participants at the measurement date. Significant judgments inherent in this analysis include estimating the amount and timing of future cash flows and the selection of appropriate discount rates, royalty rate and long-term growth rate assumptions. Changes in estimates and assumptions could materially affect the determination of fair value for each reporting unit and could result in an impairment charge, which could be material to our financial position and results of operations.

On November 8, 2022, due to a significant decline in the value of our Class A common stock, circumstances became evident that a possible impairment existed as of the third quarter balance sheet date. We concluded that the carrying value of the U.S. reporting unit exceeded its fair value. We recorded a non-cash goodwill impairment charge within the United States reporting unit for the year ended December 31, 2022. The impairment was recorded within impairment of goodwill on the consolidated statements of operations and comprehensive (loss) income. There were no goodwill impairment charges for the years ended December 31, 2021 and 2020. Refer to *Item 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 3. Balance sheet information.*

Equity-based compensation

Equity-based compensation expense generated from the granting of restricted stock units represents the fair value of the stock measured at the market price on the date of grant. Restricted stock equity-based compensation expense is recognized over the vesting period.

The fair value of time-based stock options is determined using the Black-Scholes valuation model, with such value recognized as expense over the service period, net of actual forfeitures. Assumptions used in determining stock option fair value include risk-free interest rate, expected dividend yield, expected price volatility, expected life of stock options and weighted-average fair value of stock options granted. The expected term of the options granted is estimated using the simplified method. Expected volatility is based on the historical volatility of our peers' common stock. The risk-free interest rate is determined based upon a constant U.S. Treasury security rate with a contractual life that approximates the expected term of the option.

Prior to the IPO, we operated two equity-based compensation plans, the Management Incentive Plan ("MIP") and the Phantom Profits Interest Plan ("Phantom Plans"). We used independent third-party valuation specialists in 2020 using year-to-date October data in each year to assist management in performing the annual valuation of MIP and 2015 Phantom Plan Units. We utilized valuation specialists in April 2020 as we believed COVID-19 represented a triggering event that might indicate impairment. The specialists assisted management in the determination of the fair value of the awards granted using the Monte Carlo option pricing model. The subjective assumptions and the application of judgment in determining the fair value of the awards represent management's best estimates. The most significant assumptions utilized in the MIP and Phantom Plan were expected volatility, time outstanding, risk-free rate and expected dividend yield. Expected volatility was based on the historical volatility of our peer group. The risk-free rate was based on U.S. Government Constant Maturity Treasury rates for a term corresponding to the amount of time the awards were expected to be outstanding. The expected dividend yield assumption had the rate of zero as we have not previously issued dividends and did not anticipate paying dividends in the foreseeable future.

Income taxes

The tax provision for interim periods is determined using an estimate of our annual effective tax rate, adjusted for discrete items, if any, that arise during the period. Each quarter, we update our estimate of our annual effective tax rate, and if the estimated annual effective tax rate changes, we make a cumulative adjustment in such period. The quarterly tax provision, and estimate of our annual effective tax rate, are subject to variation due to several factors, including variability in pre-tax income (or loss), the mix of jurisdictions to which such income relates, changes in how we conduct business, and tax law developments.

We maintain a valuation allowance on certain deferred tax assets that we have determined are not more-likely-than-not to be realizable and assess the need for an adjustment to this valuation allowance on a quarterly basis. The assessment is based on estimates of future sources of taxable income for the jurisdictions in which we operate and the periods over which deferred tax assets will be realizable. In the event we determine we will be able to realize all or part of the net deferred tax assets in the future, all or part of the valuation allowance will be reversed in the period it is determined. The release of all or part of the valuation allowance against deferred tax assets may cause greater volatility in the effective tax rate in the periods in which it is reversed.

We recognize a tax benefit from any uncertain tax positions only if they are more likely than not to be sustained upon examination based on the technical merits of the position. The amount of the accrual for which an exposure exists is measured as the largest amount of benefit determined on a cumulative probability basis that we believe is more likely than not to be realized upon ultimate settlement of the position. Components of the reserve, if relevant, are classified as a current or noncurrent liability in the consolidated balance sheet based on when we expect each of the items to be settled. Interest and penalties related to unrecognized tax benefits are recognized as a component of income tax expense.

JOBS Act

We qualify as an "emerging growth company" pursuant to the provisions of the JOBS Act. For as long as we are an "emerging growth company," we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not "emerging growth companies," including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, reduced disclosure obligations relating to the presentation of financial statements in the "Management's discussion and analysis of financial condition and results of operations" section and exemptions from the requirements of holding advisory "say-on-pay" votes on executive compensation and shareholder advisory votes on golden parachute compensation. We have availed ourselves of the reduced reporting obligations and executive compensation disclosure in this Annual Report and expect to continue to avail ourselves of the reduced reporting obligations available to emerging growth companies in future filings.

In addition, an emerging growth company can delay its adoption of certain accounting standards until those standards would otherwise apply to private companies. However, we are choosing to "opt out" of such extended transition period, and as a result, we plan to comply with any new or revised accounting standards on the relevant dates on which non-emerging growth companies must adopt such standards. Section 107 of the JOBS Act provides that our decision to opt out of the extended transition period for complying with new or revised accounting standards is irrevocable.

We will continue to qualify as an emerging growth company until the earliest of:

- The last day of our fiscal year following the fifth anniversary of the date of our IPO;
- The last day of our fiscal year in which have annual gross revenues of $1.07 billion or more;
- The date on which we have, during the previous three-year period, issued more than $1.0 billion in non-convertible debt;
- The date on which we are deemed to be a "large accelerated filer", which will occur at such time as we (1) have an aggregate worldwide market value of common equity securities held by non-affiliates of $700 million or more as of the last business day of our most recently completed second quarter, (2) have been required to file annual and quarterly reports under the Exchange Act for a period of at least 12 months, (3) have filed at least one annual report pursuant to the Exchange Act, and (4) are not eligible to use the requirements for smaller reporting companies as defined in Rule 12b-2 under the Exchange Act (annual revenue less than $100 million and either no public float or a public float of less than $700 million).

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

Quantitative and qualitative disclosures about market risk

We are exposed to various market risks, which may result in potential losses arising from adverse changes in market rates, such as interest rates and foreign exchange rates. We do not enter into derivatives or other financial instruments for trading or speculative purposes. We use derivative instruments to manage exposures to interest rates and foreign currencies. Derivatives are recorded on the balance sheet at fair value at each balance sheet date. We have elected the fair value method of accounting and do not designate whether the derivative instrument is an effective hedge of an asset, liability or firm commitment. Changes in the fair values of derivative instruments are recognized in the consolidated statements of operations and comprehensive (loss) income in the period incurred.

Interest rate risk

Our cash and cash equivalents balance as of December 31, 2022 consisted of demand deposits and institutional money market funds held in U.S. and foreign banks. Cash equivalents consist of highly liquid investment securities with original maturities on the date of purchase of three months or less and can be exchanged for a known amount of cash. We are exposed to the market risk related to fluctuations in interest rates and market prices for our cash equivalents. We are also exposed to interest rate risk in connection with borrowings under our Amended 2019 Credit Agreement, which bear interest at a floating rate based on one-month LIBOR plus an applicable borrowing margin. As of December 31, 2022, a 1.0% increase in interest rate would result in $13.8 million increase in total interest payable over the remaining life of the Amended 2019 Credit Agreement in the event we were to draw down the entire capacity of our revolving credit facility. For variable rate debt, interest rate changes generally do not affect the fair value of the Amended 2019 Credit Agreement, but impact future earnings and cash flows, assuming other factors are constant. In the ordinary course of business, we may enter into contractual arrangements to reduce our exposure to interest rate risks, subject to any applicable limitations in our financing arrangements.

We had an interest rate swap agreement to limit our exposure to changes in the variable interest rate on our term loan. The derivative instrument was not designated as a hedge. We terminated this interest rate swap agreement on October 28, 2022.

Foreign exchange risk management

We operate in countries other than the United States and are exposed to foreign currency risks. We bill most direct sales outside of the United States in local currencies. We expect that the percentage of our sales denominated in foreign currencies will increase in the foreseeable future as we continue to expand into international markets. When sales or expenses are not denominated in U.S. dollars, a fluctuation in exchange rates could affect our net income. We believe that the risk of a significant impact on our operating income from foreign currency fluctuations is minimal. Although we do not currently have any foreign currency hedges, we have used foreign exchange forward contracts in the past to protect against the impact of foreign currency fluctuations and may use forward contracts, derivatives or other hedges for foreign exchange risk management purposes in the future, subject to any applicable limitations in our financing arrangements.

Effects of inflation

We do not believe that inflation has had a material effect on our results of operations during the periods presented herein.

Item 8. Financial Statements and Supplementary Data.

Index to Consolidated Financial Statements

GRANT THORNTON LLP
4140 ParkLake Ave., Suite 130
Raleigh, NC 27612-3723
D +1 919 881 2700
F +1 919 881 2795

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Opinion on the financial statements

We have audited the accompanying consolidated balance sheets of Bioventus Inc. (a Delaware corporation) and subsidiaries (the "Company") as of December 31, 2022 and 2021, the related consolidated statements of operations and comprehensive (loss) income, changes in stockholders' and members' equity, and cash flows for each of the three years in the period ended December 31, 2022, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements 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.

Going concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, uncertainty exists related to the Company's ability to meet certain financial covenants within 12 months from the date of report issuance. These conditions, along with other matters as set forth in Note 1, raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements 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 audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the 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 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 financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ GRANT THORNTON LLP

We have served as the Company's auditor since 2019.

Raleigh, North Carolina
March 31, 2023

Bioventus Inc.

Consolidated Statements of Operations and Comprehensive (Loss) Income
Years Ended December 31, 2022, 2021 and 2020
(Amounts in thousands, except share amounts)

	2022	2021	2020
Net sales	$ 512,117	$ 430,898	$ 321,161
Cost of sales (including depreciation and amortization of $45,622, $26,471 and $21,169 respectively)	181,037	128,192	87,642
Gross profit	331,080	302,706	233,519
Selling, general and administrative expense	332,606	254,253	193,078
Research and development expense	25,941	19,039	11,202
Restructuring costs	6,779	2,487	563
Change in fair value of contingent consideration	6,452	829	—
Depreciation and amortization	21,153	8,363	7,439
Impairment of goodwill	189,197	—	—
Impairment of variable interest entity assets	—	5,674	—
Operating (loss) income	(251,048)	12,061	21,237
Interest expense, net	25,795	1,112	9,751
Other (income) expense	(12,944)	3,329	(4,428)
Other expense	12,851	4,441	5,323
(Loss) income before income taxes	(263,899)	7,620	15,914
Income tax (benefit) expense, net	(50,508)	(1,966)	1,192
Net (loss) income	(213,391)	9,586	14,722
Loss attributable to noncontrolling interest	54,687	9,789	1,689
Net (loss) income attributable to Bioventus Inc.	$ (158,704)	$ 19,375	$ 16,411
Net (loss) income	$ (213,391)	$ 9,586	$ 14,722
Other comprehensive (loss) income, net of tax			
Change in prior service cost and unrecognized gain (loss) for defined benefit plan adjustment	133	60	(54)
Change in foreign currency translation adjustments	(501)	(1,318)	2,126
Comprehensive (loss) income	(213,759)	8,328	16,794
Comprehensive loss attributable to noncontrolling interest	54,766	9,789	1,689
Comprehensive (loss) income attributable to Bioventus Inc.	$ (158,993)	$ 18,117	$ 18,483
Loss per share of Class A common stock, basic and diluted[(1)]:	$ (2.59)	$ (0.15)	
Weighted-average shares of Class A common stock outstanding, basic and diluted[(1)]:	61,389,107	45,472,483	

[(1)] Per share information for the year ended December 31, 2021 represents loss per share of Class A common stock and weighted-average shares of Class A common stock outstanding from February 16, 2021 through December 31, 2021, the period following Bioventus Inc.'s initial public offering and related transactions described in *Note 1. Organization* and *Note 9. Earnings per share* within the *Notes to the Consolidated Financial Statements.*

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

Bioventus Inc.

Consolidated Balance Sheets as of December 31, 2022 and 2021
(Amounts in thousands, except share amounts)

	2022	2021
Assets		
Current assets:		
Cash and cash equivalents	$ 31,814	$ 43,933
Restricted cash	23	5,280
Accounts receivable, net	136,645	124,963
Inventory	85,408	61,688
Prepaid and other current assets	18,685	27,239
Total current assets	272,575	263,103
Restricted cash, less current portion	—	50,000
Property and equipment, net	27,647	22,985
Goodwill	13,759	147,623
Intangible assets, net	1,038,724	695,193
Operating lease assets	17,308	17,186
Deferred tax assets	—	481
Investment and other assets	2,636	29,291
Total assets	$ 1,372,649	$ 1,225,862
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 37,549	$ 16,915
Accrued liabilities	111,954	131,473
Accrued equity-based compensation	—	10,875
Current portion of long-term debt	33,056	18,038
Current portion of deferred consideration	117,615	—
Other current liabilities	3,843	3,558
Total current liabilities	304,017	180,859
Long-term debt, less current portion	385,010	339,644
Deferred income taxes	154,001	133,518
Deferred consideration, less current portion	79,269	—
Contingent consideration	84,682	16,329
Other long-term liabilities	25,338	21,723
Total liabilities	1,032,317	692,073
Commitments and contingencies (Note 12)		
Stockholders' Equity:		
Preferred stock, $0.001 par value, 10,000,000 shares authorized, 0 shares issued		
Class A common stock, $0.001 par value, 250,000,000 shares authorized as of December 31, 2022 and December 31, 2021, 62,063,014 and 59,548,504 shares issued and outstanding as of December 31, 2022 and December 31, 2021, respectively	62	59
Class B common stock, $0.001 par value, 50,000,000 shares authorized, 15,786,737 shares issued and outstanding as of December 31, 2022 and December 31, 2021	16	16
Additional paid-in capital	481,919	465,272
Accumulated deficit	(165,306)	(6,602)
Accumulated other comprehensive (loss) income	(110)	179
Total stockholders' equity attributable to Bioventus Inc.	316,581	458,924
Noncontrolling interest	23,751	74,865
Total stockholders' equity	340,332	533,789
Total liabilities and stockholders' equity	$ 1,372,649	$ 1,225,862

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

Bioventus Inc.

Consolidated Statements of Changes in Stockholders' and Members' Equity
Years Ended December 31, 2022, 2021 and 2020
(Amounts in thousands, except share amounts)

	Members' Equity	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Accumulated other comprehensive (loss) income	Accumulated Deficit	Non-controlling Interest	Total Stockholders' and Members' Equity
		Shares	Amount	Shares	Amount					
Balance at December 31, 2019	$ 145,617									
Equity-based compensation	26									
Distribution to members	(19,250)									
Debt conversion	973									
Net income	14,722									
Other comprehensive income	2,072									
Balance at December 31, 2020	$ 144,160	—	$ —	—	$ —	$ —	$ —	$ —	$ —	$ 144,160
Prior to Organizational Transactions:										
Refund from members	123	—	—	—	—	—	—	—	—	123
Equity-based compensation	(39)	—	—	—	—	—	—	—	—	(39)
Net income	25,977	—	—	—	—	—	—	—	—	25,977
Other comprehensive loss	(1,507)	—	—	—	—	—	—	—	—	(1,507)
Effect of Organizational Transactions	(168,714)	31,838,589	32	15,786,737	16	41,813	—	—	79,119	(47,734)
Subsequent to Organizational Transactions:										
Initial public offering, net of offering costs	—	9,200,000	9	—	—	106,441	—	—	—	106,450
Issuance of Class A common stock for equity plans	—	169,125	—	—	—	1,617	—	—	—	1,617
Issuance of Class A common stock for acquisitions, net of registration fees	—	18,340,790	18	—	—	272,706	—	—	—	272,724
Distribution to Continuing LLC Owner	—	—	—	—	—	—	—	—	(3,306)	(3,306)
Net loss	—	—	—	—	—	—	—	(6,602)	(9,789)	(16,391)
Deconsolidation of variable interest entity	—	—	—	—	—	—	—	—	3,746	3,746
Equity based compensation	—	—	—	—	—	15,059	—	—	4,825	19,884
Replacement equity awards in connection with acquisitions	—	—	—	—	—	27,636	—	—	—	27,636
Acquisition of noncontrolling interest	—	—	—	—	—	—	—	—	200	200
Other comprehensive income	—	—	—	—	—	—	179	—	70	249
Balance at December 31, 2021	$ —	59,548,504	$ 59	15,786,737	$ 16	$ 465,272	$ 179	$ (6,602)	$ 74,865	$ 533,789
Issuance of Class A common stock for equity plans		2,514,510	3	—	—	5,819	—	—	—	5,822
Net loss		—	—	—	—	—	—	(158,704)	(54,687)	(213,391)
Tax withholdings on equity compensation awards		—	—	—	—	(3,352)	—	—	—	(3,352)
Deconsolidation of noncontrolling interest		—	—	—	—	—	—	—	247	247
Equity based compensation		—	—	—	—	14,180	—	—	3,405	17,585
Other comprehensive loss		—	—	—	—	—	(289)	—	(79)	(368)
Balance at December 31, 2022		62,063,014	$ 62	15,786,737	$ 16	$ 481,919	$ (110)	$ (165,306)	$ 23,751	$ 340,332

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

Bioventus Inc.

Consolidated Statements of Cash Flows
Years Ended December 31, 2022, 2021 and 2020
(Amounts in thousands)

	2022	2021	2020
Operating activities:			
Net (loss) income	$ (213,391)	$ 9,586	$ 14,722
Adjustments to reconcile net (loss) income to net cash from operating activities:			
Depreciation and amortization	66,803	34,875	28,643
Provision for expected credit losses	5,190	485	1,215
Equity-based compensation from 2021 Stock Incentive Plan	17,585	19,844	—
Profits interest plan, liability-classified and other equity awards compensation	—	(24,356)	10,103
Change in fair value of contingent consideration	6,452	829	—
Change in fair value of interest rate swap	(6,396)	(2,730)	1,599
Deferred income taxes	(52,792)	(9,756)	644
Change in fair value of Equity Participation Rights	—	(2,774)	—
Impairment of goodwill and asset impairment charges	199,482	—	—
Impairments related to variable interest entity	—	7,043	—
Loss on debt retirement and modification	—	2,162	—
Revaluation gain on previously held equity interest in CartiHeal	(23,709)	—	(511)
Unrealized loss (gain) on foreign currency fluctuations	1,383	472	(490)
Other, net	388	588	966
Changes in operating assets and liabilities:			
Accounts receivable	(18,022)	(20,052)	(3,941)
Inventories	(18,618)	3,183	(528)
Accounts payable and accrued expenses	10,913	18,211	20,510
Other current and noncurrent assets and liabilities	11,195	(14,619)	(733)
Net cash from operating activities - continuing operations	(13,537)	22,991	72,199
Net cash from operating activities - discontinued operations	—	—	(400)
Net cash from operating activities	(13,537)	22,991	71,799
Investing activities:			
Acquisitions, net of cash acquired	(104,841)	(262,870)	—
Purchase of property and equipment	(10,042)	(7,370)	(16,579)
Investments and acquisition of distribution rights	(1,478)	(13,520)	(4,093)
Other	(75)	—	—
Net cash from investing activities - continuing operations	(116,436)	(283,760)	(20,672)
Net cash from investing activities - discontinued operations	—	—	172
Net cash from investing activities	(116,436)	(283,760)	(20,500)
Financing activities:			
Proceeds from issuance of Class A common stock sold in initial public offering, net of underwriting discounts and offering costs	—	107,777	—
Proceeds from issuance of Class A and B common stock	5,822	1,633	—
Registration fees for Class A common stock to purchase Misonix	—	(1,838)	—
Tax withholdings on equity-based compensation	(3,352)	—	—
Borrowing on revolver	25,000	20,000	49,000
Payment on revolver	(25,000)	(20,000)	(49,000)
Proceeds from the issuance of long-term debt, net of issuance costs	79,659	257,453	—
Payments on long-term debt	(20,038)	(91,250)	(10,000)
Distributions to members	—	(367)	(19,886)
Other, net	(15)	(37)	317
Net cash from financing activities	62,076	273,371	(29,569)
Effect of exchange rate changes on cash	521	(228)	589
Net change in cash, cash equivalents and restricted cash	(67,376)	12,374	22,319
Cash, cash equivalents and restricted cash at the beginning of the period	99,213	86,839	64,520
Cash, cash equivalents and restricted cash at the end of the period	$ 31,837	$ 99,213	$ 86,839
Supplemental disclosure of noncash investing and financing activities			
Accrued liabilities for distribution rights	$ —	$ —	$ 1,000
Accrued member distributions	$ —	$ 3,181	$ 31
Debt conversion	$ —	$ —	$ 973
Accounts payable for purchase of property, plant and equipment	$ 419	$ 695	$ 336

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

Bioventus Inc.
Notes to the Consolidated Financial Statements
(Amounts in thousands, except unit and share amounts)

1. Organization

The Company

Bioventus Inc. (together with its subsidiaries, the "Company") was formed as a Delaware corporation for the purpose of facilitating an initial public offering ("IPO") and other related transactions in order to carry on the business of Bioventus LLC and its subsidiaries ("BV LLC"). Bioventus Inc. functions as a holding company with no direct operations, material assets or liabilities other than the equity interest in BV LLC. BV LLC is a limited liability company formed under the laws of the state of Delaware on November 23, 2011 and operates as a partnership. BV LLC commenced operations in May 2012. The Company is focused on developing and commercializing clinically differentiated, cost efficient and minimally invasive treatments that engage and enhance the body's natural healing processes. The Company is headquartered in Durham, North Carolina and has approximately 1,120 employees at December 31, 2022.

Initial Public Offering

On February 16, 2021, the Company closed an IPO of 9,200,000 shares of Class A common stock at a public offering price of $13.00 per share, which includes 1,200,000 shares issued pursuant to the underwriters' over-allotment option. The Company received $111,228 in proceeds, net of underwriting discounts and commissions of $8,372, which was used to purchase newly-issued membership interests from BV LLC at a price per interest equal to the IPO price of $13.00. The Company also incurred offering expenses totaling $4,778 in addition to the underwriting discounts and commissions. Offering expenses of $1,327 were paid in 2020 and $3,451 were paid in 2021. The Company is the sole managing member of, has a majority economic interest in, has the sole voting interest in, and controls the management of BV LLC. As a result, the Company consolidates the financial results of BV LLC and reports a non-controlling interest for the interest not held by the Company.

IPO Transactions

In connection with the IPO, the Company completed the following transactions ("Transactions").

- Amended and restated the limited liability company agreement of BV LLC ("BV LLC Agreement"), to, among other things, (i) provide for a new single class of common membership interests in BV LLC ("LLC Interests"); (ii) exchange all of the existing membership interests in BV LLC ("Original BV LLC Owners") for new LLC Interests; and (iii) appoint Bioventus Inc. as the sole managing member of BV LLC. Refer to *Note 8. Stockholders' equity* for further information.
- Amended and restated the Bioventus Inc. certificate of incorporation to, among other things, (i) provide for an increase in the authorized shares of Class A common stock; (ii) provide for Class B common stock with voting rights but no economic interest, which shares were issued to the Original BV LLC Owners on a one-for-one basis with the number of LLC Interests they owned; and (iii) provide for undesignated preferred stock. Refer to *Note 8. Stockholders' equity* for further information.
- Acquired, by merger, ten entities that were Original BV LLC Owners ("Former LLC Owners"), for which the Company issued 31,838,589 shares of Class A common stock as merger consideration ("IPO Mergers"). The only assets held by the Former LLC Owners were 31,838,589 LLC Interests and a corresponding number of shares of Class B common stock. Upon consummation of the IPO Mergers, the 31,838,589 shares of Class B common stock were canceled, and the Company recognized the 31,838,589 LLC Interests at carrying value, as the IPO Mergers are considered to be a recapitalization transaction.

The financial statements for periods prior to the IPO and Transactions have been adjusted to combine the previously separate entities for presentation purposes. Prior to the Transactions, Bioventus Inc. had no operations.

Interim periods

The Company reports quarterly interim periods on a 13-week basis within a standard calendar year. Each annual reporting period begins on January 1 and ends on December 31. Each quarter ends on the Saturday closest to calendar quarter-end, with the exception of the fourth quarter, which ends on December 31. The 13-week quarterly periods for fiscal year 2022 ended on April 2, July 2 and October 1. Comparable periods for 2021 ended on April 3, July 3 and October 2. The fourth and first quarters may vary in length depending on the calendar year.

Consolidation

The consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP"). The consolidated financial statements include the Company, its subsidiaries and investments in which the Company has control. Amounts pertaining to the non-controlling ownership interests held by third-parties in the operating results and financial position of the Company's controlled subsidiaries are reported as non-controlling interests. All intercompany balances and transactions have been eliminated in consolidation.

Reclassifications

Certain prior period amounts have been reclassified to conform to the current period presentation. These changes had no effect on previously reported total revenues, net (loss) income, other comprehensive (loss) income, members' equity or cash flows. Unless otherwise noted, all financial information in the consolidated financial statement footnotes reflects the Company's results from continuing operations.

Segment reporting

The Company identifies a business as an operating segment if: (i) it engages in business activities from which it may earn revenues and incur expenses; (ii) its operating results are regularly reviewed by the Chief Operating Decision Maker (CODM), to make decisions about resources to be allocated to the segment and assess its performance; and (iii) it has available discrete financial information. The Company's CODM is its Chief Executive Officer. The CODM reviews financial information at the operating segment level to allocate resources and to assess the operating results and financial performance for each operating segment.

The Company's two reportable segments are U.S. and International. U.S. and International products are primarily sold to physicians spanning the orthopedic continuum, including sports medicine, total joint reconstruction, hand and upper extremities, foot and ankle, podiatric surgery, trauma, spine and neurosurgery, as well as directly to their patients. Refer to *Note 13. Revenue recognition* and *Note 14. Segments* for further information regarding the Company's business segments.

Use of estimates

The preparation of financial statements in accordance with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and the disclosure of contingent assets and liabilities, at the date of the financial statements, as well as the reported amounts of revenues and expenses during the period. On an ongoing basis, management evaluates these estimates, including those related to contractual allowances and sales incentives, allowance for credit losses, inventory reserves, goodwill and intangible assets impairment, valuation of assets and liabilities assumed in acquisitions, useful lives of long lived assets, noncontrolling interest, fair value measurements, litigation and contingent liabilities, income taxes, and equity-based compensation. Management bases its estimates on historical experience, future expectations and other relevant assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from those estimates.

COVID-19

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") was signed into law, which was aimed at providing emergency assistance and health care for individuals, families, and businesses affected by the COVID-19 pandemic and generally supporting the U.S. economy. The CARES Act, among other things, included provisions relating to refundable payroll tax credits, deferment of employer social security payments, NOL carryback periods, alternative minimum tax credit refunds, and modifications to the net interest deduction limitations. The CARES Act allowed the Company to defer employer social security payroll tax payments from May 2020 through December 31, 2020 totaling $1,889. The Company repaid $1,440 in both December 2022 and 2021, including payments on deferred payroll tax balances acquired in business combinations.

As a result of the CARES Act and at the direction of the U.S. Department of Health and Human Services (HHS), the Company received $4,101 in Provider Relief Fund Payments in 2020. The Company determined it complied with the conditions to be able to keep and use the funds to reimburse for health care related expenses and lost revenue attributable to the public health emergency resulting from COVID-19. The payments were recorded as other income on the consolidated statement of operations and comprehensive (loss) income for the year ended December 31, 2020.

Going Concern

The accompanying consolidated financial statements have been prepared under the going concern basis of accounting, which presumes that the Company's liquidation is not imminent; however, certain conditions and events raise substantial doubt about the Company's ability to continue as a going concern.

As of December 31, 2022, the Company was not in compliance with the maximum debt leverage requirement that was then applicable under the Credit and Guaranty Agreement, dated December 6, 2019 (as amended on October 29, 2021, July 11, 2022 and March 31, 2023, the "Amended 2019 Credit Agreement"). On March 31, 2023, the Company entered into an amendment to the Amended 2019 Credit Agreement to modify certain financial covenants and to avoid an event of default by waiving the noncompliance at December 31, 2022. For additional information regarding this amendment, see *Note 5. Financial Instruments* below.

Although management has concluded that there is substantial doubt regarding the Company's ability to continue as a going concern, this conclusion is based on analysis under applicable accounting principles. If the Company's current operating projections are met, the Company believes that it should be able to meet its obligations as they come due within the twelve month period after the date the financial statements contained herein are issued. However, the Company has based this estimate on assumptions of revenues and operating costs that may prove to be wrong. Moreover, given the risks associated with employee turnover and retention of key talent, and the previously disclosed material weaknesses in internal controls over financial reporting, there is substantial risk that the Company might not meet its projections. If the Company does not meet its projections, there is substantial risk that the Company may not be able to meet its obligations as they come due within the twelve month period after the date the financial statements were issued. It is therefore probable that there is substantial doubt about the Company's ability to continue as a going concern despite recent covenant relief from its lenders.

In light of this, the Company is continuing to actively pursue plans to mitigate these conditions and events, including seeking covenant waivers or amendments from lenders, and other potential actions such as implementing various cost cutting measures and exploring divestiture opportunities for non-core assets; however, there can be no assurances that it is probable these measures will successfully mitigate these conditions and events. Therefore, these plans do not alleviate the substantial doubt about the Company's ability to continue as a going concern.

However, if mitigating steps are not taken or are not successful, the Company is at substantial risk of failing its covenants in the second quarter of 2024. A breach of a financial covenant under the Amended 2019 Credit Agreement could accelerate repayment of our obligations under the agreement. Refer to *Note 5. Financial instruments* for further discussion concerning the Company's long-term debt obligations.

As part of efforts to improve its financial condition, on February 27, 2023, the Company reached an agreement to return the assets and liabilities of CartiHeal (2009) Ltd. ("CartiHeal"), a wholly-owned subsidiary of the Company, to its former securityholders. The deconsolidation of CartiHeal relieved deferred consideration liabilities and milestone obligations related to the acquisition of CartiHeal. Refer to *Note 4. Acquisitions and investments* and *Note 15. Subsequent events* for further information regarding the acquisition and subsequent deconsolidation of CartiHeal. In addition, the Company announced a restructuring plan in December 2022 to align the Company's organizational and management cost structure to improve profitability and cash flow. Refer to *Item 8. Financial Statements and Supplementary Data—Notes to the Consolidated Financial Statements—Note 10. Restructuring costs* for further information.

2. Significant accounting policies

Recent accounting pronouncements

The Company is an accelerated public company filer. Therefore, required effective dates for adopting new or revised accounting standards are generally earlier than when emerging growth companies are required to adopt.

Variable Interest Entity

The Company reviews each investment and collaboration agreement to determine if it has a variable interest in the entity. In assessing whether the Company has a variable interest in the entity as a whole, the Company considers and makes judgments regarding the purpose and design of entity, the value of the licensed assets to the entity, the value of the entity's total assets and the significant activities of the entity. If the Company has a variable interest in the entity as a whole, the Company assesses whether or not the Company is a primary beneficiary of that variable interest entity ("VIE"), based on a number of factors, including: (i) which party has the power to direct the activities that most significantly affect the VIE's economic performance, (ii) the parties' contractual rights and responsibilities pursuant to the collaboration agreement, and (iii) which party has the obligation to absorb losses of or the right to receive benefits from the VIE that could be significant to the VIE. If the Company determines that it is the primary beneficiary of a VIE at the onset of the collaboration, the collaboration is treated as a business combination and the Company consolidates the financial statement of the VIE into the Company's consolidated financial statements. On a quarterly basis, the Company evaluates whether it continues to be the primary beneficiary of the consolidated VIE. If the Company determines that it is no longer the primary beneficiary of a consolidated VIE, it deconsolidates the VIE in the period the determination is made.

Assets and liabilities recorded as a result of consolidating financial results of the VIE into the Company's consolidated balance sheet do not represent additional assets that could be used to satisfy claims against the Company's general assets or liabilities for which creditors have recourse to the Company's general assets.

Noncontrolling Interest

The Company records noncontrolling interest on its consolidated balance sheet related to the economic interest in BV LLC held by the only continuing BV LLC owner as well as consolidated VIEs. The Company records loss attributable to noncontrolling interest on its consolidated statements of operations, which reflects the net loss for the reporting period, adjusted for changes in the noncontrolling interest holders claim to net assets, including contingent milestone and royalty payments, which are evaluated each reporting period.

Deconsolidation and discontinued operations

Upon the occurrence of certain events and on a regular basis, the Company evaluates whether it no longer has a controlling interest in its subsidiaries, including consolidated VIEs. If the Company determines it no longer has a controlling interest, the subsidiary is deconsolidated. The Company records a gain or loss on deconsolidation based on the difference on the deconsolidation date between (i) the aggregate of (a) the fair value of any consideration received, (b) the fair value of any retained noncontrolling investment in the former subsidiary and (c) the carrying amount of any noncontrolling interest in the subsidiary being deconsolidated, less (ii) the carrying amount of the former subsidiary's assets and liabilities.

The Company assesses whether a deconsolidation is required to be presented as discontinued operations in its consolidated financial statements on the deconsolidation date. This assessment is based on if the deconsolidation represents a strategic shift that has or will have a major effect on the Company's operations or financial results. If the Company determines that a deconsolidation requires presentation as a discontinued operation on the deconsolidation date, it will present the former subsidiary as a discontinued operation for all periods presented.

Effect of foreign currency

The assets and liabilities of foreign subsidiaries whose functional currency is the local currency are translated into U.S. dollars at rates of exchange in effect at the close of their month end. Equity accounts are translated at their historical rates. Revenues and expenses are translated at the exchange rate on the transaction date. Translation gains and losses are accumulated within accumulated other comprehensive (loss) income as a separate component of equity.

Foreign currency transaction gains and losses are included in other expense on the consolidated statements of operations and other comprehensive (loss) income. There were losses of $250 and $132 for the years ended December 31, 2022 and December 31, 2021, respectively, and gains of $117 for the year ended December 31, 2020.

Comprehensive (Loss) Income

Comprehensive (loss) income consists of two components: net (loss) income and other comprehensive (loss) income, which refers to gains and losses that are recorded under U.S. GAAP as an element of stockholders' equity and are excluded from net (loss) income. The Company's other comprehensive (loss) income consists of a defined benefit plan adjustment and foreign currency translation adjustments from those subsidiaries not using the U.S. dollar as their functional currency.

Cash, cash equivalents and restricted cash

Cash equivalents consist of highly liquid investments with an original maturity of three months or less at date of purchase. The Company's cash is primarily held in financial institutions in the United States and the Netherlands. The Company maintains cash balances in the United States in excess of the federally insured limits. Restricted cash is cash the Company holds for specific reasons and is not available for immediate business use.

Derivatives

The Company has historically used derivative instruments to manage exposures to interest rates. Derivatives are recorded on the balance sheet at fair value at each balance sheet date and the Company does not designate whether the derivative instrument is an effective hedge. Changes in the fair values of derivative instruments are recognized in the consolidated statements of operations and comprehensive (loss) income. The Company had entered, and may in the future enter, into derivative contracts related to its debt. Refer to *Note 5. Financial instruments* for further details regarding the Company's derivatives.

Fair value

The Company records certain assets and liabilities at fair value. Refer to *Note 6. Fair value measurements* for details regarding assets and liabilities measured at fair value. Fair value is defined as the price that would be received from selling an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. A three-level fair value hierarchy that prioritizes the inputs used to measure fair value is described below. This hierarchy requires entities to maximize the use of observable inputs and minimize the use of unobservable inputs. Assets and liabilities are categorized based on the lowest level that is significant to the valuation.

The three levels of inputs used to measure fair value are as follows:

- Level 1—Quoted prices in active markets for identical assets or liabilities;
- Level 2—Observable inputs other than quoted prices included within Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data; and
- Level 3—Unobservable inputs that are supported by little or no market data. This includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

Revenue recognition

Sale of Products

The Company derives revenue primarily from product sales in its (i) Pain Treatments portfolio, which includes osteoarthritic (OA) joint pain treatments, which are hyaluronic acid (“HA”), viscosupplementation therapies and peripheral nerve stimulation products (ii) Surgical Solutions portfolio, which includes bone graft substitutes, tissue resection, ultrasonic bone cutting and sculpting systems and other surgical products, and (iii) Restorative Therapies portfolio, which includes minimally invasive fracture treatments, rehabilitation and wound products. The Company sells product directly to healthcare institutions, patients, distributors and dealers. The Company also enters arrangements with pharmacy and health benefit managers that provide for privately negotiated rebates, chargebacks and discounts with respect to the purchase of the Company’s products.

The Company recognizes revenue generally at a point in time upon transfer of control of the promised product to customers in an amount that reflects the consideration it expects to receive in exchange for those products. The Company excludes taxes collected from customers and remitted to governmental authorities from revenues.

Revenues are recorded at the transaction price, which is determined as the contracted price net of estimates of variable consideration resulting from discounts, rebates, returns, chargebacks, contractual allowances, estimated third-party payer settlements, and certain distribution and administration fees offered in customer contracts and other indirect customer contracts relating to the sale of products. The Company establishes reserves for the estimated variable consideration based on the amounts earned or eligible for claim on the related sales. Where appropriate, these estimates take into consideration a range of possible outcomes, which are probability-weighted for relevant factors such as the Company’s historical experience, current contractual requirements, specific known market events and trends, industry data and forecasted customer buying and payment patterns. The amount of variable consideration is included in the transaction price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. The Company regularly reviews all reserves and updates them at the end of each reporting period as needed. There were no significant adjustments arising from the change in estimates of variable consideration for the years ended December 31, 2022, 2021 and 2020.

Pain Treatments

Revenue from customers, such as healthcare providers, distribution centers or specialty pharmacies is recognized at the point in time when control is transferred to the customer, typically upon shipment.

Distributor chargebacks

The Company has preexisting contracts with established rates with many of the distributors’ customers that require the distributors to sell products at their established rate. The Company offers chargebacks to distributors who supply these customers with products. The Company reduces revenue at the time of sale for the estimated future chargebacks. The Company records chargeback reserves as a reduction of accounts receivable and bases the reserves on the expected value by using probability-weighted estimates of volume of purchases, inventory holdings and historical chargebacks requested for each distributor.

Discounts and gross-to-net deductions

The Company offers retrospective discounts and gross-to-net deductions linked to the volume of purchases which may increase at negotiated thresholds within a contract-buying period. The Company reduces revenue and records the reserve as a reduction to accounts receivable for the estimated discount and rebate at the expected amount the customer will earn, based on historical buying trends and forecasted purchases.

Surgical Solutions

Most of the Company's product sales related to bone graft substitutes are through consignment inventory with hospitals, where ownership remains with the Company until the hospital or ambulatory surgical center ("ASC") performs a surgery and consumes the consigned inventory. The Company recognizes revenue when the surgery has been performed. Control of the product is not transferred until the customer consumes it, as the Company is able to require the return or transfer of the product to a third-party prior to the products use. An unconditional obligation to pay for the product does not exist until the customer uses it.

The Company consistently recognizes revenue from sales of its ultrasonic products acquired through the Misonix acquisition in accordance with shipping terms. Control is transferred to the customer when the product is shipped or received, and revenue is recognized accordingly.

Restorative Therapies

The Company recognizes revenue from third-party payers, such as governmental agencies, insurance companies or managed care providers, when the Company transfers control to the patient, typically when the patient has accepted the product or upon delivery. The Company records this revenue at the contracted rate, net of contractual allowances and estimated third-party payer settlements at the time of sale, or an estimated price based on historical data and other available information for non-contracted payers. The Company estimates the contractual allowances using the portfolio approach and based on probability weighting historical data and collections history within those portfolios. The portfolios determined using the portfolio approach consist of the following customer groups: government payers, commercial payers, and patients.

Settlements with third-party payers for retroactive revenue adjustments due to audits, reviews or investigations are considered variable consideration and are included in the determination of the estimated transaction price using the expected amount method. These settlements are estimated based on the terms of the payment agreement with the payer, correspondence from the payer and historical settlement activity, including an assessment to ensure that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the retroactive adjustment is subsequently resolved. Estimated settlements are adjusted in future periods as adjustments become known (that is, new information becomes available), or as years are settled or are no longer subject to such audits, reviews and investigations. The Company is not aware of any claims, disputes or unsettled matters with any payer that would materially affect revenues for which the Company has not adequately provided for or disclosed in the accompanying consolidated financial statements. Refer to *Note 12. Commitments and contingencies* for further information.

The Company recognizes revenue from patients (self-pay and insured patients with coinsurance and deductible responsibilities) based on billed amounts giving effect to any discounts and implicit price concessions. Implicit price concessions represent differences between amounts billed and the amounts the Company expects to collect from patients, which considers historical collection experience and current market conditions. The Company recognizes revenue from other restorative therapies products generally at the point in time when control is transferred to the customer, either upon shipment or reaching the destination, depending on the product.

Product returns

The Company estimates the amount of returns and reduces revenue in the period the related product revenue is recognized. The Company records a liability for expected returns based on probability-weighted historical data.

Accounts receivable, net

Accounts receivable, net are amounts billed and currently due from customers. The Company records the amounts due net of allowance for credit losses. The Company maintains an estimated allowance for credit losses to provide for receivables the Company does not expect to collect. The Company bases the allowance on an assessment of customer creditworthiness, historical payment experience, the age of outstanding receivables and other information as applicable. Collection of the consideration that the Company expects to receive typically occurs within 30 to 90 days of billing. The Company applies the practical expedient for contracts with payment terms of one year or less which does not consider the effects of the time value of money. Occasionally, the Company enters into payment agreements with patients that allow payment terms beyond one year. In those cases, the financing component is not deemed significant to the contract.

Contract assets

Contract assets consist of unbilled amounts resulting from estimated future royalties from an international distributor that exceeds the amount billed. Contract assets totaling $267 and $82 as of December 31, 2022 and 2021, respectively, are included in prepaid and other current assets on the consolidated balance sheets.

Contract liabilities

Contract liabilities consist of customer advance payments or deposits and deferred revenue. Occasionally for certain international customers, the Company requires payments in advance of shipping product and recognizing revenue resulting in contract liabilities. Contract liabilities were $2,895 and $2,399 as of December 31, 2022 and 2021, respectively, and are included in accrued liabilities on the consolidated balance sheets.

Shipping and handling

The Company classifies amounts billed for shipping and handling as a component of net sales. The related shipping and handling fees and costs as well as other distribution costs are included in cost of sales. The Company has elected to recognize shipping and handling activities that occur after control of the related product transfers to the customer as fulfillment costs and are included in cost of sales.

Contract costs

The Company applies the practical expedient of recognizing the incremental costs of obtaining contracts as an expense when incurred as the amortization period of the assets that the Company otherwise would have recognized is one year or less. These incremental costs include the Company's sales incentive programs for the internal sales force and third-party sales agents as the compensation is commensurate with annual sales activities. These costs are included in selling, general and administrative expense on the consolidated statements of operations and comprehensive (loss) income.

Inventory

The Company values its inventory at the lower of cost or net realizable value and adjusts for the value of inventory that is estimated to be excess, obsolete or otherwise unmarketable. Cost is determined using the first-in, first-out method. Elements of cost in inventory include raw materials, direct labor, manufacturing overhead and inbound freight. The Company records allowances for excess and obsolete inventory based on historical and estimated future demand and market conditions. Inventory items used for demonstration purposes, rentals and consigned generators are classified as property and equipment.

Business combinations

Accounting for acquisitions requires the Company to recognize separately from goodwill assets acquired and the liabilities assumed at their acquisition date fair values. Goodwill as of the acquisition date is measured as the excess of consideration transferred over the net of the acquisition date fair values of the assets acquired and the liabilities assumed. While best estimates and assumptions are used to accurately value assets acquired and liabilities assumed at the acquisition date, as well as contingent consideration where applicable, estimates are inherently uncertain and subject to refinement. During the measurement period, which may be up to one year from the acquisition date, the Company may record adjustments to the assets acquired and liabilities assumed with a corresponding offset to goodwill. Upon the conclusion of the measurement period or final determination of the values of assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments are recorded within the consolidated statements of operations and comprehensive (loss) income. Subsequent changes in the estimated fair value of contingent consideration are recognized in earnings in the period of change.

Long-lived assets

The carrying values of property, equipment, intangible assets as well as other long-lived and indefinite lived assets are reviewed for recoverability if the facts and circumstances suggest that a potential impairment may have occurred. If this review indicates that carrying values may not be recoverable, the Company will perform an assessment to determine if an impairment charge is required to reduce carrying values to estimated fair value. If quoted market prices are not available, the Company estimates fair value using an undiscounted value of estimated future cash flows. Upon retirement or sale of property and equipment, the cost of assets disposed of and the related accumulated depreciation and amortization are removed from the accounts, and any resulting gain or loss is included in income from operations. During the year ended December 31, 2021, the Company recognized an impairment of $5,674 on long lived assets related to a VIE of which $5,176 is attributable to the non-controlling interests, refer to *Note 4. Acquisitions and investments* for further information. Except for the impairment related to the VIE, there were no other events, facts or circumstances for the years ended December 31, 2022, 2021 and 2020 that resulted in any impairment charges to the Company's property, equipment, intangible or other long-lived assets.

Property and equipment

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization expense are recognized using the straight-line method over the estimated useful life of each asset, or the shorter of the lease term or useful life if related to leasehold improvements. Depreciation of generators used with certain surgical solutions are consigned to customers and depreciation is charged to selling expenses. The useful lives in years are as follows:

Computer software and hardware	3 - 5
Demonstration and consignment inventory	5
Furniture and fixtures	3 - 7
Leasehold improvements	3 - 7
Machinery and equipment	3 - 7

Intangible assets

Finite-lived intangible assets were initially recorded at fair value upon acquisition and are amortized using the straight-line method over their estimated useful lives in years are as follows:

	Weighted Average Useful Life
Intellectual property	18.1
Distribution rights	11.3
Customer relationships	12.0
Developed technology	9.7

Goodwill

Goodwill is evaluated for impairment annually or more frequently if events or changes in circumstances indicate that goodwill might be impaired. The Company assesses goodwill impairment by applying a quantitative impairment analysis comparing the carrying value of the Company's reporting units to their respective fair values. A goodwill impairment exists if the carrying value of the reporting unit exceeds its fair value.

The Company has two reporting units and assesses impairment based upon qualitative factors and if necessary, quantitative factors. A reporting unit's fair value is determined using the income approach and discounted cash flow models by utilizing Level 3 inputs and assumptions such as future cash flows, discount rates, long-term growth rates, market value and income tax considerations. Specifically, the value of each reporting unit is determined on a stand-alone basis from the perspective of a market participant and represents the price estimated to be received in a sale of the reporting unit in an orderly transaction between market participants at the measurement date. The Company performs its annual goodwill impairment test on October 31. If the fair value of the reporting unit is less than its carrying value, the Company will recognize the difference as an impairment loss, which is limited to the amount of goodwill allocated to the reporting units. There were no goodwill impairment charges for the years ended December 31, 2021 and 2020.

On November 8, 2022, due to a significant decline in the Company's Class A common stock, circumstances became evident that a possible goodwill impairment existed as of the third quarter balance sheet date. The Company concluded that the carrying value of the U.S. reporting unit exceeded its fair value. The Company recorded a non-cash goodwill impairment charge within the U.S. reporting unit for the year ended December 31, 2022. The impairment was recorded within impairment of goodwill on the consolidated statements of operations and comprehensive (loss) income. Refer to *Note 3. Balance sheet information* for further details.

Software development costs

The Company capitalizes internal and external costs incurred to develop internal-use software during the application development stage for software design, configuration, coding and testing upon placing the asset in service and then amortizes these costs on a straight-line basis over the estimated useful life of the product, not to exceed three years. The Company does not capitalize costs that are precluded from capitalization in authoritative guidance, such as preliminary project phase costs, training costs or data conversion costs. Capitalized software costs totaled $31,041 and $20,706 as of December 31, 2022 and 2021 and the related accumulated amortization totaled $20,997 and $15,491, respectively. Amortization expense was $4,449, $2,227 and $1,184 for the years ended December 31, 2022, 2021 and 2020, respectively.

Acquired in-process research and development

The fair value of in-process research and development ("IPR&D") assets acquired in a business combination are capitalized and accounted for as indefinite-lived intangible assets and are not amortized until development is completed and the product is available for sale. Once the product is available for sale, the asset is transferred to developed technology and amortized over its estimated useful life. Impairment tests for IPR&D assets occur at least annually in December, or more frequently if events or changes in circumstances indicate that the asset might be impaired. If the fair value of the intangible assets is less than the carrying amount, an impairment loss is recognized for the difference.

Equity method investments

Investments in which the Company can exercise significant influence, but does not control, are recorded under the equity method of accounting and are included in investments and other assets on the consolidated balance sheets. The Company's share of net earnings or losses is included in other (income) expense within the consolidated statements of operations and comprehensive (loss) income on a quarter lag. The Company evaluates investments for impairment whenever events or changes in circumstances indicate that the carrying amounts of such investments may be impaired. Impairment losses are recorded within earnings within the current period.

Concentration of risk

The Company provides credit, in the normal course of business, to its customers. The Company does not require collateral or other securities to support customer receivables. Credit losses are provided for through allowances and have historically been materially within management's estimates.

Certain suppliers provide the Company with product that results in a significant percentage of total sales for the years ended December 31 as follows:

	2022	2021	2020
Supplier A	25 %	27 %	26 %
Supplier B	15 %	15 %	15 %
Supplier C	10 %	15 %	17 %
Supplier D	7 %	8 %	10 %

Accounts payable to these significant suppliers at December 31 were as follows:

	2022	2021
Supplier A	$ 8,583	$ 4,928
Supplier B	$ 555	$ 200
Supplier C	$ 2,673	$ 633
Supplier D	$ 1,473	$ 1,476

Certain products provide the Company with a significant percentage of total sales for the years ended December 31 as follows:

	2022	2021	2020
Product A	25 %	27 %	26 %
Product B	14 %	20 %	27 %
Product C	15 %	15 %	15 %
Product D	10 %	15 %	17 %
Product E	7 %	8 %	10 %

Restructuring costs

The Company has restructured portions of its operations and future restructuring activities are possible. Identifying and calculating the cost to exit these operations requires certain assumptions to be made, the most significant of which are anticipated future liabilities. Although estimates have been reasonably accurate in the past, significant judgment is required, and these estimates and assumptions may change as additional information becomes available and facts or circumstances change. Restructuring costs are recorded at estimated fair value. Key assumptions in determining the restructuring costs include negotiated terms and payments to terminate contractual obligations.

Equity-based compensation

The Company measures compensation cost for all share-based payments at fair value and recognizes this cost as compensation expense over the vesting period. The Company uses the Black-Scholes method to value options and the market price on the date of grant to value restricted stock. The Company utilizes the straight-line amortization method to recognize the expense associated with the awards with graded vesting terms. Compensation expense is included in selling, general and administrative expense and Research and development expense on the consolidated statement of operations and comprehensive (loss) income based upon the classification of the employees who were granted the awards.

Advertising costs

Advertising costs include costs incurred to promote the Company's business and are expensed as incurred and recorded as selling, general and administrative expense within the consolidated statement of operations and comprehensive (loss) income. Advertising costs were $5,203, $3,873 and $2,769 for the years ended December 31, 2022, 2021 and 2020, respectively.

Research and development expense

Research and development expense consist primarily of employee compensation and related expenses as well as contract research organization services. Internal research and development costs are expensed as incurred. Research and development costs incurred by third-parties are expensed as the contracted work is performed.

Collaborative agreements

The Company periodically enters into strategic alliance agreements with counterparties to produce products and/or provide services to customers. Alliances created by such agreements are not legal entities, have no employees, no assets and have no true operations. These arrangements create contractual rights and the Company accounts for these alliances as a collaborative arrangement by reporting costs incurred from transactions within research and development expense within the consolidated statements of operations.

Contingencies

The Company records a liability in the consolidated financial statements on an undiscounted basis for loss contingencies when a loss is known or considered probable and the amount may be reasonably estimated. If the reasonable estimate of known or probable loss is a range, and no amount within the range is a better estimate than any other, the minimum amount of the range is accrued. If a loss is reasonably possible but not known or probable, and may be reasonably estimated, the estimated loss or range of loss is disclosed. Legal fees expected to be incurred in connection with a loss contingency are not included in the estimated loss contingency. The Company accrues for any legal costs as they are incurred.

Income taxes

The Company accounts for income taxes using the asset and liability method, under which deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the financial reporting and income tax basis of assets and liabilities, and for operating losses and credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the years in which those items are expected to be realized. Tax law and rate changes are recorded in the period such changes are enacted. The Company establishes a valuation allowance when it is more likely than not that certain deferred tax assets will not be realized in the foreseeable future.

The Company recognizes a tax benefit from any uncertain tax positions only if they are more likely than not to be sustained upon examination based on the technical merits of the position. The amount of the accrual for which an exposure exists is measured as the largest amount of benefit determined on a cumulative probability basis that the Company believes is more likely than not to be realized upon ultimate settlement of the position. Components of the reserve, if relevant, are classified as a current or noncurrent liability in the consolidated balance sheet based on when the Company expects each of the items to be settled. Interest and penalties related to unrecognized tax benefits are recognized as a component of income tax expense.

Earnings per share

Basic earnings per share is calculated using net income or loss attributable to Bioventus, Inc. Class A common stock holders, divided by the weighted-average Class A common stock outstanding. Diluted earnings per share is calculated using net income attributable to Bioventus, Inc. Class A common stock holders, divided by the weighted average Class A common stock outstanding adjusted for the effect of granted stock awards determined to be dilutive under the treasury stock method.

3. Balance sheet information

Cash, cash equivalents and restricted cash

A summary of cash and cash equivalents and restricted cash as of December 31 follows:

	2022	2021
Cash and cash equivalents	$ 31,814	$ 43,933
Restricted cash		
Current	23	5,280
Noncurrent	—	50,000
	$ 31,837	$ 99,213

As of December 31, 2021, current restricted cash consisted of an escrow deposit with a financial institution for the purpose of paying a Paycheck Protection Program loan acquired as part of a business combination. This loan was forgiven during the second quarter of 2022.

As of December 31, 2021, noncurrent restricted cash consisted of an escrow deposit with a financial institution for the acquisition of CartiHeal (2009) Ltd. Refer to *Note 4. Acquisitions and investment*s for further information.

Accounts receivable, net

Accounts receivable, net are amounts billed and currently due from customers. The Company records the amounts due net of allowance for credit losses. Collection of the consideration that the Company expects to receive typically occurs within 30 to 90 days of billing. The Company applies the practical expedient for contracts with payment terms of one year or less which does not consider the effects of the time value of money. Occasionally, the Company enters into payment agreements with patients that allow payment terms beyond one year. In those cases, the financing component is not deemed significant to the contract.

Accounts receivable, net of allowances, consisted of the following as of December 31:

	2022	2021
Accounts receivable	$ 143,667	$ 128,365
Less: Allowance for credit losses	(7,022)	(3,402)
	$ 136,645	$ 124,963

Due to the short-term nature of its receivables, the estimate of expected credit losses is based on aging of the account receivable balances. The allowance is adjusted on a specific identification basis for certain accounts as well as pooling of accounts with similar characteristics. The Company has a diverse customer base with no single customer representing ten percent or more of sales. The Company has one customer representing approximately 12.1% of the accounts receivable balance as of December 31, 2022. There was no single customer representing ten percent of sales or accounts receivable for the year ended December 31, 2021. Historically, the Company's reserves have been adequate to cover credit losses.

Changes in credit losses were as follows for the years ended December 31:

	2022	2021
Beginning balance	$ (3,402)	$ (3,990)
Provision	(5,190)	(485)
Write-offs	2,105	1,246
Recoveries	(535)	(173)
Ending balance	$ (7,022)	$ (3,402)

Inventory

Inventory consisted of the following as of December 31:

	2022	2021
Raw materials and supplies	$ 19,775	$ 12,213
Finished goods	67,484	50,805
Gross	87,259	63,018
Excess and obsolete reserves	(1,851)	(1,330)
	$ 85,408	$ 61,688

Changes in excess and obsolete reserves for inventory were as follows for the years ended December 31:

	2022	2021
Beginning balance	$ (1,330)	$ (868)
Provision for losses	(2,088)	(1,835)
Write-offs	1,567	1,373
Ending balance	$ (1,851)	$ (1,330)

Prepaid and other current assets

Prepaid and other current assets consisted of the following as of December 31:

	2022	2021
Prepaid taxes	$ 4,442	$ 12,236
Prepaid and other current assets	14,243	15,003
	$ 18,685	$ 27,239

Property and equipment, net

Property and equipment consisted of the following as of December 31:

	2022	2021
Computer equipment and software	$ 33,447	$ 24,412
Demonstration and consignment inventory	12,807	10,453
Leasehold improvements	3,350	3,131
Furniture and fixtures	2,356	1,964
Machinery and equipment	2,754	2,722
Assets not yet placed in service	3,805	3,403
	58,519	46,085
Less accumulated depreciation	(30,872)	(23,100)
	$ 27,647	$ 22,985

Depreciation expense was $5,766, $3,204 and $2,106 for the years ended December 31, 2022, 2021 and 2020, respectively.

Goodwill

Changes in the carrying amounts of goodwill by reportable segment during the years ended December 31, 2022 and December 31, 2021 are as follows:

	U.S.	International	Consolidated
Balance at December 31, 2020	$ 41,040	$ 8,760	$ 49,800
Additions	97,823	—	97,823
Balance at December 31, 2021	$ 138,863	$ 8,760	$ 147,623
Additions	55,295	4,999	60,294
Deconsolidation of noncontrolling interest	(494)	—	(494)
Purchase accounting adjustments	(4,467)	—	(4,467)
Impairment of goodwill	(189,197)	—	(189,197)
Balance at December 31, 2022	$ —	$ 13,759	$ 13,759

Additions during the year ended December 31, 2022 were the result of the acquisition of CartiHeal (2009) Ltd. and purchase accounting adjustments stem from changes in the preliminary fair values of assets acquired and liabilities assumed in previous and current acquisitions. Additions during the year ended December 31, 2021 resulted from the acquisitions of Misonix, Inc. and Bioness Inc. Refer to *Note 4. Acquisitions and investments* for further information.

Due to the significant decline in the Company's Class A common stock, the Company recorded a non-cash goodwill impairment charge of $189,197 within the United States reporting unit for the year ended December 31, 2022. The impairment was recorded within impairment of goodwill on the consolidated statements of operations and comprehensive (loss) income. There were no accumulated goodwill impairment losses as of December 31, 2021.

Intangible assets, net

Intangible assets consisted of the following as of December 31:

	2022	2021
Intellectual property	$ 1,200,249	$ 789,195
Distribution rights	61,325	60,700
Customer relationships	67,450	67,450
IPR&D	5,500	5,500
Developed technology and other	13,998	13,999
Total carrying amount	1,348,522	936,844
Less accumulated amortization:		
Intellectual property	(199,094)	(140,767)
Distribution rights	(44,319)	(39,379)
Customer relationships	(58,842)	(56,312)
Developed technology and other	(6,276)	(5,031)
Total accumulated amortization	(308,531)	(241,489)
Intangible assets, net before currency translation	1,039,991	695,355
Currency translation	(1,267)	(162)
	$ 1,038,724	$ 695,193

There were $410,200 and $545,000 of intangible additions during the year ended December 31, 2022 and 2021, respectively, as a result of acquisitions. Refer to *Note 4. Acquisitions and investments* for further information.

Amortization expense related to intangible assets was $67,042, $35,480 and $27,565 for the years ended December 31, 2022, 2021 and 2020, respectively, of which $20,975, $12,179 and $7,455 are included in ending inventory at December 31, 2022, 2021 and 2020, respectively. Estimated amortization expense for the years ended December 31, 2023 through 2027 is expected to be $78,987, $77,919, $75,185, $72,057 and $71,171, respectively.

Accrued liabilities

Accrued liabilities consisted of the following as of December 31:

	2022	2021
Gross-to-net deductions	$ 71,227	$ 67,945
Bonus and commission	9,179	23,342
Compensation and benefits	11,428	10,665
Income and other taxes	2,572	8,139
Other liabilities	17,548	21,382
	$ 111,954	$ 131,473

4. Acquisitions and investments

CartiHeal (2009) Ltd.

On July 12, 2022, the Company completed the acquisition of 100% of the remaining shares in CartiHeal, a privately held company headquartered in Israel and the developer of the proprietary Agili-C implant for the treatment of joint surface lesions in traumatic and osteoarthritic joints. The Company previously held an equity interest in CartiHeal's fully diluted shares with a carrying value of $15,768 and $16,771 as of July 12, 2022 and December 31, 2021, respectively. Net equity losses associated with CartiHeal for the years ended December 31, 2022, 2021 and 2020 totaled $1,003, $1,868 and $467, respectively, which are included in other (income) expense on the consolidated statements of operations and comprehensive (loss) income.

The Company acquired CartiHeal (the "CartiHeal Acquisition") for an aggregate purchase price of approximately $315,000 and an additional $135,000, becoming payable after closing upon the achievement of a certain sales milestone ("Sales Milestone", or "CartiHeal Contingent Consideration"). The Company paid $100,000 of the aggregate purchase price upon closing consisting of a $50,000 deposit held in trust and $50,000 from a financing arrangement (Refer to *Note 5. Financial instruments* for further information regarding financing arrangements). The Company also paid approximately $8,622 of CartiHeal's transaction-related fees and expenses and deferred $215,000 ("Deferred Amount") of the aggregate purchase price otherwise due at closing.

The Deferred Amount will be paid in five tranches commencing in 2023 and ending no later than 2027 as follows:

- $50,000 due upon the earliest to occur — the publication in a peer-reviewed orthopedic journal of an article that presents the results of the pivotal clinical trial ("First Paper Milestone") or July 1, 2023;
- $50,000 due upon the earliest to occur — the implantation of Agili-C devices in 100 patients in the United States or September 1, 2023;
- $25,000 due upon the earliest to occur — the publication in a peer-reviewed orthopedic journal of an article that presents any new or additional clinical data subsequent to the First Paper Milestone with respect to Agili-C ("Second Paper Milestone") or January 1, 2025;
- $25,000 due upon the earliest to occur — the publication in a peer-reviewed orthopedic journal of an article that presents any new or additional clinical data subsequent to the First and Second Paper Milestone with respect to Agili-C or January 1, 2026; and
- $65,000 due upon the earliest to occur — obtaining a U.S. Category 1 Current Procedural Terminology ("CPT") code from Centers for Medicare and Medicaid Services ("CMS") for Agili-C or January 1, 2027.

Pursuant to the CartiHeal Amendment (as defined below), the Company will pay interest on each tranche of the Deferred Amount at a rate of 8.0% annually, until such tranche is paid. The Sales Milestone will be payable upon the achievement of $75,000 in trailing twelve month sales pursuant to the CartiHeal Amendment.

The Company had entered into an Option and Equity Purchase Agreement with CartiHeal ("Option Agreement") in January 2020 and subsequent amendment in June 2022 ("CartiHeal Amendment"). The Option Agreement provided the Company with an exclusive option to acquire 100% of CartiHeal's shares ("Call Option"), and provided CartiHeal with a put option that would require the Company to purchase 100% of CartiHeal's shares under certain conditions. In August 2021, CartiHeal achieved pivotal clinical trial success, as defined in the Option Agreement, for the Agili-C implant. In order to preserve the Company's Call Option, in accordance with the Option Agreement and upon approval of the Company's Board of Directors ("BOD"), the Company deposited $50,000 into escrow in August 2021 for the potential acquisition of CartiHeal, which was included in restricted cash on the consolidated balance sheets at December 31, 2021.

The First Paper Milestone under the Option Agreement occurred on February 13, 2023, triggering the Company to make the first payment of the Deferred Amount, plus applicable interest. On February 27, 2023, the Company entered into a settlement agreement (the "Settlement Agreement") with Elron Ventures Ltd. as representative of CartiHeal's selling securityholders under the Option Agreement. Upon execution of the Settlement Agreement, the Company transferred 100% of its shares in CartiHeal to a trustee for the benefit of CartiHeal's selling securityholders. Refer to *Note 15. Subsequent events* for further information regarding the Settlement Agreement.

The fair value of consideration for the CartiHeal Acquisition is comprised of the following:

Cash consideration	$	100,000
Transaction related costs		8,622
Subtotal of cash at closing		108,622
Deferred Amount		183,400
Sales Milestone		61,901
Fair value of previously held equity interest[(a)]		39,477
Total consideration	$	393,400

(a) Remeasurement of the Company's equity method investment in CartiHeal, net of equity losses as a result of the purchase. The remeasurement included a gain of $23,709 calculated as the difference between the fair value and the carrying value of the Company's investment in CartiHeal at the acquisition date and was recognized in other income for the year ended December 31, 2022 on the consolidated statements of operations and comprehensive (loss) income. The fair value was based upon: (i) the consideration transferred to members owning 89.97% of CartiHeal's fully diluted shares; (ii) calculating the value of CartiHeal's fully diluted shares based upon the transferred consideration; and (iii) applying the calculated value to the Company's 10.03% ownership in CartiHeal's fully diluted shares at the acquisition date.

The Company accounted for the CartiHeal Acquisition using the acquisition method of accounting whereby the total purchase price was preliminary allocated to tangible and intangible assets acquired and liabilities assumed based on respective fair values. The following table summarizes the preliminary fair values of the assets acquired and liabilities assumed at the acquisition date:

Fair value of consideration	$	393,400
Assets acquired and liabilities assumed:		
Cash and cash equivalents and restricted cash		3,781
Inventory		642
Prepaid and other current assets		552
Property and equipment		259
Intangibles		410,200
Investment and other assets		727
Accounts payable		(18)
Accrued liabilities		(459)
Other current liabilities		(171)
Deferred income taxes		(79,863)
Other liabilities		(2,544)
Net assets acquired		333,106
Resulting goodwill	$	60,294

As of December 31, 2022, the purchase price allocation for the CartiHeal Acquisition was preliminary in nature and subject to completion. Adjustments to the current fair value estimates in the above table may occur as the process conducted for various valuations and assessments is finalized, including intangible assets, tax liabilities and other working capital accounts. Nearly 100% of the goodwill represents estimated future economic benefits arising from other assets acquired that could not be individually identified and separately recognized and is attributable to expected revenue growth in new markets. The goodwill is not expected to be deductible for tax purposes and $55,295 and $4,999 was allocated to the U.S. and International reporting units, respectively. The Company incurred $4,436 in acquisition costs related to CartiHeal during the year ended December 31, 2022.

CartiHeal's intangibles consists of the following:

	Useful Life	Fair Value
Intellectual property - US segment	20 years	$ 351,500
Intellectual property - International segment	8 years	58,700
		$ 410,200

The estimated fair value of the acquired CartiHeal intangibles was determined using an income approach, a valuation technique that estimates the fair value of an asset based on market participant expectations of the cash flows that an asset would generate over its remaining useful life. The determination of the useful lives was based upon consideration of market participant assumptions and transaction specific factors.

Misonix, Inc.

On October 29, 2021, in order to broaden its portfolio, the Company acquired 100% of the capital stock of Misonix, Inc. ("Misonix") in a cash-and-stock transaction (the "Misonix Acquisition"). Misonix manufactures minimally invasive surgical ultrasonic medical devices used for precise bone sculpting, removal of soft and hard tumors and tissue debridement, primarily in the areas of neurosurgery, orthopedic surgery, plastic surgery, wound care and maxillo-facial surgery. Misonix also exclusively distributes skin allografts and wound care products used to support healing of wounds. The fair value of the consideration for the Misonix Acquisition comprised the following:

	Common Shares	Price per Share[(a)]	Amount
Cash			$ 182,988
Bioventus Class A shares	18,340,790	$ 14.97	274,562
Value of Misonix options settled in Bioventus options			27,636
Merger consideration			485,186
Other cash consideration			40,130
Total Misonix consideration			$ 525,316

(a) Closing price of the Company's Class A common stock as of October 28, 2021.

The Company accounted for the Misonix Acquisition using the acquisition method of accounting whereby the total purchase price was allocated to tangible and intangible assets acquired and liabilities assumed based on respective fair values. The following table summarizes the fair values of the assets acquired and liabilities assumed at the acquisition date:

Fair value of consideration	$ 525,316
Assets acquired and liabilities assumed:	
Cash and cash equivalents	7,126
Accounts receivable	13,301
Inventory	23,428
Prepaid and other current assets	419
Property and equipment, net	10,280
Intangible assets	486,500
Operating lease assets	1,049
Deferred tax assets	6,448
Other assets	77
Accounts payable and accrued liabilities	(16,888)
Other current liabilities	(589)
Deferred income taxes	(94,012)
Other liabilities	(1,351)
Net assets acquired	435,788
Resulting goodwill	$ 89,528

Nearly 100% of the goodwill represents the estimated future economic benefits arising from other assets acquired that could not be individually identified and separately recognized. The factors contributing to the recognition of goodwill are based on several strategic and synergistic benefits that are expected to be realized from the Misonix Acquisition. The goodwill is not tax deductible and was allocated to the U.S. reporting unit for purposes of the evaluation for any future goodwill impairment. Changes in the preliminary purchase price allocation during the six months ended July 2, 2022 related to a deferred tax asset recognition of $6,448 and a reduction in inventory and property and equipment, net of $1,292 and $291, respectively.

The following table summarizes the fair values of identifiable intangible assets and their useful lives:

	Useful Life (in years)	Fair Value
Intellectual property	15 - 20 years	$ 477,000
Customer relationships	12 years	9,500
		$ 486,500

The fair value of the Misonix intellectual property was determined using a variation of the income approach or the multi-period excess earnings method, with projected earnings discounted at a rate of 12.0%. The fair value of the customer relationship asset was determined using the income approach or the profit-split method, with projected cash flow discounted at a rate of 12.0%. The determination of the useful lives was based upon consideration of market participant assumptions and transaction specific factors.

Bioness, Inc.

On March 30, 2021, the Company acquired 100% of the capital stock of Bioness, Inc. (the "Bioness Acquisition") for $48,933 in cash and future contingent consideration payments. Bioness, Inc. ("Bioness") is a global leader in neuromodulation and advanced rehabilitation medical devices through its innovative peripheral nerve stimulation therapy and premium advanced rehabilitation solutions.

Contingent consideration related to the Bioness Acquisition ("Bioness Contingent Consideration") is comprised of future earn-out payments contingent upon the achievement of certain research and development projects as well as sales milestones related to Bioness products. The Bioness Acquisition Agreement includes maximum earn-out payments of $65,000 as follows:

- $15,000 for obtaining FDA approval for U.S. commercial distribution of a certain product for certain indications on or before June 30, 2022;
- $20,000 for meeting net sales targets for certain implantable products over a three year period ending on June 30, 2025 at the latest;
- Up to $10,000 for meeting net sales milestones for certain implantable products over a three year period ending on June 30, 2025 at the latest; and
- $20,000 for maintaining Centers for Medicare & Medicaid Services coverage and reimbursement for certain products at specified levels as of December 31, 2024.

In December 2021, it became clear that the $15,000 FDA approval milestone would not be met, and therefore, it was assigned no value and was recorded as a measurement period adjustment. The maximum contingent earn-out payment decreased to $50,000 as a result.

Consolidated Pro Forma Results

The results of operations of Bioness, acquired March 30, 2021, Misonix, acquired October 29, 2021 and CartiHeal, acquired July 12, 2022, have been included in the accompanying consolidated financial statements since their respective acquisition dates. Net losses of CartiHeal included during the year ended December 31, 2022 since its acquisition date were $69,441. There are no net sales attributable to CartiHeal for the year ended December 31, 2022.

Revenue and earnings for the operations of Bioness, Misonix and CartiHeal as if the companies were acquired on January 1, 2021, are as follows for the years ended December 31:

	2022	2021
	(unaudited)	(unaudited)
Net sales	$ 512,117	$ 504,619
Net loss	$ (201,790)	$ (88,251)

The historical consolidated financial information of the Company, Misonix, Bioness and CartiHeal have been adjusted in the pro forma information to give effect to pro forma events that are (1) directly attributable to the Misonix, Bioness and CartiHeal acquisitions, (2) factually supportable and (3) expected to have a continuing impact on the combined results. The unaudited pro forma results include adjustments to reflect the inventory step-up amortization, the incremental intangible asset amortization to be incurred based on the valuations of the assets acquired, transaction costs that would have been incurred in the prior period, vesting of equity-based compensation that was accelerated due to the Misonix Acquisition, adjustments to financing costs to reflect the new capital structure as well as the income tax effect and the noncontrolling interest impact of these adjustments. These pro forma amounts are not necessarily indicative of the results that would have been obtained if the acquisitions had occurred prior to the beginning of the period presented or that may occur in the future, and do not reflect future synergies, integration costs, or other such costs or savings.

Investments

VIE

The Company had a fully diluted 8.8% ownership of Harbor Medtech Inc.'s ("Harbor") Series C Preferred Stock and an exclusive Collaboration Agreement with Harbor, which resulted in the consolidation of Harbor. The Company terminated the Collaboration Agreement on June 8, 2021, which resulted in the deconsolidation of Harbor and the recognition of a $5,674 impairment of Harbor's long-lived assets. The impairment was recorded within impairment of variable entity assets for the year ended December 31, 2021 in the consolidated statements of operations and comprehensive (loss) income, of which $5,176 was attributable to the non-controlling interest. An additional impairment of $1,369, representing the Company's remaining investment balance in Harbor, was recorded within other (income) expense for the year ended December 31, 2021 in the consolidated statements of operations and comprehensive (loss) income. The Company continues to have license rights to certain technology obtained from Harbor and is continuing product development initiated under the Collaboration Agreement.

Other

On August 23, 2021, the Company purchased shares of Trice Medical, Inc.'s ("Trice") Series D Preferred Stock for $10,000, representing a 8.4% ownership interest of its fully diluted shares. Trice is a privately held company that develops and commercializes minimally invasive technologies for sports medicine and orthopedic surgical procedures and it did not have a readily determinable fair value. The investment in Trice was recorded at cost, less any impairment, plus or minus any changes resulting from observable price changes in orderly transactions for an identical or similar investment of the same issuer. In December 2022, the Company recognized an impairment of $10,285 representing its entire ownership interest due to Trice's liquidity situation. The impairment was recorded within other (income) expense on the consolidated statements of operations and comprehensive (loss) income for the year ended December 31, 2022.

5. Financial instruments

Long-term debt consisted of the following as of December 31:

	2022	2021
Amended Term Loan due October 2026 (7.69% at December 31, 2022)	$ 420,712	$ 360,750
Less:		
Current portion of long-term debt	(33,056)	(18,038)
Unamortized debt issuance cost	(1,338)	(1,687)
Unamortized discount	(1,308)	(1,381)
	$ 385,010	$ 339,644

Amended Term Loan

On December 6, 2019, the Company entered into an Amended 2019 Credit Agreement that was originally comprised of a $200,000 term loan ("Original Term Loan") and a $50,000 revolving facility (the "Revolver"). The Company amended the 2019 Credit Agreement on October 29, 2021 in connection with the Misonix Acquisition in which the Company prepaid $80,000 on the Original Term Loan. The 2019 Credit Agreement, as amended, subsequent to the prepayment, was comprised of a $360,750 term loan ("Term Loan") and the Revolver.

On July 11, 2022, the Company further amended the 2019 Credit Agreement, as amended on October 29, 2021 (the "Amended 2019 Credit Agreement"), in conjunction with the CartiHeal Acquisition. Pursuant to the Amended 2019 Credit Agreement, an $80,000 term loan facility (the "July 2022 Term Loan" and, together with the Term Loan, the "Term Loan Facilities") was extended to the Company to be used for: (i) the financing of the CartiHeal Acquisition; (ii) the payment of related fees and expenses; (iii) repayment of the draws made on the Revolver during 2022 totaling $25,000; and (iv) working capital needs and general corporate purposes of the Company, including without limitation for permitted acquisitions.

The Company was not in compliance with certain financial covenants as of December 31, 2022. As a result, on March 31, 2023 (the "Closing Date"), the Company entered into another amendment to the Amended 2019 Credit Agreement to, among other things, modify certain financial covenants, waive the noncompliance at December 31, 2022, and to modify interest rates applicable to borrowings under the agreement, as described below.

The Term Loan Facilities will mature on October 29, 2026 ("Maturity"). The Revolver will mature on October 29, 2025.

SOFR loans and base rate loans had a margin of 3.25% and 2.25%, respectively, subsequent to July 11, 2022 and prior to the Closing Date. As of the Closing Date, SOFR loans and base rate loans had a margin of 4.25% and 3.25%, respectively. All obligations under the Amended 2019 Credit Agreement are guaranteed by the Company and certain wholly owned subsidiaries where substantially all the assets of the Company collateralize the obligations.

The Amended 2019 Credit Agreement contains customary affirmative and negative covenants, including those related to financial reporting and notification, restrictions on the declaration or payment of certain distributions on or in respect of Bioventus LLC's equity interests, restrictions on acquisitions, investments and certain other payments, limitations on the incurrence of new indebtedness, limitations on transfers, sales and other dispositions of assets of Bioventus LLC and its subsidiaries, as well as limitations on making changes to the business and organizational documents of Bioventus LLC and its subsidiaries. Financial covenant requirements include (i) a maximum debt leverage ratio of not greater than 6.84 to 1.00 for the testing period ending March 31, 2023, 6.50 to 1.00 for the testing period ending June 30, 2023, 7.26 to 1.00 for the testing period ending September 30, 2023, 5.64 for the testing period ending December 31, 2023, 5.65 to 1.00 for the testing period ending March 31, 2024, 4.25 for the testing period ending June 30, 2024, 4.25 to 1.00 for the testing period ending September 30, 2024, and 4.00 to 1.00 for the testing period ending December 31, 2024 and each testing period thereafter, and, beginning with the testing period ending December 31, 2024, to be subject to a temporary increase to 4.50 to 1.00 upon certain events, and (ii) an interest coverage ratio not less than 2.25 to 1.00 for the testing period ending March 31, 2023, 2.21 to 1.00 for the testing period ending June 30, 2023, 1.70 to 1.00 for the testing period ending September 30, 2023, 1.98 to 1.00 for the testing period ending December 31, 2023, 2.25 to 1.00 for the testing period ending March 31, 2024, 2.25 to 1.00 for the testing period ending June 30, 2024, 2.25 to 1.00 for the testing period ending September 30, 2024 and 3.00 to 1.00 for the testing period ending December 31, 2024 and each testing period thereafter. In addition, during the period commencing on the Closing Date and ending upon the satisfaction of certain conditions occurring not prior to the delivery of financial statements of the Company for the fiscal quarter ending June 30, 2024, the Company will be subject to certain additional requirements and covenants, including a requirement to maintain Liquidity (as defined in the Amended 2019 Credit Agreement) of not less than $10,000 as of the end of each calendar month during such period.

July 2022 Term Loan had an original issue discount of $240 and deferred financing costs of $101. No financing or deferred costs were expensed and there was no loss on debt refinancing and modification as a result of the July 2022 amendment. The Company paid financing costs of $3,318 as a result of the October 2021 amendment, of which $1,421 was capitalized to the consolidated balance sheets and $1,897 was recorded in selling, general and administrative expenses during the year ended December 31, 2021 within the consolidated statements of operations and comprehensive (loss) income. Due to the change in participating lenders, an additional $269 in deferred costs was recorded in interest expense for the year ended December 31, 2021. Loss on debt refinancing and modification totaled $2,162 for the year ended December 31, 2021. Capitalized deferred fees from the October 2021 amendment totaled $3,174 and $893 for the Term Loan and the Revolver, respectively.

As of December 31, 2022, $418,066 was outstanding on the Term Loan Facilities, net of original issue discount of $1,308 and deferred financing costs of $1,338. Capitalized deferred fees are amortized to interest expense on a straight-line basis over the term of the Term Loan Facilities, which approximates the effective interest method. The Company recorded $853, $588 and $543 for deferred cost amortization in interest expense for the years ended December 31, 2022, 2021 and 2020, respectively. Scheduled quarterly principal payments of the Term Loan Facilities, which commenced on September 30, 2022, totaled $8,264 for the years 2023 and 2024 and $11,019 for the years 2025 and 2026 with a final payment of $277,467 at Maturity. Contractual maturities of long term debt for the next four years are as follows: 2023—$33,056, 2024—$33,056, 2025—$44,075 and 2026—$310,525, respectively.

The Company may voluntarily prepay the Term Loan Facilities without premium or penalty upon prior notice. The Company may be required to make additional principal payments on the Term Loan Facilities dependent upon certain events as defined in the Amended 2019 Credit Agreement. These additional prepayments will be applied to the scheduled installments of principal in direct order of maturity of first the Base Rate (BR) portions of the Term Loan Facilities and then the Eurodollar portions.

The estimated fair value of the Term Loan Facilities under the Amended 2019 Credit Agreement as of December 31, 2022 was $410,195. The fair value of these obligations was determined based on the midpoint of the Bloomberg Valuation (BVAL), as of December 31, 2022. This is classified as a Level 2 instruments within the fair value hierarchy.

Revolver

The Revolver is a five-year revolving credit facility that includes revolving and swingline loans as well as letters of credit ("LOC") and, inclusive of all, cannot exceed $50,000 at any one time. LOCs are available in an amount not to exceed $7,500. Revolving loans are due at the earlier of termination or Maturity. Swingline loans are available as BR interest rate option loans only and must be outstanding for at least five days. Swingline loans are due the fifteenth or last day of a calendar month or Maturity whichever is earlier. As of December 31, 2022, the Company had one nominal LOC outstanding leaving approximately $50,000 available. The Revolver had no outstanding borrowings as of December 31, 2022 and 2021.

Interest

The Term Loan Facilities and Revolver permits the Company to elect either the secured overnight financial rate (SOFR) or base interest rate ("BR") options for the entire amount or certain portions of the loans. Both the SOFR and BR options have interest rates equal to a formula driven base interest rate plus a margin, tied to a leverage ratio. The leverage ratio is the ratio of debt to consolidated EBITDA as defined in the Amended 2019 Credit Agreement. BR portions of the Term Loan Facilities have interest due the last day of each calendar quarter-end. Pursuant to the March 2023 amendment to the Amended 2019 Credit Agreement, the margin at each applicable leverage ratio will be increased by 1.00% per annum. SOFR portions of the Term Loan Facilities have one, three or six-month interest reset periods and interest is due on the last day of each three-month period or the last day of the loan term if less than three months.

Pricing grids are used to determine the applicable loan margins based on the type of loan and the leverage ratio. The loan margin is adjusted after the quarterly financial statements are delivered to the lenders in accordance with the below pricing grid, which reflects the margins in effect following the March 2023 amendment to the Amended 2019 Credit Agreement:

Leverage ratio	SOFR	BR
> 4.00 to 1.00	4.25 %	3.25 %
≥ 3.50 to 1.00 and < 4.00 to 1.00	3.75 %	2.75 %
≥ 3.00 to 1.00 and < 3.50 to 1.00	3.25 %	2.25 %
≥ 2.50 to 1.00 and < 3.00 to 1.00	3.00 %	2.00 %
< 2.50 to 1.00	2.75 %	1.75 %

The Revolver includes a commitment fee at 0.30% of the average daily amount of the available revolving commitment, assuming any swingline loans outstanding are zero. There were no swingline loans outstanding as of December 31, 2022. The fee is payable quarterly in arrears on the last day of the calendar quarters and at Maturity. The commitment fee rate is adjusted after the quarterly financial statements are delivered to lenders based on the below pricing grid, which remained unchanged following the March 2023 amendment to the Amended 2019 Credit Agreement:

Leverage ratio	Commitment Fee Rate
≥ 2.50 to 1.00	0.30 %
< 2.50 to 1.00	0.20 %

Fees are charged on all outstanding LOCs at an annual rate equal to the margin in effect on Eurodollar revolving loans. A funding fee of 0.125% per year on the undrawn and unexpired amount of each LOC is payable as well. The fees are payable quarterly in arrears on the last day of the calendar quarters. The Company's effective weighted average interest rate was 7.72% for all outstanding debt as of December 31, 2022. Cash paid for interest totaled $18,043, $5,837 and $7,486 for the December 31, 2022, 2021 and 2020, respectively.

Interest rate swap

The Company historically entered into interest rate swap agreements to limit its exposure to changes in the variable interest rate on its long-term debt. The Company had one non-designated interest rate swap agreement that was terminated on October 28, 2022 and subsequently received $7,738 upon its termination. The swap was carried at fair value on the balance sheet (Refer to *Note 6. Fair value measurements*) with changes in fair value recorded as interest income or expense within the consolidated statements of operations and comprehensive (loss) income. Net interest income of $6,396, $2,730 and expense of $1,599 was recorded related to the change in fair value of the interest rate swap for the years ended December 31, 2022, 2021 and 2020, respectively.

6. Fair value measurements

There were no assets measured at fair value on a recurring basis and there were no liabilities valued at fair value using Level 1 inputs at December 31, 2022 and 2021. The following table provides information for assets and liabilities measured at fair value on a recurring basis using Level 2 and Level 3 inputs:

	December 31, 2022			December 31, 2021		
	Total	Level 2	Level 3	Total	Level 2	Level 3
Assets:						
Interest rate swap	$ —	$ —	$ —	$ 1,128	$ 1,128	$ —
Liabilities:						
Deferred Amount - Current	$ 117,615	$ —	$ 117,615	$ —	$ —	$ —
Deferred Amount - Long Term	79,269	—	79,269	—	—	—
CartiHeal Contingent Consideration	67,251	—	67,251	—	—	—
Bioness Contingent Consideration	17,431	—	17,431	16,329	—	16,329
Total liabilities:	$ 281,566	$ —	$ 281,566	$ 16,329	$ —	$ 16,329

Interest rate swap

The Company values interest rate swaps using discounted cash flows. Forward curves and volatility levels are used to estimate future cash flows that are not certain. These are determined using observable market inputs when available and based on estimates when not available. The fair value of the swap was recorded in the Company's consolidated balance sheets within prepaid and other current assets. Changes in fair value are recognized as interest income or expense within the consolidated statements of operations and comprehensive (loss) income.

Deferred Amount

The Deferred Amount resulting from the CartiHeal Acquisition was calculated based on the total amount payable on each due date for the five payment tranches including applicable interest as described in *Note 4. Acquisitions and investments*. As previously discussed, the Company reached a settlement Agreement with the Former Securityholders. Pursuant to the Settlement Agreement, the Company was relieved of the obligations under the Deferred Amount. Refer to *Note 15. Subsequent events* for further information.

Bioness & CartiHeal contingent consideration

The Company initially values contingent consideration related to business combinations using a probability-weighted calculation of potential payment scenarios discounted at rates reflective of the risks associated with the expected future cash flows for certain milestones. For other milestones, the Company used a variation of the income approach where revenue was simulated in a risk-neutral framework using Geometric Brownian Motion, a stock price behavior model.

Key assumptions used to estimate the fair value of contingent consideration include projected financial information, market data and the probability and timing of achieving the specific targets as discussed in *Note 4. Acquisitions and investment*s. After the initial valuation, the Company generally uses its best estimate to measure contingent consideration at each subsequent reporting period using unobservable Level 3 inputs. As previously discussed, the Company reached a settlement agreement with CartiHeal's selling securityholders. As a result of the settlement agreement, the Company was relieved of the CartiHeal Contingent Consideration obligations. Refer to *Note 15. Subsequent events* for further information.

Unobservable inputs

A summary of unobservable Level 3 inputs utilized for the above liabilities are as follows:

	Valuation Technique	Unobservable inputs	Range
CartiHeal Deferred Amount	Discounted cash flow	Payment discount rate	14.4% - 15.5%
		Payment Period	2022 - 2027
CartiHeal Contingent Consideration	Discounted cash flow	Payment discount rate	14.0% - 15.6%
		Payment Period	2022 - 2029
Bioness Contingent Consideration	Discounted cash flow	Payment discount rate	6.4% - 6.8%
		Payment period	2024 - 2025

Significant changes in these assumptions could result in a significantly higher or lower fair value. The contingent consideration reported in the above table resulted from the Bioness Acquisition on March 30, 2021 and the CartiHeal Acquisition on July 12, 2022. Contingent consideration is adjusted quarterly based upon the passage of time or the anticipated success or failure of achieving certain milestones. Changes in contingent consideration related to the Bioness Acquisition totaled $1,102 and $829 for the years ended December 31, 2022 and 2021, respectively, and were recorded as the change in fair value of contingent consideration within the consolidated statements of operations and comprehensive (loss) income. Changes in contingent consideration related to the CartiHeal Acquisition totaled $5,350 for year ended December 31, 2022.

Management incentive plan and liability-classified awards

BV LLC had operated two equity-based compensation plans, the management incentive plan (MIP) and the BV LLC Phantom Profits Interest Plan ("Phantom Plan" and, together with the MIP, the "Plans"), which were terminated on February 11, 2021 in connection with the Company's IPO. Awards granted under the MIP Plan and the 2015 Phantom Units were liability-classified and the 2012 Phantom Units were equity-classified. Prior to the IPO and during the year ended December 31, 2021, the Company settled the remaining 183,078 units with the sole MIP awardee for $10,802. No awards under the Plans were granted post-IPO and the Phantom Plan awards were settled 12 months following the termination. Vested awardees whose BV LLC employment terminated prior to the IPO had their awards settled in March 2022 for $10,413, which was included in accrued equity-based compensation on the consolidated balance sheets at December 31, 2021. Awardees that were active BV LLC employees at the IPO were entitled to receive an aggregate of 798,422 shares of Class A common stock. In February 2022, awardees received 538,203 shares of Class A common stock, of which 260,219 shares were withheld to satisfy employee payroll taxes.

The following table provides a reconciliation of the beginning and ending balances for the MIP and liability-classified awards at fair value using significant unobservable inputs or Level 3:

Balance at December 31, 2020	$	40,303
Change in fair value		(25,185)
Initial estimate (vesting)		829
Payments		(11,281)
Phantom plan conversion to Class A common stock		(4,666)
Balance at December 31, 2021	$	—

7. Equity-based compensation

Terminated plans

Prior to the IPO, BV LLC operated two equity-based compensation plans, the MIP and the Phantom Plan, which were terminated on February 11, 2021 in conjunction with the IPO. Prior to the Plans' termination, during the year ended December 31, 2021, (i) the Company granted 90,000 Phantom Plan units; (ii) there were no MIP awards granted; (iii) 900 Phantom Plan units were forfeited; and (iv) other Phantom Units were redeemed for $479. Compensation expense related to the Phantom Plan totaled $829 for the year ended December 31, 2021. This amount excludes the $25,185 decrease in fair market value of accrued equity-based compensation due to adjustments to reflect the difference between the expected public offering price of the IPO and the actual offering price, of which $1,777 was recorded in research and development expense within the consolidated statements of operations and comprehensive (loss) income for the year ended December 31, 2021. The Plans' compensation expense totaled $10,103 for the year ended December 31, 2020.

2021 Plan

The Company operates an equity-based compensation plan ("2021 Plan"), which allows for the issuance of stock options (incentive and nonqualified), restricted stock, dividend equivalents, restricted stock units ("RSUs"), other stock-based awards, and cash awards (collectively, "Awards"). As of December 31, 2022, 11,278,656 shares of Class A common stock were authorized to be awarded and 2,086,777 shares were available for Awards. New shares are issued for restricted units vested and options exercised.

Equity-based compensation expense for Awards granted under the 2021 Plan for the years ended December 31, 2022 and 2021 totaled $17,114 and $19,504, respectively. The expense is primarily included in selling, general and administrative expense with a nominal amount in research and development expense on the consolidated statements of operations and comprehensive (loss) income based upon the classification of the employee. Income tax benefits totaled $2,951 related to compensation expense for the year ended December 31, 2022. There was no income tax benefit related to equity-based compensation expense for the year ended December 31, 2021.

Restricted Stock Units

During the year ended December 31, 2022 and 2021, the Company granted time-based RSUs which vest at various dates through December 5, 2026. RSU compensation expense is recognized over the vesting period, which is typically between 1 and 4 years. Unamortized compensation expense related to the RSUs totaled $9,021 at December 31, 2022, and is expected to be recognized over a weighted average period of approximately 2.73 years. A summary of the RSU award activity for the years ended December 31, 2022 and 2021 are as follows (number of units in thousands):

	Number of units	Weighted-average grant-date fair value per unit
Unvested at December 31, 2020	—	$ —
Granted	1,032	14.41
Forfeited or canceled	(8)	13.86
Unvested at December 31, 2021	1,024	14.41
Granted	1,248	10.73
Vested	(756)	14.74
Forfeited or canceled	(327)	8.45
Unvested at December 31, 2022	1,189	$ 11.96

Stock Options

During the year ended December 31, 2022 and 2021, the Company granted time-based stock options which vest over 2 to 4 years following the date of grant and expire within 10 years. The fair value of time-based stock options is determined using the Black-Scholes valuation model, with such value recognized as expense over the service period, which is typically 2 to 4 years, net of actual forfeitures. A summary of the Company's assumptions used in determining the fair value of the stock options granted during the years ended December 31, 2022 and December 31, 2021 are shown in the following table:

	2022	2021
Risk-free interest rate	1.8% - 4.3%	0.59% - 1.32%
Expected dividend yield	— %	— %
Expected stock price volatility	33.2% - 35.2%	33.0% - 36.0%
Expected life of stock options (years)	6.25	4.17 - 6.25

The weighted-average grant date fair value of options granted during the year ended December 31, 2022 was $4.54 per share. The expected term of the options granted is estimated using the simplified method. Expected volatility is based on the historical volatility of the Company's peers' common stock. The risk-free interest rate is determined based upon a constant U.S. Treasury security rate with a contractual life that approximates the expected term of the option. Unamortized compensation expense related to the options totaled $12,090 at December 31, 2022, and is expected to be recognized over a weighted average period of approximately 2.93 years.

A summary of stock option activity is as follows for the years ended December 31, 2022 and 2021 (number of options in thousands):

	Number of options	Weighted-average exercise price	Weighted average remaining contractual term (in years)	Aggregate intrinsic value
Outstanding at December 31, 2020	—	$ —		
Granted	8,442	11.12		
Exercised	(74)	6.00		
Forfeited or canceled	(4)	13.00		
Outstanding at December 31, 2021	8,364	11.16	8.32	$ 28,315
Granted	2,606	12.19		
Exercised	(680)	6.28		
Forfeited or canceled	(1,380)	12.38		
Outstanding at December 31, 2022	8,910	11.65	7.74	$ 2,970
Exercisable and vested at December 31, 2022	3,770	$ 10.14	6.49	$ 2,970

The aggregate intrinsic value is calculated as the difference between the exercise price of the underlying options and the market price of the Company's Class A common stock for options that had exercise prices lower than $2.61 per share, the closing price of the Company's Class A common stock on December 30, 2022.

Employee Stock Purchase Plan

The Company operates a non-qualified Employee Stock Purchase Plan ("ESPP"), which provides for the issuance of shares of the Company's Class A common stock to eligible employees of the Company that elect to participate in the plan and purchase shares of Class A common stock through payroll deductions at a discounted price. As of December 31, 2022, the aggregate number of shares reserved for issuance under the ESPP was 168,525. A total of 279,000 and 94,795 shares were issued and $471 and $340 of expense was recognized during the years ended December 31, 2022 and 2021, respectively.

Defined contribution plans

The Company has various defined contribution plans which are offered in Canada, Germany, the Netherlands, United Kingdom and Israel. These plans are required by local laws or regulations in some cases. Contributions are primarily discretionary, except in some countries where contributions are contractually required. These plans cover substantially all eligible employees in the countries where the plans are offered either voluntarily or statutorily.

In the United States, the Company provides a 401(k) defined contribution plan ("U.S. Plan") that covers substantially all U.S. employees that meet minimum age requirements. Beginning in April 2021, the Company matches 100% of the employees' contribution up to 4% of the employees' wages and 50% on the next 2%. Prior to this change, the Company matched 50% of the employees' contribution up to 6% of the employees' wages. The U.S. Plan also provides for an additional 1% to 3% at the Company's discretion.

For the years ended December 31, 2022, 2021 and 2020, Company contributions totaled $6,407, $4,477, and $3,379 respectively, for all global plans. The expense is included in cost of sales, selling, general and administrative expense and research and development expense on the consolidated statement of operations and comprehensive income based upon the classification of the employee.

8. Stockholders' equity

Amendment and restatement of certificate of incorporation

On February 16, 2021, the Company amended and restated its certificate of incorporation to, among other things, provide for: (i) the authorization of 250,000,000 shares of Class A common stock with a par value of $0.001 per share; (ii) the authorization of 50,000,000 shares of Class B common stock with a par value of $0.001 per share; (iii) the authorization of 10,000,000 shares of undesignated preferred stock that may be issued from time to time by the BOD in one or more series; and (iv) the establishment of a classified BOD, divided into three classes, each of whose members will serve for staggered three-year terms.

Holders of Class A and Class B common stock are entitled to one vote per share and, except as otherwise required, will vote together as a single class on all matters on which stockholders generally are entitled to vote. Holders of Class B common stock are not entitled to receive dividends and will not be entitled to receive any distributions upon the liquidation, dissolution or winding up of the Company. Shares of Class B common stock may only be issued to the extent necessary to maintain the one-to-one ratio between the number of LLC Interests and the number of shares of Class B common stock held by the Continuing LLC Owner. Shares of Class B common stock are transferable only together with an equal number of LLC Interests. Shares of Class B common stock will be canceled on a one-for-one basis upon the redemption or exchange of any outstanding LLC Interests.

The Company must, at all times, maintain a one-to-one ratio between the number of outstanding shares of Class A common stock and the number of LLC Interests owned by the Company.

BV LLC recapitalization

As described in *Note 1. Organization*, on February 16, 2021, the Company amended and restated the BV LLC Agreement to, among other things, (i) provide for the new LLC Interests; (ii) exchange all of the then-existing membership interests of the Original BV LLC Owners for new LLC Interests; and (iii) appoint Bioventus Inc. as the sole managing member of BV LLC.

The BV LLC Agreement also provides that holders of LLC Interests may, from time to time, require the Company to redeem all or a portion of their LLC Interests for newly-issued shares of Class A common stock on a one-for-one basis. The Company may elect to settle any such redemption in shares of Class A common stock or in cash.

The amendment also requires that the Company, at all times, maintain (i) a one-to-one ratio between the number of outstanding shares of Class A common stock and the number of LLC Interests owned by the Company and (ii) a one-to-one ratio between the number of shares of Class B common stock owned by the Continuing LLC Owner and the number of LLC Interests owned by the Continuing LLC Owner.

Initial public offering

In connection with the IPO, the Company issued 15,786,737 shares of Class B common stock to the Original BV LLC Owners. As described in *Note 1. Organization*, the Company acquired, by merger the Former LLC Owners, for which the Company issued 31,838,589 shares of Class A common stock as merger consideration. In connection with the IPO Merger, the Company canceled 15,786,737 shares of Class B common stock and the Company received 15,786,737 of LLC Interests.

Noncontrolling interest

In connection with any redemption of LLC Interests by the Continuing LLC Owner, the Company will receive a corresponding number of LLC Interests, increasing its ownership interest in BV LLC. Future redemptions of LLC Interests will result in a change in ownership and reduce the amount recorded as noncontrolling interest and increase additional paid-in capital. There were no redemptions during the years ended December 31, 2022 and 2021. The following table summarizes the ownership interest in BV LLC as of December 31 (number of units in thousands):

	2022		2021	
	LLC Interests	Ownership %	LLC Interests	Ownership %
Number of LLC Interests owned				
Bioventus Inc.	62,063	79.7 %	59,548	79.0 %
Continuing LLC Owner	15,787	20.3 %	15,787	21.0 %
Total	77,850	100.0 %	75,335	100.0 %

9. Earnings per share

The following table sets forth the computation of basic and diluted loss per share of Class A common stock for the periods presented (amounts in thousands, except share and per share data):

	Year Ended December 31, 2022	February 16, 2021 through December 31, 2021
Numerator:		
Net loss	$ (213,391)	$ (16,391)
Net loss attributable to noncontrolling interests	54,687	9,789
Net loss attributable to Bioventus Inc. Class A common stockholders	$ (158,704)	$ (6,602)
Denominator:		
Weighted-average shares of Class A common stock outstanding - basic and diluted	61,389,107	45,472,483
Net loss per share of Class A common stock, basic and diluted	$ (2.59)	$ (0.15)

Shares of Class B common stock do not share in the losses of the Company and are therefore not participating securities. As such, separate presentation of basic and diluted losses per share of Class B common stock under the two-class method has not been presented.

The following number of weighted-average potentially dilutive shares as of December 31, 2022 and 2021 were excluded from the calculation of diluted loss per share because the effect of including such potentially dilutive shares would have been antidilutive upon conversion:

	Year Ended December 31, 2022	February 16, 2021 through December 31, 2021
LLC Interests held by Continuing LLC Owner[(a)]	15,786,737	15,786,737
Stock options	7,679,780	5,373,442
RSUs	710,807	966,673
Unvested shares of Class A common stock	—	30,056
Total	24,177,324	22,156,908

[(a)] Class A Shares reserved for future issuance upon redemption or exchange of LLC Interests by the Continuing LLC Owner.

10. Restructuring costs

Restructuring costs are not allocated to the Company's reportable segments as they are not part of the segment performance measures regularly reviewed by management. These charges are included in restructuring costs in the consolidated statements of operations and comprehensive (loss) income. Liabilities associated from restructuring costs are recorded in accrued liabilities on the consolidated balance sheets.

The Company announced a restructuring plan in December 2022 ("2022 Restructuring Plan") that is intended to align the Company's organizational and management cost structure to improve profitability and cash flow. The Company expects to incur $4,000 to $5,000 of pre-tax costs under the 2022 Restructuring Plan primarily consisting of employee severance and additional expenses for third-party and other related costs. Pre-tax charges recognized during the year ended December 31, 2022 totaled $4,581.

The Company adopted restructuring plans for businesses acquired to reduce headcount, reorganize management structure and consolidate certain facilities during the second half of 2021 ("2021 Acquisition Restructuring Plan") and during the first quarter of 2022 ("2022 Acquisition Restructuring Plan"). The Company planned total pre-tax charges for the 2021 Acquisition Restructuring Plan to be $3,500, of which $719 and $2,487 was recognized during the year ended December 31, 2022 and 2021, respectively. Expected pre-tax charges related to the 2022 Acquisition Restructuring Plan is $2,300, of which $1,479 was recognized during the year ended December 31, 2022.

The Company's restructuring charges and payments for plans related to businesses acquired comprised of the following:

	Employee severance and temporary labor costs	Other charges	Total
Balance at December 31, 2020	$ 166	$ 81	$ 247
Expenses incurred	2,351	136	2,487
Payments made	(1,117)	(81)	(1,198)
Balance at December 31, 2021	1,400	136	1,536
Expenses incurred	5,172	1,607	6,779
Payments made	(2,812)	(1,743)	(4,555)
Balance at December 31, 2022	$ 3,760	$ —	$ 3,760

11. Income taxes

As a result of the Transactions, Bioventus Inc. became the sole managing member of BV LLC, which is treated as a partnership for income tax purposes. As a partnership, BV LLC is not subject to United States federal and certain state and local income taxes. Any taxable income or loss generated by BV LLC is passed through to and included in the taxable income or loss of its members, including the Company, following the Transactions, on a pro rata basis. Prior to the Transactions, income from other domestic subsidiaries included BV LLC and thereafter is included in income from domestic taxable subsidiaries. The components of (loss) income before income taxes for the years ended December 31 are as follows:

	2022	2021	2020
United States	$ (215,638)	$ 9,511	$ 15,527
International	(48,261)	(1,891)	387
(Loss) income before income taxes	$ (263,899)	$ 7,620	$ 15,914

The provision for income taxes on operations consists of the following for the years ended December 31:

	2022	2021	2020
Current:			
United States federal	$ 2,092	$ 5,675	$ 782
United States state and local	(96)	1,750	214
International	289	367	707
Total current	2,285	7,792	1,703
Deferred:			
United States federal	(42,047)	(9,015)	(508)
United States state and local	(7,897)	(533)	(3)
International	(2,849)	(210)	—
Total deferred	(52,793)	(9,758)	(511)
Total income tax (benefit) expense	$ (50,508)	$ (1,966)	$ 1,192

Cash paid for income taxes totaled $1,518, $7,456 and $1,541 for the years ended December 31, 2022, 2021 and 2020, respectively. The Company's investment in foreign subsidiaries continues to be indefinite in nature; however, the Company may periodically repatriate a portion of these earnings to the extent that it does not incur significant additional tax liability.

The differences between the effective income tax rate and the federal statutory income tax rates for the years ended December 31 are as follows:

	2022	2021	2020
U.S. statutory federal corporate income tax rate	21.0 %	21.0 %	21.0 %
Noncontrolling interest	(4.6)	(18.6)	—
LLC flow-through structure	3.9	(70.4)	(20.1)
Non-deductible expenses	—	43.8	—
State and local income taxes, net of federal benefit	3.0	11.8	1.5
Change in valuation allowance	(0.3)	7.0	—
Research and other tax credits	0.2	(4.5)	—
Organizational Transactions	(0.4)	(8.6)	—
Uncertain tax positions	(0.6)	(9.0)	—
Foreign rate differential	—	(0.9)	1.2
GAAP Impairment	(2.5)	—	—
Other	(0.6)	2.6	3.9
Effective income tax rate	19.1 %	(25.8 %)	7.5 %

Deferred tax assets and liabilities are determined based on the difference between financial statement and tax bases using enacted tax rates in effect for the year in which the differences are expected to reverse. The components of the deferred taxes were as follows:

	2022	2021
Deferred tax assets:		
Net operating losses and tax credit carryforwards	$ 31,688	$ 16,303
Transaction costs	980	969
Accrued liabilities	168	862
Fixed assets	30	644
Interest	7,020	—
Other	1,314	925
Gross deferred tax assets	41,200	19,703
Valuation allowance	(2,536)	(2,320)
Total deferred tax assets	38,664	17,383
Deferred tax liability:		
Investment in Bioventus LLC	98,705	145,537
Acquired intangible	93,798	4,157
Operating lease assets	162	726
	192,665	150,420
Net deferred tax liability	$ 154,001	$ 133,037

The valuation allowance is primarily attributable to net operating losses ("NOLs"). The Company considered many factors when assessing the likelihood of future realization of these deferred tax assets, including expectations of future taxable income or loss, the carryforward periods available to the Company for tax reporting purposes, and other relevant factors. The net change in the valuation allowance was $216. The valuation allowance at December 31, 2022 and December 31, 2021 principally relates to recognizing a full valuation allowance against foreign NOLs.

Beginning in 2022, the Tax Cuts and Jobs Act of 2017 eliminated the option to deduct research and development expenditures immediately in the year incurred and requires companies to amortize such expenditures over five or fifteen years for tax purposes, depending on whether the activities were incurred in the United States or outside of the United States. This change resulted in an increase to gross deferred tax assets and cash tax liabilities.

As of December 31, 2022, the Company had approximately $136,375 in U.S. federal NOL carryforwards at its corporate subsidiaries and $1,562 in federal tax credits. Certain US federal NOL carryforwards begin to expire in 2031, while others were generated after the enactment of the Tax Cuts and Jobs Act (the "Act") and as such do not expire, but can only be utilized to offset up to 80% of taxable income in any given year. The federal tax credits start to expire at various dates beginning in 2026. As of December 31, 2022, the Company had approximately $20,934 in state NOL carryforwards and $354 in state tax credits. If not utilized, some state NOL carryforwards will expire at various dates beginning in 2025.

The Company evaluated its tax positions and had unrecognized tax benefits of $5,883 and $4,517 as of December 31, 2022 and 2021, respectively. The Company had $2,297 and $1,837 accrued for payment of interest and penalties as of December 31, 2022 and 2021, respectively. If the $5,883 of unrecognized tax benefit is recognized, it would not impact the effective tax rate due to the valuation allowance on the Company's net U.S. deferred tax assets. The Company does expect a material decrease of approximately $1,300 in the twelve months following December 31, 2022 in its uncertain tax positions due to various statute expirations during 2023. The Company files U.S. federal income tax returns as well as income tax returns in many United States and foreign jurisdictions. In general, the tax years 2019 - 2022 remain open to examination by the major jurisdictions in which the Company is subject to tax.

A reconciliation of the gross unrecognized tax benefits (excluding interest and penalties) for the year ended December 31, 2022 follows:

Beginning of the period	$ 4,517
Additions for current year tax positions	(1,452)
Expiration of statutes	2,818
End of the period	$ 5,883

Tax Receivable Agreement

The Company expects to obtain an increase in the share of the tax basis of the assets of BV LLC when LLC Interests are redeemed or exchanged by the Continuing LLC Owner and other qualifying transactions. This increase in tax basis may have the effect of reducing the amounts that the Company would otherwise pay in the future to various tax authorities. The increase in tax basis may also decrease gains (or increase losses) on future dispositions of certain capital assets to the extent tax basis is allocated to those capital assets.

On February 16, 2021, the Company entered into a tax receivable agreement ("TRA") with the Continuing LLC Owner that provides for the payment by the Company to the Continuing LLC Owner of 85% of the amount of tax benefits, if any, that the Company actually realizes as a result of (i) increases in the tax basis of assets of BV LLC resulting from any redemptions or exchanges of LLC Interests or any prior sales of interests in BV LLC; and (ii) certain other tax benefits related to the Company making payments under the TRA.

The Company will maintain a full valuation allowance against deferred tax assets related to the tax attributes generated as a result of redemptions of LLC Interests or exchanges described above until it is determined that the benefits are more-likely-than-not to be realized. As of December 31, 2022, the Continuing LLC Owner had not exchanged LLC Interests for shares of Class A common stock and therefore the Company had not recorded any liabilities under the TRA.

12. Commitments and contingencies

Leases

The Company determines if an arrangement is a lease at inception. The Company leases its office facilities as well as other property, vehicles and equipment under operating leases. The Company also leases certain office equipment under nominal finance leases. Lease assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the obligation to make lease payments arising from the lease. Lease assets and liabilities are recognized at commencement date based on the present value of lease payments over the lease term. As the Company's leases do not provide an implicit rate, the Company's incremental borrowing rate is used as a discount rate, based on the information available at the commencement date, in determining the present value of lease payments. Lease assets also include the impact of any prepayments made and are reduced by impact of any lease incentives.

The Company does not recognize lease liabilities or lease assets on the balance sheet for short-term (leases with a lease term of twelve months or less as of the commencement date). Rather, any short-term lease payments are recognized as an expense on a straight-line basis over the lease term. The current period short-term lease expense reasonably reflects short-term lease commitments.

For all classifications of leases, the Company combines lease and nonlease components in order to record the combination as a single lease component. Variable lease payments are excluded from the lease liability and recognized in the period in which the obligation is incurred. Additionally, lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise the option.

The Company leases its office facilities as well as other property, vehicles and equipment under operating leases. The Company also leases certain office equipment under nominal finance leases. The remaining lease terms range from 1 month to 5.75 years.

The components of lease cost were as follows for the years ended December 31:

	2022	2021	2020
Operating lease cost	$ 4,557	$ 3,478	$ 2,610
Short-term lease cost[(a)]	691	668	388
Total lease cost	$ 5,248	$ 4,146	$ 2,998

(a) Includes variable lease cost and sublease income, which are immaterial.

Supplemental cash flow information and non-cash activity related to operating leases were as follows for the years ended December 31:

	2022	2021	2020
Operating cash flows from operating leases	$ 4,374	$ 3,616	$ 2,567
Right-of-use assets obtained in exchange for operating lease obligations	$ 4,792	$ 4,665	$ 1,497

Supplemental balance sheet and other information related to operating leases were as follows for the years ended December 31:

	2022	2021
Operating lease assets	$ 17,308	$ 17,186
Operating lease liabilities- current	$ 3,728	$ 3,504
Operating lease liabilities- noncurrent	14,797	15,038
Total operating lease liabilities	$ 18,525	$ 18,542
Weighted average remaining lease term (years)		
Weighted average remaining lease term (years) for operating leases	4.8	5.6
Weighted average discount rate for operating leases	4.8 %	4.7 %

Maturities of operating lease liabilities as of December 31, 2022 were as follows:

2023	$ 4,491
2024	4,650
2025	4,237
2026	3,248
2027	2,653
Thereafter	1,384
Total future lease payments[(a)]	20,663
Less imputed interest	(2,138)
Present value of future lease payments	$ 18,525

(a) The above table does not reflect the future maturities of a lease entered into during November 2021 in which the Company agreed to lease a facility to expand its manufacturing operations and relocate from its current leased facilities in Memphis, Tennessee. The lease term is 10 years and partial occupancy began January 2023. Expected payments of the partial lease is as follows for the next five years and thereafter: $842, $939, $958, $977, $997 and $5,662.

Governmental and legal contingencies

In the normal course of business, the Company periodically becomes involved in various claims and lawsuits, and governmental proceedings and investigations that are incidental to its business. The Company accrues a liability when a loss is considered probable and the amount can be reasonably estimated. When a material loss contingency is reasonably possible but not probable, the Company does not record a liability, but instead discloses the nature and amount of the claim, and an estimate of the possible loss or range of loss, if such an estimate can be made. Legal fees are expensed as incurred. With respect to governmental proceedings and investigations, like other companies in the industry, the Company is subject to extensive regulation by national, state and local governmental agencies in the United States and in other jurisdictions in which the Company and its affiliates operate. As a result, interaction with governmental agencies is ongoing. The Company’s standard practice is to cooperate with regulators and investigators in responding to inquiries.

The Company is presently unable to predict the duration, scope, or result of the following matters. As such, the Company is presently unable to develop a reasonable estimate of a possible loss or range of losses, if any, related to these matters. While the Company intends to defend these matters vigorously, the outcome of such litigation or any other litigation is necessarily uncertain, is not within the Company’s complete control and might not be known for extended periods of time. In the opinion of management, the outcome of any existing claims and legal or regulatory proceedings, other than the specific matters described below, if decided adversely, is not expected to have a material adverse effect on the Company's business, financial condition, results of operations, or cash flows.

Bioventus shareholder litigation

On January 12, 2023, the Company and certain of its current and former directors and officers were named as defendants in a putative class action lawsuit filed in the Middle District of North Carolina, *Ciarciello v. Bioventus, Inc.*, No. 1:23– CV – 00032-CCE-JEP (M.D.N.C. 2023). The complaint asserts violations of Sections 10(b) and 20(a) of the Exchange Act and of Sections 11 and 15 of the Securities Act and generally alleges that the Company failed to disclose certain information regarding rebate practices, its business and financial prospects, and the sufficiency of internal controls regarding financial reporting. The complaint seeks damages in an unspecified amount. The case is in its early stages, and a lead plaintiff has not yet been appointed. The Company believes the claims alleged lack merit and intends to file a motion to dismiss. The outcome of the litigation is not presently determinable, and any loss is neither probable nor reasonable estimable.

Bioness patent litigation

On June 15, 2022, the Company, through its subsidiary Bioness, filed a lawsuit in the United States District Court for the Eastern District of Virginia against Aretech, LLC ("Aretech") alleging infringement by Aretech of various patents related the Bioness' Vector Gait and Safety Support System®. On August 8, 2022, Aretech filed an answer to the lawsuit denying infringement and asserting various affirmative defenses and counterclaims to the Bioness complaint. Bioness filed a motion to dismiss the defendant's counterclaims on September 28, 2022. In response to Bioness' motion to dismiss the counterclaims, on October 19, 2022, Aretech filed an amended answer and counterclaims. On November 16, 2022, Bioness filed a partial motion to dismiss certain of the amended counterclaims. On January 23, 2023, the court granted-in-part Bioness' motion dismissing Aretech's antitrust and inventorship-related counterclaims, but allowed certain of Aretech's counterclaims to proceed. The parties are presently finalizing a joint discovery plan and timeline. On March 23, 2023 the parties entered into a settlement and license agreement that provides for a payment by Aretech to the Company of $1,500 to resolve all claims in the litigation. The agreement also provides cross licenses to the parties for certain of their respective patents relevant to the claims asserted in the litigation.

Misonix stockholder

On September 15, 2021, a purported stockholder of Misonix filed an action in the United States District Court for the Eastern District of New York, captioned Stein v. Misonix, Inc., et al., Case No. 2:21-cv-05127 (E.D.N.Y.) (the "Stein Complaint"). The Stein Complaint named Misonix and members of its board of directors as defendants. The Stein Complaint was dismissed on April 6, 2022. On September 16, 2021, a purported stockholder of Misonix filed an action in the United States District Court for the Southern District of New York, captioned Ciccotelli v. Misonix, Inc. et al., Case No. 1:21-cv-07773 (S.D.N.Y.) (the "Ciccotelli Complaint") against Misonix, members of its board of directors, the Company, and its subsidiaries, Merger Sub I and Merger Sub II, as defendants. Plaintiff voluntarily dismissed the Ciccotelli Complaint on November 10, 2021. On October 12, 2021, another purported stockholder of Misonix filed an action in the United States District Court for the Eastern District of New York, captioned Rubin v. Misonix, Inc. et al., Case No. 1:21-cv-05672 (S.D.N.Y.) (the "Rubin Complaint") and on October 15, 2021, another purported stockholder of Misonix filed an action in the United States District Court for the Southern District of New York, captioned Taylor v. Misonix, Inc. et al., Case No. 1:21-cv-08513 (S.D.N.Y.) (the "Taylor Complaint"). The Rubin Complaint and the Taylor Complaint name Misonix and members of its board of directors as defendants. Plaintiffs voluntarily dismissed the Rubin and Taylor Complaints on January 21, 2022 and February 18, 2022, respectively.

The complaints asserted claims under Section 14(a) and Section 20(a) of the Exchange Act and SEC Rule 14a-9, challenging the adequacy of disclosures in the proxy statement/prospectus filed with the SEC on September 8, 2021 or the Definitive Proxy Statement filed with the SEC on September 24, 2021, regarding Misonix and/or Bioventus' projections and J.P. Morgan's financial analysis. The complaints had sought, among other relief, (i) injunctive relief preventing the parties from proceeding with the merger; (ii) rescission in the event that the merger is consummated; and (iii) an award of costs, including attorneys' and experts' fees.

Misonix former distributor

On March 23, 2017, Misonix's former distributor in China, Cicel (Beijing) Science & Technology Co., Ltd., filed a lawsuit against Misonix and certain of its officers and directors in the United States District Court for the Eastern District of New York. The complaint alleged that Misonix improperly terminated its contract with the former distributor. The complaint sought various remedies, including compensatory and punitive damages, specific performance and preliminary and post judgment injunctive relief, and asserted various causes of action, including breach of contract, unfair competition, tortious interference with contract, fraudulent inducement, and conversion. On October 7, 2017, the court granted Misonix's motion to dismiss each of the tort claims asserted against Misonix, and also granted the individual defendants' motion to dismiss all claims asserted against them. On January 23, 2020, the court granted Cicel's motion to amend its complaint, to include claims for alleged defamation and theft of trade secrets in addition to the breach of contract claim. Discovery in the matter ended on August 5, 2021. On January 20, 2022, the court granted Misonix's summary judgment motion on Cicel's breach of contract and defamation claims. Cicel's motion for reconsideration of the court's summary judgment ruling in Misonix's favor was dismissed by the Court on April 29, 2022. On July 18, 2022, Cicel voluntarily dismissed the remaining claim for trade secret theft and later filed an appeal to the United States Court of Appeals for the Second Circuit. The Company believes that it has various legal and factual defenses to these claims and intends to vigorously defend the appeal of the lower court's summary judgment rulings in its favor.

Bioness shareholder

Prior to closing the Bioness Acquisition, Bioness had been named as a defendant in a lawsuit, for which the Company is indemnified under the indemnification provisions contained in the Bioness Merger Agreement. The case relates to an action brought in February 2021 in the Delaware State Court of Chancery by a former minority shareholder and director of Bioness, seeking a temporary restraining order contesting the acquisition of Bioness. While the complaint to block the Bioness acquisition was dismissed by the court, a separate action was brought against the Company under the indemnification provisions of the Bioness Certificate of Incorporation to recover attorney fees and other expenses totaling approximately $3,000 incurred by the director and shareholder in connection with the matter.

On August 19, 2021, the court issued a ruling granting, in part, plaintiff's motion for summary judgment, awarding plaintiff attorney's fees and related expenses incurred in connection with performance of the plaintiff's directorial duties, and denying fees and expenses incurred in a non-director capacity. In its ruling, the court's order also directed the parties to agree upon a process that will govern the payment of and challenges to plaintiff's payment requests and required Bioness to pay 50% of the demanded amount into escrow if more than 50% of the total invoiced amount was in dispute. Pursuant to the court's order, to date, Bioness has paid approximately $1,300 into escrow. On November 1, 2022, at a hearing before Delaware State Court of Chancery, the court ruled in favor of the former Bioness director awarding attorney's fees in connection with the underlying pre-merger litigation and the advancement action in the amounts claimed, less approximately $50. On December 23, 2022, Bioness and the plaintiff entered into a settlement agreement resolving the matter for the aggregate sum of $2,500 payable to the plaintiff. The settlement was satisfied by releasing the $1,300 previously paid by Bioness and held in escrow and by an additional payment of $1,200. Pursuant to the indemnification obligations under the Bioness Merger Agreement, this subsequent payment was made on behalf of Bioness on December 28. 2022, by the selling majority shareholder under that agreement. The Company subsequently recovered the $1,300 paid into escrow from the selling Bioness shareholders pursuant an indemnification request under the Bioness Merger Agreement. An order dismissing the case was entered by the court on January 27, 2023.

On February 8, 2022, the above referenced minority shareholder of Bioness filed another action in the Delaware State Court of Chancery in connection with the Company's acquisition of Bioness. This action names the former Bioness directors, the Alfred E. Mann Trust (Trust), which was the former majority shareholder of Bioness, the trustees of the Trust and Bioventus as defendants. The complaint alleges, among other things, that the individual directors, the Trust, and the trustees breached their fiduciary duty to the plaintiff in connection with their consideration and approval of the Company's transaction. The complaint also alleges that the Company aided and abetted the other defendants in breaching their fiduciary duties to the plaintiff and that the Company breached the Merger Agreement by failing to pay the plaintiff its pro rata share of the merger consideration. The Company believes that it is indemnified under the indemnification provisions contained in the Bioness Merger Agreement for these claims. On July 20, 2022, the Company filed a motion to dismiss all claims made against it on various grounds, as did all the other named defendants in the suit. A hearing on Bioness' and other the defendant's motions was held before the Court of Chancery on January 19, 2023. The Court has not yet ruled on any of these motions. The Company believes that there are various legal and factual defenses to the claims plaintiff made against us and intend to defend ourselves vigorously.

Other matters

On November 10, 2021, the Company entered into an asset purchase agreement for a hyaluronic acid ("HA") product and made an upfront payment of $853. An additional payment of $853 was made in 2022 upon the transfer of certain seller customer data. If the Company is able to obtain a Medical Device Regulation Certification for the product, $1,707 will be paid to the seller within five days. The Company is required to pay royalties through 2026 of 5.0% on the first $569 in sales and 2.5% thereafter.

On August 23, 2019, the Company was assigned a third-party license on a product currently in development and the Company is subject to a 3% royalty on certain commercial sales, or a nominal minimum amount per quarter, beginning in 2023.

On May 29, 2019, the Company and the Musculoskeletal Transplant Foundation, Inc. d/b/a MTF Biologics ("MTF"), entered into a collaboration and development agreement to develop one or more products for orthopedic application to be commercialized by the Company and supplied by MTF (the "Development Agreement"). The first phase has been completed, but during the second quarter of 2022, the Company elected to discontinue the development of MOTYS, the initial product candidate under development. On October 21, 2022, the Company provided notice to MTF of termination of the Development Agreement and the related cGTP Commercial Supply Agreement with MTF for MOTYS, effective December 20, 2022.

On December 9, 2016, the Company entered into an amended and restated license agreement for the exclusive U.S. distribution and commercialization rights of a single injection osteoarthritis ("OA") product with the supplier of the Company's single injection OA product for the non-U.S. market. The agreement requires the Company to meet annual minimum purchase requirements and pay royalties on net sales. Royalties related to this agreement during the years ended December 31, 2022, 2021 and 2020 totaled $14,712, $13,300 and $10,021, respectively. These royalties are included in cost of sales within the consolidated statements of operations and comprehensive (loss) income.

As part of a supply agreement entered on February 9, 2016 and subsequently amended for the Company's three injection OA product, the Company is subject to annual minimum purchase requirements for 10 years. After the initial 10 years, the agreement will automatically renew for an additional 5 years unless terminated by the Company or the seller in accordance with the agreement.

As part of a supply agreement for the Company's five injection OA product that was amended and restated on December 22, 2020, the Company is subject to annual minimum purchase requirements for 8 years.

The Company has an exclusive license agreement for bioactive bone graft putty. The Company is required to pay a royalty on all commercial sales revenue from the licensed products with a minimum annual royalty payment through 2023, the date the agreement will expire, upon the expiration of the patent held by the licensor. These royalties are included in cost of sales on the consolidated statements of operations and comprehensive (loss) income.

From time to time, the Company causes letters of credit ("LOCs") to be issued to provide credit support for guarantees, contractual commitments and insurance policies. The fair values of the LOCs reflect the amount of the underlying obligation and are subject to fees payable to the issuers, competitively determined in the marketplace. As of December 31, 2022 and 2021, the Company had one LOC outstanding for a nominal amount.

The Company currently maintains insurance for risks associated with the operation of its business, provision of professional services and ownership of property. These policies provide coverage for a variety of potential losses, including loss or damage to property, bodily injury, general commercial liability, professional errors and omissions and medical malpractice. The Company is self-insured for health insurance covering most of its employees located in the United States. The Company maintains stop-loss insurance on a "claims made" basis for expenses in excess of $200 per member per year.

13. Revenue recognition

The Company attributes net sales to external customers to the U.S. and to all foreign countries based on the legal entity from which the sale originated. The following table presents the Company's net sales disaggregated by major products ("Vertical") within each segment as follows for the years ended December 31:

	2022	2021	2020
U.S.			
Pain Treatments	$ 194,830	$ 201,068	$ 156,576
Restorative Therapies	134,214	103,009	76,633
Surgical Solutions	126,207	83,476	60,488
Total U.S. net sales	455,251	387,553	293,697
International			
Pain Treatments	21,495	20,539	$ 14,602
Restorative Therapies	20,420	18,563	11,991
Surgical Solutions	14,951	4,243	871
Total International net sales	56,866	43,345	27,464
Total net sales	$ 512,117	$ 430,898	$ 321,161

14. Segments

The Company's two reportable segments are U.S. and International. The Company's products are primarily sold to orthopedists, musculoskeletal and sports medicine physicians, podiatrists, neurosurgeons and orthopedic spine surgeons, as well as to their patients. The Company does not disclose segment information by asset as the Chief Operating Decision Maker ("CODM") does not review or use it to allocate resources or to assess the operating results and financial performance. Segment adjusted EBITDA is the segment profitability metric reported to the Company's CODM for purposes of decisions about allocation of resources to, and assessing performance of, each reportable segment.

The following table presents segment adjusted EBITDA reconciled to (loss) income before income taxes for the years ended December 31:

	2022	2021	2020
Segment adjusted EBITDA			
U.S.	$ 56,231	$ 70,640	$ 69,252
International	10,078	10,119	3,191
Interest expense, net	(25,795)	(1,112)	(9,751)
Depreciation and amortization	(66,803)	(34,875)	(28,643)
Acquisition and related costs	(27,081)	(22,964)	(166)
Remeasurement gain on equity method investment	23,709	—	(6,172)
Restructuring and succession charges	(7,453)	(3,717)	—
Equity compensation	(17,585)	4,512	(10,103)
COVID-19 benefits, net	—	—	4,123
Equity loss in unconsolidated investments	(1,003)	(1,868)	(467)
Foreign currency impact	(250)	(132)	117
Impairment of goodwill	(189,197)	—	—
Asset impairment charges	(10,285)	—	—
Impairments related to variable interest entity	—	(7,043)	—
Other items	(8,465)	(5,940)	(5,467)
(Loss) income before income taxes	$ (263,899)	$ 7,620	$ 15,914

15. Subsequent events

CartiHeal Deconsolidation

As previously discussed, the Company consolidated CartiHeal on July 12, 2022 and reported the acquisition in its Quarterly Report on Form 10-Q filed by the Company with the SEC on November 21, 2022. Refer to *Note 4. Acquisitions and investments* for additional information regarding the acquisition of CartiHeal.

The First Paper Milestone under the Option Agreement occurred on February 13, 2023, triggering an obligation of the Company to make the first $50,000 payment, plus applicable interest, under the Option Agreement.

On February 27, 2023, the Company entered into a settlement agreement (the "Settlement Agreement") with Elron Ventures Ltd. ("Elron" and together with the Company, the "Parties") as representative of CartiHeal's selling securityholders under the Option Agreement collectively, the "Former Securityholders"). Pursuant to the Settlement Agreement, Elron, on behalf of the Former Securityholders, have agreed to forbear from initiating any legal action or proceedings relating to non-payment of any obligations arising under the Option Agreement during a period of 30 calendar days (the "Interim Period") in exchange for (i) a one-time non-refundable amount of $10,000 and (ii) a one-time non-refundable payment of $150 to Elron to be used in accordance with the expense fund provisions of the Option Agreement. The Interim Period expired on March 29, 2023 and the Company did not exercise its right to extend the Interim Period. In addition, the Parties mutually released any further claims under the Option Agreement and related transaction documents, including without limitation a release by the Former Securityholders of any rights to enforce the provisions of the Option Agreement or make further monetary claims against the Company and/or its respective affiliates and representatives.

Upon execution of the Settlement Agreement, the Company transferred 100% of its shares in CartiHeal to a trustee (the "Trustee") for the benefit of the Former Securityholders. This transfer was irrevocable, unless and until the Former Securityholders received the entire amount of the aggregate purchase price and corresponding milestones and any interest to be accrued thereon in accordance with the provisions of the Option Agreement prior to the expiration of the Interim Period.

The Company had no ownership interest and no voting rights during the Interim Period. Accordingly, the Company concluded that upon execution of the Settlement Agreement, the Company ceased to control CartiHeal for accounting purposes, and therefore, has deconsolidated CartiHeal (the "Deconsolidation", or "Disposal") effective February 27, 2023. The Company also concluded that this disposal will be treated as a discontinued operation. The loss upon disposal is estimated to be $60,600 and will be recorded within loss from discontinued operations due at closing.

Because the Company was not able to find a financing solution to fund the payment obligations under the Option and Equity Purchase Agreement on terms the Company believes to be favorable to it and its shareholders, the Company elected to allow the Interim Period to expire on March 29, 2023. The Company hopes to continue to explore opportunities to reacquire CartiHeal in a manner consistent with its financial objectives, but can give no assurance that the Company will be able to obtain the necessary financing or negotiate acceptable terms to reacquire CartiHeal and its assets.

Other

During January and February 2023, the Company borrowed $49,000 on its Revolver for working capital needs. However, on the Closing Date of the amendment to the Amended 2019 Credit Agreement, as part of the closing conditions, the Company repaid $20,000 of these borrowings. Additionally, the Company paid $1,250 in closing fees, and will be required to pay an additional $600 by December 31, 2023 unless the Total Net Leverage Ratio as at September 30, 2023 is below 5.25 to 1.00.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosures.

None.

Item 9A. Controls and Procedures.

Limitations on Effectiveness of Controls and Procedures

In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Annual Report on Form 10-K. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, because of material weakness in the Company's internal control over financial reporting described below, our disclosure controls and procedures were not effective as of December 31, 2022.

Management's Report on Internal Control over Financial Reporting

The Company's management is responsible for establishing and maintaining adequate internal control over financial reporting (as such term is defined in the Exchange Act Rule 13a-15(f)). The 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 U.S. GAAP, 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 the 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. 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.

In connection with the preparation and filing of this Annual Report, the Company's management, including our Chief Executive Officer and our Chief Financial Officer, conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2022, based on the framework set forth in "Internal Control—Integrated Framework (2013)" issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO criteria"). Notably, the assessment does not include CartiHeal, which was acquired by the Company in 2022 and included in the Company's 2022 financial statements. CartiHeal comprised approximately 29.7%, of the Company's total assets, and 0% of the Company's total net sales in 2022. Based on the Company's evaluation, our Chief Executive Officer and Chief Financial Officer, concluded that, as of December 31, 2022, the Company's internal controls over financial reporting were not effective due to material weaknesses identified that are not fully remediated as of December 31, 2022.

Material Weaknesses in Internal Control over Financial Reporting

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected and corrected on a timely basis.

Changes in Control Environment

The Company did not conduct an effective risk assessment to identify and assess changes in its business processes and internal control environment related to newly acquired companies and multiple information technology ("IT") system implementations that occurred in 2022. Further, there was a lack of adequate personnel resources in accounting, IT and other support functions to support simultaneous system implementations and business process integrations for acquired companies, implement appropriate controls for acquired companies and maintain focus on compliance with internal controls for legacy Bioventus processes.

In addition, during 2022, the Company saw an unprecedented level of turnover in roles that drive execution of internal control activities. This turnover, paired with business changes related to acquisitions, resulted in a disruption to the effective completion of control activities across a number of business processes. Further, management identified a gap in control design related to sufficient tracking of control performance to ensure controls operated effectively.

In considering these breakdowns in the control environment, Bioventus has determined the associated COSO principles requiring further control and action by management to be:

(a) Control environment - Establishes structure, authority, and responsibility (COSO Principle 3);

(b) Risk assessment – Identifies and analyzes significant change (COSO Principle 9); and

(c) Monitoring – Conducts ongoing and /or separate evaluations (COSO Principle 16).

These control deficiencies when considered in the aggregate create a reasonable possibility that a material misstatement to the consolidated financial statements will not be prevented or detected on a timely basis, and therefore, management concluded that the deficiencies represent a material weakness in our internal control over financial reporting, and our internal control over financial reporting was not effective as of December 31, 2022.

Remediation Measures

(a) We identified staffing gaps based on employee turnover and integration challenges. Throughout 2022, we hired personnel and temporary resources to backfill positions vacated due to employee turnover and added additional headcount in accounting, finance and IT to expand capacity.

(b) In the fourth quarter of 2022, we engaged third-party consultants to perform an Accounting Transformation & Integration Assessment ("Project Action"). The Project Action team identified priority initiatives to enhance processes and systems to address inadequate processes, including order to cash, procure to pay and related master data processes. Further, Project Action benchmarked resources for the accounting function.

(c) As part of Project Action, we intend to develop mid- to long-term plans to further scale accounting, finance and IT for growth and public company requirements and continue to assess the level of resources that we need. We plan to continue to evaluate retention programs to retain key resources.

(d) We will prioritize key projects and ensure organizational capacity, with only essential IT projects occurring during the year.

(e) We are reinforcing execution rigor and are establishing recurring metrics regarding internal controls in processes, and tracking current performance compared with target performance to provide additional visibility to management and the Audit Committee. We also plan to further utilize our systems to automate the tracking of internal control completion.

(f) We will implement regular internal control certifications by control owners for all key controls.

(g) We will drive additional accountability for control owners by tying a portion of their performance objectives to successful completion of internal controls.

(h) We will increase training on internal controls, public company requirements and rigor through additional training requirements for new and existing control owners and tracking compliance to those training requirements.

(i) We will update and/or develop standard operating procedures to further document process and control performance for use in day-to-day execution and when training new employees.

(j) Further, we plan to implement a new internal control policy that further defines expectations for internal control performance and communication of changes to financially relevant processes. This policy will require management and internal audit approval before process changes or system implementations go-live.

Rebates Accrual Material Weakness

As previously reported, we identified a material weakness related to the Company's internal controls over financial reporting that were not performed at a sufficient level of precision to ensure that the third quarter 2022 rebates accrual was complete and accurate. The process undertaken to estimate the expected reduction in revenue from rebates was consistent with the Company's historical practice. However, subsequent to the initial calculation of the third quarter 2022 rebates accrual, an unexpectedly large invoice was received and there were not processes in place to ensure it was reviewed timely in order to update the accrual.

The Company reassessed open rebates accruals and the approach for calculating the rebate accruals based on this invoice. The Company revised its estimation methodology resulting in a decrease of revenue of $8.4 million. This adjustment was recorded subsequent to the earnings release but prior to the filing of the Company's Quarterly Report on Form 10-Q for the third quarter of 2022. Further, this change in revenue projection related to the rebates accrual adjustment for 2022 and cascading effect on future revenue projections materially impacted the Company's evaluation of its ability to meet debt covenants in its Amended 2019 Credit Agreement, resulting in liquidity and going concern disclosures in the Company's Quarterly Report on Form 10-Q for the third quarter of 2022.

Remediation Measures

We have designed and implemented new processes and enhanced controls to address the underlying causes of the material weakness related to the rebates accrual, including:

- Reassessing open rebates accruals and changing the estimation method for calculating the rebates accruals, including enhancing the precision of the controls;
- Implementing enhanced controls and status tracking to ensure that rebates invoices from third-party payers are received and reviewed timely; and
- Increasing rigor of documenting key conversations with payers.

The Company is in the process of implementing enhanced procedures to ensure the completeness and accuracy of key reports and information used in the rebates accrual and further enhancing the precision of supporting documentation for control performance.

We believe the actions described with respect to our control environment and rebates accrual processes will be sufficient to remediate the identified material weaknesses and strengthen our internal control over financial reporting. However, the new and enhanced controls have not all been fully implemented and/or have not operated for a sufficient amount of time to conclude that our material weaknesses have been fully remediated. We will continue to implement and monitor the effectiveness of our controls and will make any further changes management determines appropriate.

Notwithstanding the identified material weaknesses above, the Chief Executive Officer and Chief Financial Officer believe that the financial statements and related financial information included in this Annual Report fairly present, in all material respects, our balance sheets, statements of operations and comprehensive (loss) income, statement of changes in stockholders' and members' equity and statements of cash flows as of and for the periods presented.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the fourth quarter of 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting except for changes to controls resulting from the material weaknesses described above.

Attestation Report of Independent Registered Public Accounting Firm

This Annual Report does not include an attestation report on our internal control over financial reporting of our registered public accounting firm due to an exemption established by the JOBS Act for emerging growth companies.

Item 9B. Other Information.

On March 31, 2023 (the "Closing Date"), Bioventus LLC, a Delaware limited liability company and subsidiary of Bioventus Inc. ("Bioventus LLC" or the "Company") and certain of its subsidiaries entered into an Amendment No. 4 to the Credit and Guaranty Agreement (the "Fourth Amendment") with Wells Fargo Bank, National Association, as administrative agent and collateral agent, and the lenders and other financial institutions party thereto, which amended the Credit and Guaranty Agreement, dated as of December 6, 2019 (the "2019 Credit Agreement," and, as amended by that certain Amendment No. 1 to Credit and Guaranty Agreement, dated as of August 29, 2021, by the Second Amendment to Credit and Guaranty Agreement, dated as of October 29, 2021, by the Third Amendment to Credit and Guaranty Agreement, dated as of July 11, 2022, and by the Fourth Amendment, the "Amended 2019 Credit Agreement").

Interest

With respect to each of the term loans and the revolving facility of Bioventus LLC outstanding under the Amended 2019 Credit Agreement as of the Closing Date, Bioventus LLC may elect either SOFR or Base Rate interest rate options for the entire amount or certain portions of the loans and have interest rates equal to a formula driven base interest rate plus a margin, tied to a leverage ratio. The leverage ratio is the ratio of debt to Consolidated Adjusted EBITDA as defined in the Amended 2019 Credit Agreement for four consecutive quarters at the end of each period. Pursuant to the Fourth Amendment, the margin at each applicable leverage ratio will be increased by 1.00% per annum.

Maturity

Each of the term loans outstanding under the Amended 2019 Credit Agreement will mature on October 29, 2026. The revolving facility outstanding under the Amended 2019 Credit Agreement will mature on October 29, 2025.

Other

The Amended 2019 Credit Agreement contains customary affirmative and negative covenants, including those related to financial reporting and notification, restrictions on the declaration or payment of certain distributions on or in respect of Bioventus LLC's equity interests, restrictions on acquisitions, investments and certain other payments, limitations on the incurrence of new indebtedness, limitations on transfers, sales and other dispositions of assets of Bioventus LLC and its subsidiaries, as well as limitations on making changes to the business and organizational documents of Bioventus LLC and its subsidiaries. Financial covenant requirements include (i) a maximum debt leverage ratio of not greater than 6.84 to 1.00 for the testing period ending March 31, 2023, 6.50 to 1.00 for the testing period ending June 30, 2023, 7.26 to 1.00 for the testing period ending September 30, 2023, 5.64 for the testing period ending December 31, 2023, 5.65 to 1.00 for the testing period ending March 31, 2024, 4.25 for the testing period ending June 30, 2024, 4.25 to 1.00 for the testing period ending September 30, 2024, and 4.00 to 1.00 for the testing period ending December 31, 2024 and each testing period thereafter, and, beginning with the testing period ending December 31, 2024, to be subject to a temporary increase to 4.50 to 1.00 upon certain events, and (ii) an interest coverage ratio not less than 2.25 to 1.00 for the testing period ending March 31, 2023, 2.21 to 1.00 for the testing period ending June 30, 2023, 1.70 to 1.00 for the testing period ending September 30, 2023, 1.98 to 1.00 for the testing period ending December 31, 2023, 2.25 to 1.00 for the testing period ending March 31, 2024, 2.25 to 1.00 for the testing period ending June 30, 2024, 2.25 to 1.00 for the testing period ending September 30, 2024 and 3.00 to 1.00 for the testing period ending December 31, 2024 and each testing period thereafter. In addition, during the period commencing on the Closing Date and ending upon the satisfaction of certain conditions occurring not prior to the delivery of financial statements of the Company for the fiscal quarter ending June 30, 2024, the Company will be subject to certain additional requirements and covenants, including a requirement to maintain Liquidity (as defined in the Amended 2019 Credit Agreement) of not less than $10,000,00 as of the end of each calendar month during such period.

The foregoing summary is qualified in its entirety by reference to the Fourth Amendment, which is attached hereto as an Exhibit 10.8(d). The Fourth Amendment and the Amended 2019 Credit Agreement are not intended to be a source of factual, business or operational information about the Company or its subsidiaries. The representations, warranties and covenants contained in the Fourth Amendment and the Amended 2019 Credit Agreement were made only for purposes of such agreements and as of specific dates, were solely for the benefit of the parties to such agreements, and may be subject to limitations agreed upon by the parties, including being qualified by disclosures for the purpose of allocating contractual risk between the parties instead of establishing matters as facts; and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors or security holders. Accordingly, investors should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the parties. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Fourth Amendment, which subsequent information may or may not be fully reflected in the Company's public disclosures.

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

Not Applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The following table sets forth the name, age and position(s) of each of our directors and executive officers as of March 16, 2023:

Name	Age	Position(s)
Executive Officers		
Kenneth M. Reali	57	Chief Executive Officer and Director
Mark L. Singleton	54	Senior Vice President and Chief Financial Officer
Anthony D'Adamio	62	Senior Vice President and General Counsel
Katrina Church	61	Senior Vice President and Chief Compliance Officer
Non-Employee Directors		
William A. Hawkins[4]	69	Director, Chairperson
John A. Bartholdson	52	Director
Patrick J. Beyer[1]	57	Director
Philip G. Cowdy[3]	55	Director
Mary Kay Ladone[1][2]	56	Director
Michelle McMurry-Heath[3][4]	53	Director
Guido J. Neels[2]	74	Director
Guy P. Nohra[2]	62	Director
Martin P. Sutter[3]	67	Director
Susan M. Stalnecker[1][4][5]	70	Director

(1) Member of the audit and risk committee

(2) Member of the compensation committee

(3) Member of the nominating and corporate governance committee

(4) Member of the compliance, ethics and culture committee

(5) Chair of audit and risk committee

Kenneth M. Reali has served as our Chief Executive Officer since April 2020 and as a member of our board of directors ("Board") since September 2020. Mr. Reali previously served as President and Chief Executive Officer of Clinical Innovations, LLC, a medical device company focused on advancing woman's healthcare, from June 2015 until its successful sale on February 12, 2020. In this role, Mr. Reali led the company through two successful acquisitions by a private equity firm in October 2017 and later to a leading diagnostic and therapeutic medical technology company in February 2020. Prior to joining Clinical Innovations, LLC, Mr. Reali also served as the President and CEO of Baxano Surgical, Inc., a medical device company, from January 2010 until February 2015, leading its turn-around out of bankruptcy. Mr. Reali also held positions of increasing responsibility at several medical device companies, including Biomet, Inc. (now known as Zimmer Biomet) and Stryker Corporation. Mr. Reali also served as Senior Vice President and General Manager within the Biologics and Clinical Therapies business of Smith & Nephew plc from May 2005 to January 2010, a division which was later spun out to become Bioventus LLC ("BV LLC"). Mr. Reali served as a member of the board of managers of BV LLC from April 2020 until the time of our IPO. Mr. Reali also currently serves as a member of the board of directors of the Advanced Medical Technology Association, or AdvaMed, an American medical device trade association, and DYSIS Medical Ltd., a privately held medical device company focused on the noninvasive, in-vivo detection of cancerous and pre-cancerous lesions. Mr. Reali also serves on the ethics and health care compliance committee of AdvaMed. Mr. Reali also served from 2015 to December 2021 as a member of the board of directors of Ossio, Ltd. an orthopedic device company, where he was a member of the compensation committee. Mr. Reali holds a Bachelor of Science in Business Administration from Valparaiso University. We believe Mr. Reali is qualified to serve on our Board because of his vast skills and experience in the medical device industry, his role as our Chief Executive Officer and his extensive knowledge of the Company.

Mark Singleton has served as our Senior Vice President and Chief Financial Officer since effective March 2022. Mr. Singleton previously served as Vice President of Finance, Americas Strategic Business Units at Teleflex Inc. ("Teleflex"), a provider of specialty medical devices, from February 2021 to March 2022 and prior to that, served as Teleflex's Vice President of Finance, Vascular Strategic Business Unit from 2014 to 2020. Prior to Teleflex, Mr. Singleton held multiple leadership roles at Lenovo Group Limited, a multinational technology company, including as Executive Director, Think Business Group Chief Financial Officer (2013-2014), Executive Director, Western Europe Chief Financial Officer (2011-2012), Executive Director, North America Chief Financial Officer (2007-2011) and Director, U.S. Finance Manager (2005-2007). Mr. Singleton received his Bachelor of Science from Purdue University and his Master of Business Administration from Duke University, Fuqua School of Business.

Anthony D'Adamio has served as our Senior Vice President and General Counsel since August 2017. Previously, Mr. D'Adamio was General Counsel and Secretary at Siemens Healthcare (now known as Siemens Healthineers AG) from January 2010 to August 2017 and served as Deputy General Counsel and Secretary of Siemens Healthcare Diagnostics from January 2007 to January 2010. Prior to that, Mr. D'Adamio was Senior Counsel within the Diagnostics Division of Bayer Healthcare LLC (now known as Siemens Healthcare Diagnostics) from January 2001 to December 2006. Mr. D'Adamio began his legal career at the law firm of Bond, Schoeneck & King before taking corporate legal positions with companies within the health insurance, pharmaceutical and biotechnology industries, including Group Health Incorporated, Quest Diagnostics and Covance Inc. Mr. D'Adamio holds a Juris Doctor, cum laude, from Howard University School of Law and a Bachelor of Arts from the State University of New York at Binghamton.

Katrina Church has served as our Chief Compliance Officer since August 2020. Prior to joining us, Ms. Church served in corporate counsel and compliance roles within the Merz Group of companies, most recently as Global Compliance Officer for Merz Pharma GmbH & Co KGaA, a privately-held pharmaceutical company, from March 2015 to August 2020. From June 1998 to December 2008, Ms. Church was Executive Vice President and General Counsel of Connetics Corporation, a specialty pharmaceutical company that was acquired by Stiefel Laboratories, Inc. in 2008. Ms. Church began her career as an attorney at Hopkins & Carley, a San Jose-based law firm. In 2020, Ms. Church was nominated for several industry awards for compliance training and received the 2020 Women in Compliance Award for "Most Impactful Compliance Training Programme of the Year" and the Brandon Hall 2020 Gold Medal for Excellence in Training. Ms. Church holds a Juris Doctor from New York University School of Law and a Bachelor of Arts in Comparative Literature, magna cum laude, from Duke University.

William A. Hawkins has served as a member of our Board since September 2020 and as Chairperson of our Board since September 2020. Mr. Hawkins is a Senior Advisor to EW Healthcare Partners, a leading private equity firm investing in life sciences. From October 2011 to July 2015, Mr. Hawkins served as President and Chief Executive Officer of Immucor, Inc., a leading provider of transfusion and transplantation diagnostic products worldwide. Prior to that, Mr. Hawkins served in positions of increasing responsibility at Medtronic, Inc., a prominent medical technology company, from January 2002 to June 2011, most recently serving as its Chief Executive Officer from November 2007 to June 2011. Mr. Hawkins served as President and Chief Executive Officer of Novoste Corporation, a global leader in the field of vascular brachytherapy, from 1988 to 2002 and has also held several senior leadership positions at American Home Products (now known as Wyeth, LLC), Johnson & Johnson, Guidant Corp. and Eli Lilly and Co. Mr. Hawkins served as a member of the board of managers of BV LLC from January 2016 until the time of our IPO. Mr. Hawkins also currently serves on the board of directors of Biogen Inc. and MiMedx Group Inc., each a public biopharmaceutical company; and Baebies, Inc., Cirtec Medical Corp., Immucor, Inc., Enterra Medical and Virtue Labs, LLC, each a privately-held life science company. Mr. Hawkins serves on the compensation committee of Biogen and chairs the ethics and compliance committee of MiMedx. Mr. Hawkins previously served on the Board of Directors of Avanos Medical, Inc. from 2015 to April 2021. Mr. Hawkins was elected to the Duke University Board of Trustees in 2011 and currently serves as its Vice Chairman. Mr. Hawkins is also Chair of the Duke University Health System board of director and a member of the board of directors of the North Carolina Biotechnology Center and the Focused Ultrasound Foundation Society. Mr. Hawkins holds a Master of Business Administration from the University of Virginia Darden School of Business and received a Bachelor of Science in electrical and biomedical engineering from Duke University. Mr. Hawkins was selected to serve on our Board because of his experience in and knowledge of the life science industry.

Patrick J. Beyer has served as a member of our Board since October 2021. Mr. Beyer is the President of International and Global Orthopedics for ConMed Corporation, a publicly held medical technology company, a position in which he has served since October 2020. He previously served as President of ConMed International from December 2014 to October 2020. Prior to joining ConMed, Mr. Beyer served as Chief Executive Officer of ICNet, a privately held infectious control software company from 2010 to 2014 when the company was sold. Prior to this, he spent 21 years at Stryker Corporation where he led Stryker Europe from 2005 to 2009; Stryker UK, South Africa and Ireland from 2002 to 2005 and Stryker Medical from 1999 to 2002. Mr. Beyer previously served on the board of directors of Misonix, Inc. from May 2021 to October 2021, where he was a member of its audit committee. Mr. Beyer graduated from Kalamazoo College with a Bachelor of Arts in Economics, Western Michigan University with a Master of Business Administration in Finance and Harvard Business School's Advanced Management Program. Mr. Beyer was selected to serve on our Board because of his extensive healthcare and public company experience.

Philip G. Cowdy has served as a member of our Board since September 2020. Mr. Cowdy has served as the Chief Business Development and Corporate Affairs Officer for Smith & Nephew plc, a medical equipment manufacturing company, since 2018 Since joining Smith & Nephew plc in June 2008, he has also served as Executive Vice President of Business Development and Corporate Affairs, Head of Corporate Affairs and Strategic Planning, Group Director of Corporate Affairs and Director of Investor Relations. Prior to joining Smith & Nephew plc, Mr. Cowdy served as a Senior Director at Deutsche Bank for 13 years, providing corporate finance and equity capital markets advice to a variety of UK-based companies. Mr. Cowdy served as a member of the board of managers of BV LLC from January 2012 to October 2017 and again from July 2018 until the time of our IPO, and has served as a member of its Audit, Compliance and Quality Committee. Mr. Cowdy received his Bachelor of Science in Natural Sciences from Durham University ("UK") and is a qualified chartered accountant. Mr. Cowdy was selected to serve on our Board because of his experience in the industry, his finance experience, and his knowledge of the Company.

Mary Kay Ladone has served as a member of our Board since July 2021. Ms. Ladone served as Senior Vice President, Corporate Development, Strategy and Investor Relations, of Hill-Rom Holdings, Inc. ("Hill-Rom"), a medical technology provider, from December 2018 to December 2021. Ms. Ladone previously served as Hill-Rom's Vice President, Investor Relations, July 2016 to December 2018. Ms. Ladone served as Senior Vice President, Investor Relations, of Baxalta Inc. from 2015 to 2016 before joining Hill-Rom. Prior to Baxalta Inc., Ms. Ladone served in a variety of senior finance, business development and investor relations roles for Baxter International, Inc. Since March 2022, Ms. Ladone has also served on the board of directors of Inogen Inc., a publicly traded supplemental oxygen therapies provider, where she is a member of the audit and compensation committees. Ms. Ladone also serves on the board of directors of Kestra Medical Technologies, Inc., a privately held wearable medical device and digital healthcare company, where she has been the chair of the audit committee since September 2022. Ms. Ladone holds a Bachelor of Arts in Finance and Economics from the University of Notre Dame. Ms. Ladone was selected to serve on our Board due to her significant finance and investor relations experience at large healthcare companies.

Michelle McMurry-Heath, MD, PhD, has served as a member of our Board since January 2022. Dr. McMurry-Heath served as President and Chief Operating Officer of the Biotechnology Innovation Organization, a membership and advocacy organization focused on improving biotech research and applying biotech innovations to major healthcare challenges, from 2020 to 2022. Dr. McMurry-Health was previously with Johnson & Johnson ("J&J") from 2014 to 2020, where she served as Global Head of Evidence Generation for Medical Device Companies and then Vice President of Global External Innovation and Global Leader for Regulatory Sciences. Prior to her time at J&J, Dr. McMurry-Heath was a key science policy leader in government, conducting a comprehensive analysis of the National Science Foundation's policies, programs and personnel. President Obama then named her associate science director of the FDA's Center for Devices and Radiological Health where she served from 2010 to 2014. From 2005 to 2010, Dr. McMurry-Heath was Director of the Health, Biomedical Science and Society Policy Program at the Aspen Institute. Dr. McMurry-Heath began her career as a Senior Policy Advisor for Senator Joseph Lieberman for Health, Social, and Biomedical Innovation Policy from 2001 to 2004. She later served as a Robert Wood Johnson Health and Society Scholar at the University of California, San Francisco and Berkeley from 2004 to 2005 and a Mcarthur Fellow, Global Health for the Council on Foreign Relations from 2004 to 2006. Dr. McMurry-Heath also serves on the Board of Directors at publicly traded PerkinElmer, where she is a member of the audit committee. Dr. McMurray-Heath received her M.D./Ph.D. in Immunology from Duke University's Medical Scientist Training Program, becoming the first African American to graduate from the prestigious program, and her AB in Biochemistry from Harvard University. Dr. McMurry-Heath was selected to serve on our Board due to her significant policy, regulatory, commercial health care and advocacy experience.

Guido J. Neels has served as a member of our Board since September 2020. Mr. Neels has been with EW Healthcare Partners (formerly Essex Woodlands), a healthcare growth equity and venture capital firm, since August 2006, where he is has served as Operating Partner since 2013. Prior to joining EW Healthcare Partners, Mr. Neels served in a variety of management positions at Guidant Corporation, a developer of cardiovascular medical products. From July 2004 until retiring in November 2005, Mr. Neels served as Guidant's Chief Operating Officer, where he was responsible for the global operations of Guidant's four operating units: Cardiac Rhythm Management, Vascular Intervention, Cardiac Surgery and Endovascular Solutions. From December 2002 to July 2004, Mr. Neels served as Guidant's Group Chairman, Office of the President, responsible for worldwide sales operations, corporate communications, corporate marketing, investor relations and government relations. In January 2000, Mr. Neels was named Guidant's President, Europe, Middle East, Africa and Canada. In addition, Mr. Neels served as Guidant's Vice President, Global Marketing, Vascular Intervention, from 1996 to 2000 and as Guidant's General Manager, Germany and Central Europe, from 1994 to 1996. Mr. Neels served as a member of the board of managers of BV LLC from May 2012 until the time of our IPO. Mr. Neels also currently serves on the board of directors of Axogen, Inc. and is a member of its compensation committee. Mr. Neels previously served on the board of directors of Endologix, Inc. from December 2010 to June 2019 and on the board of directors of Entellus Medical from November 2009 to February 2018, each of which is a public company. Mr. Neels holds a Master in Business Administration from the Stanford University Graduate School of Business and received his Business Engineering degree from the University of Leuven in Belgium. Mr. Neels was selected to serve on our Board because of his experience in the industry, familiarity with serving on the boards of public companies and his knowledge of our business.

Guy P. Nohra has served as a member of our Board since September 2020. In March 1996, Mr. Nohra co-founded Alta Partners, a life sciences venture capital firm, and he has since been involved in the funding and development of numerous medical technology and life sciences companies. Mr. Nohra served as a member of the board of managers of BV LLC, from May 2012 until the time of our IPO. Mr. Nohra currently serves as a member of the boards of directors of Spiral Therapeutics, Inc., a private life sciences company. He also previously served on the board of directors of various public companies, including ATS Medical, Inc., Cutera, Inc., AcelRx Pharmaceuticals, Inc., and ZS Pharma, as well as several private companies, including Bionure, Inc., Sanifit Therapeutics S.A., Carbylan Biosurgery, Inc., Cerenis Therapeutics, Coapt Systems, Paracor Medical, Inc. and PneumRx. Mr. Nohra holds a Master in Business Administration from the University of Chicago and received his Bachelor of Arts in History from Stanford University. Mr. Nohra was selected to serve on our Board because of his extensive experience in the life sciences industry, his investment and development experience, and his service as a director of other life sciences companies.

Martin P. Sutter has served as a member of our Board since September 2020. Mr. Sutter is one of the two founding Managing Directors of EW Healthcare Partners (previously known as Essex Woodlands), one of the oldest and largest life sciences and healthcare focused growth equity and venture capital firms, which he formed in 1985. Mr. Sutter has more than 35 years of management experience in operations, marketing, finance and venture capital. Mr. Sutter served as a member of the board of managers of BV LLC from May 2012 until the time of our IPO. Mr. Sutter also currently serves on the board of directors of MiMedx Group, Inc., a publicly traded regenerative medicine life sciences company, and Prolacta Biosciences, Inc., a privately held life sciences company. Mr. Sutter has also previously served on the board of directors of Abiomed, Inc., Tissue Tech, Inc. and Suneva Medical, Inc. Mr. Sutter currently serves on the compensation and nominating and governance committees of MiMedx Group, Inc. and Prolacta Biosciences, Inc. and previously served on the compensation and nominating and governance committee of Abiomed, Inc. Mr. Sutter holds a Master of Business Administration from the University of Houston and received his Bachelor of Science from Louisiana State University. Mr. Sutter was selected to serve on our Board because of his extensive experience in the life sciences industry, his investment experience, and his service as a director of other life sciences companies.

Susan M. Stalnecker has served as a member of our Board since September 2020. Ms. Stalnecker has been a Senior Advisor at Boston Consulting Group, a global management consulting firm, since March 2016. Ms. Stalnecker served as Vice President of E.I. duPont de Nemours and Co. (now known as DuPont de Nemours, Inc., or DuPont), a diversified science and innovations public company and leader in the fields of healthcare, electronics and transportation, from December 1976 until she retired in 2016. During her nearly 40-year career at DuPont, Ms. Stalnecker served in several senior leadership roles including Vice President, Treasurer & M&A; Vice President, Risk Management; Vice President, Government and Consumer Markets; and Vice President, Productivity & Shared Services. Ms. Stalnecker served as a member of the board of managers of BV LLC from November 2018 until the time of our IPO. Ms. Stalnecker also currently serves on the board of directors of Leidos Holding, Inc. and Optimum Funds McQuairie, and serves on the Board of Trustees of the Duke Health System. She also serves on the audit & finance committee of Leidos Inc., the audit committee of Optimum Funds McQuairie and the compliance, audit & finance committees of the Duke Health System. Ms. Stalnecker holds a Master of Business Administration from The Wharton School of the University of Pennsylvania and received her Bachelor of Arts from Duke University. Ms. Stalnecker was selected to serve on our Board because of her extensive experience as a financial expert, her investment experience, and her service as a director of other public companies.

John A. Bartholdson was appointed as a member of our Board in January 2023 and his appointment became effective January 8, 2023. Mr. Bartholdson is the co-founder and has been a Partner of Juniper Investment Company, a private investment management firm that invests in publicly traded and private companies through concentrated ownership positions, since its inception in 2007. Mr. Bartholdson has 25 years of experience leading and overseeing private and public equity investments. His experience includes extensive management oversight, service on multiple public and private company boards, and deep transactional expertise. Mr. Bartholdson presently serves as the Chairman of the board of directors of Theragenics Corporation, a medical device company serving the surgical products and prostate cancer treatment markets. From 2019, he has been a member of the board of directors of Lincoln Educational Services Corporation, a public company and a leading provider of career education and training services, and presently serves on its Compensation, Audit and Nominating and Corporate Governance Committees. Previously, he served as a member of the board of directors of Obagi Medical Products, Inc., a public specialty pharmaceutical company, until its acquisition by Valeant Pharmaceuticals in 2013. In addition, Mr. Bartholdson has previously served on the board of directors of numerous private companies. Mr. Bartholdson was a Partner of Stonington Partners, where he worked from 1997 to 2011. Prior to that, he was an analyst at Merrill Lynch Capital Partners from 1992 to 1994. Mr. Bartholdson received his Bachelor of Arts from Duke University and his Master of Business Administration from Stanford Graduate School of Business. Mr. Bartholdson was selected to serve on our board because of his significant governance, finance, and transactional experience on multiple public and private company boards.

Code of compliance and ethics

We have a written code of compliance and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. A current copy of the code is posted on our website, *www.bioventus.com*. In addition, we intend to post on our website all disclosures that are required by law or Nasdaq listing standards concerning any amendments to, or waivers from, any provision of the code. The information on our website is deemed not to be incorporated in this Annual Report or to be part of this Annual Report.

The remaining information required by this item is incorporated by reference to our definitive proxy statement for our 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2022.

Item 11. Executive Compensation.

The information required by this item is incorporated by reference to the information under the section captioned “Executive and Director Compensation” in our definitive proxy statement for our 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2022.

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

The information required by this item is incorporated by reference to the information under the section captioned “Security Ownership of Certain Beneficial Owners and Management” in our definitive proxy statement for our 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2022.

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

The information required by this item is incorporated by reference to the information under the section captioned “Certain Relationships and Related Party Transactions” in our definitive proxy statement for our 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2022.

Item 14. Principal Accounting Fees and Services.

The information required by this item is incorporated by reference to the information under the section captioned “Report of the Audit and Risk Committee of the Board of Directors” in our definitive proxy statement for our 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2022.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a) *Financial Statements.* See the table of contents under *Part II, Item 8. Financial Statements and Supplementary Data* of this Annual Report on Form 10-K above for the list of financial statements filed as part of this report.

(b) *Exhibits.* The following is a list of exhibits filed as part of this Annual Report on Form 10-K.

Exhibit no.	Description	Form	File No.	Exhibit	Filing Date	Filed / Furnished Herewith
2.1	Agreement and Plan of Merger, dated July 29, 2021, by and among Bioventus Inc., Oyster Merger Sub I, Inc., Oyster Merger Sub II, LLC and Misonix, Inc.	8-K	001-37844	2.1	7/29/2021	
2.2	Agreement and Plan of Merger, dated as of March 30, 2021, by and among Bioventus LLC, Bioness Inc., Perseus Intermediate, Inc., Perseus Merger Sub, Inc., Alfred E. Mann Living Trust and Mann Group, LLC.	8-K	001-37844	10.1	3/31/2021	
3.1	Amended and Restated Certificate of Incorporation of Bioventus Inc.	8-K	001-37844	3.1	2/17/2021	
3.2	Amended and Restated Bylaws of Bioventus Inc.	8-K	001-37844	3.2	2/17/2021	
4.1	Specimen Stock Certificate evidencing the shares of Class A common stock.	S-1	333-252238	4.1	1/20/2021	
4.2	Description of Capital Stock.	10-K	001-37844	4.2	3/26/2021	
10.1	Tax Receivable Agreement, dated as of February 16, 2021, by and among Bioventus Inc., Bioventus LLC and its Members.	8-K	001-37844	10.2	2/17/2021	
10.2	Registration Rights Agreement, dated February 16, 2021, by and among Bioventus Inc. and the Original LLC.	8-K	001-37844	10.3	2/17/2021	
10.3	Second Amended and Restated Limited Liability Company Agreement of Bioventus LLC dated as of February 16, 2021.	8-K	001-37844	10.1	2/17/2021	
10.4	Stockholders Agreement, dated February 16, 2021, by and among Bioventus Inc., Bioventus LLC and the Principal Stockholders.	8-K	001-37844	10.4	2/17/2021	
10.5†	Amended and Restated License Agreement, dated as of December 9, 2016, by and between Bioventus LLC, Q-Med AB and Nestlé Skin Health S.A.	S-1	333-252238	10.5	1/20/2021	
10.6†	Amended and Restated Supply Agreement, dated as of December 9, 2016, by and between Bioventus LLC and Q-Med AB.	S-1	333-252238	10.6	1/20/2021	
10.7†	Exclusive License, Supply and Distribution Agreement, dated as of February 9, 2016, by and between IBSA Institut Biochimique SA (Switzerland) and Bioventus LLC.	S-1	333-252238	10.7	1/20/2021	

Exhibit no.	Description	Form	File No.	Exhibit	Filing Date	Filed / Furnished Herewith
10.7(a)†	Amendment No. 1 to Exclusive License, Supply and Distribution Agreement, dated as of December 31, 2018, by and between IBSA Institut Biochimique SA (Switzerland) and Bioventus LLC.	S-1	333-252238	10.7(a)	1/20/2021	
10.7(b)†	Amendment No. 2 to Exclusive License, Supply and Distribution Agreement, dated as of December 31, 2020, by and between IBSA Institut Biochimique SA (Switzerland) and Bioventus LLC.	S-1/A	333-252238	10.7(b)	2/4/2021	
10.8	Credit and Guaranty Agreement, dated as of December 6, 2019, by and among Bioventus LLC, certain Guarantor Subsidiaries party thereto, Wells Fargo Bank, National Association, as administrative agent and collateral agent and the lenders and other financial institutions party thereto.	S-1	001-37844	10.11	1/20/2021	
10.8(a)	Amendment No. 1 to Credit and Guaranty Agreement, dated as of August 29, 2021, by and among Bioventus LLC, certain Guarantor Subsidiaries party thereto, Wells Fargo Bank, National Association, as administrative agent and the lenders and other financial institutions party thereto.	10-Q	001-37844	10.1	11/10/2021	
10.8(b)	Amendment No. 2 to Credit and Guaranty Agreement, dated as of October 29, 2021, by and among Bioventus LLC, Oyster Merger Sub I, LLC, Oyster Merger Sub II, LLC, Misonix, Inc., certain Guarantor Subsidiaries party thereto, Wells Fargo Bank, National Association, as administrative agent and the lenders and other financial institutions party thereto.	8-K	001-37844	10.1	10/29/2021	
10.8(c)	Amendment No. 3 to Credit and Guaranty Agreement between Bioventus LLC, Guarantor Subsidiaries party thereto, Wells Fargo Bank, National Association, as administrative agent, dated July 11, 2022.	8-K	001-37844	10.1	7/12/2022	
10.8(d)	Amendment No. 4 to Credit and Guaranty Agreement between Bioventus LLC, Guarantor Subsidiaries party thereto, Wells Fargo Bank, National Association, as administrative agent, dated March 31, 2023.					*
10.9^	Director Offer Letter, dated as of December 11, 2015, by and between Bioventus LLC and William A. Hawkins.	S-1	333-252238	10.33	1/20/2021	
10.10^	Retention Letter, dated as of April 13, 2020, by and between Bioventus LLC and John E. Nosenzo.	S-1	333-252238	10.35	1/20/2021	
10.11^	Director Offer Letter, dated as of October 3, 2018, by and between Bioventus LLC and Susan M. Stalnecker.	S-1	333-252238	10.38	1/20/2021	
10.12^	Phantom Profits Interest Plan Award Agreement, dated as of June 25, 2020, by and between Bioventus LLC and Kenneth M. Reali.	S-1	333-252238	10.42	1/20/2021	

Exhibit no.	Description	Form	File No.	Exhibit	Filing Date	Filed / Furnished Herewith
10.13^	Option Letter, dated as of July 30, 2020, by and between Bioventus LLC and Kenneth M. Reali.	S-1	333-252238	10.43	1/20/2021	
10.14^	Bioventus Inc. 2021 Employee Stock Purchase Plan.	S-1/A	333-252238	10.44	2/4/2021	
10.15^	Bioventus Inc. 2021 Equity Incentive Plan.	10-Q	001-37844	10.3	8/12/2022	
10.16^	Form of Notice of Stock Option Grant and Stock Option Agreement.	S-1/A	333-252238	10.47	2/10/2021	
10.17^	Form of Restricted Stock Unit Award Grant Notice and Restricted Stock Unit Agreement.	S-1/A	333-252238	10.48	2/10/2021	
10.18^	Bioventus Inc. Non-Employee Director Compensation Policy.	S-1/A	333-252238	10.51	2/10/2021	
10.19^	Employment Agreement, dated as of February 9, 2021, by and among Bioventus Inc., Bioventus LLC and Kenneth Reali.	S-1/A	333-252238	10.52	2/10/2021	
10.20^	Employment Agreement, dated as of February 9, 2021, by and among Bioventus Inc., Bioventus LLC and Gregory O. Anglum.	S-1/A	333-252238	10.53	2/10/2021	
10.21^	Employment Agreement, dated as of February 9, 2021, by and among Bioventus Inc., Bioventus LLC and John E. Nosenzo.	S-1/A	333-252238	10.54	2/10/2021	
10.22^	Employment Agreement, dated as of February 9, 2021, by and among Bioventus Inc., Bioventus LLC and Anthony D'Adamio.	S-1/A	333-252238	10.55	2/10/2021	
10.23^	Employment Agreement, dated as of February 9, 2021, by and among Bioventus Inc., Bioventus LLC and Alessandra Pavesio.	S-1/A	333-252238	10.56	2/10/2021	
10.24^	Form of Indemnification Agreement.	S-1/A	333-252238	10.46	2/4/2021	
10.25	Lease Agreement, dated November 17, 2021, between Bioventus LLC and 7101 Goodlett Farms Parkway, LLC.	8-K	001-37844	10.1	11/22/2021	
10.26^	Revised Employment Agreement, dated as of February 14, 2022, by and among Bioventus Inc., Bioventus LLC and Mark Singleton.	8-K	001-37844	10.1	2/28/2022	
10.27^	Bioventus Inc. Restricted Stock Unit Award Grant Notice and Restricted Stock Unit Agreement Inducement Award.	S-8	333-264050	99.1	4/1/2022	
10.28^	Bioventus Inc. Notice of Stock Option Grant Inducement Award.	S-8	333-264050	99.2	4/1/2022	
10.29	Option and Equity Purchase Agreement, between Bioventus LLC, CartiHeal (2009) Ltd., Elron Electronic Industries Ltd., dated July 15, 2020.	S-1	333-252238	10.10	1/20/2021	
10.29(a)	Amendment to Option and Equity Purchase Agreement, between Bioventus LLC, CartiHeal (2009) Ltd., Elron Ventures Ltd. and dated June 17, 2022.	8-K	001-37844	10.1	6/22/2022	

Exhibit no.	Description	Form	File No.	Exhibit	Filing Date	Filed / Furnished Herewith
10.30†	Amended and Restated Exclusive Distribution Agreement No. 2, between Bioventus LLC and Seikagaku Corporation and dated as of December 22, 2020.	S-1	333-252238	10.9	1/20/2021	
21.1	Listing of Subsidiaries					*
23.1	Consent of Grant Thornton LLP (Bioventus Inc.).					*
31.1	Certification of Chief Executive Officer pursuant to Rules 13a-14(a)/15d-14(a) under the Securities Exchange Act of 1934, as amended.					*
31.2	Certification of Chief Financial Officer pursuant to Rules 13a-14(a)/15d-14(a) under the Securities Exchange Act of 1934, as amended.					*
32	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					**
99.1	List of patents and pending patent applications directed to Bioventus Inc.'s material products.					*
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 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 - the cover page XBRL tags are embedded within the Inline XBRL document contained in Exhibit 10					***

* Filed herewith
** Furnished herewith
*** Submitted electronically herewith
† Certain portions of this exhibit have been omitted pursuant to Regulation S-K, Item (601)(b)(10).
^ Indicates management contract or compensatory plan.

(c) *Financial Statement Schedules.* Schedules for which provision is made in the applicable accounting regulation of the Securities and Exchange Commission have been omitted because they are not applicable, not required or the information required is given in the Consolidated Financial Statements and notes thereto set forth above under *Part II, Item 8. Financial Statements and Supplemental Data*.

Item 16. Form 10-K Summary.

None

SIGNATURE

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

BIOVENTUS INC.

By: /s/ Kenneth M. Reali
Name: Kenneth M. Reali
Title: Chief Executive Officer and Director (Principal Executive Officer)

March 31, 2023

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

Name	Date	Title
/s/ Kenneth M. Reali Kenneth M. Reali	March 31, 2023	Chief Executive Officer and Director (Principal Executive Officer)
/s/ Mark L. Singleton Mark L. Singleton	March 31, 2023	Senior Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)
/s/ William A. Hawkins III William A. Hawkins III	March 31, 2023	Chairman
/s/ John A. Bartholdson John A. Bartholdson	March 31, 2023	Director
/s/ Patrick J. Beyer Patrick J. Beyer	March 31, 2023	Director
/s/ Philip G. Cowdy Philip G. Cowdy	March 31, 2023	Director
/s/ Mary Kay Ladone Mary Kay Ladone	March 31, 2023	Director
/s/ Michelle McMurry-Heath Michelle McMurry-Heath	March 31, 2023	Director
/s/ Guido J. Neels Guido J. Neels	March 31, 2023	Director
/s/ Guy P. Nohra Guy P. Nohra	March 31, 2023	Director
/s/ Susan M. Stalnecker Susan M. Stalnecker	March 31, 2023	Director
/s/ Martin P. Sutter Martin P. Sutter	March 31, 2023	Director

Exhibit 10.8(d)

AMENDMENT NO. 4 TO CREDIT AND GUARANTY AGREEMENT

This **AMENDMENT NO. 4 TO CREDIT AND GUARANTY AGREEMENT**, dated as of March 31, 2023 (this "Amendment"), made by and among BIOVENTUS LLC, a Delaware limited liability company ("Borrower"), the Guarantor Subsidiaries party hereto, the Lenders party hereto (the "Consenting Lenders") and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent (the "Administrative Agent"), amends that certain Credit and Guaranty Agreement, dated as of December 6, 2019 (as previously amended by that certain Amendment No. 1 to Credit and Guaranty Agreement, dated as of August 29, 2021, that certain Amendment No. 2 to Credit and Guaranty Agreement, dated as of October 29, 2021, that certain Amendment No. 3 to Credit and Guaranty Agreement, dated as of July 11, 2022, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the effectiveness hereof, the "Credit Agreement"; the Credit Agreement as amended and supplemented by this Amendment, the "Amended Credit Agreement"), by and among the Borrower, the Guarantor Subsidiaries party thereto from time to time, each lender party thereto from time to time (collectively, the "Lenders"), the Administrative Agent and the Collateral Agent.

WHEREAS, in connection with the Credit Agreement, the Credit Parties entered into that certain Pledge and Security Agreement, dated as of December 6, 2019 (as amended, supplemented or otherwise modified prior to the date hereof, the "Existing Pledge and Security Agreement"; the Existing Pledge and Security Agreement, as amended by this Amendment, the "Pledge and Security Agreement"); and

WHEREAS the Borrower has requested and, subject to the terms and conditions set forth herein, the Consenting Lenders (which collectively constitute the Required Lenders) and the Administrative Agent have agreed, to amend the Credit Agreement and the Existing Pledge and Security Agreement as set forth herein;

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, the parties hereto agree as follows:

Section 1. Defined Terms. Each capitalized term used and not otherwise defined herein has the meaning ascribed thereto in the Credit Agreement.

Section 2. Limited Waivers.

(a) Borrower acknowledges and agrees that one or more Defaults or Events of Default have occurred and are continuing (or may have occurred and be continuing) resulting from (i) the Borrower's failure to comply with the financial covenants set forth in Section 6.7(a) of the Credit Agreement as of December 31, 2022, (ii) any amendments, supplements, waivers or other modifications to the CartiHeal Milestone Payments and/or the CartiHeal Equity Purchase Agreement, in each case, pursuant to the CartiHeal Settlement Agreement (as defined in the Amended Credit Agreement), (iii) the disposition of equity interests in CartiHeal and the payment of Settlement Consideration (as defined in the CartiHeal Settlement Agreement), in each case, pursuant to the CartiHeal Settlement Agreement, (iv) any failure to provide notice pursuant to Section 5.1(h) of the Credit Agreement of any Defaults or Events of Default resulting from the events or circumstances described in the foregoing clauses (i) through (iii), or (v) any representation, warranty or certification as to the absence of any Default or Event of Default that was made (or deemed made) by the Borrower in connection with the borrowing of Revolving Loans on January 25, 2023 or February 16, 2023 being false as a result of any Default or Event of Default resulting from the events or circumstances described in the foregoing clauses (i) through (iv) (collectively, the "Specified

Events of Default"). Pursuant to the request of Borrower and subject to the covenants and terms and conditions set forth herein and in reliance on the representations and warranties set forth herein, the Consenting Lenders and Administrative Agent hereby waive the Specified Events of Default (the "Waiver"). The Waiver shall be limited precisely as written and shall not be deemed to constitute: (a) an amendment, consent or waiver of any other terms or conditions of any of the Credit Documents; or (b) a consent to any future amendment, consent or waiver, whether of any subsequent breach of the same provisions or otherwise.

(b) The Consenting Lenders and the Administrative Agent hereby waive the requirement pursuant to Section 2.13(a) of the Credit Agreement to provide advanced written notice in respect of the Fourth Amendment Effective Date Prepayment (as defined below).

Section 3. Amendments to Credit Agreement. Subject to the covenants and terms and conditions set forth herein and in reliance on the representations and warranties set forth herein, the parties hereto agree that, effective as of the Fourth Amendment Effective Date (as hereinafter defined), the Credit Agreement is hereby amended, (i) to delete red or green stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~ and ~~stricken text~~) and (ii) to add the blue or green double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text), in each case, as set forth in the conformed copy of the Credit Agreement attached as Annex A hereto.

Section 4. Amendments to Existing Pledge and Security Agreement. Subject to the covenants and terms and conditions set forth herein and in reliance on the representations and warranties set forth herein, the parties hereto agree that, effective as of the Fourth Amendment Effective Date (as hereinafter defined), the Existing Pledge and Security Agreement is hereby amended:

(a) by adding, in alphabetical order in Section 1.1 of the Existing Pledge and Security Agreement, the following defined term:

"**Excluded Deposit Account**" means, collectively, (a) Deposit Accounts established solely for the purpose of funding payroll, payroll taxes and other compensation and benefits to employees, (b) Deposit Accounts established as trust, escrow or fiduciary accounts, and (c) Deposit Accounts that are zero balance accounts.

(b) by amending and restating Section 2.2(i) thereof to read in full as follows:

(i) (i) Letter of Credit Rights not in excess of $500,000; and (ii) Excluded Deposit Accounts; and

Section 5. Deposit Accounts.

(a) On or before the date that is sixty (60) days (or, solely in the case of the Specified SVB Accounts (as defined below), ninety (90) days) following the Fourth Amendment Effective Date (or such later date as reasonably agreed by the Administrative Agent), Borrower and each Guarantor Subsidiary shall cause each Deposit Account (other than Excluded Deposit Accounts) (as each of such terms is defined in the Pledge and Security Agreement) of the Borrower or any Guarantor Subsidiary maintained in the United States: (i) other than with respect to Specified Non-Lender Accounts (as defined below), to be maintained with a Lender; and (ii) to be subject to a deposit account control agreement in form and substance reasonably satisfactory to Administrative Agent.

(b) For purposes hereof, each of the following terms shall have the meanings set forth below:

"Specified Non-Lender Accounts" means any Deposit Accounts of any Credit Party maintained with Pacific Western Bank (or an affiliate thereof) as of the Fourth Amendment Effective Date; provided that the combined average daily balance of all Specified Non-Lender Accounts shall not exceed $300,000.

"Specified SVB Accounts" means any Deposit Accounts of any Credit Party maintained with Silicon Valley Bank (or any affiliate or successor thereof) as of the Fourth Amendment Effective Date; provided that the combined average daily balance of all Specified SVB Accounts shall not exceed $500,000.

(c) With respect to any Deposit Account that becomes subject to a control agreement in accordance with clause (ii) of Section 5(a) above, the Collateral Agent shall not deliver a notice of control (or similar notice) in respect of such Deposit Account unless an Event of Default has occurred and is then continuing.

Section 6. Amendment Fee. In connection with the transactions contemplated hereby, Borrower shall pay to Administrative Agent, for the ratable benefit of the Lenders, an amendment fee in an aggregate amount equal to: (a) One Million Two Hundred Fifty Thousand Dollars ($1,250,000) (the "Fourth Amendment Fee First Installment"), which amount shall be fully earned, and shall be payable in full in cash, on the Fourth Amendment Effective Date and once paid shall be non-refundable; and (b) Six Hundred Thousand Dollars ($600,000) (the "Fourth Amendment Fee Second Installment"), which amount (subject to the following proviso) shall be fully earned on the Fourth Amendment Effective Date and shall be payable in full in cash on or before December 31, 2023 and once paid shall not be refundable; provided that, notwithstanding the foregoing, in the event that the Total Net Leverage Ratio as at September 30, 2023 is below 5.25 to 1.00, then the Fourth Amendment Fee Second Installment shall not be payable and shall be automatically and permanently discharged in full.

Section 7. Representations and Warranties. In order to induce the Consenting Lenders and the Administrative Agent to enter into this Amendment, each Credit Party hereby represents and warrants to each of the Consenting Lenders and the Administrative Agent that, as of the Fourth Amendment Effective Date, (a) it has the organizational power and authority to execute, deliver and carry out the terms of this Amendment, (b) it has taken all necessary organizational action to authorize the execution, delivery and performance of the Amendment, (c) it has duly executed and delivered the Amendment, (d) except as otherwise expressly provided herein, no Default or Event of Default has occurred and is continuing before or after giving effect to this Amendment, and (e) the representations and warranties contained in Section 4 of the Credit Agreement and in the other Credit Documents are true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which will be true and correct in all respects) on and as of the Fourth Amendment Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties will have been true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which will have been true and correct in all respects) on and as of such earlier date.

Section 8. Conditions to Effectiveness of Amendment. This Amendment shall become effective on the date (such date, if any, the "Fourth Amendment Effective Date") on which each of the conditions set forth below has been satisfied:

(a) The Administrative Agent shall have received duly executed counterparts of this Amendment from the Borrower, the Guarantor Subsidiaries and the Consenting Lenders constituting the Required Lenders.

(b) The Administrative Agent shall have received each of the following in form and substance reasonably satisfactory to the Administrative Agent:

(i)a certificate of an officer of each Credit Party certifying that attached thereto is (A) a true, correct and complete copy of resolutions duly adopted by the board of directors (or other governing body) of such Credit Party authorizing and approving the transactions contemplated hereunder and the execution, delivery and performance of this Amendment, (B) an incumbency of the officers or authorized representatives of such Credit Party executing this Amendment and the other Credit Documents and (C) a good standing certificate form the applicable Governmental Authority of the jurisdiction of incorporation, organization or formation of such Credit Party; and

(ii)opinions of counsel to the Credit Agreement addressed to the Administrative Agent and the Lenders with respect to this Amendment.

(c) Other than the Specified Events of Default, no Default or Event of Default shall exist on such Fourth Amendment Effective Date immediately prior to or after giving effect to this Amendment.

(d) On or after March 30, 2023, Borrower shall have repaid Twenty Million Dollars ($20,000,000) in principal amount of Revolving Loans (such repayment, the "Fourth Amendment Effective Date Prepayment").

(e) Administrative Agent shall have received the Fourth Amendment Fee First Installment in full and cash.

(f) The representations and warranties in the Credit Documents will be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be true and correct in all respects) immediately prior to, and immediately after giving effect to, this Amendment on the Fourth Amendment Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties will have been true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which will have been true and correct in all respects) on and as of such earlier date.

(g) All costs and, to the extent invoiced prior to the Fourth Amendment Effective Date, expenses (including reasonable, documented, out-of-pocket legal fees and expenses of consultants and other advisors) and other compensation payable to Administrative Agent and Wells Fargo Securities, LLC will have been paid to the extent then due.

Section 9. General Release. General Release. In consideration of the benefits provided to Borrower under the terms and provisions hereof, Borrower and each Guarantor Subsidiary hereby agree as follows (the "General Release"):

(a) Borrower and each Guarantor Subsidiary, for itself and on behalf of its respective successors and assigns (each, a "Releasing Party" and collectively, the "Releasing Parties"), do hereby release, acquit and forever discharge Administrative Agent, Collateral Agent, Lenders and all of their Related Parties (including, without limitation, all of their predecessors in interest) (collectively, the

"Released Parties" and individually, a "Released Party"), of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or of any relationship, acts, omissions, misfeasance, malfeasance, causes of action, defenses, offsets, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth herein at length, in each case, that relate to, arise out of or otherwise are in connection with (i) any or all of the Credit Documents or transactions contemplated thereby or any actions or omissions in connection therewith or (ii) any aspect of the dealings or relationships between or among any Releasing Party, on the one hand, and any or all of the Released Parties, on the other hand, relating to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof (each, a "Released Claim" and collectively, the "Released Claims"), that any of the Releasing Parties now has or may acquire as of the later of (i) the date this Amendment becomes effective through the satisfaction (or waiver by the Consenting Lenders) of all conditions hereto and (ii) the date that all of the Releasing Parties have executed and delivered this Amendment to Administrative Agent (hereafter, the "Release Date"), including, without limitation, those Released Claims in any way arising out of, connected with or related to any and all prior credit accommodations, if any, provided by the Released Parties (or any of them), to any Releasing Party, Borrower or otherwise pursuant to the Credit Documents, and any agreements, notes or documents of any kind related thereto or the transactions contemplated thereby or hereby, or any other agreement or document referred to herein or therein.

(b) Each Releasing Party acknowledges that it has read each of the provisions of this General Release. Each Releasing Party fully understands that this General Release has important legal consequences and such Releasing Party realizes that they are releasing any and all Released Claims that such Releasing Party may have as of the Release Date. Each Releasing Party hereby acknowledges that it has had an opportunity to obtain a lawyer's advice concerning the legal consequences of each of the provisions of this General Release.

(a) Each Releasing Party hereby specifically acknowledges and agrees that: (i) none of the provisions of this General Release shall be construed as or constitute an admission of any liability on the part of any Released Party; (ii) the provisions of this General Release shall constitute an absolute bar to any Released Claim of any kind, whether any such Released Claim is based on contract, tort, warranty, mistake or any other theory, whether legal, statutory or equitable; and (iii) any attempt to assert a Released Claim barred by the provisions of this General Release shall subject the Releasing Parties to the provisions of applicable law setting forth the remedies for the bringing of groundless, frivolous or baseless claims or causes of action.

(d) This General Release may be pleaded as full and complete defense to or be used as the basis for an injunction against any action, suit or other proceeding that may be instituted, prosecuted, or attempted in breach of this General Release. Each Releasing Party irrevocably covenants and agrees forever to refrain from initiating, filing, instituting, maintaining, or proceeding upon, or encouraging, advising, or voluntarily assisting any other person or entity to initiate, institute, maintain or proceed upon any Released Claim of any nature whatsoever released in this General Release. Each Releasing Party expressly agrees that the customary rules of contract interpretation to the effect that ambiguities are to be construed or resolved against the drafting party shall not be employed in the interpretation or construction of this General Release. Each Releasing Party represents and warrants that it is the owner of and has not assigned, sold, transferred, or otherwise disposed of any of the Released Claims in this General Release. Each Releasing Party hereby agrees, represents, and warrants that it has the authority and capacity to execute this General Release.

Section 10. Acknowledgement of the Guarantor Subsidiaries. Each Guarantor Subsidiary hereby consents, acknowledges and agrees to the amendments set forth in Sections 3, 4 and 5 hereof and hereby confirms and ratifies in all respects the Guaranty and each Collateral Document to which such Guarantor Subsidiary is a party (including, without limitation, the continuation of such Guarantor Subsidiary's payment and performance obligations thereunder and the Liens granted thereunder upon and after the effectiveness of this Amendment) and the enforceability of such Guaranty and each such Collateral Document against such Guarantor Subsidiary in accordance with their respective terms.

Section 11. Effects on Credit Documents; Acknowledgement. Except as expressly modified hereby, the Credit Agreement shall continue in effect in accordance with its terms. Except as expressly set forth herein, this Amendment (i) shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders, the Administrative Agent, the Collateral Agent or the Credit Parties under the Credit Agreement or any other Credit Document, and (ii) shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other provision of the Credit Agreement or any other Credit Document. Each and every term, condition, obligation, covenant and agreement contained in the Credit Agreement or any other Credit Document (including any grant of security interest by any Credit Party pursuant to each Collateral Document to which it is a party) is hereby ratified and re-affirmed in all respects and shall continue in full force and effect as modified by this Amendment and nothing herein can or may be construed as a novation thereof. It is understood and agreed that (i) each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof" or words of like import referring to the Credit Agreement, shall hereafter be deemed to be a reference to the Amended Credit Agreement, (ii) each reference in each Credit Document to the "Credit Agreement", "thereunder", "thereof" or words of like import referring to the Credit Agreement, shall hereafter be deemed to be a reference to the Amended Credit Agreement and (iii) this Amendment is a "Credit Document" for all purposes under the Amended Credit Agreement and the other Credit Documents.

Section 12. Amendment, Modification and Waiver. This Agreement may not be amended, modified or waived except by an instrument or instruments in writing signed and delivered on behalf of each of the parties hereto.

Section 13. Severability. Any provision of this Amendment 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 hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 14. Counterparts. This Amendment may be executed in counterparts (and by different parties hereto in 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 Amendment by facsimile transmission or Electronic Transmission (PDF or TIFF format) shall be effective as delivery of a manually executed counterpart of this Amendment. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature 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 15. Governing Law. **THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK**.

Section 16. Headings. The headings of this Amendment are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

Section 17. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent and each of the Guarantor Subsidiaries and Lenders, and their respective successors, legal representatives, and assignees to the extent such assignees are permitted assignees as provided in Section 10.6 of the Amended Credit Agreement.

[*Remainder of page intentionally left blank*.]

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

BIOVENTUS LLC,
as Borrower

By: /s/ Kenneth Reali
Name: Kenneth Reali
Title: Chief Executive Officer

PERSEUS INTERMEDIATE, INC.,
as Guarantor Subsidiary

By: /s/ Anthony D'Adamio
Name: Anthony D'Adamio
Title: Vice President and Secretary

BIONESS INC.,
as Guarantor Subsidiary

By: /s/ Anthony D'Adamio
Name: Anthony D'Adamio
Title: Secretary

MISONIX, LLC,
as Guarantor Subsidiary

By: /s/ Anthony D'Adamio
Name: Anthony D'Adamio
Title: Secretary

SOLSYS MEDICAL, LLC,
as Guarantor Subsidiary

By: /s/ Anthony D'Adamio
Name: Anthony D'Adamio
Title: Secretary

MISONIX OPCO, LLC
as Guarantor Subsidiary

By: /s/ Anthony D'Adamio
Name: Anthony D'Adamio
Title: Secretary

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent, and a Lender

By: /s/ Stephanie Micua
Name: Stephanie Micua
Title: Senior Vice President

[*Signature Page to Bioventus LLC Amendment No. 4*]

JPMORGAN CHASE BANK, N.A.,
as a Lender

By: /s/ Lindsey Ruehl
Name: Lindsey Ruehl
Title: Authorized Officer

[*Signature Page to Bioventus LLC Amendment No. 4*]

CITIZENS BANK, N.A.,
as a Lender

By: /s/ Michael Flynn
Name: Michael Flynn
Title: Senior Vice President

TD BANK, N.A.,
as a Lender

By: /s/ Fred Casale
Name: Fred Casale
Title: Vice President

[*Signature Page to Bioventus LLC Amendment No. 4*]

MORGAN STANLEY SENIOR FUNDING INC
as a Lender and a Term A-2 Loan Lender

By: /s/ Jake Dowden
Name: Jake Dowden
Title: Vice President

[*Signature Page to Bioventus LLC Amendment No. 4*]

DNB CAPITAL LLC,
as a Lender and a Term A-2 Loan Lender

By: /s/ Kristie Li
Name: Kristie Li
Title: Senior Vice President

By: /s/ Bret Douglas
Name: Bret Douglas
Title: Senior Vice President

MUFG UNION BANK, N.A.,
as a Lender

By: /s/ Gina M. West
Name: Gina M. West
Title: Director

CITIZENS BANK, N.A.,
as a Lender

By: /s/ Michael Flynn
Name: Michael Flynn
Title: Senior Vice President

[*Signature Page to Bioventus LLC Amendment No. 4*]

THE HUNTINGTON NATIONAL BANK,
as a Lender

By: /s/ Joseph Aardema
Name: Joseph Aardema
Title: Vice President

[*Signature Page to Bioventus LLC Amendment No. 4*]

ANNEX A

Amended Credit Agreement

[See attached.]

172347781
Published CUSIP Number: 09073RAH6
Revolving Credit CUSIP Number: 09073RAJ2
Initial Term Loan CUSIP Number: 09073RAK9
Term A-1 Loan CUSIP Number: 09073RAL7

CREDIT AND GUARANTY AGREEMENT

dated as of December 6, 2019 (as amended by that certain Amendment No. 1 to Credit and Guaranty Agreement dated as of August 29, 2021, Amendment No. 2 to Credit and Guaranty Agreement dated as of October 29, 2021~~ and~~, Amendment No. 3 to Credit and Guaranty Agreement dated as of July 11, 2022 **and Amendment No. 4 to Credit and Guaranty Agreement dated as of March 31, 2023**)

among

Bioventus LLC,
as Borrower,

Certain Subsidiaries of the Borrower
From Time to Time Party Hereto,
as Guarantors,

The Lenders From Time to Time Party Hereto

Wells Fargo Bank, National Association,
as Administrative Agent and Collateral Agent

Wells Fargo Securities, LLC,
JPMorgan Chase Bank, N.A.,
and
Truist Securities, Inc.,
as Joint Lead Arrangers and Joint Bookrunners

JPMorgan Chase Bank, N.A.
and Truist Bank,
as Syndication Agents

DNB Bank ASA, New York Branch,
as Documentation Agent

TABLE OF CONTENTS

Appendices

Schedules

Exhibits

CREDIT AND GUARANTY AGREEMENT

This **CREDIT AND GUARANTY AGREEMENT**, dated as of December 6, 2019~~, is entered into~~ (as amended by that certain Amendment No. 1 to Credit and Guaranty Agreement dated as of August 29, 2021, Amendment No. 2 to Credit and Guaranty Agreement dated as of October 29, 2021, Amendment No. 3 to Credit and Guaranty Agreement dated as of July 11, 2022 and Amendment No. 4 to Credit and Guaranty Agreement dated as of March 31, 2023), is by and among **Bioventus LLC**, a Delaware limited liability company ("**Borrower**"), certain Subsidiaries of the Borrower from time to time party hereto, as Guarantor Subsidiaries, the Lenders from time to time party hereto and Wells Fargo Bank, National Association, as administrative agent (together with its permitted successors in such capacity, the "**Administrative Agent**") and as collateral agent (together with its permitted successors in such capacity, the "**Collateral Agent**").

RECITALS:

WHEREAS, capitalized terms used in these recitals will have the respective meanings set forth for such terms in Section 1.1;

WHEREAS, certain of the Lenders agreed to extend certain senior secured credit facilities to the Borrower, in an aggregate principal amount of $250,000,000, consisting of (a) $200,000,000 in aggregate principal amount of Initial Term Loans, the proceeds of which will be used, in part, to finance the repayment of all amounts outstanding under the Existing Credit Agreement and for working capital needs and general corporate purposes of the Borrower and its Subsidiaries and (b) $50,000,000 in aggregate principal amount of Revolving Credit Commitments, which will be used for working capital needs and general corporate purposes, including Permitted Acquisitions;

WHEREAS, the Borrower has agreed to secure all of its Obligations by granting to the Collateral Agent, for the benefit of the Secured Parties, a Lien on substantially all of its assets subject to certain exceptions set forth herein;

WHEREAS, the Guarantors have agreed to guarantee the obligations of the Borrower hereunder and to secure their respective Obligations by granting to the Collateral Agent, for the benefit of the Secured Parties, a Lien on all of their respective assets subject to certain exceptions as set forth herein; and

WHEREAS, in connection with the Oyster Mergers, certain of the Lenders agreed to extend a term loan facility to the Oyster Borrower, in an aggregate principal amount of $262,000,000, the proceeds of which were used in part to finance the Oyster Mergers and the repayment of all amount outstanding under the Oyster Existing Credit Agreements and for working capital needs and general corporate purposes.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, will have the following meanings:

"**Additional Lender**" means, at any time, any bank, other financial institution or institutional investor that, in any case, is not an existing Lender and that agrees to provide any portion of any (a) Incremental Loan in accordance with Section 2.24 or (b) Credit Agreement Refinancing Indebtedness pursuant to a Refinancing Amendment in accordance with Section 2.26; *provided* that each Additional Lender with respect to any Incremental Revolving Facility (other than any Person that is a Lender, an Affiliate of a Lender or an Approved Fund of a Lender at such time) will be subject to the approval of the Administrative Agent, each Issuing Bank and/or each Swing Line Lender (such approval not to be unreasonably withheld, conditioned or delayed), in each case to the extent any such consent would be

required from the Administrative Agent, each Issuing Bank and/or each Swing Line Lender under Section 10.6(c), respectively, for an assignment of Loans to such Additional Lender.

"**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**" as defined in the preamble hereto.

"**Adverse Proceeding**" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of the Borrower or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of any Executive Officer of the Borrower, threatened against or affecting the Borrower or any Subsidiary or any property of the Borrower or any Subsidiary.

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

"**Affected Lender**" as defined in Section 2.18(b).

"**Affected Loans**" as defined in Section 2.18(b).

"**Affiliate**" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. For the avoidance of doubt, none of the Agents or their respective lender affiliates shall be deemed to be an Affiliate of the Borrower or of any Subsidiary or Unrestricted Subsidiary.

"**Agents**" means, collectively, the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Syndication Agents and the Documentation Agent.

"**Aggregate Amounts Due**" as defined in Section 2.17.

"**Aggregate Payments**" as defined in Section 7.2.

"**Agreed Currency**" means (a) Dollars, (b) the Euro, (c) Sterling and (d) any other Eligible Currency which the Borrower requests any Issuing Bank (and the applicable Issuing Bank agrees) to include as an Agreed Currency hereunder.

"**Agreement**" means this Credit and Guaranty Agreement, dated as of the Closing Date.

"**All-In Yield**" means, as to any Indebtedness or Loans of any Class, the yield thereof, whether in the form of interest rate, margin, original issue discount, upfront fees, an interest rate floor to the extent greater than 0.00% per annum for the Initial Term Loans and Revolving Loans (with such increased amount being equated to interest margins for purposes of determining any increase to the Applicable Margin); *provided* that (i) original issue discount and upfront fees will be equated to interest rate assuming a 4-year life to maturity (or, if less, the stated life to maturity at the time of its incurrence of the applicable Indebtedness); (ii) that "All-In Yield" will not include arrangement fees, structuring fees, underwriting fees, commitment fees, ticking fees or any other similar fees payable to the Lead Arrangers in connection with the Initial Revolving Commitments and Initial Term Loans or to one or more arrangers or lenders (or their respective affiliates) in connection with respect to any other applicable Indebtedness or commitments in respect thereof (regardless of how such fees are computed); and (iii) if an interest rate

floor for the applicable Indebtedness or commitments in respect thereof being incurred is greater than the interest rate floor for the Initial Term Loans or the Revolving Loans, as applicable, the difference between such floor for such applicable new Indebtedness or commitments and the Initial Term Loans or the Revolving Loans, as applicable, will be equated to an increase in the Applicable Margin, and in such case the interest rate floor (expressed in the definition of Adjusted Term SOFR or Base Rate), but not the Applicable Margin, as applicable to the Initial Term Loans or the Revolving Loans, as applicable, will be increased to the extent of such differential between interest rate floors.

"**Anti-Corruption Laws**" means Laws relating to anti-bribery or anti-corruption (governmental or commercial) which apply to the Credit Parties, their Subsidiaries or their Unrestricted Subsidiaries, including Laws that prohibit the corrupt payment, offer, promise, or authorization of the payment or transfer of anything of value (including gifts or entertainment), directly or indirectly, to any Government Official, any foreign government employee or commercial entity in order to obtain an improper business advantage; including the FCPA, the United Kingdom Bribery Act of 2010, and all national and international Laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

"**Anti-Terrorism Laws**" means any of the Laws relating to terrorism, economic sanctions or money laundering, including, but not limited to, (i) Executive Order No. 13224, (ii) the PATRIOT Act, (iii) the Laws comprising or implementing the Bank Secrecy Act, and (iv) the economic and financial sanctions or trade embargoes enacted, imposed, administered and enforced from time to time by (a) the U.S. government, including those administered by OFAC, the U.S. Department of State or the U.S. Department of Commerce, (b) the European Union or any of its member states, or (c) Her Majesty's Treasury of the United Kingdom.

"**Applicable Margin**" means, with respect to the Initial Term Loans, the Term A-1 Loans, the Term A-2 Loans and the Revolving Loans, (a) from the ~~Third~~Fourth Amendment Effective Date until the first Business Day that immediately follows the date on which a Compliance Certificate is delivered pursuant to Section 5.1(e) for the Fiscal Quarter ending ~~September 30, 2022, a percentage per annum equal to 3.25% for SOFR Loans and 2.25% for Base Rate Loans~~March 31, 2023, "pricing Level I" and (b) thereafter, the applicable percentage per annum set forth below, as determined by reference to the Total Net Leverage Ratio, as set forth in the then most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.1(e):

Applicable Margin				
Pricing Level	Total Net Leverage Ratio	SOFR Loans	~~SOFR~~Base Rate Loans	~~Base Rate Loans~~
I	≥ 4.00:1.00	4.25%	3.25%	~~2.25%~~
II	≥ 3.50:1.00 and < 4.00:1.00	3.75%	2.75%	~~1.75%~~
III	≥ 3.00:1.00 and < 3.50:1.00	3.25%	2.25%	~~1.25%~~
IV	≥ 2.50:1.00 and < 3.00:1.00	3.00%	2.00%	~~1.00%~~
V	< 2.50:1.00	2.75%	1.75%	~~0.75%~~

Any increase or decrease in the Applicable Margin resulting from a change in the Total Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 5.1(e); provided, however, that "Pricing Level I" shall apply without regard to the Total Net Leverage Ratio (x) at any time after the date on which any annual or quarterly financial statement was required to have been delivered pursuant to Section 5.1(a) or Section 5.1(b) but was not delivered (or the Compliance Certificate related to such financial statements was required to have been delivered pursuant to Section 5.1(e) but was not delivered), commencing with the first Business Day immediately following such date and continuing until the first Business Day immediately following the date on which such financial statements (or, if later, the Compliance

Certificate related to such financial statements) are delivered, or (y) at all times if an Event of Default shall have occurred and be continuing.

"**Application**" means an application, in such form as the applicable Issuing Bank may specify from time to time, requesting such Issuing Bank to open a Letter of Credit.

"**Approved Electronic Communications**" means any notice, demand, communication, information, document or other material that any Credit Party provides to the Administrative Agent pursuant to any Credit Document or the transactions contemplated therein which is distributed to the Administrative Agent or to the Lenders by means of electronic communications pursuant to Section 10.1(d).

"**Approved Fund**" means (a) any investment company, fund, securitization vehicle, trust or conduit that is engaged in making, purchasing, holding or investing in commercial loans and similar extensions of credit in the ordinary course of its business and (b) any Person (other than a Natural Person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that in the case of each of the preceding clauses (a) and (b) is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender.

"**Asset Sale**" means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, exclusive license (as licensor or sublicensor), transfer or other disposition to, or any exchange of property with (each, a "**disposition**"), any Person in one transaction or a series of related transactions, of all or any part of the Borrower's or any Subsidiary's assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, including the Capital Stock of any Subsidiary, other than:

(a) dispositions of inventory or goods held for sale or other immaterial assets, in each case, in the ordinary course of business;

(b) dispositions of used, worn-out, obsolete, used or surplus property (other than current assets), in each case in the ordinary course of business, and property (other than current assets) no longer used or useful in the Businesses;

(c) dispositions of assets that are made subject to a Finance Lease or Purchase Money Indebtedness within 365 days after the acquisition, construction, lease or improvement of the asset financed;

(d) dispositions of property that constitutes a Casualty Event;

(e) dispositions of cash or Cash Equivalents (or Investments that were cash or Cash Equivalents when made) in the ordinary course of business;

(f) dispositions of equipment or Real Estate Assets to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the net cash proceeds of such disposition are applied within 365 days of the receipt thereof to the purchase price of replacement property;

(g) dispositions or discounts by the Borrower or any Subsidiary of accounts, receivables or notes receivable arising in the ordinary course of business or in connection with the collection or compromise thereof, including supplier financing arrangements without recourse to the Borrower or any Subsidiary that accelerate collection of receivables from clients or customers;

(h) (i) non-exclusive licenses or sub-licenses of Intellectual Property in the ordinary course of business and (ii) the abandonment or other disposition of Intellectual Property that is, in the reasonable good faith judgment of the Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Credit Parties taken as a whole;

(i) leases, subleases, licenses or sub-licenses of real property or personal property (other than Intellectual Property) in the ordinary course of business;

(j) dispositions of any business, asset or property between or among the Borrower and the Subsidiaries; *provided* that any such disposition outside the ordinary course of business (A) by any Non-Credit Party to the Borrower or to a Guarantor Subsidiary (other than to the extent permitted pursuant to Section 6.8) or (B) by the Borrower or a Guarantor Subsidiary to any Non-Credit Party, in either case is on terms that are, taken as a whole, at least as favorable to the Borrower or such Guarantor Subsidiary, as the case may be, as the terms of an arm's length disposition of such business, asset or property, taken as a whole between unaffiliated Persons;

(k) dispositions of other assets for aggregate consideration not to exceed $1,000,000 in the case of any single transaction or series of related transactions;

(l) dispositions of non-core assets acquired in a Permitted Acquisition or other Investment permitted under Section 6.6 disposed of within eighteen (18) months following the consummation of such Permitted Acquisition or other Investment and in the aggregate amount not to exceed 25% of the cash purchase consideration paid in respect of such Permitted Acquisition or other Investment;

(m) dispositions of real property and related assets in connection with relocation of Executive Officers or employees of the Borrower and the Subsidiaries;

(n) unwinding of Rate Contracts;

(o) issuance or sale of Capital Stock of an Unrestricted Subsidiary, sale of Indebtedness of an Unrestricted Subsidiary owing to any Credit Party or any of their Subsidiaries, or sale of other securities of an Unrestricted Subsidiary;

(p) to the extent constituting dispositions, Liens permitted by Section 6.2, Restricted Junior Payments permitted by Section 6.4 and Investments permitted by Section 6.6; and

(q) dispositions of Investments in Joint Ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the Joint Venture parties set forth in joint venture arrangements and similar binding arrangements.

"**Assignment Agreement**" means an Assignment and Assumption Agreement substantially in the form of **Exhibit E**, with such amendments or modifications as may be approved by the Administrative Agent and the Borrower.

"**Assignment Effective Date**" as defined in Section 10.6(b).

"**Authorized Officer**" means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, chief operating officer, chief financial officer, president, vice president, treasurer, secretary and any other officer having substantially the same authority and responsibility as any of the foregoing.

"**Available Amount**" means, as at any date of determination, an amount equal to:

(a) the sum (and, in the case of clauses (ii) through (viii) below, received or retained, as applicable, after the Closing Date and prior to such date of determination), without duplication, of:

(i) the greater of (1) $5,000,000 and (2) an amount equal to 5% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination;

(ii) 50% of cumulative Consolidated Net Income of the Borrower and the Subsidiaries, which will accumulate on a quarterly basis commencing with the Fiscal Quarter in

which the Closing Date occurs; *provided* that such amount will not be less than zero for any quarterly period;

(iii) the aggregate amount of capital contributions to the capital of the Borrower made in cash or Cash Equivalents (other than with respect to Disqualified Capital Stock or pursuant to a Specified Equity Contribution or to the extent such proceeds have been previously utilized in accordance with the terms of this Agreement, including to incur Contribution Indebtedness pursuant to Section 6.1(j));

(iv) the net cash proceeds received by the Borrower after the Closing Date (and prior to such date of determination) from issuances or sales of its Capital Stock (that is not Disqualified Capital Stock) or of a Parent's Capital Stock, other than with respect to Specified Equity Contributions or to the extent such proceeds have been previously utilized in accordance with the terms of this Agreement including to incur Contribution Indebtedness pursuant to Section 6.1(j);

(v) the amount of any Waivable Mandatory Prepayment retained by the Borrower (and not otherwise utilized) in accordance with the terms of this Agreement;

(vi) (x) the aggregate amount of all cash dividends and other cash distributions received by the Borrower or any Subsidiary from any Joint Ventures or Unrestricted Subsidiaries during the period from and including the Business Day immediately following the Closing Date through and including the date of determination in respect of Investments in such Unrestricted Subsidiary or Joint Venture made by the Borrower or any Subsidiary made in reliance on the Available Amount and (y) the net cash proceeds received by the Borrower or any Subsidiary in connection with the sale, transfer or other disposition of its ownership interest in any Joint Ventures or Unrestricted Subsidiaries during the period from and including the Business Day immediately following the Closing Date through and including the date of determination in respect of Investments in such Unrestricted Subsidiary or Joint Venture, in each case, to the extent that the original Investments in such Unrestricted Subsidiary or Joint Venture were made in reliance on the Available Amount;

(vii) the Investments of the Borrower or any Subsidiary made in reliance on the Available Amount in any Unrestricted Subsidiary that has been re-designated as a Subsidiary or that has been merged or consolidated with or into the Borrower or any Subsidiary (up to the lesser of (A) the fair market value (as determined in good faith by the Borrower) of the Investments of the Borrower or any Subsidiary in such Unrestricted Subsidiary at the time of such re-designation or merger or consolidation and (B) the fair market value (as determined in good faith by the Borrower) of the original Investments by the Borrower or any Subsidiary in such Unrestricted Subsidiary); and

(viii) the returns (including repayments of principal and payments of interest), profits, distributions and similar amounts received in cash or Cash Equivalents by the Borrower or any Subsidiary on Investments made by the Borrower or any Subsidiary in reliance on the Available Amount;

minus

(b) the sum, without duplication, of:

(i) the aggregate amount of Restricted Junior Payments made after the Closing Date (and prior to such date of determination) pursuant to Section 6.4(l); and

(ii) the aggregate amount of Investments made after the Closing Date (and prior to such date of determination) pursuant to Section 6.6(l), with each such Investment measured as of the date made and without giving effect to subsequent changes in value.

"**Available Foreign Currencies**" means the Agreed Currencies other than Dollars.

"**Available Tenor**" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) 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 (b) 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, 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 2.18(e)(iv).

"**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 Product Agreement**" means any agreement evidencing Bank Product Obligations.

"**Bank Product Obligations**" means all obligations of every nature of the Borrower or any Subsidiary, from time to time owed to any Bank Product Provider in connection with any Bank Product, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to the Borrower or such Subsidiary, would have accrued on any Bank Product Obligation, whether or not a claim is allowed against the Borrower or such Subsidiary for such interest in the related bankruptcy proceeding), reimbursement, fees, expenses, indemnification or otherwise.

"**Bank Product Provider**" means a Lender or Agent or any Affiliate of a Lender or Agent that in each case that provides Bank Products to the Borrower or any Subsidiary (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of a Bank Product Agreement), whether or not such Person subsequently ceases to be a Lender, an Agent or an Affiliate of a Lender or Agent, in any case, that has executed and delivered to the Administrative Agent a letter agreement in form and substance reasonably acceptable to the Administrative Agent pursuant to which such Lender, Agent or Affiliate of such Lender or Agent appoints the Administrative Agent and the Collateral Agent as agents under the applicable Credit Documents.

"**Bank Products**" means all facilities or services related to (a) cash management and related services, including automated clearinghouse of funds, treasury, depository, overdraft, electronic funds transfer, cash pooling, controlled disbursements and other cash management arrangements, (b) commercial credit card and merchant card services, credit or debit cards, stored value cards and purchase cards and the processing of related sales or receipts and (c) E-payables and comparable services.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Base Rate**" means, at any time, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1.00% and (c) the sum of (i) Adjusted Term SOFR for a one-month tenor in effect on such day plus (ii) 1.00%; each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the NYFRB Rate or Adjusted Term SOFR, as applicable (provided that clause (c) shall not be applicable during any period in which Adjusted Term SOFR is unavailable or unascertainable). Notwithstanding the foregoing, in no event shall the Base Rate be less than 1.00%.

"**Base Rate Loan**" means a Loan bearing interest at a rate determined by reference to the Base Rate.

"**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 2.18(e)(i).

"**Benchmark Replacement**" means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate 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 as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Credit Documents.

"**Benchmark Replacement Adjustment**" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor, 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 (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) 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 such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

"**Benchmark Replacement Date**" means the earlier to occur of the following events with respect to the then-current Benchmark:

(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 such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date 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 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 then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide 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 any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors, the NYFRB, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide 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 any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of 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, a "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, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) 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).

"**Benchmark Unavailability Period**" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 2.18(e)(i) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 2.18(e)(i).

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" means 31 CFR § 1010.230.

"**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 and subject to Section 4975 of the Internal Revenue 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 Internal Revenue Code) the assets of any such "employee benefit plan" or "plan".

"**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.

"**Bioventus Parent**" means Bioventus, Inc., a Delaware corporation.

"Bi-Weekly Report Date" means April 14, 2023 and each second Friday thereafter (or if such day is not a Business Day, the immediately preceding Business Day).

"**Blocked Person**" means any Person: (a) listed in the annex to, or otherwise the target of sanctions imposed by, Executive Order No. 13224; (b) listed in any sanctions-related list of designated Persons maintained by the United States (including, but not limited to, OFAC Lists), the United Nations Security Council, the European Union or any of its member states, or Her Majesty's Treasury of the United Kingdom or any other relevant sanctions authority; (c) fifty percent (50%) or more, individually or in the aggregate, owned or controlled by any Person described in paragraphs (a) or (b) hereof; (d) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; or (e) that is the government of a Sanctioned Country.

"**Board of Directors**" means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person, (b) in the case of any other limited liability company, the members, manager or the board of managers of such Person (which, in the case of the Borrower as constituted on the date of this Agreement, shall mean the Borrower's Board of Managers), (c) in the case of any partnership, the members, board of directors or board of managers of the general partner of such person and (d) in any other case, the functional equivalent of the foregoing.

"**Board of Governors**" means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"**Borrower**" as defined in the preamble hereto.

"**Borrower LLC Agreement**" means that certain Amended and Restated Limited Liability Company Agreement, dated as of May 4, 2012, among Smith & Nephew, Inc., Beluga I, Inc., Beluga II, Inc., Beluga III, Inc., Beluga IV, Inc., Beluga V, Inc., Beluga VI, Inc., Beluga VII, Inc., Beluga VII-A, Inc., Beluga VIII, Inc., and Bioventus LLC, as amended by (i) that certain First Amendment to Bioventus LLC Amended and Restated Limited Liability Company Agreement, dated as of May 21, 2015, (ii) that certain Second Amendment to Bioventus LLC Amended and Restated Limited Liability Company Agreement, dated as of November 23, 2015 and (iii) that certain Third Amendment to Bioventus LLC Amended and Restated Limited Liability Company, dated as of December 8, 2017.

"**Businesses**" means, at any time, a collective reference to the businesses engaged in or proposed to be engaged in by the Borrower and the Subsidiaries (and any Persons that become Subsidiaries pursuant to the CartiHeal Equity Purchase) on the Third Amendment Effective Date and other similar, ancillary, incidental, complementary or related, or reasonable or logical extensions of such businesses.

"**Business Day**" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close.

"**Calculation Date**" means (a) the date of issuance, amendment, renewal or extension of any Foreign Currency Letter of Credit, but only as to the Foreign Currency Letter of Credit so issued, amended, renewed or extended, and (b) any other date selected by the Administrative Agent in its reasonable discretion.

"**Calendar Quarter**" means, for any calendar year, the successive first, second, third or fourth period of three consecutive calendar months in such year.

"**Cap**" means, with respect to any provision of this Agreement as of any date of determination, any limitation based on a fixed Dollar amount or percentage of TTM Consolidated Adjusted EBITDA (or if both apply to such provision, whichever is higher determined as of such date); *provided* that, for the avoidance of doubt, Cap shall not include any limitation based on a ratio.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants,

rights or options to purchase or other arrangements or rights to acquire any of the foregoing; *provided* that no Indebtedness of the Borrower will constitute Capital Stock by virtue of being convertible or exchangeable into Capital Stock prior to such conversion or exchange and; *provided further*, in the case of the Borrower, Capital Stock shall include units under the Borrower's profits interest plans, phantom profits interest plans and equity participation rights plans.

"**Captive Insurance Subsidiary**" means any Subsidiary that is subject to regulation as an insurance company (or any Subsidiary thereof).

"**CartiHeal**" means CartiHeal (2009) Ltd., an Israeli private company.

"**CartiHeal Equity Purchase**" means the direct or indirect acquisition, by the Borrower, of all of the outstanding Capital Stock of CartiHeal (that is not already owned (directly or indirectly) by the Borrower as of the Third Amendment Effective Date) pursuant to the terms of the CartiHeal Equity Purchase Agreement (or otherwise on terms reasonably acceptable to the Administrative Agent).

"**CartiHeal Equity Purchase Agreement**" means that certain Option and Equity Purchase Agreement, dated as of July 15, 2020, by and among the Borrower, CartiHeal, the major shareholders party thereto and Elron Electronic Industries Ltd., as the securityholder representative, as amended by that certain Amendment to Option and Equity Purchase Agreement, dated as of June 17, 2022, **as amended by the CartiHeal Settlement Agreement,** and as further amended, supplemented or otherwise modified from time to time in a manner not prohibited hereby.

"**CartiHeal Milestone Payments**" mean those certain Post-Closing Payments, the Annual Interest Payment and the Sales Milestone Consideration (each as defined in the CartiHeal Equity Purchase Agreement) made by the Borrower pursuant to, and in accordance with, the terms of the CartiHeal Equity Purchase Agreement, including any interest payable thereon pursuant to the CartiHeal Equity Purchase Agreement.

"**CartiHeal Reorganization**" means, following the CartiHeal Equity Purchase, the contribution of all or a portion of the Capital Stock of CartiHeal to one or more Subsidiaries.

"CartiHeal Settlement Agreement" means that certain Settlement Agreement, dated as of February 27, 2023 (the "Settlement Agreement"), by and among the Borrower, CartiHeal, Elron Ventures Ltd., ESOP Management and Trust Services LTD and Bioventus Cooperatief, U.A.

"**Cash Equivalents**" means, as at any date of determination:

(a) Dollars, Euros and Sterling (and, to the extent reasonably necessary to reimburse any Foreign Currency Letter of Credit, the applicable Available Foreign Currency);

(b) local currencies held by the Borrower or any Subsidiary from time to time in the ordinary course of business or consistent with past practice and not for speculation that is a national currency of any participating member state of the European Union;

(c) marketable securities (i) issued or directly and unconditionally guaranteed or insured as to interest and principal by the United States Government or (ii) issued by any agency or instrumentality of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date;

(d) marketable direct obligations issued by any state, commonwealth or territory of the United States of America or any political subdivision of any such state, commonwealth or territory or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's;

(e) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from

Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency);

(f) certificates of deposit, time deposits or bankers' acceptances maturing within one year after such date and issued or accepted (x) by any Lender or (y) by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (i) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator) and (ii) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000;

(g) marketable short-term money market and similar highly liquid funds having a rating of at least P-1 or A-1 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency);

(h) (i) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (f) of this definition, having a term of not more than 30 days, with respect to securities issued or fully guaranteed or insured by the United States government and (ii) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition;

(i) investment funds investing substantially all of their assets in securities of the types described in clauses (a) through (h) above; and

(j) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $5,000,000,000.

In the case of Investments by any Foreign Subsidiary or Investments made in a jurisdiction outside the United States of America, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (a) through (h) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (h) and in this paragraph.

"**Casualty Event**" means any event that gives rise to the receipt by the Borrower or any Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property.

"**CFC**" means a "controlled foreign corporation" within the meaning of Section 957 of the Internal Revenue Code.

"**Change of Control**" means the occurrence of any of the following: (a) at any time prior to consummation of a Qualifying IPO, Permitted Holders will cease to beneficially own and control, directly or indirectly, on a fully-diluted basis more than 50% of the voting power in the Borrower (other than during the short term pendency of any Permitted Reorganization or Permitted IPO Reorganization to the extent such interim failure to own and control is reasonably necessary or advisable to effectuate such transaction and so long as such interim failure to own and control is cured by the close of business on the date of the consummation of such Permitted Reorganization or Permitted IPO Reorganization), or (b) at any time after consummation of a Qualifying IPO, any Person or "group" (but excluding any employee benefit plan of such person and its subsidiaries and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than the Permitted Holders will have acquired beneficial ownership of 35% or more on a fully diluted basis of the voting power in the Borrower and the percentage of aggregate voting interests so held is greater than the percentage of aggregate voting power held, directly or indirectly, in the aggregate by the Permitted Holders; unless, in the case of clause (b) above, the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the Board of Directors

of the Borrower. For purposes of this Agreement, "group" and beneficial ownership will have the meanings given in Rules 13d-3 and 13d-5 under the Exchange Act, or any successor provision.

"**Class**" means (a) with respect to the Lenders, each of the following classes of the Lenders: (i) the Lenders having Term Loan Exposure arising from the Initial Term Loans, (ii) the Lenders having Term Loan Exposure arising from any separately identifiable tranche of Incremental Term Loans, (iii) the Lenders having Term Loan Exposure arising from any separately identifiable tranche of Refinancing Term Loans, (iv) the Lenders having Term Loan Exposure arising from any separately identifiable tranche of Extended Term Loans, (v) the Lenders having Term A-1 Loan Exposure arising from any separately identifiable tranche of Term A-1 Loans, (vi) the Lenders having Term A-2 Loan Exposure arising from any separately identifiable tranche of Term A-2 Loans and (vii) the Lenders having Revolving Credit Exposure (including the Swing Line Lenders), and (b) with respect to Loans, each of the following classes of Loans: (i) Initial Term Loans, (ii) any separately identifiable tranche of Incremental Term Loans, (iii) any separately identifiable tranche of Refinancing Term Loans, (iv) any separately identifiable tranche of Extended Term Loans, (v) Term A-1 Loans, (vi) Term A-2 Loans and (vii) Revolving Loans (including Swing Line Loans).

"**Closing Date**" means December 6, 2019.

"**Closing Date Certificate**" means a Closing Date Certificate substantially in the form of **Exhibit G**.

"**Collateral**" means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are granted or purported to be granted pursuant to the Collateral Documents as collateral security for the Obligations; *provided* that Collateral shall not include any Excluded Assets or any other property or assets specifically excluded from the scope of any grant clause under any other Collateral Document unless (as to any Credit Party) such Credit Party hereafter agrees in writing that any such Excluded Asset, asset or property shall constitute Collateral hereunder.

"**Collateral Agent**" as defined in the preamble hereto.

"**Collateral Documents**" means the Pledge and Security Agreement, the Mortgages (if any) and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Credit Documents in order to grant to the Collateral Agent, for the benefit of the Secured Parties, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations.

"**Commitment**" means any Revolving Credit Commitment, any Term A-1 Loan Commitment, any Term A-2 Loan Commitment, any Initial Term Loan Commitment and any Incremental Term Loan Commitment.

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

"**Compliance Certificate**" means a Compliance Certificate of the Borrower substantially in the form of **Exhibit C**.

"**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 "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" 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 2.18(c) 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 Credit Documents).

"**Consolidated Adjusted EBITDA**" means, for any Test Period, an amount determined for the Borrower and the Subsidiaries on a consolidated basis and without duplication equal to:

(a) Consolidated Net Income for such period, *plus*

(b) the sum of, in each case (other than subclauses (x) and (xxi) below) to the extent deducted (and not added back or excluded) in the calculation of Consolidated Net Income, but without duplication:

(i) Consolidated Interest Expense of such Person for such Test Period;

(ii) consolidated tax expense of such Person for such Test Period based on income, profits or capital, including state, franchise, capital and similar taxes and withholding taxes paid or accrued during such period;

(iii) amounts attributable to depreciation and amortization expense of such Person for such Test Period (including amortization of customer contracts, non-compete agreements or other intangible assets);

(iv) non-cash charges or expenses reducing Consolidated Net Income for such Test Period (*provided*, in connection with any non-cash charge or expense that is an accrual of a reserve for a cash expenditure or payment required to be made, or anticipated to be made, in a future period, (1) the Borrower may determine not to add back such non-cash charge or expense in the current Test Period and (2) to the extent the Borrower decides to add back such non-cash charge or expense, the cash payment in respect thereof in such future period will be subtracted from Consolidated Adjusted EBITDA to such extent) (in the case of this clause (2), other than (x) in respect of payments in an aggregate amount not in excess of $12,300,000 made by the Borrower or any of its Subsidiaries to Anthony Bihl pursuant to any management equity plan or other management or employee benefit plan or arrangement and (y) any payments made pursuant to Section 6.4(k));

(v) non-recurring costs, fees and expenses **(x)** associated with the Transactions **or (y) incurred in connection with the Fourth Amendment**;

(vi) fees, charges and expenses arising in connection with the consummation or proposed consummation of any transaction that is or would be a Permitted Acquisition, permitted Investment, disposition, incurrence or repayment of Indebtedness (including a refinancing, amendment or other modification thereof) and/or equity offering (including any Qualifying IPO), in each case whether or not consummated and any amendment or modification to the terms of any such transactions (including such costs, fees, charges and expenses reimbursed or actually paid by a Person that is not the Borrower or a Subsidiary or covered by indemnification or reimbursement provisions);

(vii) restructuring, integration or similar charges, expenses or reserves, whether or not classified as restructuring charges or expenses under GAAP (including restructuring costs related to acquisitions and closure or consolidation of branches, facilities or locations, any lease termination settlements (or remaining rental expense until the end of the applicable lease term), and any expense related to any reconstruction, recommissioning or reconfiguration of fixed assets for alternate use);

(viii) any net loss from disposed or discontinued operations;

(ix) extraordinary, unusual or non-recurring costs, fees, charges and other expenses (including with respect to the OIG Matter), including severance costs and expenses (including such fees, charges and expenses incurred by the Borrower or any Subsidiary that are reimbursed or actually paid by a Person that is not the Borrower or a Subsidiary or covered by indemnification or reimbursement provisions);

(x) expenses, losses (including lost revenues) or charges (other than any expense, loss or charge added-back under another clause in this definition) incurred during such period in connection with Casualty Events to the extent that such any such amount is covered by business interruption or other insurance and which either has been reimbursed or as to which the Borrower has made a determination that there exists reasonable evidence that such amount will be reimbursed by the insurer and only to the extent that such amount is (a) not denied by the applicable insurance carrier in writing and (b) in fact reimbursed within 180 days of the date of such determination (with a deduction for any amount so added back to the extent not so reimbursed within 180 days);

(xi) expenses, charges and losses due to the effects of purchase accounting, as set forth in the Statement of Financial Accounting Standards 141(R), Business Combinations;

(xii) the amount of any expenses paid on behalf of any member of the Board of Directors or reimbursable to such member of the Board of Directors and any management, monitoring, consultant or advisory fees (including termination fees), closing fees and related indemnities and expenses paid or accrued to the Sponsor and their Affiliates;

(xiii) costs or expenses incurred by the Borrower or any Subsidiary pursuant to a management equity plan, profits interest or stock option plan or any other management or employee benefit plan or arrangement or any stock subscription or shareholder plan;

(xiv) expenses, charges and losses in the form of earn-out obligations and contingent consideration obligations (including to the extent accounted for as performance and retention bonuses, compensation or otherwise) and adjustments thereof and purchase price adjustments, in each case paid in connection with Permitted Acquisitions or other permitted Investments or acquisitions, including those investments entered into prior the Closing Date;

(xv) any minority interest expense;

(xvi) the amount of costs relating to opening facilities, signing, retention and completion bonuses, relocation expenses, severance costs, recruiting expenses, costs, expenses and losses incurred in connection with any strategic or new initiatives, transition costs, and other business optimization expenses (including costs and expenses relating to business optimization programs), and new systems design and implementation costs;

(xvii) without duplication of amounts added in determining Consolidated Adjusted EBITDA for any prior Test Period pursuant to clause (b)(iv) above, any payments made pursuant to Section 6.4(k);

(xviii) [reserved];

(xix) expenses in the form of bonuses paid to employees in connection with Permitted Acquisitions or other Investments permitted under Section 6.6;

(xx) for any Test Period ending on or prior to the date that is twelve (12) months after the Third Amendment Effective Date, any Public Company Costs;

(xxi) the amount of "run-rate" cost savings, operating expense reductions and cost synergies projected by the Borrower in good faith to result from (A) actions taken and (B) actions

committed to be taken or expected to be taken no later than eighteen (18) months after any acquisition, disposition or operational change, in each case, which cost savings, operating expense reductions and cost synergies will be determined by the Borrower in good faith and calculated on a Pro Forma Basis as though such cost savings, operating expense reductions and cost synergies had been realized on the first day of the Test Period for which Consolidated Adjusted EBITDA is being determined; and

(xxii) costs, expenses, charges and losses in connection with research and development related to distribution and commercialization rights; *minus*

(c) the sum of, in each case to the extent included in the calculation of Consolidated Net Income, but without duplication:

(i) extraordinary, unusual or non-recurring cash gains of such Person for such Test Period increasing Consolidated Net Income; and

(ii) all non-cash items of such Person for such Test Period increasing Consolidated Net Income, including gains on cancellation of debt purchased at less than par (in each case of or by the Borrower and its Subsidiaries for such period), other than the accrual of revenue in the ordinary course and excluding any such items which represent the reversal in such Test Period of any accrual of, or cash reserve for, anticipated cash charges in any prior period to the extent such amount was deducted in determining Consolidated Adjusted EBITDA for such prior period;

provided that the amounts included in Consolidated Adjusted EBITDA for any Test Period pursuant to subclauses (vii), (ix) (other than any payment in connection with the OIG Matter), (xvi), (xxi) (other than adjustments thereunder, in an aggregate amount not to exceed $20,000,000, pertaining to the Oyster Mergers or the Oyster Reorganization), (xxii) and (viii) (solely with respect to cash expenses incurred by discontinued operations at the time of close and on an ongoing basis) of clause (b) above will not in the aggregate exceed 25% of Consolidated Adjusted EBITDA for such Test Period (prior to giving effect to amounts added-back pursuant to such subclauses); *provided further* that any determination of whether any item is extraordinary, unusual or non-recurring shall be made by the Borrower in its reasonable judgment in consultation with the Administrative Agent.

"**Consolidated Interest Expense**" means, with respect to any Person for any Test Period, the total consolidated interest expense of such Person and its Subsidiaries for such Test Period determined on a consolidated basis in accordance with GAAP, *plus*, without duplication (and solely to the extent such items were deducted in the calculation of Consolidated Net Income):

(a) imputed interest on Finance Leases of such Person and its Subsidiaries for such Test Period;

(b) commissions, discounts and other fees, charges and expenses owed by such Person and its Subsidiaries with respect to letters of credit securing financial obligations, bankers' acceptance financing and receivables financings for such Test Period;

(c) amortization of debt issuance costs, debt discount, or premium and other debt or equity financing fees and expenses incurred by such Person and its Subsidiaries for such Test Period including net costs under Rate Contracts or other derivative instruments entered into for the purpose of hedging interest rate risk and any commitment fees payable thereunder;

(d) cash contributions to any employee stock ownership plan or similar trust made by such Person and its Subsidiaries to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than such Person or a wholly-owned Subsidiary) in connection with Indebtedness incurred by such plan or trust for such Test Period;

(e) all interest paid or payable with respect to discontinued operations of such Person and its Subsidiaries for such Test Period;

(f) the interest portion of any deferred payment obligations of such Person and its Subsidiaries for such Test Period; and

(g) all interest on any Indebtedness of such Person and its Subsidiaries that is (i) Indebtedness of others secured by any Lien on property owned or acquired by such Person or its Subsidiaries, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such property or (ii) contingent obligations of such Person or its Subsidiaries in respect of Indebtedness;

provided that Consolidated Interest Expense shall be calculated after giving effect to Rate Contracts related to interest rates (including associated costs), but excluding unrealized gains and losses with respect to such Rate Contracts; *provided further*, that when determining Consolidated Interest Expense in respect of any Test Period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of such Test Period. For purposes of this definition, interest on Finance Leases will be deemed to accrue at the interest rate reasonably determined by an Authorized Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligations in accordance with GAAP as in effect on the Closing Date.

"**Consolidated Net Income**" means, for any Test Period:

(a) the net income (or loss) of the Borrower and the Subsidiaries on a consolidated basis for such Test Period taken as a single accounting period determined in conformity with GAAP, *plus*

(b) the income (or loss) of any Joint Venture or Unrestricted Subsidiary of the Borrower or any Subsidiary, solely, in the case of any income, to the extent of the amount of dividends or other distributions actually paid to the Borrower or any Subsidiary by such Joint Venture or Unrestricted Subsidiary during such Test Period, *minus*

(c) to the extent included in clause (a) above, an amount equal to the sum of (without duplication):

(i) with respect to any Person that is not a wholly-owned Subsidiary of the Borrower but whose net income is consolidated in whole or in part with the net income of the Borrower, the income (or loss) of such Person solely to the extent attributable to that portion of the Capital Stock in such Person that is not owned, directly or indirectly, by the Borrower during such Test Period; *provided*, the Borrower's equity in the net income in such Person will be included in Consolidated Net Income up to the amount of dividends, distributions or other payments in respect of such equity that are paid in cash (or to the extent converted into cash) by such Person to the Borrower or any of its Subsidiaries (and the Borrower's equity in the net loss of such Person shall be included to the extent of the aggregate Investment of the Borrower or any of its Subsidiaries in such Person);

(ii) with respect to any Person that is not a wholly-owned Subsidiary of the Borrower but whose net income is consolidated in whole or in part with the net income of the Borrower, the income of such Person solely to the extent that the declaration or payment of dividends or similar distributions by such Person of that income is not permitted by operation of the terms of its Organizational Documents or any agreement, instrument or requirement of Law applicable to such Person during such Test Period; *provided* that Consolidated Net Income shall be increased by the amount of dividends or distributions or other payments that are actually paid by such Person to the Borrower or any of its Subsidiaries in respect of such Test Period;

(iii) the income (or loss) of any Person accrued prior to the date (x) such Person becomes a Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any Subsidiary or (y) such Person's assets are acquired by the Borrower or any Subsidiary;

(iv) any after-tax gains or losses attributable dispositions of property;

(v) earnings (or losses), including any non-cash impairment charge, resulting from any reappraisal, revaluation or write-up (or write-down) of assets during such Test Period;

(vi) (A) unrealized gains and losses with respect to Rate Contracts for such Test Period and the application of Accounting Standards Codification 815 (Derivatives and Hedging), as such Topic may be amended, updated or supplemented from time to time, and (B) any after-tax effect of income (or losses) for such Test Period that result from the early extinguishment of (x) Indebtedness, (y) obligations under any Rate Contracts or (z) other derivative instruments;

(vii) gains and losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such Test Period (including currency translation gains or losses related to currency remeasurements of Indebtedness (including any net gain (or loss) resulting from Rate Contracts for currency exchange risk)); and

(viii) the effects of adjustments (including the effects of such adjustments pushed down to such Person and its Subsidiaries) in the inventory, property and equipment, software, goodwill, other intangible assets, in-process research and development, deferred revenue, debt and unfavorable or favorable lease line items in such Person's consolidated financial statements pursuant to GAAP for such Test Period resulting from the application of purchase accounting in relation to the Transactions or any acquisition consummated prior to the Closing Date and any Permitted Acquisition or other Investment or the amortization or write-off of any amounts thereof, net of taxes, for such Test Period.

"**Consolidated Total Debt**" means, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of the Borrower and the Subsidiaries referred to in the following clauses of the definition of "Indebtedness": clauses (a), (b), (c) (but only with respect to any notes payable), (e) (but only to the extent that such indebtedness is recourse debt), (f) (but only to the extent that any letter of credit has been drawn and not reimbursed (provided that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Total Debt until three Business Days after such amount is drawn (it being understood that any borrowing, whether automatic or otherwise, to fund such reimbursement shall be counted))) and (i) (to the extent relating to Indebtedness of the type described in clauses (a), (b), (c), (e) and (f) of the definition thereof), in each case determined on a consolidated basis in accordance with GAAP; provided that Consolidated Total Debt shall not include (~~x~~**y**) Indebtedness in respect of obligations under Rate Contracts~~,~~ **or** (~~y~~**z**) operating leases on the balance sheet of the Borrower and the Subsidiaries ~~**or (z) any Indebtedness in respect of the CartiHeal Milestone Payments (other than Indebtedness in respect of any Annual Interest Payment (as defined in the CartiHeal Equity Purchase Agreement))**~~.

"**Contractual Obligation**" means, as applied to any Person, any provision of any of the Securities issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"**Contributing Guarantors**" as defined in Section 7.2.

"**Contribution Indebtedness**" means Indebtedness of a Credit Party in an aggregate principal amount up to 100.0% of the net cash proceeds received by the Borrower since the Closing Date from the issue or sale of Capital Stock (other than Disqualified Capital Stock) of the Borrower or Capital Stock of a Parent of the Borrower the proceeds of which have been contributed to the Borrower or contributions to the common equity capital of the Borrower (in each case, other than Specified Equity Contributions or proceeds of sales of Capital Stock to the Borrower or any Subsidiary) to the extent such net cash proceeds or cash have not been otherwise utilized in accordance with the term of this Agreement and such net cash

proceeds or cash have been designated as "Contribution Indebtedness" by the Borrower in a written certification to the Administrative Agent no less than 90 days after the receipt thereof; *provided* that (i) such Indebtedness does not mature prior to 91 days after the Latest Term Loan Maturity Date at the time such Indebtedness is incurred, or have a shorter Weighted Average Life to Maturity than the Term Loans at the time such Indebtedness is incurred; (ii) immediately before and after giving effect thereto and to the use of the proceeds thereof no Event of Default has occurred and is continuing or would result therefrom; and (iii) after giving effect thereto and the use of proceeds thereof, the Borrower and its Subsidiaries are in Pro Forma compliance with the Financial Covenants set forth in Section 6.7.

"**Controlled Entity**" means, as to any Person, any other Person that is in control of, or is controlled by, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"**Controlled Investment Affiliate**" means, as to any Person, any other Person which directly or indirectly is in control of, is controlled by, or is under common control with, such Person and is organized by such Person (or any Person controlling or controlled by such Person) primarily for making equity or debt investments, directly or indirectly, in the Borrower or other portfolio companies of such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management or policies of such Person, whether by contract or otherwise.

"**Conversion/Continuation Date**" means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"**Conversion/Continuation Notice**" means a Conversion/Continuation Notice substantially in the form of **Exhibit A-2**.

"**Counterpart Agreement**" means a Counterpart Agreement substantially in the form of **Exhibit H**.

"Covenant Adjustment Period" means the period (a) from and after the Fourth Amendment Effective Date through and including (b) the date on which the Borrower shall have delivered:

(i) the financial statements required to be delivered pursuant to Section 5.1(b) for the fiscal quarter ending June 30, 2024 (or to the extent that either clause (A) or clause (B) of the proviso set forth below is not true and correct as of such fiscal quarter end, any fiscal quarter ending thereafter with respect to which clause (A) and clause (B) of the proviso set forth below are true); and

(ii) the Compliance Certificate required to be delivered pursuant to Section 5.1(e) in connection therewith;

provided that, as of such fiscal quarter end, (A) no Default or Event of Default shall have occurred and be continuing and (B) the Borrower and its Subsidiaries shall be in compliance with the financial covenants set forth in Section 6.7.

"**Covered Entity**" means any of the following:

(a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"**Credit Agreement Refinancing Indebtedness**" means secured or unsecured Indebtedness of the Borrower in the form of (i) Refinancing Term Commitments or Refinancing Term Loans or (ii) other term loans or notes or revolving commitments governed by definitive documentation other than this Agreement; *provided* that:

(a) such Indebtedness is incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace, or refinance, in whole or part, any of the Term Loans, any Class of Term Loans, Revolving Loans or Revolving Credit Commitments;

(b) such Indebtedness is in an original aggregate principal amount not greater than the Maximum Refinancing Amount;

(c) any such Indebtedness will not mature prior to the final maturity date of the Refinanced Indebtedness, or have a shorter Weighted Average Life to Maturity than the Refinanced Indebtedness;

(d) any mandatory prepayments (and, with respect to any Credit Agreement Refinancing Indebtedness comprising Revolving Loans, to the extent commitments thereunder are permanently reduced or terminated) of:

(i) any Credit Agreement Refinancing Indebtedness that comprises junior lien or unsecured notes or loans may not be made except to the extent that prepayments are (A) permitted hereunder and (B) to the extent required hereunder or pursuant to the terms of any Credit Agreement Refinancing Indebtedness that is Pari Passu Lien Indebtedness, first made or offered to the Loans and any such Pari Passu Lien Indebtedness; and

(ii) any Credit Agreement Refinancing Indebtedness that is Pari Passu Lien Indebtedness will be made on a *pro rata* basis or less than *pro rata* basis with the Initial Term Loans or Initial Revolving Commitments, as applicable (but not greater than a pro rata basis except for prepayments with the proceeds of Credit Agreement Refinancing Indebtedness and in respect of an earlier maturing tranche);

(e) such Indebtedness is not incurred or guaranteed by any Person other than a Credit Party;

(f) if such Indebtedness is secured:

(i) such Indebtedness is not secured by any assets or property of the Borrower or any Subsidiary that does not constitute Collateral;

(ii) [reserved];

(iii) if such Indebtedness constitutes Pari Passu Lien Indebtedness, a debt representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a Pari Passu Lien Intercreditor Agreement; and

(iv) if such Indebtedness is secured on a junior basis to the Obligations, a debt representative, acting on behalf of the holders of such Indebtedness, has become party to or is otherwise subject to the provisions of a Junior Lien Intercreditor Agreement; and

(g) the other terms applicable to such Indebtedness are either (i) substantially identical to or (taken as a whole as determined by the Borrower and the Administrative Agent) no more favorable to the lenders or holders providing such Indebtedness than those applicable to such Refinanced Indebtedness or (ii) otherwise on customary market terms (taken as a whole as determined by the Borrower in its reasonable judgment), including with respect to high yield debt securities to the extent applicable; *provided* that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower or applicable Subsidiary is bound by a confidentiality obligation with respect thereto, in which case the Borrower will

deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof); *provided further,* that this clause (g) will not apply to (1) terms addressed in the preceding clauses (a) through (f), (2) interest rate, fees, funding discounts and other pricing terms, (3) redemption, prepayment or other premiums, (4) optional prepayment terms, and (5) covenants and other terms that are (i) applied to the Loans and Commitments existing at the time of incurrence of such Credit Agreement Refinancing Indebtedness (so that existing Lenders also receive the benefit of such provisions) and/or (ii) applicable only to periods after the Latest Term Loan Maturity Date at the time of incurrence of such Indebtedness.

"**Credit Date**" means the date of a Credit Extension.

"**Credit Document**" means any of (i) this Agreement, (ii) the Notes, if any, (iii) the Collateral Documents, (iv) the Wells Fee Letter, solely with respect to the provision regarding the annual administrative fee due to the Administrative Agent and any documents or certificates executed by the Borrower in favor of an Issuing Bank relating to Letters of Credit, (v) the Intercompany Subordination Agreement, (vi) any other subordination and intercreditor agreement (including any Pari Passu Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement) entered into pursuant to the terms hereof and (vii) any Incremental Amendment, Refinancing Amendment or Extension Amendment.

"**Credit Extension**" means the making of a Loan or the Issuing of a Letter of Credit.

"**Credit Party**" means the Borrower and each Guarantor Subsidiary.

"**Default**" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"**Default Excess**" means, with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender's Pro Rata Share of the aggregate outstanding principal amount of Loans of all of the Lenders (calculated as if all Defaulting Lenders (including such Defaulting Lender) had funded all of their respective Defaulted Loans) over the aggregate outstanding principal amount of all Loans of such Defaulting Lender.

"**Default Period**" means, with respect to any Defaulting Lender, the period commencing on the date of the applicable Funding Default and ending on the earliest of the following dates: (a) the date on which all Commitments are cancelled or terminated and/or the Obligations are declared or become immediately due and payable, (b) with respect to any Funding Default (other than any such Funding Default arising pursuant to clause (e) of the definition of "Defaulting Lender"), the date on which (i) the Default Excess with respect to such Defaulting Lender will have been reduced to zero (whether by the funding by such Defaulting Lender of any Defaulted Loans of such Defaulting Lender or by the non-pro rata application of any voluntary or mandatory prepayments of the Loans in accordance with the terms of Section 2.13 or Section 2.14 or by a combination thereof) and (ii) such Defaulting Lender will have delivered to the Borrower and the Administrative Agent a written reaffirmation of its intention to honor its obligations hereunder with respect to its Commitments, and (c) the date on which the Borrower, the Administrative Agent and the Required Lenders waive all Funding Defaults of such Defaulting Lender in writing.

"**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.

"**Defaulted Loan**" as defined in Section 2.22.

"**Defaulting Lender**" will mean any Lender that has (a) failed to fund its portion of any Loan, or any portion of its participation in any Letter of Credit or Swing Line Loan within two (2) Business Days of the date on which it will have been required to fund the same, unless such Lender notifies the Borrower that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, will be specifically identified in such writing) has not been satisfied, (b) notified the Borrower, the Administrative Agent, any Issuing Bank, any Swing Line Lender or any other Lender in writing that it does not intend to comply

with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under agreements in which it commits to extend credit generally unless such Lender notifies the Borrower that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, will be specifically identified in such writing) has not been satisfied, (c) failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans (unless such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, will be specifically identified in writing to the Borrower prior to such failure) cannot be satisfied) and participations in then outstanding Letters of Credit and Swing Line Loans; *provided* that any such Lender will cease to be a Defaulting Lender under this clause (c) upon receipt of such confirmation by the Administrative Agent and the Borrower, (d) otherwise failed to pay over to the Borrower, the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, (e) has become the subject of a Bail-In Action or (f)(i) been adjudicated as, or determined by any Governmental Authority having regulatory authority over such Lender or its properties or assets to be, insolvent or (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar person charged with reorganization or liquidation of its business or custodian, appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment, unless, in the case of any Lender referred to in this clause (f), the Borrower, the Administrative Agent, each Swing Line Lender and each Issuing Bank will be satisfied that such Lender intends, and has all approvals required to enable it, to continue to perform its obligations as a Lender hereunder. For the avoidance of doubt, a Lender will not be deemed to be a Defaulting Lender solely by virtue of the Undisclosed Administration of such Lender or its Parent or of the ownership or acquisition of any Capital Stock in such Lender or its Parent by a Governmental Authority so long as such ownership interest does not result in or provide such Lender 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 Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender; *provided* that, as of any date of determination, the determination of whether any Lender is a Defaulting Lender hereunder will not take into account, and will not otherwise impair, any amounts funded by such Lender which have been assigned by such Lender to an SPC pursuant to Section 10.6. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (e) above will be conclusive and binding absent manifest error, and such Lender will be deemed to be a Defaulting Lender upon delivery of written notice of such determination by the Administrative Agent to the Borrower and each other Lender.

"Deposit Account" has the meaning assigned to that term in the Pledge and Security Agreement.

"**Designated Non-Cash Consideration**" means the fair market value of non-cash consideration received by the Borrower or any Subsidiary in connection with an Asset Sale pursuant to Section 6.8(e) that is designated as Designated Non-Cash Consideration pursuant to a certificate of an Executive Officer, setting forth the basis of such valuation (which amount will be reduced by the fair market value of the portion of the non-cash consideration converted to cash within one hundred eighty (180) days following the consummation of the applicable Asset Sale).

"**Disqualified Capital Stock**" means any Capital Stock which, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely in exchange for Capital Stock that is not otherwise Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely in exchange for Capital Stock that is not otherwise Disqualified Capital Stock), in whole or in part, (c) provides for the scheduled payment of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the date that is ninety-one (91) days after the Latest Term Loan Maturity Date, except, in the case of clauses (a) and (b), if as a result of a change of control or asset sale, so long as

any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to the prior payment in full of all Obligations, the cancellation or expiration of all Letters of Credit and the termination of the Commitments; *provided*, if such Capital Stock is issued pursuant to a plan for the benefit of future, current or former employees, directors or officers of the Borrower or any Subsidiary or by any such plan to such employees, directors or officers, such Capital Stock will not constitute Disqualified Capital Stock solely because they may be required to be repurchased by the Borrower or a Subsidiary in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's or officer's termination, death or disability.

"**Disqualified Lender**" means (a) any person identified by name in writing to the Lead Arrangers on or prior to November 15, 2019, (b) any other Person that is identified by name in writing to the Lead Arrangers (if after November 15, 2019 and prior to the Closing Date) or the Administrative Agent (on or after the Closing Date), to the extent such person is a competitor or is an affiliate of a competitor of the Borrower or its Subsidiaries, which supplement to the Disqualified Lender List shall become effective three (3) Business Days after delivery thereof to the Lead Arrangers or the Administrative Agent, as applicable and (c) any affiliate of any person referred to in clauses (a) or (b) above that is (I) clearly identifiable as such solely on the basis of the similarity of its name or (II) identified as such by name in writing to the Administrative Agent, which supplement to the Disqualified Lender List shall become effective three (3) Business Days after delivery thereof to the Administrative Agent; provided, that (i) any supplement to the Disqualified Lender List shall not apply retroactively to disqualify any Persons that have previously acquired an assignment or participation interest in the Loans and Commitments and (ii) a "competitor" or an affiliate of a competitor shall not include any bona fide fixed income investors or debt funds (other than a bona fide fixed income investors or debt fund that has been identified in writing pursuant to clause (a) above) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business which is managed, sponsored or advised by any Person controlling, controlled by or under common control with such competitor or affiliate thereof, as applicable, and for which no personnel involved with the competitive activities of its affiliates (x) makes any investment decisions for such fixed income investors or debt fund, as applicable or (y) has access to any information (other than information publicly available) relating to the Borrower or its Subsidiaries from such fixed income investors or debt fund, as applicable.

"**Disqualified Lender List**" means the list of Disqualified Lenders identified by the Borrower to the Administrative Agent in writing prior to the Closing Date, as such list of Disqualified Lenders may be supplemented from time to time pursuant to the definition of "Disqualified Lender".

"**Documentation Agent**" means DNB Bank ASA, New York Branch, in its capacity as Documentation Agent hereunder.

"**Dollar Equivalent**" means, at any time as to any amount denominated in any Agreed Currency other than Dollars, the equivalent amount in Dollars as determined by the Administrative Agent at such time on the basis of the Exchange Rate for the purchase of Dollars with such Agreed Currency, on the most recent Calculation Date for such currency.

"**Dollars**" and the sign "$" mean the lawful money of the United States of America.

"**Domestic Subsidiary**" means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

"**E-Fax**" means any system used to receive or transmit faxes electronically.

"**E-Signature**" means the process of attaching to or logically associating with an Electronic Transmission an electronic symbol, encryption, digital signature or process (including the name or an abbreviation of the name of the party transmitting the Electronic Transmission) with the intent to sign, authenticate or accept such Electronic Transmission.

"**E-System**" means any electronic system approved by the Administrative Agent, including IntraLinks® and ClearPar® and any other Internet or extranet-based site, whether such electronic system

is owned, operated or hosted by the Administrative Agent, any of its Related Persons or any other Person, providing for access to data protected by passcodes or other security system.

"**EEA Financial Institution**" means (a) any institution 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, or (c) any institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision 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.

"**Electronic Record**" has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

"**Electronic Signature**" has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

"**Electronic Transmission**" means each document, instruction, authorization, file, information and any other communication transmitted, posted or otherwise made or communicated by e-mail or E-Fax, or otherwise to or from an E-System.

"**Eligible Assignee**" means, in each case, subject to the proviso at the end of this definition, (a) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), (b) any Person (other than a Natural Person and/or the Borrower or any of the Borrower's Subsidiaries or Affiliates) in compliance with Section 10.6(c)(ii) or (c) any Approved Fund; *provided* that in no event will (i) a Disqualified Lender be an Eligible Assignee without the Borrower's consent (which may be withheld in its sole discretion) and (ii) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons in this clause (ii) be an Eligible Assignee.

"**Eligible Currency**" means any currency other than Dollars (a) that is readily available, (b) that is freely traded, (c) in which deposits are customarily offered to banks in the London interbank market, (d) that is convertible into Dollars in the international interbank market and (e) as to which a Dollar Equivalent may be readily calculated. If, after the designation by an Issuing Bank of any currency as an Agreed Currency, (x) currency control or other exchange regulations are imposed in the country in which such currency is issued with the result that different types of such currency are introduced, (y) such currency is, in the reasonable determination of the applicable Issuing Bank, no longer readily available or freely traded or (z) in the reasonable determination of the applicable Issuing Bank, a Dollar Equivalent amount of such currency is not readily calculable, the applicable Issuing Bank shall promptly notify the Administrative Agent and the Borrower, and such currency shall no longer be an Agreed Currency until such time as an Issuing Bank agrees to reinstate such currency as an Agreed Currency.

"**Employee Benefit Plan**" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates.

"**Environmental Claim**" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged Environmental Liability or violation of any Environmental Law; (b) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (c) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"**Environmental Laws**" means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them) Laws, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (a) the environment, natural resources and environmental matters, including those relating to any Hazardous Materials Activity; (b) the generation, use, storage, transportation or disposal of Hazardous Materials; or (c) occupational health and safety, land use or the protection of human, plant or animal health or welfare, in any manner applicable to the Borrower or any of its Subsidiaries or any Facility.

"**Environmental Liabilities**" means all Liabilities (including costs of Remedial Actions, natural resource damages and costs and expenses of investigation and feasibility studies, including the cost of environmental consultants and attorneys' costs) that may be imposed on, incurred by or asserted against any Credit Party or any Subsidiary of any Credit Party as a result of, or related to, (a) any actual or alleged violation of any Environmental Law; (b) any Release or threatened Release; (c) any Remedial Action or Hazardous Materials Activity; or (d) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

"**ERISA Affiliate**" means, as applied to any Person, (a) any entity, whether or not incorporated, that is under common control with the Person within the meaning of Section 4001(a)(14) of ERISA, (b) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (c) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (d) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (b) above or any trade or business described in clause (c) above is a member. Any former ERISA Affiliate of the Borrower or Subsidiary will continue to be considered an ERISA Affiliate of any the Borrower or such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of the Borrower or such Subsidiary and with respect to liabilities arising after such period for which the Borrower or such Subsidiary could be liable under the Internal Revenue Code or ERISA.

"**ERISA Event**" means (a) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan; (b) the filing pursuant to Section 412 of the Internal Revenue Code or Section 302 of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan, the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code or Section 302 or 303 of ERISA with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (d) the withdrawal by the Borrower or any Subsidiary or any of their respective ERISA Affiliates from any Pension Plan with two or more non-related contributing sponsors or the termination of any such Pension Plan resulting in liability to the Borrower, any Subsidiary or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (e) the institution by the PBGC of proceedings to terminate any Pension Plan or Multiemployer Plan, or the occurrence of any event or condition which could reasonably constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any such plan; (f) the imposition of any liability under Title IV of ERISA on the Borrower, any Subsidiary or any of their respective ERISA Affiliates, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA; (g) the withdrawal of the Borrower, any Subsidiary or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by the Borrower, any Subsidiary or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in "endangered" or "critical" status (within the meaning of Sections 431 or 432 of the Internal Revenue Code or Sections 304 or 305 of ERISA), or in "critical and declining status" (within the meaning of Section 305 of ERISA) or in insolvency pursuant to

Section 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (h) the occurrence of an act or omission which could give rise to the imposition on the Borrower, any Subsidiary or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (i) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against the Borrower, any Subsidiary or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (j) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan or Multiemployer Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any such plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; (k) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan; (l) the occurrence of a non-exempt "prohibited transaction" with respect to which the Borrower or any Subsidiary is a "disqualified person" or a "party in interest" (within the meaning of Section 4975 of the Internal Revenue Code or Section 406 of ERISA, respectively) or which could reasonably be expected to result in Liability to the Borrower or any Subsidiary; (m) a determination that any Pension Plan is, or is expected to be, in "at risk" status (as defined in Section 430(j) of the Internal Revenue Code or Section 303 of ERISA); or (n) the imposition of liability on the Borrower or any Subsidiary or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA.

"**Erroneous Payment**" as defined in Section 9.14(a).

"**Erroneous Payment Deficiency Assignment**" as defined in Section 9.14(d).

"**Erroneous Payment Impacted Class**" as defined in Section 9.14(d).

"**Erroneous Payment Return Deficiency**" as defined in Section 9.14(d).

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

"**Euro**" means the lawful currency of any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to economic and monetary union.

"**Event of Default**" means each of the conditions or events set forth in Section 8.1.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"**Exchange Rate**" means, on any day, for purposes of determining the Dollar Equivalent of any Eligible Currency, the rate at which such other currency may be exchanged into Dollars at the time of determination on such day on the Bloomberg WCR Page for such currency. If such rate does not appear on any Bloomberg WCR Page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be selected by the Administrative Agent, or, in the event no such service is selected, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about such time as the Administrative Agent shall elect after determining that such rates shall be the basis for determining the Exchange Rate, on such date for the purchase of Dollars for delivery two Business Days later; *provided* that, if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent, after consultation with the Borrower, may use any reasonable method it deems in good faith appropriate to determine such rate, and such determination shall be presumed correct absent manifest error.

"**Excluded Assets**" has the meaning assigned to that term in the Pledge and Security Agreement.

"Excluded Deposit Accounts" has the meaning assigned to that term in the Pledge and Security Agreement.

"**Excluded Subsidiary**" means (a) each Immaterial Subsidiary, (b) each Unrestricted Subsidiary, (c) each Foreign Subsidiary, (d) each Foreign Subsidiary Holding Company, (e) each direct or indirect Subsidiary of any Foreign Subsidiary or any Foreign Subsidiary Holding Company, (f) each Subsidiary to the extent that such Subsidiary is prohibited or restricted by any applicable Law from guaranteeing the Obligations, (g) each Subsidiary if, and for so long as, the guarantee of the Obligations by such Subsidiary would require the consent, approval, license or authorization of a Governmental Authority or under any binding Contractual Obligation with any Person other than the Borrower or any Subsidiary existing on the Closing Date (or, if later, the date such Subsidiary is acquired (so long as such Contractual Obligation is not incurred in contemplation of such acquisition)), except to the extent such consent, approval, license or authorization has actually been obtained; it being understood and agreed that there shall not be a requirement to seek to obtain any such consent, (h) each Subsidiary that is not a wholly owned Subsidiary of a Credit Party, (i) each special purpose securitization vehicle (or similar entity), (j) each Subsidiary that is a not-for-profit organization, (k) each Captive Insurance Subsidiary and (l) each Subsidiary with respect to which, as determined by the Borrower and the Administrative Agent, the cost of providing a guarantee is excessive in view of the benefits to be obtained by the Lenders; in each case of this definition, unless such Subsidiary is designated as a Guarantor pursuant to the definition of "Guarantors."

"**Excluded Swap Obligation**" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, and only for so long as, all or a portion of the guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" (determined after giving effect to any applicable keep well, support or other agreement for the benefit of such Guarantor and any and all guarantees of such Guarantor's Swap Obligations by other Credit Parties) as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 7.14) at the time the guaranty of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion will apply only to the portion of such Swap Obligation that is attributable to swaps for which the guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

"**Excluded Tax**" means any of the following Taxes imposed on or with respect to any 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, and including branch profits taxes) and franchise taxes, in each case (i) imposed as a result of such Recipient 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 Tax (or any political subdivision thereof) or (ii) imposed on any Recipient as a result of a present or former connection between such Recipient and the jurisdiction of the Governmental Authority imposing such Tax or any political subdivision or taxing authority thereof or therein (other than such connection arising from any such Recipient having executed, delivered, become a party to, performed its obligations or received a payment under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced, any Credit Document, or sold or assigned an interest in any Credit Document or Loan); (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which such Lender (i) acquires such interest in the Loan or Commitment or otherwise becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower under Section 2.23) or (ii) changes its lending office, except in each case, to the extent that, pursuant to Section 2.20, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) Taxes that are attributable to the failure by any Recipient to deliver the documentation required to be delivered pursuant to Section 2.20(f) or Section 2.20(g); and (d) Taxes imposed under FATCA.

"**Executive Officer**" means, as applied to any Person, any individual holding the position of chairman of the Board of Directors, chief executive officer, chief financial officer, chief operating officer, chief compliance officer, chief legal officer and any other executive officer having substantially the same authority and responsibility as any of the foregoing.

"**Executive Order No. 13224**" means Executive Order No. 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.

"**Existing Credit Agreement**" means that certain Credit and Guaranty Agreement, dated as of November 15, 2016 (as amended, amended and restated, supplemented or otherwise modified prior to the date hereof), among the Borrower, the several lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.

"**Existing Letters of Credit**" means those letters of credit existing on the Closing Date and identified on Schedule 1.1.

"**Extended Revolving Credit Commitment**" as defined in Section 10.5(g)(i)(2).

"**Extended Term Lender**" as defined in Section 10.5(g)(i)(3).

"**Extended Term Loans**" as defined in Section 10.5(g)(i)(3).

"**Extension**" as defined in Section 10.5(g)(i).

"**Extension Amendment**" as defined in Section 10.5(g)(iii).

"**Extension Offer**" as defined in Section 10.5(g)(i).

"**Facility**" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by the Borrower, any Subsidiary or any of their respective predecessors or Affiliates.

"**Fair Share**" as defined in Section 7.2.

"**Fair Share Contribution Amount**" as defined in Section 7.2.

"**FATCA**" means Sections 1471 through 1474 of the Internal Revenue 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, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code, any intergovernmental agreement between a non-U.S. jurisdiction and the United States with respect to the foregoing and any law or regulation (or official interpretation thereof) adopted pursuant to any such intergovernmental agreement.

"**FCPA**" means the U.S. Foreign Corrupt Practices Act (15 U.S.C. §§78dd-1 et seq.).

"**Federal Funds Effective Rate**" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the NYFRB on the Business Day next succeeding such day, provided that if such rate is not so published for any day which is a Business Day, the Federal Funds Effective Rate for such day shall be the average of the quotation for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent. Notwithstanding the foregoing, if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"**Finance Lease**" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP as in effect on the Closing Date, is or should be accounted for as a finance lease or capital lease on the balance sheet of that Person; provided that for all purposes hereunder the amount of obligations under any Finance Lease shall be the amount thereof accounted for as a liability in accordance with GAAP as in effect on January 1, 2019.

"**Financial Covenants**" are, as of any date of determination, the covenants set forth in Section 6.7(a) as applicable on such date.

"**Financial Officer Certification**" means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer, treasurer, controller or other officer with equivalent duties of the Borrower that such financial statements fairly present, in all material respects, the financial condition of the Borrower and the Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments and the absence of footnotes.

"**Financial Plan**" as defined in Section 5.1(k).

"**First Lien Net Leverage Ratio**" means, as of any date, the ratio of (a) Consolidated Total Debt of the Borrower and the Subsidiaries that is secured by a Lien on the Collateral that ranks pari passu with the Liens on the Collateral securing the Obligations outstanding as of the most recently ended Test Period, *minus* up to $50,000,000 of Unrestricted Cash as of such date to (b) Consolidated Adjusted EBITDA for the most recently ended Test Period, all of the foregoing determined on a Pro Forma Basis.

"**First Oyster Merger**" as defined in the definition of "Oyster Merger Agreement".

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year.

"**Fiscal Year**" means the fiscal year of the Borrower and the Subsidiaries ending on December 31st of each calendar year.

"**Flood Hazard Property**" means any improved portion of a Material Real Estate Asset subject to a Mortgage in favor of the Collateral Agent, for the benefit of the Secured Parties, and located in an area designated by the Federal Emergency Management Agency (or any successor thereto) as having special flood or mud slide hazards.

"**Flood Insurance Laws**" means, collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto, and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

"**Floor**" means a rate of interest equal to (a) with respect to any Incremental Term Loan, Extended Term Loan or Refinancing Term Loan, the applicable floor determined pursuant to Section 2.24, Section 2.26 and Section 10.5(g), as applicable, and (b) for any other purpose, 0.0%.

"**Foreign Casualty Event**" as defined in Section 2.15(f)(i).

"**Foreign Currency Letter of Credit**" means a Letter of Credit denominated in any Available Foreign Currency.

"**Foreign Disposition**" as defined in Section 2.15(f)(i).

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Foreign Subsidiary Holding Company**" means any Subsidiary that has no material assets other than the Capital Stock (or Capital Stock and Indebtedness) of one or more CFCs or other Foreign Subsidiary Holding Companies.

"Fourth Amendment" means that certain Amendment No. 4 to Credit and Guaranty Agreement, dated as of March 31, 2023, by and among the Borrower, the Guarantor Subsidiaries party thereto, the Lenders party thereto and the Administrative Agent.

"Fourth Amendment Effective Date" means March 31, 2023.

"**Funded Debt**" means all Indebtedness of the Borrower and the Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

"**Funding Default**" as defined in Section 2.22(d).

"**Funding Guarantor**" as defined in Section 7.2.

"**Funding Notice**" means a notice substantially in the form of **Exhibit A-1**.

"**GAAP**" means, subject to the limitations on the application thereof set forth in Section 1.2 and in the definition of Finance Lease, United States generally accepted accounting principles in effect as of the date of determination thereof; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof (including through the adoption of IFRS) on the operation of such provision (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 (including through the adoption of IFRS), 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 anything herein to the contrary, all leases of the Borrower and its Subsidiaries that are treated as operating leases for purposes of GAAP on January 1, 2019 shall continue to be accounted for as operating leases regardless of any change in or application of GAAP following such date that would otherwise require such leases to be treated as Finance Leases.

"**Government Official**" means (a) any official, officer, employee or representative of, or any Person acting in an official capacity for or on behalf of, any Governmental Authority, (b) any political party or party official or candidate for political office or (c) any official, officer, employee, or any Person acting in an official capacity for or on behalf of, any company, business, enterprise or other entity owned (in whole or in substantial part) controlled by or Affiliated (as defined without reference to clause (a) of the second sentence set forth in the definition of "Affiliate") with a Governmental Authority.

"**Governmental Acts**" means any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

"**Governmental Authority**" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity, officer or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government in a jurisdiction where the Borrower and its Subsidiaries operate the Businesses.

"**Governmental Authorization**" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"**Granting Lender**" as defined in Section 10.6(k).

"**Grantor**" as defined in the Pledge and Security Agreement.

"**Guarantor**" means (i) each Guarantor Subsidiary and (ii) to the extent that any Person, if any, becomes the direct Parent of the Borrower and such Parent elects, in its sole discretion, to Guarantee the Obligations (it being understood that there is no requirement for any such Parent to give such Guaranty) by executing a supplement to the Guaranty in substantially the form attached thereto, then such Parent shall be a Guarantor hereunder; *provided* that, with respect to any such Parent that is not organized under the laws of the United States of America, any State thereof or the District of Columbia, the Required Lenders shall have granted their consent to such Parent as a Guarantor taking into account the local laws and regulations in the jurisdiction of such Parent's organization and operations, and the availability and enforceability of guarantees and security to be provided by such Parent, and all documentation of such guarantees and security and related filings (if applicable) shall be in form and substance satisfactory to the Required Lenders.

"**Guarantor Subsidiary**" means each Subsidiary of the Borrower (other than an Excluded Subsidiary). The Borrower may, in its sole discretion, cause any Subsidiary that is not required to be a Guarantor to Guarantee the Obligations by causing such Subsidiary to execute a supplement to the Guaranty in substantially the form attached thereto, and any such Subsidiary shall be a Guarantor hereunder for all purposes; *provided* that with respect to any Subsidiary that is not a Domestic Subsidiary, the Required Lenders shall have granted their consent to such Subsidiary as a Guarantor taking into account the local laws and regulations in the jurisdiction of such Subsidiary's organization and operations, and the availability and enforceability of guarantees and security to be provided by such Subsidiary, and all documentation of such guarantees and security and related filings (if applicable) shall be in form and substance satisfactory to the Required Lenders.

"**Guaranty**" means the guaranty of each Guarantor set forth in Section 7.

"**Hazardous Materials**" means any chemical, material, substance or waste, (i) exposure to, or the Release of which is prohibited, limited or regulated by any Governmental Authority, (ii) which may or could result in liability under Environmental Law, or (iii) which may or could pose a hazard to human health and safety or to the indoor or outdoor environment, including any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, toxic mold and biomedical waste.

"**Hazardous Materials Activity**" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"**Highest Lawful Rate**" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

"**Historical Financial Statements**" means as of the Closing Date, with respect to the Borrower and its consolidated Subsidiaries, (i) the audited consolidated balance sheets as of December 31, 2017 and 2018 and the related audited consolidated statements of operations and comprehensive (loss) income, statements of changes in members' equity and cash flows for the years ended December 31, 2017 and 2018, and (ii) the unaudited consolidated balance sheet as of September 30, 2019 and the related unaudited consolidated statement of operations and comprehensive (loss) income and statements of changes in members' equity and cash flows for the nine months then ended, in each case together with the notes thereto.

"**IFRS**" means International Financial Reporting Standards and applicable accounting requirements set by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants, or any successor to either such Board, or the SEC, as the case may be), as in effect from time to time.

"**Immaterial Subsidiary**" means on any date, any Subsidiary of the Borrower that has less than 2.5% of consolidated total assets on a Pro Forma Basis and generates less than 2.5% of annual consolidated revenues of the Borrower and the Subsidiaries as reflected on the most recent financial statements delivered pursuant to Section 5.1(a) prior to such date; *provided* that if, at any time and from time to time after the Closing Date (or such longer period as the Administrative Agent may agree in its sole discretion), Domestic Subsidiaries that are not Guarantors solely because they meet the thresholds set forth above comprise in the aggregate more than (when taken together with the consolidated total assets of the Subsidiaries of such Domestic Subsidiaries at the last day of the most recent Test Period) 5.0% of consolidated total assets of the Borrower and the Subsidiaries as of the end of the most recently ended Test Period or more than (when taken together with the revenues of the Subsidiaries of such Domestic Subsidiaries for such Test Period) 5.0% of the consolidated revenues of the Borrower and the Subsidiaries for such Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) cause one or more Domestic Subsidiaries to comply with the provisions of Section 5.10 with respect to any such Subsidiaries so that the foregoing excess is eliminated.

"**Increased Cost Lender**" as defined in Section 2.23(a).

"**Incremental Amendment**" as defined in Section 2.24(e).

"**Incremental Amount**" as defined in Section 2.24(c).

"**Incremental Equivalent Debt**" means Indebtedness of any one or more Credit Parties in the form of loans or notes that constitute Pari Passu Lien Indebtedness or Junior Lien Indebtedness or that are unsecured; *provided* that:

(a) the aggregate principal amount of all Incremental Equivalent Debt on any date such Indebtedness is incurred will not, together with any Incremental Revolving Facilities and/or Incremental Term Facilities previously incurred, exceed the Incremental Amount (on the same basis as the Borrower may incur Incremental Facilities pursuant to the fourth, fifth and sixth sentences of Section 2.24(c), but substituting "Incremental Equivalent Debt" for "Incremental Facility" therein); *provided* that:

(i) loans or notes that constitute Pari Passu Lien Indebtedness will only be incurred when the First Lien Net Leverage Ratio, after giving effect to the incurrence thereof on a Pro Forma Basis and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), would not exceed 3.50:1.00; *provided* that such ratio level shall increase to 3.75:1.00 in connection with any Material Permitted Acquisition that results in the Financial Covenant level set forth in Section 6.7(a)(i) increasing and for any other Incremental Equivalent Debt incurred to finance a Material Permitted Acquisition during the duration of such increase,

(ii) loans or notes that constitute Junior Lien Indebtedness will only be incurred when the Secured Net Leverage Ratio, after giving effect to the incurrence thereof on a Pro Forma Basis and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), would not exceed 3.50:1.00; *provided* that such ratio level shall increase to 3.75:1.00 in connection with any Material Permitted Acquisition that results in the Financial Covenant level set forth in Section 6.7(a)(i) increasing and for any other Incremental Equivalent Debt incurred to finance a Material Permitted Acquisition during the duration of such increase, and

(iii) unsecured loans or notes will only be incurred when the Total Net Leverage Ratio, after giving effect to the incurrence thereof on a Pro Forma Basis and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), would not exceed 3.50:1.00; *provided* that such ratio level shall increase to 3.75:1.00 in connection with any Material Permitted Acquisition that results in the Financial Covenant level set forth in Section 6.7(a)(i) increasing and for any other Incremental Equivalent Debt incurred to finance a Material Permitted Acquisition during the duration of such increase;

(b) (i) any Incremental Equivalent Debt that constitutes Pari Passu Lien Indebtedness will not mature prior to the maturity date of each of the Initial Term Loans, the Term A-1 Loans and the Term A-2 Loans and (ii) any Incremental Equivalent Debt that constitutes Junior Lien Indebtedness or unsecured Indebtedness will not mature prior to the date that is 91 days after the maturity date of each of the Initial Term Loans, the Term A-1 Loans and the Term A-2 Loans;

(c) any Incremental Equivalent Debt will not have a shorter Weighted Average Life to Maturity than the Initial Term Loans, the Term A-1 Loans or the Term A-2 Loans;

(d) any Incremental Equivalent Debt that is secured (i) will not be secured by any property or assets of the Borrower or any Subsidiary other than the Collateral and (ii) will be subject to a Pari Passu Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement, as applicable;

(e) any Incremental Equivalent Debt constituting Pari Passu Lien Indebtedness may participate on a *pro rata* basis or less than *pro rata* basis (but not greater than a *pro rata* basis except for prepayments with the proceeds of a Permitted Refinancing and in respect of an earlier maturing tranche) with the then-existing Term Loans in any mandatory prepayments hereunder, and any mandatory prepayments of any Incremental Equivalent Debt that is unsecured or Junior Lien Indebtedness may not be made except to the extent that prepayments are offered, to the extent required under this Agreement or any Pari Passu Lien Indebtedness, first on a *pro rata* basis to the Term Loans and any applicable Pari Passu Lien Indebtedness;

(f) Incremental Equivalent Debt will not be guaranteed by any Person other than the Credit Parties;

(g) with respect to any Incremental Equivalent Debt incurred as Pari Passu Lien Indebtedness in the form of term loans, the MFN Adjustment will apply to any such Incremental Equivalent Debt (but the MFN Adjustment will not apply to any other Incremental Equivalent Debt);

(h) subject to the provisions set forth in Section 1.5 with respect to any Limited Condition Transaction, no Default or Event of Default will have occurred and be continuing on the date such Incremental Equivalent Debt is incurred, or would occur immediately after giving effect thereto; and

(i) Other Applicable Incurrence Requirements shall apply, *mutatis mutandis*.

For the avoidance of doubt, if the Borrower shall incur indebtedness as Incremental Equivalent Debt under the Incremental Fixed Amount substantially concurrently with the incurrence of indebtedness under any of the First Lien Net Leverage Ratio, Secured Net Leverage Ratio and/or Total Net Leverage Ratio tests described above, such applicable ratio will be calculated with respect to such incurrence without regard to any incurrence of indebtedness under the Incremental Fixed Amount. Unless the Borrower elects otherwise, each Incremental Equivalent Debt will be deemed incurred first under the applicable First Lien Net Leverage Ratio, Secured Net Leverage Ratio and/or Total Net Leverage Ratio to the extent permitted, with the balance incurred under the Incremental Fixed Amount. If any of the First Lien Net Leverage Ratio, Secured Net Leverage Ratio and/or Total Net Leverage Ratio tests described above for the incurrence of any Incremental Equivalent Debt would be satisfied on a Pro Forma Basis as of the end of any Fiscal Quarter, the classification shall be deemed to have occurred automatically.

"**Incremental Facility**" as defined in Section 2.24(a).

"**Incremental Fixed Amount**" means, as of any date of measurement, (a) the greater of (i) $100,000,000 and (ii) 100% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination, *minus* (b) the aggregate amount of Incremental Term Loans previously incurred in reliance on this definition (excluding $30,000,000 of principal amount of the Term A-2 Loans incurred on the Third Amendment Effective Date such that, as of the Third Amendment Effective Date (after giving effect to the Term A-2 Loans incurred on such date), Incremental Term Loans in an aggregate principal amount of $50,000,000 shall be deemed to have been incurred under the Incremental Fixed Amount), *minus* (c) the aggregate amount of Revolving Credit Commitments previously committed in reliance on this definition to fund Incremental Revolving Facilities, *minus* (d) the aggregate amount of all Incremental Equivalent Debt previously incurred in reliance on this definition, *plus* (e) the aggregate principal amount of any prepayments of Term Loans made pursuant to Section 2.13(a) after the Third Amendment Effective Date to the extent not funded with the proceeds of Funded Debt, *plus* (f) the aggregate principal amount of any reductions of the Revolving Credit Commitments made pursuant to Section 2.13(b) to the extent not funded with the proceeds of Funded Debt.

"**Incremental Loans**" as defined in Section 2.24(a).

"**Incremental Ratio Amount**" means an aggregate principal amount of Indebtedness that, after giving effect to the incurrence thereof on a Pro Forma Basis and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), would not result in, with respect to any Incremental Facility or Incremental Equivalent Debt to be incurred as Pari Passu Lien Indebtedness, the First Lien Net Leverage Ratio being equal to or greater than 3.50:1.00 for the most recently ended Test Period; *provided* that such ratio level shall increase to 3.75:1.00 in connection with any Material Permitted Acquisition that results in the Financial Covenant level set forth in Section 6.7(a)(i) increasing and for any other Incremental Facility or Incremental Equivalent Debt incurred to finance a Material Permitted Acquisition during the duration of such increase.

"**Incremental Revolving Facilities**" as defined in Section 2.24(a).

"**Incremental Revolving Loans**" as defined in Section 2.24(a).

"**Incremental Term Facilities**" as defined in Section 2.24(a).

"**Incremental Term Loans**" as defined in Section 2.24(a).

"**Incremental Term Loan Commitment**" means the commitment of a Lender to make or otherwise fund an Incremental Term Loan and "Incremental Term Loan Commitments" means such commitments of all Lenders in the aggregate.

"**Incremental Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Incremental Term Loans of such Lenders; *provided*, at any time prior to the making of the Incremental Term Loans, the Incremental Term Loan Exposure of any Lender will be equal to such Lender's Incremental Term Loan Commitment.

"**Indebtedness**," as applied to any Person, means, without duplication, (a) all indebtedness for borrowed money; (b) that portion of obligations with respect to Finance Leases that is properly classified as a liability on a balance sheet in conformity with GAAP as in effect of the date hereof; (c) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (d) any obligation owed for all or any part of the deferred purchase price of property or services to the extent the same would be required to be shown as a liability on the balance sheet of such Person prepared in accordance with GAAP; (e) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby will have been assumed by that Person or is nonrecourse to the credit of that Person (*provided* that the amount of such Indebtedness for purposes of this clause (e) will be the lesser of the fair market value of such property at such date of determination and the amount of Indebtedness so secured); (f) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (g) [reserved]; (h) Disqualified Capital Stock; (i) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-

making, discounting with recourse or sale with recourse by such Person of Indebtedness of any other Person in respect of items in clauses (a)-(g) of this definition other than by endorsement of negotiable instruments for collection in the ordinary course of business; (j) [reserved]; (k) [reserved]; and (l) obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including any Rate Contract, whether entered into for hedging or speculative purposes; *provided* that in no event (i) will obligations under any Rate Contract be deemed "Indebtedness" for the purpose of calculating any ratio contemplated by this Agreement and (ii) will operating leases of the Borrower and the Subsidiaries be deemed "Indebtedness" for any purpose under this Agreement. Notwithstanding anything to the contrary in clause (f) of this definition, to the extent any letter of credit issued for the benefit of the Borrower or any Subsidiary (a "**Primary LC**") is supported (including any "back-to-back" arrangement) by a another letter of credit (including any Letter of Credit hereunder) also issued for the benefit of the Borrower or any Subsidiary (the "**Supporting LC**"), to the extent that any both such Primary LC and the relevant Supporting LC would constitute "Indebtedness" for any purpose under this Agreement, then the Primary LC and the relevant Support LC shall be deemed to be a single obligation in an amount equal to the amount of Indebtedness attributable to the Primary LC (and any corresponding amount of the Supporting LC that also would then constitute "Indebtedness" will be disregarded).

For all purposes hereof, the Indebtedness of any Person will (A) include the Indebtedness of any partnership or Joint Venture (other than a Joint Venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Debt and (B) in the case of Subsidiaries that are not Credit Parties, exclude loans and advances made by Credit Parties having a term not exceeding 364 days (inclusive of any roll over or extensions of terms) and made in the ordinary course of business solely to the extent the aggregate principal amount of all such loans and advances at any time outstanding does not exceed $4,000,000 solely to the extent that such intercompany loans and advances are evidenced by one or more notes in form and substance reasonably satisfactory to the Administrative Agent and pledged as Collateral. The amount of Indebtedness of any Person for purposes of clause (e) will be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value (as determined by such Person in good faith) of the property encumbered thereby as determined by such Person in good faith.

"**Indemnified Liabilities**" means, collectively, any and all liabilities (including Environmental Liabilities), obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the costs of any Remedial Action), expenses and disbursements of any kind or nature whatsoever (including the reasonable and documented fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened by any Person, whether or not any such Indemnitee will be designated as a party or a potential party thereto, and any reasonable and documented out-of-pocket fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (a) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); (b) the Wells Fee Letter and any Contractual Obligation entered into in connection with any Approved Electronic Communications; (c) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of the Borrower or any Subsidiary; or (d) any investigation, litigation or other proceeding relating to any of the foregoing, whether or not brought by any such Indemnitee or any of its Related Persons, any holders of securities or creditors (and including attorneys' fees in any case), whether or not any such Indemnitee, Related Person, holder or creditor is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Law or theory thereof, including common law, equity, contract, tort or otherwise.

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

"**Indemnitee**" as defined in Section 10.3(a).

"**Initial Credit Extension**" as defined in Section 3.1.

"**Initial Revolving Borrowing**" means one or more borrowings of Revolving Loans in amounts not to exceed up to $10,000,000 (including for working capital purposes and/or to pay Transaction Costs).

"**Initial Revolving Commitment**" means the commitment of a Lender set forth on Appendix A-2 to make or otherwise fund any Revolving Loan and to acquire participations in Letters of Credit and Swing Line Loans hereunder, and "**Initial Revolving Commitments**" means such commitments of all of the Lenders in the aggregate. The amount of each Lender's Initial Revolving Commitment, if any, is subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Initial Revolving Commitments as of the Closing Date is $50,000,000.

"**Initial Term Loan**" means a Term Loan made by a Lender to the Borrower on the Closing Date pursuant to Section 2.1(a).

"**Initial Term Loan Commitment**" means the commitment of a Lender to make or otherwise fund an Initial Term Loan and "**Initial Term Loan Commitments**" means such commitments of all of the Lenders in the aggregate. The amount of each Lender's Initial Term Loan Commitment, if any, is set forth on Appendix A-1 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Initial Term Loan Commitments as of the Closing Date is $200,000,000.

"**Initial Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Initial Term Loans of such Lender; *provided*, at any time prior to the making of the Initial Term Loans, the Initial Term Loan Exposure of any Lender will be equal to such Lender's Initial Term Loan Commitment.

"**Initial Term Loan Facility**" means the term loan facility established pursuant to Section 2.1(a).

"**Initial Term Loan Note**" means a promissory note in the form of **Exhibit B-1**, as it may be amended, supplemented or otherwise modified from time to time.

"**Intellectual Property**" has the meaning set forth in the Pledge and Security Agreement.

"**Intercompany Subordination Agreement**" means the Intercompany Subordination Agreement to be executed by the Borrower and its Subsidiaries substantially in the form of **Exhibit K**.

"**Interest Coverage Ratio**" means, as of any date, the ratio of (a) Consolidated Adjusted EBITDA for the most recently ended Test Period to (b) Consolidated Interest Expense paid in cash and net of cash interest income for the most recently ended Test Period, in each case for the Test Period as of such date, all of the foregoing determined on a Pro Forma Basis.

"**Interest Payment Date**" means with respect to (a) any Base Rate Loan, the last Business Day of each Calendar Quarter, commencing on the first such date to occur after the borrowing of such Loan and the final maturity date or conversion date of such Loan; and (b) any SOFR Loan, the last day of each Interest Period applicable to such Loan; *provided* that in the case of each Interest Period of longer than three months "Interest Payment Date" will also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period.

"**Interest Period**" means, as to any SOFR Loan, the period commencing on the date such SOFR Loan is disbursed or converted to or continued as a SOFR Loan and ending on the date one (1), three (3)

or six (6) months thereafter, in each case as selected by the Borrower in the applicable Funding Notice or Conversion/Continuation Notice and subject to availability; provided that:

(a) the Interest Period shall commence on the Credit Date or Conversion/Continuation Date thereof, as the case may be, of any SOFR Loan and, in the case of immediately successive Interest Periods, each successive Interest Period shall commence on the day on which the immediately preceding Interest Period expires;

(b) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the immediately preceding Business Day;

(c) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month at the end of such Interest Period;

(d) (i) no Interest Period with respect to any portion of any Class of Term Loans will extend beyond such Class's Term Loan Maturity Date and (ii) no Interest Period with respect to any portion of the Revolving Loans will extend beyond the Revolving Credit Commitment Termination Date applicable to such Revolving Loans; and

(e) no tenor that has been removed from this definition pursuant to Section 2.18(e)(iv) shall be available for specification in any Funding Notice or Conversion/Continuation Notice.

"**Interest Rate Determination Date**" means, with respect to any Interest Period, the Periodic Term SOFR Determination Day or the Base Rate Term SOFR Determination Day, as applicable.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended, and any successor statute.

"**Investment**" means (a) any direct or indirect purchase or other acquisition by the Borrower or any Subsidiary of, or of a beneficial interest in, any of the Securities of any other Person; (b) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary from any Person, of any Capital Stock of such Person; (c) any direct or indirect loan, advance or capital contribution by the Borrower or any Subsidiary to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business; and (d) the purchase or other acquisition of property and assets or businesses of any Person or of assets constituting a business unit, a line of business or division of such Person, a facility or Capital Stock in a Joint Venture or other Capital Stock in another Person that, upon the consummation thereof, will be a Subsidiary (including as a result of a merger or consolidation) or, in the case of a purchase or acquisition of assets (other than Capital Stock), will be owned by the Borrower or a Subsidiary. The amount of any Investment will be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment, but net of any return, whether a return of capital, interest, dividend or otherwise, with respect to such Investment.

"**Issuance Notice**" means an Issuance Notice substantially in the form of **Exhibit A-3**.

"**Issue**" means, with respect to any Letter of Credit, to issue, extend the expiration date of, renew (including by failure to object to any automatic renewal on the last day such objection is permitted), increase the face amount of, or reduce or eliminate any scheduled decrease in the face amount of, such Letter of Credit, or to cause any Person to do any of the foregoing. The terms "Issued" and "Issuance" have correlative meanings.

"**Issuing Bank**" means each of (a) with respect to Letters of Credit issued hereunder on or after the Closing Date, (i) Wells Fargo Bank, National Association, in its capacity as an issuer of Letters of Credit hereunder and (ii) any (A) Lender, (B) Affiliate of a Lender and (C) other bank or legally authorized Person, in each case under this clause (ii), that agrees to act in such capacity and reasonably acceptable to the Borrower and the Administrative Agent, in such Person's capacity as an issuer of Letters of Credit hereunder and (b) with respect to the Existing Letters of Credit, JPMorgan Chase Bank, N.A., in its capacity as issuer thereof.

"**Joint Venture**" means (a) any Person which would constitute an "equity method investee" of the Borrower or any Subsidiary and (b) any Person in whom the Borrower or any Subsidiary beneficially owns any Capital Stock that is not a Subsidiary (other than an Unrestricted Subsidiary); *provided* that in no event will any Subsidiary of any Person be considered a Joint Venture of such Person.

"**Judgment Currency**" as defined in Section 10.26(a).

"**Junior Financing**" means any Junior Lien Indebtedness, any Subordinated Debt and any unsecured Indebtedness, in each case in excess of the Threshold Amount.

"**Junior Lien Indebtedness**" means any Indebtedness of any Credit Party that is secured by Liens on Collateral that rank junior in priority to the Liens that secure the Obligations.

"**Junior Lien Intercreditor Agreement**" means an Intercreditor Agreement, in form and substance reasonably acceptable to the Borrower, the Collateral Agent and the applicable debt representatives for Junior Lien Indebtedness permitted hereunder.

"**L/C Reimbursement Agreement**" as defined in Section 2.4(a).

"**Latest Term Loan Maturity Date**" means, as at any date of determination, the latest maturity or expiration date applicable to any Term Loan (including any Incremental Term Loan), as extended in accordance with this Agreement from time to time.

"**Laws**" means any federal, state, local or foreign law (including common law), statute, code or ordinance, or any rule or regulation promulgated by any Governmental Authority.

"**LCT Election**" as defined in Section 1.5.

"**LCT Test Date**" as defined in Section 1.5.

"**Lead Arrangers**" means Wells Fargo Securities, LLC, JPMorgan Chase Bank, N.A. and Truist Securities, Inc. (formerly known as SunTrust Robinson Humphrey, Inc.), in their respective capacities as joint lead arrangers and joint bookrunners hereunder.

"**Lender**" means, collectively, (a) each Person listed on the signature pages hereto as a Lender holding a Commitment or a Loan and (b) any other Person (other than a Natural Person) that becomes a party hereto pursuant to an Assignment Agreement and holds a Commitment or a Loan. Unless the context clearly indicates otherwise, the term "Lenders" will include the Swing Line Lenders.

"**Lender Presentation**" means that certain lender presentation dated November 12, 2019.

"**Lending Office**" means, with respect to any Lender, the office or offices of such Lender specified as its "Lending Office" beneath its name on Appendix B hereto or in the administrative questionnaire delivered by such Lender to the Borrower and the Administrative Agent, or, in each case, such other office or offices of such Lender as it may from time to time notify the Borrower and the Administrative Agent.

"**Letter of Credit**" means a commercial or standby letter of credit Issued or to be Issued by an Issuing Bank pursuant to this Agreement and the Existing Letters of Credit.

"**Letter of Credit Obligations**" means all outstanding obligations incurred by any Issuing Bank or any Lender at the request of the Borrower, whether direct or indirect, contingent or otherwise, due or not due, in connection with the Issuance or any other amendment to Letters of Credit by any Issuing Bank or the purchase of a participation as set forth in Section 2.4(e) with respect to any Letter of Credit. The amount of such Letter of Credit Obligations will equal the maximum amount that may be payable by the Issuing Banks and the Lenders thereupon or pursuant thereto; *provided* that such calculation will, with respect to Foreign Currency Letters of Credit, be made using the Dollar Equivalent of any Foreign Currency Letters of Credit with respect to amounts denominated in Available Foreign Currencies.

"**Letter of Credit Sublimit**" means, as of any date of determination, the lower of the following amounts: (a) $7,500,000 and (b) the aggregate amount of the Revolving Credit Commitments as of such date minus the Total Utilization of Revolving Credit Commitments as of such date.

"**Letter of Credit Usage**" means, as at any date of determination, the sum of (a) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Letters of Credit then outstanding, and (b) the aggregate amount of all drawings under Letters of Credit honored by the Issuing Banks and not theretofore reimbursed by or on behalf of the Borrower; *provided* that such calculation will, with respect to Foreign Currency Letters of Credit, be made using the Dollar Equivalent of any Foreign Currency Letters of Credit with respect to amounts denominated in Available Foreign Currencies.

"**Liabilities**" means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions, charges, disbursements and expenses (including those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

"**Lien**" means (a) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing and (b) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities; *provided* that in no event shall an operating lease in and of itself be deemed a Lien.

"**Limited Condition Transaction**" means any Permitted Acquisition, other Investment, irrevocable (which can be conditional) repayment or redemption of, or offer to purchase, any Indebtedness permitted hereunder by any one or more of the Borrower and/or one or more of its Subsidiaries whose consummation is not conditioned on the availability of, or on obtaining, third party financing.

"Liquidity" means, at any time of determination: (a) during the period of sixty (60) calendar days immediately following the Fourth Amendment Effective Date, an amount equal to the sum of (i) the aggregate amount of cash and Cash Equivalents held in Deposit Accounts (other than Excluded Deposit Accounts) of the Credit Parties in the U.S. reflected on the combined consolidated balance sheet of the Borrower and the Subsidiaries plus (ii) the amount by which the Revolving Credit Commitments then exceed the Revolving Credit Exposure; and (b) thereafter, an amount equal to the sum of (i) Unrestricted Cash maintained with a Lender subject to a deposit account control agreement in form and substance satisfactory to Administrative Agent plus (ii) the amount by which the Revolving Credit Commitments then exceed the Revolving Credit Exposure.

"Liquidity Covenant Equity Contribution" has the meaning set forth in Section 6.11(b).

"**Loan**" means an Initial Term Loan, a Term A-1 Loan, a Term A-2 Loan, an Incremental Term Loan, an Extended Term Loan, a Refinancing Term Loan, a Revolving Loan (including any Incremental Revolving Loan) or a Swing Line Loan.

"**Margin Stock**" means "margin stock" as such term is defined in Regulation U of the Board of Governors as in effect from time to time.

"**Material Adverse Effect**" means a material adverse effect with respect to (a) the business, operations, properties, assets or financial condition of the Borrower and the Subsidiaries, taken as a whole, (b) the ability of the Credit Parties, taken as a whole, to fully and timely perform their payment obligations under this Agreement or any other Credit Document, (c) the legality, validity, binding effect or enforceability against a Credit Party of a Credit Document to which it is a party or (d) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender or any Secured Party under any Credit Document.

"**Material Permitted Acquisition**" means any Permitted Acquisition with a purchase price in excess of $25,000,000.

"**Material Real Estate Asset**" means any fee-owned Real Estate Asset located in the United States having a fair market value (determined in good faith by the Borrower) in excess of $7,500,000 as of the date of the acquisition thereof.

"**Maximum Refinancing Amount**" means, with respect to any Credit Agreement Refinancing Indebtedness, Permitted Refinancing or other refinancing, the principal amount (including interest paid in kind or otherwise capitalized to principal) and/or undrawn commitments, as applicable, of such Refinanced Indebtedness plus the sum of (i) the amount of all accrued and unpaid interest on such Refinanced Indebtedness, (ii) the amount of any premiums (including tender premiums), make-whole amounts or penalties on such Refinanced Indebtedness, (iii) the amount of all fees (including any exit consent fees) on such Refinanced Indebtedness, (iv) the amount of all fees (including commitment, underwriting, structuring, ticking and closing fees), commissions, costs, expenses and other amounts associated with such Refinancing Indebtedness and (v) the amount of all original issue discount and upfront fees associated with such Refinancing Indebtedness ("**Refinancing Amount**"); *provided* that (1) to the extent on the date of such Permitted Refinancing the Borrower has capacity under the clause of Section 6.1 pursuant to which such Refinanced Indebtedness was initially incurred (or to which such Refinanced Indebtedness at such time has been classified, as applicable) to incur additional principal amount of the same type as the Refinanced Indebtedness ("**Additional Incurrence Capacity**"), then the Borrower and its Subsidiaries may incur Refinancing Indebtedness in an aggregate principal amount not to exceed the maximum Additional Incurrence Capacity if greater than the Refinancing Amount; *provided further*, that the amount of Refinancing Indebtedness incurred in reliance on the Additional Incurrence Capacity will be considered to have been incurred under the clause of Section 6.1 pursuant to which such Refinanced Indebtedness was initially incurred (or to which such Refinanced Indebtedness at such time has been classified, as applicable).

"**MFN Adjustment**" means, with respect to the incurrence of any Incremental Term Loans, Incremental Equivalent Debt that is Pari Passu Lien Indebtedness in the form of term loans (but not notes or securities) or Permitted Ratio Debt that is Pari Passu Lien Indebtedness in the form of term loans (but not notes or securities), in each case during the first 12 months following the Closing Date, in the event that the All-In Yield applicable to such Indebtedness exceeds the All-In Yield of the Initial Term Loans at the time of such incurrence by more than 50 basis points, then the interest rate margins for the Initial Term Loans will automatically be increased on the date of incurrence of such specified Indebtedness to the extent necessary so that the All-In Yield of the Initial Term Loans is equal to the All-In Yield of such specified Indebtedness minus 50 basis points (*provided* that any increase in All-In Yield of the Initial Term Loans due to the increase in an interest rate floor on such specified Indebtedness will be effected solely through an increase in any interest rate floor applicable to the Initial Term Loans).

"Minimum Liquidity Covenant" means the covenant set forth in Section 6.11(a).

"**Moody's**" means Moody's Investor Services, Inc.

"**Mortgage**" means a mortgage, deed of trust, deed to secure debt or other document creating a Lien on any Real Estate Asset or any interest in any Real Estate Asset, as applicable, made in favor of the

Collateral Agent for the benefit of the Secured Parties in form reasonably acceptable to the Borrower and the Administrative Agent.

"**Multiemployer Plan**" means any Employee Benefit Plan which is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"**NAIC**" means The National Association of Insurance Commissioners and any successor thereto.

"**Narrative Report**" means, with respect to the financial statements for which such narrative report is required, a narrative report describing the results of operations and financial condition of the Borrower and its Subsidiaries in the form prepared for presentation to senior management thereof for the applicable Fiscal Quarter or Fiscal Year and for the period from the beginning of the Fiscal Year in which such Fiscal Quarter occurs to the end of such Fiscal Quarter.

"Natural Person" means a natural person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person.

"**Net Cash Proceeds**" means:

(a) with respect to any Asset Sale subject to Section 2.14(a) or Casualty Event subject to Section 2.14(b), an amount equal to: (i) cash payments (including any cash received by way of release from escrow or deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by the Borrower or any Subsidiary from such Asset Sale, *minus* (ii) any bona fide direct costs incurred in connection with such Asset Sale, including (A) Taxes payable (including related Tax Payments) in connection with such Asset Sale (including taxes imposed on the distribution or repatriation of such Net Cash Proceeds), (B) payment of the outstanding principal amount of, premium or penalty, if any, interest and breakage costs on any Indebtedness (other than the Loans or any Incremental Equivalent Debt) that is secured by a Lien on the stock or assets in question (and, to the extent such stock or assets constitute Collateral, which Lien is senior to the Lien of Agent or is *pari passu* with the Lien of Agent to the extent permitted hereunder) and that is required to be repaid under the terms thereof as a result of such Asset Sale, (C) a reserve for any purchase price adjustment or indemnification payments (fixed or contingent) established in accordance with GAAP or attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by the Borrower or any Subsidiary in connection with such Asset Sale, (D) the out-of-pocket expenses, costs and fees (including with respect to legal, investment banking, brokerage, advisor and accounting and other professional fees, sales commissions and disbursements, survey costs, title insurance premiums and related search and recording charges, transfer taxes and deed or mortgage recording taxes or following a Casualty Event, restoration costs) in each case actually incurred in connection with such sale or disposition and payable to a Person that is not an Affiliate of the Borrower, (E) in the case of any Asset Sale or Casualty Event by a non-wholly owned Subsidiary, the *pro rata* portion of the Net Cash Proceeds thereof attributable to minority interests and not available for distribution to or for the account of the Borrower as a result thereof and (F) any reserve for adjustment in respect of (x) the sale price of such asset or assets established in accordance with GAAP and (y) any liabilities associated with such asset or assets and retained by the Borrower or any Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction, it being understood that "Net Cash Proceeds" shall include the amount of any reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in this subclause (F); and

(b) with respect to the sale, incurrence or issuance of any Indebtedness by the Borrower or any Subsidiary, the excess, if any, of (A) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance *minus* (B) the sum of Taxes paid or reasonably estimated to be payable as a result thereof, fees (including investment banking fees, attorneys' fees, accountants' fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses, incurred by the Borrower or such Subsidiary in connection with such sale, incurrence or issuance.

"**Non-Consenting Lender**" as defined in Section 2.23(c).

"**Non-Credit Party**" means any Subsidiary that is not a Credit Party.

"**Non-U.S. Lender**" means a Lender (including any Issuing Bank) that is not a United States person as defined in Section 7701(a)(30) of the Internal Revenue Code.

"**Nonpublic Information**" means material information with respect to the Borrower, any Subsidiary or their respective securities which has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD.

"**Note**" means an Initial Term Loan Note, a Term A-1 Loan Note, a Term A-2 Loan Note, a Revolving Loan Note or a Swing Line Note.

"**Notice**" means a Funding Notice, an Application, an Issuance Notice or a Conversion/Continuation Notice.

"**NYFRB**" means the Federal Reserve Bank of New York.

"**NYFRB Rate**" means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); *provided* that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received to the Administrative Agent from a Federal funds broker of recognized standing selected by it; *provided*, *further*, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"**Obligations**" means all obligations of every nature of each Credit Party from time to time owed to any Agent (including any former Agent), any Lender, any Issuing Bank, any Indemnitee or any other Secured Party under any Credit Document (including, without limitation, Letter of Credit Obligations), any obligations owed to any Secured Swap Provider under any Secured Rate Contract, or any obligations owed to any Bank Product Provider in respect of Bank Product Obligations under any Bank Product Agreement, in each case, whether for principal, premium, interest (including interest premiums, fees and other amounts incurred during the pendency of any bankruptcy, insolvency, receivership or similar proceeding, whether or not due and payable and whether or not allowed or allowable in such proceeding), reimbursement of amounts drawn under Letters of Credit, payments for early termination of Secured Rate Contracts, fees, expenses, indemnification or otherwise; *provided* that the Obligations with respect to any Guarantor shall exclude all Excluded Swap Obligations of such Guarantor. For the avoidance of doubt, "Obligations" will include obligations arising under any Incremental Term Loan or any Extended Term Loan.

"**Obligee Guarantor**" as defined in Section 7.6.

"**OFAC**" means the U.S. Department of Treasury's Office of Foreign Assets Control.

"**OFAC Lists**" means, collectively, the SDN List and/or any other list of terrorists or other restricted Persons maintained by OFAC.

"**OIG Matter**" means the "OIG Matter" as disclosed in the Lender Presentation.

"**Organizational Documents**" means (a) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, and (d) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the

reference to any such "Organizational Document" will only be to a document of a type customarily certified by such governmental official.

"**Other Applicable Incurrence Requirements**" as defined in Section 2.24(g).

"**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 Credit Document, except any such Taxes that are imposed as a result of a present or former connection between a Recipient and the jurisdiction imposing such Tax (other than connections 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 Credit Document or sold or assigned an interest in any Loan or Credit Document) imposed with respect to an assignment (other than an assignment made pursuant to Section 2.23).

"**Overnight Bank Funding Rate**" means, for any day, an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

"**Oyster Borrower**" means (a) from the Second Amendment Effective Date until the consummation of the First Oyster Merger, Oyster Merger Sub I, (b) from the consummation of the First Oyster Merger until the consummation of the Second Oyster Merger, Oyster Target, and (c) from and after the consummation of the Second Oyster Merger until the consummation of the Oyster Debt Assumption, Oyster Merger Sub II; it being understood and agreed that from and after the consummation of the Oyster Debt Assumption, all of the obligations of the Oyster Borrower under the Oyster Credit Documents shall become obligations of the Borrower.

"**Oyster Debt Assumption**" means the assumption by the Borrower of all of the rights and obligations of the Oyster Borrower as the borrower in respect of the Term A-1 Loans, upon which the Oyster Borrower shall cease to constitute (and be released from all of its obligations as) the borrower in respect of the Term A-1 Loans, pursuant to an assumption agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower.

"**Oyster Existing Credit Agreements**" means, collectively, (a) that certain Loan and Security Agreement, dated as of December 26, 2019, by and among Silicon Valley Bank, the Oyster Target and certain of affiliates of the Oyster Target and (b) that certain Amended and Restated Credit Agreement, dated as of September 27, 2019 by and among SWK Holdings Corporation, the Oyster Target and certain affiliates of the Oyster Target, in each case of clause (a) and (b) of this definition, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"**Oyster Merger Agreement**" means that certain Agreement and Plan of Merger dated as of July 29, 2021 (together with any exhibits and schedules thereto) by and among Bioventus Parent, Oyster Merger Sub I, Oyster Merger Sub II, and Oyster Target, pursuant to which, first, Oyster Merger Sub I will merge with and into Oyster Target, with Oyster Target as the surviving corporation (the "**First Oyster Merger**"), and, second, Oyster Target, as the surviving corporation in the First Oyster Merger, will merge with and into Oyster Merger Sub II, with Oyster Merger Sub II as the surviving limited liability company (the "**Second Oyster Merger**" and, together with the First Oyster Merger, the "**Oyster Mergers**").

"**Oyster Merger Sub I**" means Oyster Merger Sub I, Inc., a Delaware corporation.

"**Oyster Merger Sub II**" means Oyster Merger Sub II, LLC, a Delaware limited liability company.

"**Oyster Mergers**" as defined in the definition of "Oyster Merger Agreement".

"**Oyster Refinancing**" means, collectively, (i) the payment in full of the principal, accrued and unpaid interest, fees and other amounts (other than contingent obligations that are not then owing or with respect to which no claim has been made) outstanding on the Second Amendment Effective Date under

each of the Oyster Existing Credit Agreements, (ii) the termination of all commitments to extend credit under the Oyster Existing Credit Agreements and (iii) the termination and/or release of all liens, security interests, pledges mortgages and other encumbrances securing the indebtedness outstanding under the Oyster Existing Credit Agreements.

"**Oyster Reorganization**" means, following the consummation of the Oyster Mergers, the contribution by Bioventus Parent of all of the Capital Stock of Oyster Merger Sub II to the Borrower.

"**Oyster Target**" means Misonix, Inc., a Delaware corporation.

"**Oyster Transactions**" means, collectively, (a) the Oyster Mergers, (b) the Oyster Refinancing, (c) the incurrence of the Term A-1 Loans and (d) the payment of fees, premiums, costs and expenses in connection with the foregoing.

"**Parent**" means, with respect to any Person, any other Person of which the first Person is a direct or indirect Subsidiary.

"**Pari Passu Lien Indebtedness**" means any Indebtedness of any Credit Party that is secured by Liens on Collateral that rank *pari passu* in priority with the Liens on Collateral that secure the Obligations.

"**Pari Passu Lien Intercreditor Agreement**" means an intercreditor agreement among the Collateral Agent and one or more debt representatives for Pari Passu Lien Indebtedness permitted hereunder in form and substance reasonably acceptable to the Borrower, the Collateral Agent and the applicable debt representatives for such Pari Passu Lien Indebtedness.

"**Participant Register**" as defined in Section 10.6(g).

"**PATRIOT Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, signed into law October 26, 2001, as amended from time to time.

"**Payment Office**" means the office of the Administrative Agent set forth on Appendix B hereto, or such other office or person as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

"**Payment Recipient**" as defined in Section 9.14(a).

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereto.

"**Pension Plan**" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

"**Perfection Certificate**" means a certificate in the form of **Exhibit L** or any other form approved by the Borrower and the Administrative Agent, as the same shall be supplemented from time to time.

"**Permitted Acquisition**" means the purchase or other acquisition of property and assets or businesses of any Person or of assets constituting a business unit, a line of business or division of such Person, a facility or Capital Stock in a Joint Venture or other Capital Stock in another Person that, upon the consummation thereof, will be a Subsidiary (including as a result of a merger or consolidation) or, in the case of a purchase or acquisition of assets (other than Capital Stock), will be owned by the Borrower or a Subsidiary; *provided* that:

(a) subject to the provisions of Section 1.5 to the extent an LCT Election has been made with respect to such acquisition, immediately prior to and after giving effect thereto, no Event of Default has occurred and is continuing;

(b) the Person, assets or division acquired are in the same business as the Businesses engaged in by the Borrower and the Subsidiaries on the Second Amendment Effective Date, after giving effect to the Oyster Transactions and the Oyster Reorganization, or other ancillary or generally related Businesses or logical extensions thereof;

(c) such acquisition is not a hostile or contested acquisition;

(d) to the extent any acquired Person is required to become a Guarantor, the Borrower takes all actions required by Sections 5.10 and 5.11, as applicable; *provided* that the Borrower and its Subsidiaries will not be permitted to make Permitted Acquisitions of Persons that do not become Guarantor Subsidiaries (or of assets that are acquired by Non-Credit Parties) unless the aggregate amount of TTM Consolidated Adjusted EBITDA attributable to all such Persons acquired pursuant to Permitted Acquisitions consummated after the Second Amendment Effective Date (and, for the avoidance of doubt, excluding all Non-Credit Parties existing as of the Second Amendment Effective Date and Investments therein), together with the aggregate amount of TTM Consolidated Adjusted EBITDA attributable to Investments made in reliance on the proviso to Section 6.6(b) and the proviso to Section 6.6(f), shall be no greater than **(x) other than during the Covenant Adjustment Period,** an amount equal to the greater of (i) $5,000,000 and (ii) 5% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination **and (y) during the Covenant Adjustment Period, $10,000,000**; and

(e) (i) the Borrower and its Subsidiaries are in Pro Forma compliance with the Financial Covenants set forth in Section 6.7 immediately after giving effect to such acquisition and related transactions (giving effect to any increase in the Financial Covenant level set forth in Section 6.7(a)(i) as provided for therein, including with respect to any Material Permitted Acquisition which causes such increase to become effective) and (ii) with respect to acquisitions with a purchase price in excess of $25,000,000, the Borrower will have delivered to the Administrative Agent (which, for the avoidance of doubt, shall be posted to the Lenders) a customary compliance certificate.

Notwithstanding anything in this definition to the contrary, the Oyster Mergers shall be deemed to be a Permitted Acquisition.

"**Permitted Holders**" means (a) the Sponsor, (b) any limited partners or other investors in Sponsor that acquire via a *pro rata* dividend or similar distribution and continue to hold any of Sponsor's beneficial ownership or voting interests in the Capital Stock of the Borrower or any Parent thereof (collectively "**Sponsor Parties**") and (c) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) the members of which include the Sponsor and that (directly or indirectly) hold or acquire beneficial ownership of voting interests in the Capital Stock of the Borrower or any Parent thereof, so long as the Sponsor (directly or indirectly) owns more than 50% of the economic and voting interests in the Capital Stock of the Borrower; *provided* that (I) for purposes of clause (a) of the definition of "Change of Control," Permitted Holders may include Sponsor Parties only so long as Sponsor retains the power, by Voting Capital Stock, contract or otherwise, to elect a majority of the members of the Board of Directors of the Borrower and (II) for purposes of clause (b) of the definition of "Change of Control," Permitted Holders will include Sponsor Parties only to the extent they comprise part of a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) in accordance with clause (c) of this definition.

"**Permitted IPO Reorganization**" means any transactions or actions taken in connection with and reasonably related to consummating an initial public offering (including any tax sharing arrangements or tax receivable agreements entered into in connection therewith on customary terms for similar transactions), so long as (i) after giving effect thereto the security interest of the Lenders in the Collateral and the value of the Guaranty given by the Guarantors, taken as a whole, are not materially impaired (as determined by the Borrower in good faith), (ii) immediately prior to and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, (iii) the Credit Parties immediately prior to giving effect thereto continue to be Credit Parties immediately after giving effect thereto (or their successors as a result thereof are or become Credit Parties no later than immediately after giving effect thereto), (iv) the assets and property constituting Collateral immediately prior to giving effect thereto continue to constitute Collateral immediately after giving effect thereto, (v) the revenues of the Credit

Parties (taken as a whole) on a Pro Forma Basis for the most recent Test Period shall not be reduced as a result thereof in any material respect, (vi) in the good faith determination of the Borrower, such transactions are not materially disadvantageous to the Lenders, and (vii) not less than ten (10) Business Days (or such shorter period as may be agreed by the Administrative Agent in its sole discretion) prior to any such transactions or actions, the Borrower shall deliver to the Administrative Agent written notice of such transactions or actions and a general description of such transactions or actions to be taken.

"**Permitted Liens**" as defined in Section 6.2.

"**Permitted Ratio Debt**" means Indebtedness of the Borrower and/or any Subsidiary; *provided* that:

(a) immediately after giving effect to the issuance, incurrence, or assumption of such Indebtedness and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), (x) if such incurrence constitutes Pari Passu Lien Indebtedness, the First Lien Net Leverage Ratio, after giving effect to the incurrence thereof on a Pro Forma Basis and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), would not exceed 3.50:1.00; *provided* that such ratio level shall increase to 3.75:1.00 in connection with any Material Permitted Acquisition that results in the Financial Covenant level set forth in Section 6.7(a)(i) increasing and for any other Permitted Ratio Debt incurred to finance a Material Permitted Acquisition during the duration of such increase, (y) if such incurrence constitutes Junior Lien Indebtedness, the Secured Net Leverage Ratio, after giving effect to the incurrence thereof on a Pro Forma Basis and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), would not exceed 3.50:1.00; *provided* that such ratio level shall increase to 3.75:1.00 in connection with any Material Permitted Acquisition that results in the Financial Covenant level set forth in Section 6.7(a)(i) increasing and for any other Permitted Ratio Debt incurred to finance a Material Permitted Acquisition during the duration of such increase and (z) if such incurrence constitutes unsecured Indebtedness, the Total Net Leverage Ratio, after giving effect to the incurrence thereof on a Pro Forma Basis and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), would not exceed 3.50:1.00; *provided* that such ratio level shall increase to 3.75:1.00 in connection with any Material Permitted Acquisition that results in the Financial Covenant level set forth in Section 6.7(a)(i) increasing and for any other Permitted Ratio Debt incurred to finance a Material Permitted Acquisition during the duration of such increase;

(b) (i) any such Indebtedness that constitutes Pari Passu Lien Indebtedness will not mature prior to the maturity date of each of the Initial Term Loans, the Term A-1 Loans and the Term A-2 Loans and (ii) any such Indebtedness that constitutes Junior Lien Indebtedness or unsecured Indebtedness will not mature prior to the date that is 91 days after the maturity date of each of the Initial Term Loans, the Term A-1 Loans and the Term A-2 Loans;

(c) such Indebtedness does not have a shorter Weighted Average Life to Maturity than, the Term Loans at the time such Indebtedness is incurred;

(d) subject to the provisions set forth in Section 1.5 with respect to any Limited Condition Transaction, immediately before and after giving effect thereto and to the use of the proceeds thereof no Event of Default has occurred and is continuing or would result therefrom;

(e) Other Applicable Incurrence Requirements shall apply, *mutatis mutandis*;

(f) any mandatory prepayments of any Permitted Ratio Debt that is Pari Passu Lien Indebtedness shall be made on a *pro rata* basis or less than *pro rata* basis with mandatory prepayments of the Term Loans;

(g) (x) if such Indebtedness is Pari Passu Lien Indebtedness, a debt representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a Pari Passu Lien Intercreditor Agreement; and (y) if such Indebtedness is secured on a junior basis to the

Term Loans, a debt representative, acting on behalf of the holders of such Indebtedness, has become party to or is otherwise subject to the provisions of a Junior Lien Intercreditor Agreement;

(h) any such Indebtedness constituting Pari Passu Lien Indebtedness may participate on a *pro rata* basis or less than *pro rata* basis (but not greater than a *pro rata* basis except for prepayments with the proceeds of a Permitted Refinancing and in respect of an earlier maturing tranche) with the then-existing Term Loans in any mandatory prepayments hereunder, and any mandatory prepayments of any such Indebtedness that is unsecured or Junior Lien Indebtedness may not be made except to the extent that prepayments are offered, to the extent required under this Agreement or any Pari Passu Lien Indebtedness, first on a *pro rata* basis to the Term Loans and any applicable Pari Passu Lien Indebtedness; and

(i) with respect to any Permitted Ratio Debt incurred as Pari Passu Lien Indebtedness in the form of term loans, the MFN Adjustment will apply to any such Permitted Ratio Debt.

The proceeds of any Permitted Ratio Debt received will not (but the application of such proceeds may) reduce Indebtedness for purposes of determining compliance with the First Lien Net Leverage Ratio or the Secured Net Leverage Ratio or the Total Net Leverage Ratio specified in clause (a) of the foregoing sentence.

"**Permitted Refinancing**" means, with respect to any specified Indebtedness of any Person ("**Refinanced Indebtedness**"), any modification, refinancing, refunding, replacement, renewal, extension, defeasance or discharge (the Indebtedness incurred to effect such modification, refinancing, refunding, replacement, renewal, extension, defeasance or discharge, "**Refinancing Indebtedness**") of such Refinanced Indebtedness; *provided* that:

(a) the principal amount (and/or undrawn commitments, as applicable) of such Refinancing Indebtedness is not greater than the Maximum Refinancing Amount;

(b) except with respect to Indebtedness of the Borrower and its Subsidiaries incurred pursuant to Section 6.1(c) or (d), has a scheduled final maturity that is no sooner than, and a Weighted Average Life to Maturity that is no shorter than, the final scheduled final maturity date and Weighted Average Life to Maturity of such Refinanced Indebtedness;

(c) the only obligors in respect of such Refinancing Indebtedness are the obligors on such Refinanced Indebtedness; *provided* that, in the case of a Permitted Refinancing that occurs in connection with a Permitted Acquisition or other Investment permitted pursuant to Section 6.6, additional Persons that are created or acquired as part of such Permitted Acquisition or Investment may be added as obligors to the Refinancing Indebtedness;

(d) the other terms applicable to such new Indebtedness are either (i) substantially identical to or (taken as a whole as determined by the Borrower in good faith in consultation with the Administrative Agent) no more favorable to the lenders or holders providing such Indebtedness than, those applicable to such Refinanced Indebtedness or (ii) otherwise on customary market terms (taken as a whole as determined by the Borrower in its reasonable judgment), including with respect to high yield debt securities to the extent applicable; *provided* that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower or applicable Subsidiary is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof);

(e) to the extent such Refinanced Indebtedness is Subordinated Debt, such Refinancing Indebtedness is Subordinated Debt;

(f) to the extent such Refinanced Indebtedness is secured by Liens on any property or assets of the Borrower or any Subsidiary, such Refinancing Indebtedness is either (i) secured solely by Liens on such property and assets securing such Refinanced Indebtedness (except to the extent that the applicable obligors have capacity under Section 6.2 for the incurrence of additional Liens on other property and

assets) or (ii) unsecured; *provided* that (i) if such Refinanced Indebtedness is Junior Lien Indebtedness, the Refinancing Indebtedness is either (x) unsecured or (y) Junior Lien Indebtedness on intercreditor terms at least as favorable to the Lenders as those contained in the intercreditor documentation governing the Refinanced Indebtedness and (ii) if such Refinanced Indebtedness is Pari Passu Lien Indebtedness, the Refinancing Indebtedness is either (x) unsecured or (y) Pari Passu Lien Indebtedness or Junior Lien Indebtedness, in either case on intercreditor terms at least as favorable to the Lenders as those contained in the intercreditor documentation governing the Refinanced Indebtedness (as reasonably determined by the Borrower in good faith); and

(g) to the extent such Refinanced Indebtedness is unsecured, such Refinancing Indebtedness is unsecured;

provided further, in the case of clauses (d), (e) and (f) of this definition, a certificate of the Borrower delivered to the Administrative Agent at least five (5) Business Days prior to the incurrence of such Refinancing Indebtedness (or such shorter period as may be agreed by the Administrative Agent), together with a reasonably detailed description of the material covenants and events of default of such Refinancing Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has reasonably determined in good faith that such terms and conditions satisfy the requirements of such clause shall be conclusive evidence that such terms and conditions satisfy the foregoing requirements unless the Administrative Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination (including a reasonably detailed description of the basis upon which it disagrees); *provided further*, that with respect to any Refinanced Indebtedness which is revolving in nature, the commitments related to such Refinanced Indebtedness shall be terminated in connection and substantially simultaneously with the applicable Permitted Refinancing.

"**Permitted Reorganization**" means any re-organizations and other activities and actions related to tax planning and/or re-organization, including any tax sharing arrangement or tax receivable agreement on customary terms for similar transactions, so long as (i) after giving effect thereto the security interest of the Lenders in the Collateral and the value of the Guaranty given by the Guarantors, taken as a whole, are not materially impaired (as determined by the Borrower in good faith), (ii) immediately prior to and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, (iii) the Credit Parties immediately prior to giving effect thereto continue to be Credit Parties immediately after giving effect thereto (or their successors as a result thereof are or become Credit Parties no later than immediately after giving effect thereto), (iv) the assets and property constituting Collateral immediately prior to giving effect thereto continue to constitute Collateral immediately after giving effect thereto, (v) the revenues of the Credit Parties (taken as a whole) on a Pro Forma Basis for the most recent Test Period shall not be reduced as a result thereof in any material respect, (vi) in the good faith determination of the Borrower, such transactions are not materially disadvantageous to the Lenders, and (vii) not less than ten (10) Business Days (or such shorter period as may be agreed by the Administrative Agent in its sole discretion) prior to any such transactions or actions, the Borrower shall deliver to the Administrative Agent written notice of such transactions or actions and a general description of such transactions or actions to be taken.

"**Person**" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"**Platform**" as defined in Section 5.1(p).

"**Pledge and Security Agreement**" means the Pledge and Security Agreement to be executed by the Borrower and each Guarantor substantially in the form of **Exhibit I**.

"**Prime Rate**" means the rate of interest *per annum* publicly announced from time to time by the Administrative Agent as its prime rate; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

"**Pro Forma**" or "**Pro Forma Basis**" means, with respect to the calculation of the First Lien Net Leverage Ratio, Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio or for any other pro forma calculation called for by this Agreement to be made Pro Forma or on a Pro Forma Basis, as of any time, that pro forma effect will be given to the Transactions, any Permitted Acquisition, or any other Specified Transaction (including any such transaction prior to the Closing Date), as follows:

(a) with respect to any incurrence, assumption, guarantee, redemption or permanent repayment of Indebtedness, such ratio will be calculated giving pro forma effect thereto as if such incurrence, assumption, guarantee, redemption or permanent repayment of indebtedness had occurred on the first day of such Test Period;

(b) with respect to the Transactions, acquisitions prior to the Closing Date, any Permitted Acquisition, other Investment or acquisition or the redesignation of an Unrestricted Subsidiary, such ratio or other calculation will be calculated giving pro forma effect thereto as if such action occurred on the first day of such Test Period in a manner consistent, where applicable, with the pro forma adjustments (along with the limitations and caps pertaining thereto) set forth in the definition of "Consolidated Adjusted EBITDA" (including clause (xxi) thereof) and including pro forma adjustments arising out of events that are directly attributable to such Permitted Acquisition or other Investment, are factually supportable and are expected to have a continuing impact, in each case as determined on a basis consistent with Article 11 of Regulation S-X of the Securities Act of 1933, as amended, as interpreted by the SEC, and as certified by a financial officer of such Borrower; and

(c) with respect to any merger, sale, transfer or other disposition, and the designation of an "Unrestricted Subsidiary," such ratio will be calculated giving pro forma effect thereto as if such action had occurred on the first day of such Test Period and including pro forma adjustments arising out of events that are directly attributable to any sale, transfer or other disposition, are factually supportable and are expected to have a continuing impact, in each case as determined on a basis consistent with Article 11 of Regulation S-X of the Securities Act of 1933, as amended, as interpreted by the SEC, and as certified by a financial officer of such Borrower.

"**Pro Rata Share**" means (a) with respect to all payments, computations and other matters relating to the Initial Term Loan of any Lender, the percentage obtained by dividing (i) the Initial Term Loan Exposure of that Lender by (ii) the aggregate Initial Term Loan Exposure of all of the Lenders; (b) with respect to all payments, computations and other matters relating to the Term A-1 Loan of any Lender, the percentage obtained by dividing (i) the Term A-1 Loan Exposure of that Lender by (ii) the aggregate Term A-1 Loan Exposure of all of the Lenders; (c) with respect to all payments, computations and other matters relating to the Term A-2 Loan of any Lender, the percentage obtained by dividing (i) the Term A-2 Loan Exposure of that Lender by (ii) the aggregate Term A-2 Loan Exposure of all of the Lenders; (d) with respect to all payments, computations and other matters relating to any Class of the Incremental Term Loan of any Lender, the percentage obtained by dividing (i) the Incremental Term Loan Exposure of that Lender by (ii) the aggregate Incremental Term Loan Exposure of all of the Lenders; (e) with respect to all payments, computations and other matters relating to any Class of the Extended Term Loan of any Lender, the percentage obtained by dividing (i) the Term Loan Exposure of that Lender arising from Extended Term Loans of such Lender by (ii) the aggregate Term Loan Exposure of all of the Lenders arising from the Extended Term Loans; (f) with respect to all payments, computations and other matters relating to any Class of the Refinancing Term Loan of any Lender, the percentage obtained by dividing (i) the Term Loan Exposure of that Lender arising from Refinancing Term Loans of such Lender by (ii) the aggregate Term Loan Exposure of all of the Lenders arising from the Refinancing Term Loans; (g) with respect to all payments, computations and other matters relating to the Revolving Credit Commitment or Revolving Loans of any Lender or any Letters of Credit Issued or participations purchased therein by any Lender or any participations in any Swing Line Loans purchased by any Lender, the percentage obtained by dividing (i) the Revolving Credit Exposure of that Lender by (ii) the aggregate Revolving Credit Exposure of all of the Lenders; and (h) with respect to all payments, computations and other matters relating to the Term Loans of any Lender, the percentage obtained by dividing (i) the Term Loan Exposure of that Lender by (ii) the aggregate Term Loan Exposure of all of the Lenders. For all other purposes with respect to each Lender, "Pro Rata Share" means the percentage obtained by dividing (A) an amount equal to the sum of the Term Loan Exposure and the Revolving

Credit Exposure of that Lender, by (B) an amount equal to the sum of the aggregate Term Loan Exposure and the aggregate Revolving Credit Exposure of all of the Lenders.

"**Prohibited Transaction**" as defined in Section 406 of ERISA and Section 4975(c) of the Internal Revenue Code.

"**Projections**" as defined in Section 4.8.

"**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 Company Costs**" shall mean costs relating to compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the status of the Borrower (or of any Parent thereof that does not own any Subsidiaries other than the Borrower and any Subsidiary and any other Parents of the Borrower) as a reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act, the rules of securities exchange companies with listed equity securities, directors' compensation, fees and expense reimbursement, shareholder meetings and reports to shareholders, directors' and officers' insurance and other executive costs, legal and other professional fees, and listing fees.

"**Public Lender**" as defined in Section 5.1(p).

"**Purchase Money Indebtedness**" means Indebtedness of any the Borrower or any Subsidiary incurred for the purpose of financing all or any part of the purchase price or cost of acquisition, repair, construction or improvement of property or assets used or useful in the business of the Borrower or any Subsidiary (whether through the direct purchase of property or assets or the Capital Stock of any Person owning such property or assets).

"**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).

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Credit Party that has assets exceeding $10,000,000 at the time the relevant Guaranty or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Qualifying IPO**" means the issuance by the Borrower or any Parent thereof of its Securities in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act (whether alone or in connection a secondary public offering).

"**Rate Contracts**" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, interest rate options, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, forward foreign exchange transactions, currency swap transactions, cross-currency rate swap transactions, currency options, derivative transactions, insurance transactions, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing whether relating to interest rates, commodities, investments, securities, currencies or any other reference measure (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "**Master Agreement**"), including any such obligations

or liabilities under any Master Agreement; *provided* that no phantom stock, phantom profits interests, profits interests or similar plan providing for payments only on account of services provided by current or former directors, managers, officers, employees or consultants of the Borrower or any of its Subsidiaries shall be a "Rate Contract".

"**Real Estate Asset**" means, at any time of determination, any interest (fee, leasehold or otherwise) then held by any Credit Party in any real property.

"**Recipient**" means (a) the Administrative Agent or (b) any Lender, as applicable.

"**Refinanced Indebtedness**" means, (a) with respect to any Credit Agreement Refinancing Indebtedness, the Indebtedness refinanced thereby, (b) with respect to any Permitted Refinancing, as defined in the definition thereof and (c) with respect to any other refinancing, the obligations being refinanced.

"**Refinancing Amendment**" means an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) the Administrative Agent and (c) each Additional Lender and Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with Section 2.26.

"**Refinancing Commitments**" means any Refinancing Term Commitments or Refinancing Revolving Commitments.

"**Refinancing Indebtedness**" means, (a) with respect to any Loans or Revolving Credit Commitments, Credit Agreement Refinancing Indebtedness, (b) with respect to any Permitted Refinancing, as defined in the definition thereof and (c) with respect to any other refinancing, the new obligations being incurred the proceeds of which will be used to refinance other obligations.

"**Refinancing Loans**" means any Refinancing Term Loans or Refinancing Revolving Loans.

"**Refinancing Revolving Commitments**" means one or more Classes of commitments in respect of Revolving Loans hereunder that result from a Refinancing Amendment.

"**Refinancing Revolving Loans**" means one or more Classes of Revolving Loans that result from a Refinancing Amendment.

"**Refinancing Term Commitments**" means one or more Classes of Term Loan Commitments hereunder that result from a Refinancing Amendment.

"**Refinancing Term Loans**" means one or more Classes of Term Loans that result from a Refinancing Amendment.

"**Refunded Swing Line Loans**" as defined in Section 2.3(b)(iv).

"**Register**" as defined in Section 2.7(b).

"**Regulation D**" means Regulation D of the Board of Governors, as in effect from time to time.

"**Regulation FD**" means Regulation FD as promulgated by the U.S. Securities and Exchange Commission under the Securities Act and Exchange Act as in effect from time to time.

"**Reimbursement Date**" as defined in Section 2.4(d).

"**Related Fund**" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"**Related Person**" means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, partner, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

"**Release**" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material).

"**Relevant Governmental Body**" means the Board of Governors and/or the NYFRB, or a committee officially endorsed or convened by the Board of Governors and/or the NYFRB or any successor thereto.

"**Remedial Action**" means all actions required to (a) clean up, remove, treat or in any other way address any Hazardous Material in the indoor or outdoor environment, (b) prevent or minimize any Release so that a Hazardous Material does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care with respect to any Hazardous Material.

"**Required Lenders**" means one or more of the Lenders having or holding Term Loan Exposure and/or Revolving Credit Exposure and representing more than 50% of the sum of (i) the aggregate Term Loan Exposure of all of the Lenders, and (ii) the aggregate Revolving Credit Exposure of all of the Lenders; *provided* that to the extent there are two or more Lenders that are not Affiliates, the Required Lenders must include at least two such Lenders that are not Affiliates.

"**Required Prepayment Date**" as defined in Section 2.15(e).

"**Reset Date**" as defined in Section 1.6(c).

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

"**Responsible Officer**" means the chief executive officer, president or chief financial officer of the Borrower.

"**Restricted Debt Payment**" means any payment of principal of, or any payment of any premium, if any, or interest on, or fees on, or indemnities or expenses owing to any holder of, or redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment, in each case prior to the stated maturity or due date thereof, with respect to any Junior Financing.

"**Restricted Equity Payment**" means (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of the Borrower now or hereafter outstanding, except a dividend payable solely in Capital Stock of the Borrower (other than Disqualified Capital Stock); (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of the Borrower now or hereafter outstanding, other than in exchange for Capital Stock of the Borrower (other than Disqualified Capital Stock); and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock of the Borrower now or hereafter outstanding.

"**Restricted Junior Payment**" means any (a) Restricted Equity Payment and (b) Restricted Debt Payment.

"**Revolving Credit Commitment**" means (a) the Initial Revolving Commitments and (b) each additional commitment of a Lender to make or otherwise fund any Revolving Loan (including any Incremental Revolving Loan and any Refinancing Revolving Loan) and to acquire participations in

Letters of Credit and Swing Line Loans hereunder, and "**Revolving Credit Commitments**" means such commitments of all of the Lenders in the aggregate. The amount of each Lender's Revolving Credit Commitment is set forth on Appendix A-2 hereto, in the applicable Assignment Agreement, if applicable, or in the Incremental Amendment evidencing an Incremental Revolving Facility, if applicable, or in the Refinancing Amendment evidencing any Refinancing Revolving Commitments, if applicable, in each case is subject to any adjustment or reduction pursuant to the terms and conditions hereof.

"**Revolving Credit Commitment Period**" means the period from the Closing Date to but excluding the Revolving Credit Commitment Termination Date.

"**Revolving Credit Commitment Termination Date**" means the earliest to occur of (a) October 29, ~~2026~~2025, as extended in accordance with this Agreement from time to time solely with respect to any Extended Revolving Credit Commitments, as applicable, (b) the date the Revolving Credit Commitments are permanently reduced to zero pursuant to Section 2.13(b), and (c) the date of the termination of the Revolving Credit Commitments pursuant to Section 8.1.

"**Revolving Credit Exposure**" means, with respect to any Lender as of any date of determination, (a) prior to the termination of the Revolving Credit Commitments, that Lender's Revolving Credit Commitment; and (b) after the termination of the Revolving Credit Commitments, the sum of (i) the aggregate outstanding principal amount of the Revolving Loans of that Lender, (ii) in the case of an Issuing Bank, the aggregate Letter of Credit Usage in respect of all Letters of Credit Issued by that Lender (net of any participations by the Lenders in such Letters of Credit), (iii) the aggregate amount of all participations by that Lender in any outstanding Letters of Credit or any unreimbursed drawing under any Letter of Credit, (iv) in the case of the Swing Line Lenders, the aggregate outstanding principal amount of all Swing Line Loans (net of any funded participations therein by the Lenders) made by such Swing Line Lenders, and (v) the aggregate amount of all funded participations therein by that Lender in any outstanding Swing Line Loans.

"**Revolving Credit Facility**" means the revolving credit facility established pursuant to Section 2.2 (including any increase in such revolving credit facility pursuant to Section 2.24).

"**Revolving Credit Limit**" means, as of any date of determination, the aggregate amount of the Revolving Credit Commitments as of such date.

"**Revolving Lender**" means, at any time, any Lender that has a Revolving Credit Commitment at such time or, if the Revolving Credit Commitments have terminated, Revolving Credit Exposure.

"**Revolving Loan**" means a Loan made by a Lender to the Borrower pursuant to Section 2.2(a).

"**Revolving Loan Note**" means a promissory note in the form of **Exhibit B-2**, as it may be amended, supplemented or otherwise modified from time to time.

"**S&P**" means Standard & Poor's Ratings Services, or any successor entity thereto.

"Sanctioned Country" means, at any time, any country or territory that is the subject or target of any comprehensive economic or financial sanctions or trade embargoes under Anti-Terrorism Laws (as of the date of this Agreement, the Crimea region of Ukraine, Cuba, Iran, North Korea, and Syria).

"**SDN List**" means the Specially Designated Nationals and Blocked Persons List maintained by OFAC.

"**Second Amendment**" means that certain Amendment No. 2 to Credit Agreement dated as of the Second Amendment Effective Date.

"**Second Amendment Effective Date**" means October 29, 2021.

"**Second Oyster Merger**" as defined in the definition of "Oyster Merger Agreement".

"**Secured Net Leverage Ratio**" means, as of any date, the ratio of (a) Consolidated Total Debt of the Borrower and the Subsidiaries that is secured by a Lien on any asset or property of the Borrower or any Subsidiary outstanding as of the most recently ended Test Period, *minus* up to $50,000,000 of Unrestricted Cash as of such date to (b) Consolidated Adjusted EBITDA for the most recently ended Test Period, all of the foregoing determined on a Pro Forma Basis.

"**Secured Obligation**" as defined in the Pledge and Security Agreement.

"**Secured Party**" means the Administrative Agent, the Collateral Agent, each other Agent (including any former Agent), each Lender, each Issuing Bank, each other Indemnitee solely to the extent of any outstanding claim under Section 10.2 or for Indemnified Liabilities of such Indemnitee pursuant to and in accordance with Section 10.3, each Secured Swap Provider and each Bank Product Provider.

"**Secured Rate Contract**" means any Rate Contract between the Borrower and/or any Subsidiary and a Secured Swap Provider and not entered into for speculative purposes.

"**Secured Swap Provider**" means an Agent or a Lender or an Affiliate of an Agent or a Lender (or a Person who was an Agent or a Lender or an Affiliate of an Agent or a Lender at the time of execution and delivery of a Rate Contract) who has entered into a Rate Contract with the Borrower and/or any Subsidiary.

"**Securities**" means any Capital Stock, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"**SOFR**" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"**SOFR Administrator**" means the NYFRB (or a successor administrator of the secured overnight financing rate).

"**SOFR Loan**" means any Loan bearing interest at a rate based on Adjusted Term SOFR as provided in Section 2.8 (other than pursuant to clause (c) of the definition of "Base Rate").

"**Solvent**" means, with respect to any Person, that as of the date of determination, (a) the fair value of the assets of such Person and the Subsidiaries, on a consolidated basis, exceeds their debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, (b) the present fair saleable value of the property of such Person and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such debts and other liabilities become absolute and matured, (c) such Person and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such liabilities become absolute and matured, and (d) such Person and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

"**SPC**" as defined in Section 10.6(k).

"**Specified Acquisition Agreement Representations**" means such of the representations and warranties made by the acquired business with respect to the acquired business in the definitive documentation for any Limited Condition Transaction that is an acquisition to the extent a breach of such

representations and warranties is material to the interests of the Lenders (in their capacities as such), but only to the extent that the Borrower or its applicable Affiliate has the right to terminate its obligations in accordance with such definitive documentation or decline to consummate such acquisition in accordance with such definitive documentation, in each case, as a result of a breach of such representations and warranties in such definitive documentation.

"**Specified Representations**" means the representations and warranties of the Credit Parties in the Credit Documents relating to their organizational existence, organizational power and authority (only as to execution, delivery and performance of the applicable Credit Documents and the extensions of credit thereunder), the due authorization, execution, delivery and enforceability (against the Credit Parties) of the applicable Credit Documents, solvency on a consolidated basis as of the closing date of a Limited Condition Transaction after giving effect to the Limited Condition Transaction, no conflicts of Credit Documents with the charter documents of the Credit Parties, compliance with Federal Reserve margin regulations, the Investment Company Act, OFAC, FCPA or other sanctions matters and the Patriot Act and the creation, attachment and perfection of security interests in the Collateral (subject to Permitted Liens).

"**Specified Transaction**" means any Permitted Acquisition, any permitted Investment or other acquisition (including acquisition of a book of business), any issuance, incurrence, assumption, guarantee, redemption, repayment of, or offer to purchase, any indebtedness (including any irrevocable or conditional indebtedness, indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transaction), any designation or re-designation of an "Unrestricted Subsidiary," any merger or other fundamental change, all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business or division, any Restricted Junior Payment or Incremental Term Loan.

"**Sponsor**" means the collective reference to Smith & Nephew, Inc., Smith & Nephew OUS, Inc., Beluga I, Inc., Beluga II, Inc., Beluga III, Inc., Beluga IV, Inc., Beluga V, Inc., Beluga VI, Inc., Beluga VII, Inc., Beluga VII-A, Inc., and Beluga VIII, Inc., each a Delaware corporation, and their respective Controlled Investment Affiliates.

"**Sterling**" means the lawful currency of the United Kingdom of Great Britain and Northern Ireland.

"**Subordinated Debt**" means, collectively, any Incremental Equivalent Debt, Permitted Ratio Debt or other Indebtedness permitted to be incurred hereunder that is expressly subordinated in right of payment to the payment in full in cash of all Obligations; *provided*, that to the extent such Indebtedness is secured by Liens, such Liens are, in each case, subject to a Junior Lien Intercreditor Agreement or such other intercreditor arrangement as is reasonably acceptable to the Administrative Agent.

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; *provided* that in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person will be deemed to be outstanding.

For purposes of this Agreement, except to the extent expressly stated otherwise, (a) with respect to the Borrower or any of its direct or indirect subsidiaries, references to "Subsidiary" will not include, or be a reference to, any Unrestricted Subsidiary and (b) references to any "Subsidiary" will mean a Subsidiary of the Borrower.

"**Swap Obligation**" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"**Swing Line Commitment**" means as to any Lender (i) the amount set forth opposite such Lender's name on Appendix A-3 hereto or (ii) if such Lender has entered into an Assignment Agreement, the amount set forth for such Lender as its Swing Line Commitment in the Register maintained by the Administrative Agent pursuant to Section 9.7(b).

"**Swing Line Lender**" means each of (a) Wells Fargo Bank, National Association, in its capacity as a Swing Line Lender hereunder, or, upon the resignation of Wells Fargo Bank, National Association as the Administrative Agent hereunder, any Lender (or Affiliate or Approved Fund of any Lender) that agrees, with the approval of the Administrative Agent (or, if there is no such successor Administrative Agent, the Required Lenders) and the Borrower, to act as a Swing Line Lender hereunder or any replacement Swing Line Lender in accordance with Section 2.3(d), and (b) any (i) Lender, (ii) Affiliate of a Lender and (iii) other bank or legally authorized Person, in each case under this clause (b), that agrees to act in such capacity and reasonably acceptable to the Borrower and the Administrative Agent, in such Person's capacity as a Swing Line Lender hereunder.

"**Swing Line Loan**" means a Loan made by a Swing Line Lender to the Borrower pursuant to Section 2.3.

"**Swing Line Loan Outstandings**" means, at any time of calculation, the then existing aggregate outstanding principal amount of Swing Line Loans.

"**Swing Line Note**" means a promissory note in the form of **Exhibit B-3**, as it may be amended, supplemented or otherwise modified from time to time.

"**Swing Line Sublimit**" means, as of any date of determination, the lower of the following amounts: (a) $7,500,000 and (b) the aggregate amount of the Revolving Credit Commitments as of such date minus the Total Utilization of Revolving Credit Commitments as of such date.

"**Syndication Agents**" means JPMorgan Chase Bank, N.A. and Truist Bank (successor by merger to SunTrust Bank), in their respective capacities as Syndication Agents hereunder.

"**Tax**" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) of any nature and whatever called, levied, collected, withheld or assessed by any Governmental Authority, together with any interest thereon, additions to tax or penalties imposed with respect thereto.

"**Tax Payments**" means:

(a) prior to any Permitted IPO Reorganization or Permitted Reorganization, for any taxable year or portion thereof during which the Borrower is a pass-through entity for U.S. federal income tax purposes (other than any pass-through entity or disregarded entity described in clause (c) below), an amount in cash sufficient to fund (but not to exceed) tax distributions required under Section 4.02 of the Borrower LLC Agreement as in effect on the date hereof, provided, however, for this purpose that the definition of "Assumed Tax Rate" in the Borrower LLC Agreement shall mean 40%, or such higher rate as may from time to time be reasonably determined by the Borrower's Board of Managers to be the appropriate tax rate;

(b) following any Permitted IPO Reorganization or Permitted Reorganization, for any taxable year or portion thereof during which the Borrower is a pass-through entity for U.S. federal income tax purposes (other than any pass-through entity or disregarded entity described in clause (c) below), any payments and distributions to the members or partners of the Borrower, on or prior to each estimated tax payment date as well as each other applicable due date, such that each such member or partner receives, in the aggregate in respect of such taxable year or portion thereof, payments or distributions not to exceed an amount equal to the product of (i) the U.S. federal taxable income allocated by the Borrower to such member or partner in respect of the relevant period less the sum of any U.S. federal taxable loss allocated by the Borrower to such member or partner in respect of the relevant period and any loss carryforwards available from losses allocated to such member or partner by the Borrower in prior periods to the extent not taken into account in prior periods (in both cases, subject to any applicable limitations on the use of

such losses), multiplied by (ii) the highest combined marginal U.S. federal, state and local income tax rates (including any tax rate imposed on "net investment income" by Section 1411 of the Internal Revenue Code) applicable to an individual or, if higher, a corporation, resident in New York, New York, determined by taking into account (A) the character of the income and loss allocable to the members or partners as it affects the applicable tax rate, (B) the deductibility of state and local income taxes for U.S. federal income tax purposes (and any limitations thereon), and (C) any application of the alternative minimum tax; *provided*, that to the extent a member or partner would be entitled to receive less than its pro rata share of the amounts otherwise distributable to all members or partners on any given date, the amounts distributable to such member or partner shall be increased to ensure that all distributions are made pro rata in accordance with each member or partner's relative ownership of the Borrower; *provided further*, that to the extent all of the Borrower's U.S. federal taxable income is allocated to or otherwise taxed by an entity taxed as a corporation for U.S. federal income tax purposes, then for purposes of clause (ii) the assumed highest combined marginal U.S. federal, state and local income tax rates shall be the tax rates applicable to a Delaware corporation; and

(c) without duplication of any amounts paid or distributed under clause (a) or clause (b) of this definition, for any taxable year or portion thereof during which (i) the Borrower or any of its Subsidiaries other than any Unrestricted Subsidiaries are members of a consolidated, combined, unitary or similar income tax group for U.S. federal or applicable foreign, state or local income tax purposes (a "**Tax Group**") of which a direct or indirect parent company of the Borrower is the common parent or (ii) the Borrower is a pass-through or disregarded entity for U.S. federal or applicable foreign, state or local income tax purposes that is wholly-owned (directly or indirectly) by an entity that is taxable as a corporation for U.S. federal income tax purposes (a "**Parent Corporation**"), any payments and distributions to fund the portion of the U.S. federal, foreign, state or local income taxes of such Tax Group or such Parent Corporation (as applicable) for such taxable period that is attributable to the net taxable income of the Borrower and/or the applicable Subsidiaries other than any Unrestricted Subsidiaries (and, to the extent permitted in the following proviso, the applicable Unrestricted Subsidiaries); provided that for each taxable period, (x) the amount of such payments and distributions made in respect of such taxable period in the aggregate will not exceed the amount that the Borrower and the applicable Subsidiaries other than any Unrestricted Subsidiaries (and, to the extent permitted by this proviso, the applicable Unrestricted Subsidiaries), as applicable, would have been required to pay in respect of such net taxable income as stand-alone taxpayers or as a stand-alone Tax Group and (y) the amount of any such payments made in respect of an Unrestricted Subsidiary will be permitted only to the extent that cash distributions are first made by such Unrestricted Subsidiary to the Borrower or any Subsidiary other than an Unrestricted Subsidiary for such purpose.

"**Term A-1 Loan**" means a Term Loan made by a Lender to the Oyster Borrower on the Second Amendment Effective Date pursuant to Section 2.1(b).

"**Term A-1 Loan Commitment**" means the commitment of a Lender to make or otherwise fund a Term A-1 Loan and "**Term A-1 Loan Commitments**" means such commitments of all of the Lenders in the aggregate. The amount of each Lender's Term A-1 Loan Commitment, if any, is set forth on Appendix A-4 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Term A-1 Loan Commitments as of the Second Amendment Effective Date is $262,000,000.

"**Term A-1 Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term A-1 Loans of such Lender; *provided*, at any time prior to the making of the Term A-1 Loans, the Term A-1 Loan Exposure of any Lender will be equal to such Lender's Term A-1 Loan Commitment.

"**Term A-1 Loan Lender**" means, at any time, any Lender that has Term A-1 Loan Exposure at such time.

"**Term A-1 Loan Maturity Date**" means the earliest of (a) October 29, 2026, as extended in accordance with this Agreement from time to time, (b) the date that all such Term A-1 Loans will become due and payable in full hereunder, whether by acceleration or otherwise and (c) the date that is 45 days

after the Second Amendment Effective Date in the event that the Oyster Debt Assumption has not occurred by such date.

"**Term A-1 Loan Note**" means a promissory note in the form of **Exhibit B-4**, as it may be amended, supplemented or otherwise modified from time to time.

"**Term A-1 Loan Required Lenders**" means one or more of the Lenders having or holding Term A-1 Loan Exposure representing more than 50% of the aggregate Term A-1 Loan Exposure; *provided* that to the extent there are two or more Lenders that are not Affiliates, the Term A-1 Loan Required Lenders must include at least two such Lenders that are not Affiliates.

"**Term A-2 Loan**" means a Term Loan made by a Lender to the Borrower on the Third Amendment Effective Date pursuant to Section 2.1(c).

"**Term A-2 Loan Commitment**" means the commitment of a Lender to make or otherwise fund a Term A-2 Loan and "**Term A-2 Loan Commitments**" means such commitments of all of the Lenders in the aggregate. The amount of each Lender's Term A-2 Loan Commitment, if any, is set forth on Appendix A-5 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Term A-2 Loan Commitments as of the Third Amendment Effective Date is $80,000,000.

"**Term A-2 Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term A-2 Loans of such Lender; *provided*, at any time prior to the making of the Term A-2 Loans, the Term A-2 Loan Exposure of any Lender will be equal to such Lender's Term A-2 Loan Commitment.

"**Term A-2 Loan Lender**" means, at any time, any Lender that has Term A-2 Loan Exposure at such time.

"**Term A-2 Loan Maturity Date**" means the earlier of (a) October 29, 2026, as extended in accordance with this Agreement from time to time and (b) the date that all such Term A-2 Loans will become due and payable in full hereunder, whether by acceleration or otherwise.

"**Term A-2 Loan Note**" means a promissory note in the form of **Exhibit B-5**, as it may be amended, supplemented or otherwise modified from time to time.

"**Term A-2 Loan Required Lenders**" means one or more of the Lenders having or holding Term A-2 Loan Exposure representing more than 50% of the aggregate Term A-2 Loan Exposure; *provided* that to the extent there are two or more Lenders that are not Affiliates, the Term A-2 Loan Required Lenders must include at least two such Lenders that are not Affiliates.

"**Term Loan**" means, individually and collectively, the Initial Term Loans, the Term A-1 Loans, the Term A-2 Loans, the Incremental Term Loans, if any, Extended Term Loans, if any, and Refinancing Term Loans, if any.

"**Term Loan Commitment**" means, collectively, the Initial Term Loan Commitments, the Term A-1 Loan Commitments, the Term A-2 Loan Commitments, Incremental Term Loan Commitments (if any) and commitments to make Refinancing Term Loans, if any, and Extended Term Loans, if any.

"**Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term Loans of such Lender; *provided* that, at any time prior to the making of the Term Loans, the Term Loan Exposure of any Lender will be equal to such Lender's Term Loan Commitment.

"**Term Loan Maturity Date**" means (a) for the Initial Term Loans, the earlier of (i) October 29, 2026, as extended in accordance with this Agreement from time to time, and (ii) the date that all such Initial Term Loans will become due and payable in full hereunder, whether by acceleration or otherwise;

(b) for any Incremental Term Loans, the earlier of (i) the date identified in the applicable Incremental Amendment, as extended in accordance with this Agreement from time to time, and (ii) the date that all such Incremental Term Loans will become due and payable in full hereunder, whether by acceleration or otherwise; (c) for any Extended Term Loans, the earlier of (i) the final maturity date as specified in the applicable Extension Amendment and (ii) the date such Extended Term Loans will become due and payable in full hereunder, whether by acceleration or otherwise, (d) with respect to any Refinancing Term Loans, the earlier of (A) the final maturity date as specified in the applicable Refinancing Amendment and (B) the date such Refinancing Term Loans will become due and payable in full hereunder, whether by acceleration or otherwise, (e) with respect to the Term A-1 Loans, the Term A-1 Loan Maturity Date and (f) with respect to the Term A-2 Loans, the Term A-2 Loan Maturity Date.

"**Term SOFR**" means,

(a) for any calculation with respect to a 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. (Eastern 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 a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "Base Rate 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. (Eastern time) on any Base Rate 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 Base Rate Term SOFR Determination Day.

"**Term SOFR Adjustment**" means (a) for any calculation with respect to a Base Rate Loan determined pursuant to clause (c) of the definition of "Base Rate", 0.11448% and (b) for any calculation with respect to a SOFR Loan, (i) 0.11448% for an Interest Period of one-month's duration, (ii) 0.26161% for an Interest Period of three-months' duration and (iii) 0.42826% for an Interest Period of six-months' duration.

"**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 Reference Rate**" means the forward-looking term rate based on SOFR.

"**Terminated Lender**" as defined in Section 2.23.

"**Test Date**" means the last day of any Test Period.

"**Test Period**" in effect at any time means the most recent period of four consecutive Fiscal Quarters of the Borrower ended on or prior to such time (taken as one accounting period) in respect of which financial statements for each quarter or fiscal year in such period have been or are required to be

delivered pursuant to Section 5.1(a) or (b), as applicable; *provided* that, prior to the first date that financial statements have been or are required to be delivered pursuant to Section 5.1(a) or (b), the Test Period in effect will be the period of four consecutive Fiscal Quarters of the Borrower ended September 30, 2019. A Test Period may be designated by reference to the last day thereof (i.e., the "December 31, 2018 Test Period" refers to the period of four consecutive Fiscal Quarters of the Borrower ended on December 31, 2018), and a Test Period will be deemed to end on the last day thereof.

"**Third Amendment**" means that certain Amendment No. 3 to Credit and Guaranty Agreement, dated as of July 11, 2022, by and among the Borrower, the Guarantor Subsidiaries party thereto, the Lenders party thereto and the Administrative Agent.

"**Third Amendment Effective Date**" means July 11, 2022.

"**Threshold Amount**" means $15,000,000.

"**Total Net Leverage Ratio**" means, as of any date, the ratio of (a) Consolidated Total Debt of the Borrower and the Subsidiaries outstanding as of the most recently ended Test Period, *minus* up to $50,000,000 of Unrestricted Cash as of such date to (b) Consolidated Adjusted EBITDA for the most recently ended Test Period, all of the foregoing determined on a Pro Forma Basis.

"**Total Utilization of Revolving Credit Commitments**" means, as at any date of determination, the sum of (a) the aggregate principal amount of all outstanding Revolving Loans (other than Revolving Loans made for the purpose of repaying any Refunded Swing Line Loans or reimbursing the applicable Issuing Bank for any amount drawn under any Letter of Credit, but not yet so applied), (b) the aggregate principal amount of all outstanding Swing Line Loans, and (c) the Letter of Credit Usage.

"**Transaction Costs**" means the fees, costs and expenses paid or payable by the Borrower or any Subsidiary in connection with the Transactions.

"**Transactions**" means the (i) Initial Credit Extension and (ii) the repayment or release of all amounts outstanding under the Existing Credit Agreement and the payment of all related fees, premiums and expenses on the Closing Date.

"**TTM Consolidated Adjusted EBITDA**" means, as of any date of determination, the Consolidated Adjusted EBITDA of the Borrower for the four consecutive Fiscal Quarters most recently ended prior to such date for which financial statements have been delivered pursuant to Section 5.1(a) or (b) (or, in the case of a determination date that occurs prior to the first such delivery pursuant to such Sections, for the four consecutive Fiscal Quarters ended as of September 30, 2019).

"**Type of Loan**" means (a) with respect to either Term Loans or Revolving Loans, a Base Rate Loan or a SOFR Loan, and (b) with respect to Swing Line Loans, a Base Rate Loan.

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided* that if by reason of mandatory provisions of law, the perfection, the effect of perfection or non-perfection or the priority of the security interests of the Collateral Agent in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, the term "**UCC**" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**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 related Benchmark Replacement Adjustment.

"**Undisclosed Administration**" means the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator with respect to a Lender or its direct or indirect parent under or pursuant to the law in the country where such Lender or parent is subject to home jurisdiction supervision, if applicable law requires that such appointment is not to be publicly disclosed.

"**Unrestricted Cash**" means the sum of the aggregate amount of cash and Cash Equivalents held in ~~accounts~~**Deposit Accounts** of the Credit Parties in the U.S. reflected on the combined consolidated balance sheet of the Borrower and the Subsidiaries to the extent that (a) it would not appear as "restricted" on the combined consolidated balance sheet of the Borrower and the Subsidiaries (unless such appearance is related to the Credit Documents (or the Liens created thereunder)), (b) it is not subject to any Lien (other than Permitted Liens) in favor of any Person other than the Collateral Agent **or a Lender** for the benefit of the Secured Parties or (c) for purposes of calculating any of the Secured Net Leverage Ratio, the Total Leverage Ratio or the Total Net Leverage Ratio, it does not represent the cash proceeds of any Indebtedness then being incurred.

"**Unrestricted Subsidiary**" means collectively and individually, any direct or indirect subsidiary of the Borrower identified by the Borrower in writing to the Administrative Agent as being an "Unrestricted Subsidiary" pursuant to Section 5.13; *provided* that (a) except to the extent provided in Section 5.13, no Subsidiary may be designated (or re-designated) as an Unrestricted Subsidiary, (b) notwithstanding anything to the contrary in this Agreement, no Subsidiary may be designated as an Unrestricted Subsidiary if it was previously designated an Unrestricted Subsidiary, (c) no Unrestricted Subsidiary may own, or hold an exclusive license in, any ~~Intellectual Property~~**property** that is material to the operation of the business of the Borrower and its Subsidiaries (taken as a whole) (as determined by the Borrower in good faith) and (d) no Person may be designated as an "Unrestricted Subsidiary" if such Person is not an "Unrestricted Subsidiary" or is a "Guarantor" under any agreement, document or instrument evidencing any Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness or other Indebtedness in excess of the Threshold Amount, or any Permitted Refinancing in respect of the foregoing, or has otherwise guaranteed or given assurances of payment or performance under or in respect of any such Indebtedness for purposes of calculating Investments permitted under Section 6.6. The designation of any Subsidiary as an "Unrestricted Subsidiary" will constitute an Investment in an amount equal to the fair market value of the Borrower's or such Subsidiary's Investment in such Subsidiary, determined as of the date of such designation by the Borrower in its good faith and reasonable business judgment, and the aggregate amount of all Investments permitted to be made in all "Unrestricted Subsidiaries" will be limited as provided in Section 6.6. The designation of any Unrestricted Subsidiary as a Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of the Borrower's or its Subsidiary's (as applicable) Investment in such Subsidiary. As of the Closing Date, there are no Unrestricted Subsidiaries.

"**Unused Line Fee Rate**" means the applicable percentage set forth below, as determined by reference to the Total Net Leverage Ratio, as set forth in the then most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.1(e):

Level	Total Net Leverage Ratio	Unused Line Fee Rate
I	≥ 2.50:1.00	0.30%
II	< 2.50:1.00	0.20%

From the Third Amendment Effective Date until the first Business Day that immediately follows the date on which a Compliance Certificate is delivered pursuant to Section 5.1(e) for the Fiscal Quarter ending September 30, 2022, "Level I" shall apply.

"**U.S.**" or "**United States**" means United States of America.

"**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; provided, that for purposes of notice requirements in Sections 2.1, 2.2(c), 2.3(a) and 2.9, in each case, such day is also a Business Day.

"**U.S. Lender**" means each Lender (including any Issuing Bank) that is a United States person as defined in Section 7701(a)(30) of the Internal Revenue Code.

"**Voting Capital Stock**" means, with respect to any Person, shares of such Person's Capital Stock having the right to vote for the election of directors of such Person and any other Capital Stock of such Person treated as voting stock for purposes of Treasury Regulation Section 1.956-2(c)(2).

"**Waivable Mandatory Prepayment**" as defined in Section 2.15(e).

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

"**Wells Fee Letter**" means that certain Fee Letter, dated November 15, 2019, by and among the Borrower, Wells Fargo Securities, LLC and Wells Fargo Bank, National Association.

"**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.

1.2 Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein will have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by the Borrower to the Lenders pursuant to Sections 5.1(a) and 5.1(b) will be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(f), if applicable). If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement, or compliance with any covenant, set forth in any Credit Document, and either the Borrower or the Required Lenders will so request, the Administrative Agent, the Lenders and the Borrower will negotiate in good faith to amend such ratio, requirement or covenant to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided* that until so amended, (a) such ratio, requirement or covenant will continue to be computed in accordance with GAAP prior to such change therein and (b) the Borrower will provide to the Administrative Agent and the Lenders reconciliation statements to the extent provided in Section 5.1(f), if applicable. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein will be construed, and all computations of amounts and ratios referred to in Section 5 and Section 6 will be made, without giving effect to any election under Accounting Standards

Codification 825-10 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other Liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value." Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof may utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements, including those identified as exceptions to generally accepted accounting principles in the definition of "GAAP."

1.3 Interpretation, etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References to "hereof" or "herein" mean of or in this Agreement, as applicable. References herein to any Section, Appendix, Schedule or Exhibit will be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word "include" or "including," when following any general statement, term or matter, will not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather will be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms lease and license will include sub-lease and sub-license, as applicable. Unless the context requires otherwise, any definition of or reference to any agreement, instrument or other document (including any Organizational Document) will be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Credit Document). Any reference herein to any Person will be construed to include such Person's successors and permitted assigns. The words "asset" and "property" will be construed to have the same meaning and effect. The word "will" shall be construed to have the same meaning and effect as the word "shall." Any reference to any law or regulation will (i) include all statutory and regulatory provisions consolidating, replacing or interpreting or supplementing such law or regulation and (ii) unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time. This Section 1.3 will apply, *mutatis mutandis*, to all Credit Documents.

1.4 Certifications. Any certificate or other writing required hereunder or under any other Credit Document to be certified by any officer or other authorized representative of any Person will be deemed to be executed and delivered by such officer or other authorized representative solely in such individual's capacity as an officer or other authorized representative of such Person and not in such officer's or other authorized representative's individual capacity.

1.5 Limited Condition Transactions. Notwithstanding anything in this Agreement or any Credit Document to the contrary, when (a)(i) calculating any applicable ratio or the use of any basket, (ii) determining the accuracy of the representations and warranties set forth in Section 4 hereof or (iii) determining satisfaction of any conditions precedent, in the case of each of clause (i), (ii) and (iii), in connection with any Specified Transaction or (b) determining compliance with any provision that requires that no Default or Event of Default has occurred, is continuing or would result thereof, in the case of each of (a) and (b) in connection with a Limited Condition Transaction, the date of determination of such ratio and determination of such accuracy, satisfaction and compliance will, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**"), be deemed to be the date the definitive agreements for such Limited Condition Transaction are entered into (the "**LCT Test Date**"). If on a Pro Forma Basis after giving effect to such Limited Condition Transaction and the other Specified Transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) calculated as if such Limited Condition Transaction or other transactions had occurred at the beginning of the most recently ended Test Period ending prior to the LCT Test Date for which financial statements are delivered (or were required to have been delivered), the Borrower could have taken such action on the relevant LCT Test Date in compliance with such representation, warranty, condition, provision, ratio or basket, such provisions will be deemed to have been complied; *provided* that, on the consummation date of such Limited Condition Transaction, (x) no Event of Default pursuant to Section 8.1(a), (f) or (g) has occurred and is continuing and (y) the Specified Representations and the Specified Acquisition Agreement Representations (to the extent applicable) shall be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and

warranties will be true and correct in all respects) immediately prior to, and immediately after giving effect to, such Limited Condition Transaction. For the avoidance of doubt, (i) if any of such ratios are exceeded as a result of fluctuations in such ratio (including due to fluctuations in Consolidated Adjusted EBITDA) at or prior to the consummation of the relevant Limited Condition Transaction, such ratios and other provisions will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Transaction is permitted hereunder and (ii) such ratios and compliance with such conditions will not be tested at the time of consummation of such Limited Condition Transaction or related Specified Transactions, unless on such date an Event of Default pursuant to Section 8.1(a), (f) or (g) will be continuing. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any subsequent calculation of any ratio (excluding, for the avoidance of doubt, any ratio contained in Section 6.7) or basket availability with respect to any other Specified Transaction on or following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any such ratio or basket will be calculated on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof and the use of cash which would have otherwise constituted Unrestricted Cash for the purpose of calculating any applicable ratio) have been consummated until such time as the applicable Limited Condition Transaction has actually closed or the definitive agreement with respect thereto has been terminated or expires.

1.6 Currency Conversion and Fluctuations.

(a) If more than one currency or currency unit are at the same time recognized by the central bank of any country as the lawful currency of that country, then (i) any reference in the Credit Documents to, and any obligations arising under the Credit Documents in, the currency of that country shall be translated into or paid in the currency or currency unit of that country designated by the Administrative Agent and (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognized by the central bank for conversion of that currency or currency unit into the other, rounded up or down (to the next 1/16 of 1%) by the Administrative Agent as it deems appropriate.

(b) If a change in any currency of a country occurs, this Agreement shall be amended (and each party hereto agrees to enter into any supplemental agreement necessary to effect any such amendment) to the extent that the Administrative Agent determines such amendment to be necessary to reflect the change in currency and to put the Lenders in the same position, so far as possible, that they would have been in if no change in currency had occurred.

(c) No later than 11:00 a.m. London time on each Calculation Date, the Administrative Agent shall determine the Exchange Rate as of such Calculation Date with respect to each applicable currency; *provided* that, upon receipt of an Application or Issuance Notice for a Foreign Currency Letter of Credit pursuant to Section 2.4(b), the Administrative Agent shall determine the Exchange Rate with respect to the relevant currency on the related Calculation Date (it being acknowledged and agreed that the Administrative Agent shall use such Exchange Rate for the purposes of determining compliance with Section 2.4(a) with respect to such Application). The Exchange Rates so determined shall become effective on the relevant Calculation Date (a "**Reset Date**"), shall remain effective until the next succeeding Reset Date and shall for all purposes of this Agreement (other than Section 10.26 and any other provision expressly requiring the use of a current Exchange Rate) be the Exchange Rates employed in converting any amounts between Dollars and any other currency.

(d) No later than 11:00 a.m. London time on each Reset Date, the Administrative Agent shall determine the aggregate amount of the Dollar Equivalents of the Letter of Credit Obligations then outstanding in a currency other than Dollars.

(e) The Administrative Agent shall promptly notify the Borrower of each determination of an Exchange Rate hereunder.

1.7 Divisions. For all purposes under the Credit Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws):

(a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Capital Stock at such time and (c) such action shall be deemed to be permitted, in each case, if after giving effect to the preceding clauses (a) and (b), such action would otherwise be permitted under Section 6.8. Any division of a limited liability company shall for all purposes under the Credit Documents constitute a separate Person hereunder and thereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

1.8 Rates. The Administrative Agent does not warrant or accept any 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 Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or with respect to 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), as it may or may not be adjusted pursuant to Section 2.18(e), will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR 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 the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, 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.

SECTION 2. LOANS AND LETTERS OF CREDIT

2.1 Term Loans.

(a) Initial Term Loan Commitments. Subject to the terms and conditions hereof, each Lender identified on Appendix A-1 hereto severally agreed to make, on the Closing Date, an Initial Term Loan in Dollars to the Borrower in an amount equal to such Lender's Initial Term Loan Commitment as of such date; *provided* that the Borrower will deliver to Administrative Agent on behalf of the Lenders a fully executed Funding Notice no later than 11:00 a.m. (New York City time) at least one Business Day in advance of the proposed funding date (in the case of a Base Rate Loan) or at least three U.S. Government Securities Business Days (or at least two Business Days for any funding on the Closing Date) in advance of the proposed funding date (in the case of a SOFR Loan). The Borrower may make only one borrowing under the Initial Term Loan Commitment, which will be on the Closing Date. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.13(a) and 2.14, all amounts owed hereunder with respect to the Initial Term Loans will be paid in full no later than the Term Loan Maturity Date. Each Lender's Initial Term Loan Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the funding of such Lender's Initial Term Loan Commitment on such date.

(b) Term A-1 Loan Commitments. Subject to the terms and conditions hereof, each Term A-1 Loan Lender severally agrees to make, on the Second Amendment Effective Date, a Term A-1 Loan in Dollars to the Oyster Borrower in an amount equal to such Lender's Term A-1 Loan Commitment as of such date; *provided* that the Oyster Borrower will deliver to Administrative Agent on behalf of such Lenders a fully executed Funding Notice no later than 11:00 a.m. (New York City time) at least one Business Day in advance of the proposed funding date (in the case of a Base Rate Loan) or at least three

U.S. Government Securities Business Days in advance of the proposed funding date (in the case of a SOFR Loan). The Oyster Borrower may make only one borrowing under the Term A-1 Loan Commitment, which will be on the Second Amendment Effective Date. Any amount borrowed under this Section 2.1(b) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.13(a) and 2.14, all amounts owed hereunder with respect to the Term A-1 Loans will be paid in full no later than the Term A-1 Loan Maturity Date. Each Lender's Term A-1 Loan Commitment shall terminate immediately and without further action on the Second Amendment Effective Date after giving effect to the funding of such Lender's Term A-1 Loan Commitment on such date.

(c) Term A-2 Loan Commitments. Subject to the terms and conditions hereof, each Term A-2 Loan Lender severally agrees to make, on the Third Amendment Effective Date, a Term A-2 Loan in Dollars to the Borrower in an amount equal to such Lender's Term A-2 Loan Commitment as of such date; *provided* that the Borrower will deliver to Administrative Agent on behalf of such Lenders a fully executed Funding Notice no later than 11:00 a.m. (New York City time) at least one Business Day in advance of the proposed funding date (in the case of a Base Rate Loan) or at least two U.S. Government Securities Business Days in advance of the proposed funding date (in the case of a SOFR Loan). The Borrower may make only one borrowing under the Term A-2 Loan Commitment, which will be on the Third Amendment Effective Date. Any amount borrowed under this Section 2.1(c) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.13(a) and 2.14, all amounts owed hereunder with respect to the Term A-2 Loans will be paid in full no later than the Term A-2 Loan Maturity Date. Each Lender's Term A-2 Loan Commitment shall terminate immediately and without further action on the Third Amendment Effective Date after giving effect to the funding of such Lender's Term A-2 Loan Commitment on such date.

2.2 Revolving Loans. Revolving Credit Commitments. During the Revolving Credit Commitment Period, subject to the terms and conditions hereof, each Lender severally agrees to make Revolving Loans in Dollars to the Borrower in an aggregate amount up to but not exceeding such Lender's Revolving Credit Commitment; *provided* that, after giving effect to the making of any Revolving Loans in no event will the Total Utilization of Revolving Credit Commitments exceed either (i) as to any Revolving Loans made on the Closing Date, the Initial Revolving Borrowing or (ii) at all times, the Revolving Credit Limit. Amounts borrowed pursuant to this Section 2.2(a) may be repaid and reborrowed during the Revolving Credit Commitment Period. Each Lender's Revolving Credit Commitment will expire on the Revolving Credit Commitment Termination Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Credit Commitments will be paid in full no later than such date.

(b) [Reserved].

(c) Borrowing Mechanics for Revolving Loans after the Closing Date.

(i) Except pursuant to Section 2.4(d), Revolving Loans that are Base Rate Loans will be made in an aggregate minimum amount of $100,000 and integral multiples of $50,000 in excess of that amount, and Revolving Loans that are SOFR Loans will be in an aggregate minimum amount of $100,000 and integral multiples of $50,000 in excess of that amount.

(ii) Whenever the Borrower desires that the Lenders make Revolving Loans, the Borrower will deliver to the Administrative Agent by Electronic Transmission a fully executed and delivered Funding Notice no later than 11:00 a.m. (New York City time) at least three U.S. Government Securities Business Days in advance of the proposed Credit Date in the case of a SOFR Loan, and at least one Business Day in advance of the proposed Credit Date in the case of a Revolving Loan that is a Base Rate Loan. Except as otherwise provided herein, a Funding Notice for a Revolving Loan that is a SOFR Loan will be irrevocable on and after the related Interest Rate Determination Date, and the Borrower will be bound to make a borrowing in accordance therewith.

(iii) Notice of receipt of each Funding Notice in respect of Revolving Loans, together with the amount of each Lender's Pro Rata Share thereof, if any, together with the applicable interest rate, will be provided by the Administrative Agent to each applicable Lender by

Electronic Transmission with reasonable promptness, but (*provided* the Administrative Agent will have received such notice by 11:00 a.m. (New York City time)) not later than 2:00 p.m. (New York City time) on the same day as the Administrative Agent's receipt of such Notice from the Borrower.

(d) Each Lender will make the amount of its Revolving Loan available to the Administrative Agent not later than 12:00 noon (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars at the Payment Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent will make the proceeds of such Revolving Loans available to the Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Revolving Loans received by the Administrative Agent from the Lenders to be credited to the account of the Borrower at the Payment Office or such other account as may be designated in writing to the Administrative Agent by the Borrower.

2.3 Swing Line Loans.

(a) Swing Line Loans Commitments. During the Revolving Credit Commitment Period, subject to the terms and conditions hereof, each Swing Line Lender hereby severally agrees to make Swing Line Loans to the Borrower; *provided* that after giving effect to the making of any Swing Line Loan, in no event will (i) the Swing Line Loan Outstandings exceed the Swing Line Sublimit then in effect, (ii) the Revolving Credit Exposure exceed the Revolving Credit Limit, (iii) the aggregate principal amount of outstanding Swing Line Loans made by such Swing Line Lender exceed such Swing Line Lender's Commitment or (iv) such Swing Line Lender's Revolving Credit Exposure exceed its Revolving Credit Commitment. Amounts borrowed pursuant to this Section 2.3 may be repaid and reborrowed during the Revolving Credit Commitment Period. The Borrower hereby unconditionally promises to pay the unpaid principal amount of each Swing Line Loan on the earlier of the Revolving Credit Commitment Termination Date and the first date after such Swing Line Loan is made that is the fifteenth (15th) or last day of a calendar month (or, if such date is not a Business Day, on the next succeeding Business Day) and is at least five (5) Business Days after such Swing Line Loan is made; *provided* that, on each date that a Revolving Loan is made, the Borrower will repay all Swing Line Loans that were outstanding on the date such Loan was requested to be made. Each Swing Line Lender's Revolving Credit Commitment will expire on the Revolving Credit Commitment Termination Date and all Swing Line Loans and all other amounts owed hereunder with respect to the Swing Line Loans and the Revolving Credit Commitments will be paid in full no later than such date.

(b) Borrowing Mechanics for Swing Line Loans.

(i) Swing Line Loans will be made in an aggregate minimum amount of $50,000 and integral multiples of $50,000 in excess of that amount.

(ii) Whenever the Borrower desires that the Swing Line Lenders make a Swing Line Loan, the Borrower will deliver to the Administrative Agent by Electronic Transmission a Funding Notice no later than 11:00 a.m. (New York City time) on the proposed Credit Date, in which Funding Notice the Borrower will specify the Swing Line Lender requested to make such Swing Line Loan. The Administrative Agent will promptly advise the applicable Swing Line Lender of any such notice received from the Borrower.

(iii) The applicable Swing Line Lender will make such Swing Line Loan available to the Borrower by wire transfer of same day funds in Dollars to an account of the Borrower with the Administrative Agent designated for such purpose by 2:00 p.m. (New York City time) on the applicable Credit Date. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent will make the proceeds of such Swing Line Loans available to the Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Swing Line Loans received by the Administrative Agent from the Swing Line Lenders to be credited to the account of the Borrower at the Payment Office, or to such other account as may be designated in writing to the Administrative Agent by the Borrower.

(iv) With respect to any Swing Line Loans which have not been voluntarily prepaid by the Borrower pursuant to Section 2.13, any Swing Line Lender may at any time in its sole and absolute discretion, deliver to the Administrative Agent (with a copy to the Borrower), no later than 11:00 a.m. (New York City time) at least one Business Day in advance of the proposed Credit Date, a notice (which will be deemed to be a Funding Notice given by the Borrower) requesting that each Lender holding a Revolving Credit Commitment make Revolving Loans that are Base Rate Loans to the Borrower on such Credit Date in an amount not to exceed the amount of such Swing Line Lender's Swing Line Loans (the "**Refunded Swing Line Loans**") outstanding on the date such notice is given which the applicable Swing Line Lender requests the Lenders to prepay. Anything contained in this Agreement to the contrary notwithstanding, (1) the proceeds of such Revolving Loans made by the Lenders other than the applicable Swing Line Lender will be immediately delivered by the Administrative Agent to the applicable Swing Line Lender (and not to the Borrower) and applied to repay a corresponding portion of the Refunded Swing Line Loans and (2) on the day such Revolving Loans are made, the applicable Swing Line Lender's Pro Rata Share of the Refunded Swing Line Loans will be deemed to be paid with the proceeds of a Revolving Loan made by the applicable Swing Line Lender to the Borrower, and such portion of the Swing Line Loans deemed to be so paid will no longer be outstanding as Swing Line Loans and will no longer be due under the Swing Line Note of the applicable Swing Line Lender but will instead constitute part of the applicable Swing Line Lender's outstanding Revolving Loans to the Borrower and will be due under the Revolving Loan Note issued by the Borrower to the applicable Swing Line Lender. The Borrower hereby authorizes the Administrative Agent and each Swing Line Lender to charge the Borrower's accounts with the Administrative Agent and the Swing Line Lenders (up to the amount available in each such account) in order to immediately pay any applicable Swing Line Lender the amount of the Refunded Swing Line Loans to the extent the proceeds of such Revolving Loans made by the Lenders, including the Revolving Loans deemed to be made by any applicable Swing Line Lender, are not sufficient to repay in full the Refunded Swing Line Loans. If any portion of any such amount paid (or deemed to be paid) to any Swing Line Lender should be recovered by or on behalf of the Borrower from a Swing Line Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered will be ratably shared among all of the Lenders in the manner contemplated by Section 2.17.

(v) If for any reason Revolving Loans are not made pursuant to Section 2.3(b)(iv) in an amount sufficient to repay any amounts owed to a Swing Line Lender in respect of any outstanding Swing Line Loans on or before the third Business Day after demand for payment thereof by the applicable Swing Line Lender, each Lender holding a Revolving Credit Commitment will be deemed to, and hereby agrees to, have purchased a participation in such outstanding Swing Line Loans, and in an amount equal to its Pro Rata Share of the applicable unpaid amount together with accrued interest thereon. Upon one (1) Business Days' notice from the applicable Swing Line Lender, each Lender holding a Revolving Credit Commitment will deliver to the applicable Swing Line Lender an amount equal to its respective participation in the applicable unpaid amount in same day funds at the Payment Office of the applicable Swing Line Lender. In order to evidence such participation each Lender holding a Revolving Credit Commitment agrees to enter into a participation agreement at the request of the applicable Swing Line Lender in form and substance reasonably satisfactory to such Swing Line Lender. In the event any Lender holding a Revolving Credit Commitment fails to make available to the applicable Swing Line Lender the amount of such Lender's participation as provided in this paragraph, such Swing Line Lender will be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by such Swing Line Lender for the correction of errors among banks and thereafter at the Base Rate, as applicable.

(vi) Notwithstanding anything contained herein to the contrary, (1) each Lender's obligation to make Revolving Loans for the purpose of repaying any Refunded Swing Line Loans pursuant to the second preceding paragraph and each Lender's obligation to purchase a participation in any unpaid Swing Line Loans pursuant to the immediately preceding paragraph will be absolute and unconditional and will not be affected by any circumstance, including without limitation (A) any set-off, counterclaim, recoupment, defense or other right which such

Lender may have against any Swing Line Lender, any Credit Party or any other Person for any reason whatsoever; (B) the occurrence or continuation of a Default or Event of Default; (C) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of any Credit Party; (D) any breach of this Agreement or any other Credit Document by any party thereto; or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; and (2) no Swing Line Lender will be obligated to make any Swing Line Loans (A) if it has elected not to do so after the occurrence and during the continuation of a Default or Event of Default or (B) so long as any Lender is a Defaulting Lender, unless such Swing Line Lender has entered into arrangements satisfactory to it and the Borrower to eliminate such Swing Line Lender's risk with respect to the Defaulting Lender's participation in such Swing Line Loan, including by cash collateralizing such Defaulting Lender's Pro Rata Share of the outstanding Swing Line Loans and participating interests in any such Swing Line Loan will be allocated among non-Defaulting Lenders in a manner consistent with Section 2.22 (and Defaulting Lenders will not participate therein).

(c) Independent Swing Line Lender Obligations. The failure of any Swing Line Lender to make a Swing Line Loan shall not relieve any other Swing Line Lender of its obligation hereunder to make Swing Line Loans, but no Swing Line Lender shall be responsible for the failure of any other Swing Line Lender to make a Swing Line Loan requested to be made by such other Swing Line Lender.

(d) Resignation or Removal of a Swing Line Lender. Any Swing Line Lender may resign as a Swing Line Lender hereunder at any time upon at least 30 days' prior written notice to the Lenders, the Administrative Agent and the Borrower. Following such notice of resignation, the applicable Swing Line Lender may be replaced at any time by written agreement among the Borrower, the Administrative Agent and the successor Swing Line Lender. The Administrative Agent will notify the Lenders of any such replacement of the applicable Swing Line Lender. At the time any such resignation or replacement will become effective, the Borrower will pay all unpaid fees accrued for the account of the replaced Swing Line Lender. From and after the effective date of any such resignation or replacement, (i) the successor Swing Line Lender will have all the rights and obligations of the replaced Swing Line Lender under this Agreement with respect to Swing Line Loans to be made by it thereafter and (ii) references herein and in the other Credit Documents to the term "Swing Line Lender" will be deemed to refer to such successor or to any previous Swing Line Lender, or to such successor and all current Swing Line Lenders and all previous Swing Line Lenders, as the context will require. After the resignation or replacement of the Swing Line Lender hereunder, the replaced Swing Line Lender will remain a party hereto and will continue to have all the rights and obligations of a Swing Line Lender under this Agreement with respect to Swing Line Loans made by it prior to such resignation or replacement, but will not be required to make additional Swing Line Loans.

2.4. Issuance of Letters of Credit and Purchase of Participations Therein.

(a) Letters of Credit. From time to time on any Business Day from the Closing Date through the earlier of the Revolving Credit Commitment Termination Date and the fifth Business Day prior to the date specified in clause (a) of the definition of "Revolving Credit Commitment Termination Date," subject to the terms and conditions hereof, each Issuing Bank agrees to Issue, in accordance with such Issuing Bank's usual and customary business practices, Letters of Credit for the account of the Borrower in the aggregate amount up to but not exceeding the Letter of Credit Sublimit; *provided* that the Revolving Credit Exposure does not exceed the Revolving Credit Limit; and *provided*, *further*, that (i) each Letter of Credit will be denominated in Dollars or in one or more Available Foreign Currencies; (ii) immediately after giving effect to such Issuance, in no event will the Revolving Credit Exposure of any Revolving Credit Lender exceed the Revolving Credit Commitment of such Lender; (iii) after giving effect to such Issuance, in no event will the Total Utilization of Revolving Credit Commitments exceed the Revolving Credit Limit then in effect; (iv) after giving effect to such Issuance, in no event will the Letter of Credit Usage exceed the Letter of Credit Sublimit then in effect; and (v) in no event will any Letter of Credit have an expiration date that is not a Business Day or is later than the earlier of (1) the fifth Business Day prior to the date specified in clause (a) of the definition of "Revolving Credit Commitment Termination Date" and (2) the date which is one year from the date of Issuance of such standby Letter of Credit or such later date as is acceptable to such applicable Issuing Bank, in each case except to the extent cash collateralized or backstopped pursuant to arrangements reasonably acceptable to

the Issuing Bank. Subject to the foregoing, each Issuing Bank may agree that a Letter of Credit will automatically be extended for one or more successive periods not to exceed one year each (and in any event not to exceed the period prescribed in clause (v)(1) above), unless such Issuing Bank elects not to extend for any such additional period; *provided* that such Issuing Bank will not extend any such Letter of Credit if it has received written notice that an Event of Default has occurred and is continuing at the time such Issuing Bank must elect to allow such extension; *provided*, *further*, that no Issuing Bank will Issue any Letter of Credit if (A) any fee due in connection with, and on or prior to, the Issuance of such Letter of Credit has not been paid, (B) such Letter of Credit is requested to be Issued in a form that is not acceptable to such Issuing Bank or (C) such Issuing Bank will not have received, each in form and substance reasonably acceptable to it and duly executed by the Borrower, the documents that such Issuing Bank generally uses in the ordinary course of business for the Issuance of letters of credit of the type of such Letter of Credit (collectively, the "**L/C Reimbursement Agreement**"); *provided*, *further*, that so long as any Lender is a Defaulting Lender, such Issuing Bank will not be required to Issue any Letter of Credit unless such Issuing Bank has entered into arrangements satisfactory to it and the Borrower to eliminate such Issuing Bank's risk with respect to the participation in Letters of Credit of the Defaulting Lender, including by cash collateralizing such Defaulting Lender's Pro Rata Share of the Letter of Credit Usage, and participating interests in any such newly issued or increased Letter of Credit will be allocated among non-Defaulting Lenders in a manner consistent with Section 2.22 (and Defaulting Lenders will not participate therein). No Issuing Bank shall be under any obligation to issue Letters of Credit if the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally. As of the Closing Date, each of the Existing Letters of Credit shall constitute, for all purposes of this Agreement and the other Credit Documents, a Letter of Credit issued and outstanding hereunder.

(b) Notice of Issuance. Whenever the Borrower desires the Issuance of a Letter of Credit, it will deliver in a writing or Electronic Transmission to the applicable Issuing Bank and the Administrative Agent an Application or Issuance Notice no later than 12:00 noon (New York City time) at least three (3) Business Days, or such shorter period as may be agreed to by the applicable Issuing Bank in any particular instance, in advance of the proposed date of Issuance. For each Issuance, the applicable Issuing Bank may, but will not be required to, determine that, or take notice whether, the conditions precedent set forth in Section 3.2 have been satisfied or waived in connection with the Issuance of any Letter of Credit; *provided*, *however*, that no Letters of Credit will be Issued during the period starting on the first Business Day after the receipt by such Issuing Bank of notice from the Administrative Agent or the Lenders holding more than 50% of the aggregate Revolving Credit Exposure of all Lenders that any condition precedent contained in Section 3.2 is not satisfied and ending on the date all such conditions are satisfied or duly waived. Upon receipt by the applicable Issuing Bank of the L/C Reimbursement Agreement, in form and substance reasonably acceptable to such Issuing Bank and duly executed by the Borrower, the applicable Issuing Bank will Issue the requested Letter of Credit only in accordance with such Issuing Bank's standard operating procedures. Upon the Issuance of any Letter of Credit or amendment or modification to a Letter of Credit, such Issuing Bank will promptly notify the Administrative Agent, which will in turn promptly notify each Lender with a Revolving Credit Commitment of such Issuance, which notice will be accompanied by a copy of such Letter of Credit or amendment or modification to a Letter of Credit and the amount of such Lender's respective participation in such Letter of Credit pursuant to Section 2.4(e). Each Issuing Bank further agrees to provide the Administrative Agent, in form and substance satisfactory to the Administrative Agent, upon the request of the Administrative Agent (or any Lender with a Revolving Credit Commitment through the Administrative Agent), copies of any Letter of Credit Issued by such Issuing Bank and any related L/C Reimbursement Agreement and such other documents and information as may reasonably be requested by the Administrative Agent. To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 2.4, the provisions of this Section 2.4 shall control.

(c) Responsibility of the Issuing Banks With Respect to Requests for Drawings and Payments. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, the applicable Issuing Bank will be responsible only to examine the documents delivered under such Letter of Credit with reasonable care so as to determine whether they appear on their face to be in accordance with the terms and conditions of such Letter of Credit. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of the applicable Issuing Bank (as determined by a court of competent jurisdiction in a final non-appealable order) with respect to

such a determination, such Issuing Bank will be deemed to have exercised reasonable 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, any 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. As between the Borrower and the Issuing Banks, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit Issued by the Issuing Banks, by the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Issuing Banks will not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and Issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, email, cable, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Issuing Banks, including any Governmental Acts; none of the above will affect or impair, or prevent the vesting of, any of the Issuing Banks' rights or powers hereunder. Without limiting the foregoing and in furtherance thereof, any action taken or omitted by the Issuing Banks under or in connection with the Letters of Credit or any documents and certificates delivered thereunder, if taken or omitted in good faith, will not give rise to any liability on the part of the Issuing Banks to the Borrower. Notwithstanding anything to the contrary contained in this Section 2.4(c), the Borrower will retain any and all rights it may have against the applicable Issuing Bank for any liability arising solely out of the gross negligence, bad faith or willful misconduct of such Issuing Bank as determined by a court of competent jurisdiction in a final non-appealable order.

(d) Reimbursement by the Borrower of Amounts Drawn or Paid Under Letters of Credit. In the event any Issuing Bank has determined to honor a drawing under a Letter of Credit, it will immediately notify the Borrower and the Administrative Agent, and the Borrower will reimburse the applicable Issuing Bank, or the Administrative Agent for the benefit of such Issuing Bank, on or before the Business Day immediately following the date on which such drawing is honored (the "**Reimbursement Date**") in an amount in Dollars and in same day funds equal to the amount of such honored drawing or, in the case of reimbursement in an Available Foreign Currency, in such Available Foreign Currency and in same day funds equal to the amount of such honored drawing; *provided* that anything contained herein to the contrary notwithstanding, (i) unless the Borrower will have notified the Administrative Agent and the applicable Issuing Bank prior to 10:00 a.m. (New York City time) on the date such drawing is honored that the Borrower intends to reimburse the applicable Issuing Bank for the amount of such honored drawing with funds other than the proceeds of Revolving Loans, the Borrower will be deemed to have given a timely Funding Notice to the Administrative Agent requesting each Lender with a Revolving Credit Commitment to make Revolving Loans that are Base Rate Loans on the Reimbursement Date in an amount in Dollars equal to the amount of such honored drawing (and in the event any amounts denominated in Available Foreign Currencies are not paid when due, such amount shall be converted to Dollars based on the Dollar Equivalent thereof), and (ii) without regard to the satisfaction of the conditions specified in Section 3.2 (each of which conditions precedent the Lenders with a Revolving Credit Commitment hereby irrevocably waive), each Lender with a Revolving Credit Commitment will, on the later of the Reimbursement Date or one (1) Business Day after receipt of written notice that a drawing has not been reimbursed, make Revolving Loans that are Base Rate Loans in the amount of such honored drawing, the proceeds of which will be applied directly by the Administrative Agent to reimburse the applicable Issuing Bank for the amount of such honored drawing; and *provided*, *further*, if for any reason proceeds of Revolving Loans are not received by the applicable Issuing Bank on the Reimbursement Date in an amount equal to the amount of such honored drawing, the Borrower will reimburse such Issuing Bank, on demand, in an amount in same day funds equal to the excess of the

amount of such honored drawing over the aggregate amount of such Revolving Loans, if any, which are so received. Nothing in this Section 2.4(d) will be deemed to relieve any Lender with a Revolving Credit Commitment from its obligation to make Revolving Loans on the terms and conditions set forth herein, and the Borrower will retain any and all rights it may have against any Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.4(d). In the event any amount denominated in an Available Foreign Currency is not paid when due, such amount shall, for all purposes of this Agreement, be converted to an amount in Dollars based on the Dollar Equivalent thereof.

(e) Lenders' Purchase of Participations in Letters of Credit. Immediately upon the Issuance of each Letter of Credit, each Lender having a Revolving Credit Commitment will be deemed to have purchased, in each case, without recourse or warranty, and hereby agrees to irrevocably purchase, from the Issuing Banks a participation in such Letter of Credit and any drawings honored thereunder in an amount equal to such Lender's Pro Rata Share (with respect to the Revolving Credit Commitments) of the maximum amount which is or at any time may become available to be drawn thereunder. In the event that the Borrower will fail for any reason to reimburse the applicable Issuing Bank as provided in Section 2.4(d), the applicable Issuing Bank will promptly notify each Lender with a Revolving Credit Commitment of the unreimbursed amount in Dollars of such honored drawing and of such Lender's respective participation therein based on such Lender's Pro Rata Share of the Revolving Credit Commitments. Each Lender with a Revolving Credit Commitment will make available to the applicable Issuing Bank an amount equal to its respective participation, in Dollars and in same day funds, at the office of the Issuing Bank specified in such notice, not later than 12:00 noon (New York City time) on the first Business Day (under the laws of the jurisdiction in which such office of such Issuing Bank is located) after the date notified by such Issuing Bank. In the event that any Lender with a Revolving Credit Commitment fails to make available to the applicable Issuing Bank on such Business Day the amount of such Lender's participation in such Letter of Credit as provided in this Section 2.4(e), such Issuing Bank will be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by such Issuing Bank for the correction of errors among banks and thereafter at the Base Rate. Nothing in this Section 2.4(e) will be deemed to prejudice the right of any Lender with a Revolving Credit Commitment to recover from such Issuing Bank any amounts made available by such Lender to such Issuing Bank pursuant to this Section in the event that it is determined that the payment with respect to a Letter of Credit in respect of which payment was made by such Lender constituted gross negligence, bad faith or willful misconduct on the part of such Issuing Bank as determined by a court of competent jurisdiction in a final non-appealable order. In the event such Issuing Bank will have been reimbursed by other Lenders pursuant to this Section 2.4(e) for all or any portion of any drawing honored by such Issuing Bank under a Letter of Credit, such Issuing Bank will distribute to the Administrative Agent, which will in turn distribute to each Lender which has paid all amounts payable by it under this Section 2.4(e) with respect to such honored drawing, such Lender's Pro Rata Share of all payments subsequently received by such Issuing Bank from the Borrower in reimbursement of such honored drawing when such payments are received. Any such distribution will be made to a Lender at its primary address set forth below its name on Appendix B, in the administrative questionnaire delivered by such Lender to the Borrower and the Administrative Agent or at such other address as such Lender may request.

(f) Obligations Absolute. The obligation of the Borrower to reimburse the Issuing Banks for drawings honored under the Letters of Credit Issued by it and to repay any Revolving Loans made by the Lenders pursuant to Section 2.4(d) and the obligations of the Lenders under Section 2.4(e) will be unconditional and irrevocable and will be performed strictly in accordance with the terms hereof under all circumstances including any of the following circumstances: (i) any lack of validity or enforceability of any Letter of Credit, any document transferring or purporting to transfer any Letter of Credit, any Credit Document (including the sufficiency of any such instrument), or any modification to any provision of any of the foregoing; (ii) the existence of any claim, set-off, defense, abatement, recoupment or other right which the Borrower or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), the Issuing Banks, Lender or any other Person or, in the case of a Lender, against the Borrower, whether in connection herewith, the transactions contemplated herein or any transaction (including any underlying transaction between the Borrower or Subsidiary and the beneficiary for which any Letter of Credit was procured); (iii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iv) payment

by the applicable Issuing Bank under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit; (v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of the Borrower or any Subsidiary; (vi) any breach hereof or any other Credit Document by any party thereto; (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; (viii) the fact that an Event of Default or a Default will have occurred and be continuing; or (ix) solely with respect to the obligations of the Lenders under Section 2.4(c), the failure of any condition precedent set forth in Section 3.2 to be satisfied (each of which conditions precedent the Lenders with a Revolving Credit Commitment hereby irrevocably waive); *provided* that, in each case, that payment by the applicable Issuing Bank under the applicable Letter of Credit will not have constituted gross negligence, bad faith or willful misconduct of such Issuing Bank as determined by a court of competent jurisdiction in a final non-appealable order under the circumstances in question.

(g) Indemnification. Without duplication of any obligation of the Borrower under Section 10.2 or Section 10.3, in addition to amounts payable as provided herein, the Borrower hereby agrees to protect, indemnify, pay and save harmless the Issuing Banks from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable fees, expenses and disbursements of a single firm of outside counsel (and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may be a single local counsel acting in multiple jurisdictions) and, solely in the event of an actual or potential conflict of interest between any Issuing Bank, where the Person or Persons affected by such conflict of interest inform the Borrower in writing of such conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Persons similarly situated taken as a whole) but excluding allocated costs of internal counsel) which the Issuing Banks may incur or be subject to as a consequence, direct or indirect, of (i) the Issuance of any Letter of Credit by an Issuing Bank, other than as a result of (1) the gross negligence, bad faith or willful misconduct of such Issuing Bank as determined by a court of competent jurisdiction in a final non-appealable order or (2) the failure by such Issuing Bank to exercise reasonable care when determining whether a proper demand for payment is made under any Letter of Credit Issued by it, or (ii) the failure of an Issuing Bank to honor a drawing under any such Letter of Credit as a result of any Governmental Act.

(h) Cash Collateralization of Letters of Credit. In the event that any Letter of Credit is outstanding at the time that the Borrower prepays, or is required to repay, the Obligations or the Revolving Credit Commitments are terminated, the Borrower will (i) deposit with the Administrative Agent, for the benefit of all Lenders having Revolving Credit Exposure, cash or Cash Equivalents in an amount equal to one hundred and three percent (103%) of the aggregate outstanding Letter of Credit Usage to be available to Administrative Agent, for its benefit and the benefit of Issuing Banks, to reimburse payments of drafts drawn under such Letters of Credit and pay any fees and expenses related thereto and (ii) prepay the fee payable under Section 2.11(a)(ii) with respect to such Letters of Credit for the full remaining terms of such Letters of Credit. Upon termination of any such Letter of Credit and provided no Event of Default will have occurred and be continuing, the unearned portion of such prepaid fee attributable to such Letter of Credit will be refunded to the Borrower, together with the deposit described in the preceding clause (i) to the extent not previously applied by the Administrative Agent in the manner described herein.

2.5 Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares. All Loans will be made, and all participations will be purchased, by the Lenders simultaneously and proportionately to their respective Pro Rata Shares. No Lender will be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby nor will any Term Loan Commitment or any Revolving Credit Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds. Unless the Administrative Agent will have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to the Administrative Agent the amount of such Lender's Loan requested on such Credit Date, the Administrative Agent may assume that such Lender has made such amount available to the

Administrative Agent on such Credit Date and the Administrative Agent may, in its sole discretion, but will not be obligated to, make available to the Borrower a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent will be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the customary rate set by the Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent will promptly notify the Borrower and the Borrower will immediately pay such corresponding amount to the Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the rate payable hereunder for Base Rate Loans for such Class of Loans. Nothing in this Section 2.5(b) will be deemed to relieve any Lender from its obligation to fulfill its Term Loan Commitments and Revolving Credit Commitments hereunder or to prejudice any rights that the Borrower may have against any Lender as a result of any default by such Lender hereunder.

2.6 Use of Proceeds.

(a) The proceeds of the Initial Term Loans will be used to (i) consummate the Transactions and (ii) after the usage specified in clause (i) above, for working capital needs and general corporate purposes of the Borrower and the Subsidiaries, including for Permitted Acquisitions, capital expenditures and other transactions not prohibited under the terms of this Agreement.

(b) The proceeds of the Revolving Loans, Letters of Credit and Swing Line Loans made after the Closing Date will be applied by the Borrower for working capital and general corporate purposes of the Borrower and the Subsidiaries, including for Permitted Acquisitions, capital expenditures and other transactions not prohibited under the terms of this Agreement.

(c) No portion of the proceeds of or draws related to any Credit Extension will be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

(d) No Credit Party, nor any of its Controlled Entities or any of their respective directors and officers, will directly or knowingly indirectly use any part of any proceeds of any Credit Extension or lend, contribute, or otherwise make available such proceeds to any Person (i) to fund or facilitate any activities or business of or with any Person that, at the time of such funding or facilitation, is a Blocked Person, (ii) to fund or facilitate any activities or business of or in any Sanctioned Country or (iii) in any other manner that will result in a violation by any Person of Anti-Terrorism Law. No part of the proceeds of any Credit Extension will be used directly or knowingly indirectly for any corrupt payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of Anti-Corruption Law.

(e) The proceeds of the Term A-1 Loan will be used to (i) consummate the Oyster Transactions on the Second Amendment Effective Date and (ii) after the usage specified in clause (i) above, for working capital needs and general corporate purposes of the Oyster Borrower and the Subsidiaries, including for Permitted Acquisitions, capital expenditures and other transactions not prohibited under the terms of this Agreement.

(f) The proceeds of the Term A-2 Loan will be used to (i) finance, in part, the CartiHeal Equity Purchase on the Third Amendment Effective Date, (ii) repay certain outstanding Revolving Loans on the Third Amendment Effective Date and (iii) after the usage specified in clauses (i) and (ii) above, for working capital needs and general corporate purposes of the Borrower and the Subsidiaries, including for Permitted Acquisitions, capital expenditures and other transactions not prohibited under the terms of this Agreement.

2.7 Evidence of Debt; Register; Disqualified Lender List; Notes.

(a) Evidence of Debt. Each Lender will maintain on its internal records an account or accounts evidencing the Indebtedness of the Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation will be conclusive and binding on the Borrower, absent manifest error; *provided* that failure to make any such recordation, or any error in such recordation, will not affect any Lender's Revolving Credit Commitments or the Borrower's Obligations in respect of any applicable Loans; and *provided further*, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register will govern.

(b) Register. The Administrative Agent will maintain a register for the recordation of the names and addresses of the Lenders and the Revolving Credit Commitments, the Swing Line Commitments and the Loans of each Lender from time to time (the "**Register**"). The Register will be available for inspection by the Borrower or any Lender (with respect to any entry relating to such Lender's Loans) at any reasonable time from time to time upon reasonable prior notice. The Administrative Agent will record in the Register the Revolving Credit Commitments and the Loans, the principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from to time and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation will be conclusive and binding on the Borrower and each Lender, absent manifest error; *provided* that failure to make any such recordation, or any error in such recordation, will not affect any Lender's Revolving Credit Commitments or the Borrower's Obligations in respect of any Loan. The Borrower hereby designates the Administrative Agent to serve as the Borrower's agent solely for purposes of maintaining the Register as provided in this Section 2.7, and the Borrower hereby agrees that, to the extent the Administrative Agent serves in such capacity, the Administrative Agent and its officers, directors, employees, agents and affiliates will constitute "Indemnitees."

(c) Disqualified Lender List. The Disqualified Lenders List will be (i) posted to the Lenders on both the "Public Side Information" and the "Private Side Information" portions of the Platform, subject to the confidentiality provisions thereof in accordance with Section 10.17 hereof, and (ii) made available to the Lenders, other Agents and Issuing Banks upon written request to the Administrative Agent. The Borrower hereby acknowledges and consents to the posting and/or distribution of the Disqualified Lenders List pursuant to the terms set forth in this Agreement. The parties to this Agreement hereby acknowledge and agree that the Administrative Agent will not be deemed to be in default under this Agreement or to have any duty or responsibility or to incur any liabilities as a result of a breach of this Section 2.7(c), nor will the Administrative Agent have any duty, responsibility or liability to monitor or enforce assignments, participations or other actions in respect of Disqualified Lenders, or otherwise take (or omit to take) any action with respect thereto.

(d) Notes. If so requested by any Lender by written notice to the Borrower (with a copy to the Administrative Agent) at least three Business Days prior to the Closing Date, or at any time thereafter, the Borrower will execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) on the Closing Date (or, if such notice is delivered after the date that is three Business Days prior to the Closing Date, promptly after the Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Term Loan, Revolving Loan or Swing Line Loan as the case may be.

2.8 Interest on Loans.

(a) Except as otherwise set forth herein, each Class of Loan will bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

Class of Loans	Interest
Initial Term Loans, Term A-1 Loans, Term A-2 Loans and Revolving Loans that are, in each case, Base Rate Loans	Base Rate *plus* the Applicable Margin
Initial Term Loans, Term A-1 Loans, Term A-2 Loans and Revolving Loans that are, in each case, SOFR Loans	Adjusted Term SOFR *plus* the Applicable Margin
Swing Line Loans	Base Rate *plus* the Applicable Margin
Incremental Term Loans (other than Term A-1 Loans and Term A-2 Loans), Extended Term Loans or Refinancing Term Loans that are, in each case, Base Rate Loans	Base Rate *plus* the applicable margin set forth in the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment.
Incremental Term Loans (other than Term A-1 Loans and Term A-2 Loans), Extended Term Loans or Refinancing Term Loans that are, in each case, SOFR Loans	Adjusted Term SOFR *plus* the applicable margin set forth in the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment.

(b) The basis for determining the rate of interest with respect to any Loan (except a Swing Line Loan which can be made and maintained as Base Rate Loans only), and the Interest Period with respect to any SOFR Loan, will be selected by the Borrower and notified to the Administrative Agent and the Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to the Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan will be a Base Rate Loan; provided that if such Loan is a SOFR Loan with an Interest Period of one month, then such Loan shall be automatically continued as a SOFR Loan with an Interest Period of one month.

(c) In connection with SOFR Loans there will be no more than ten (10) Interest Periods outstanding at any time. In the event the Borrower fails to specify between a Base Rate Loan or a SOFR Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan (if outstanding as a SOFR Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan); provided that if no Conversion/Continuation Notice is provided with respect to an outstanding SOFR Loan with an Interest Period of one month, such SOFR Loan shall be continued as a SOFR Loan with an Interest Period of one month. In the event the Borrower fails to specify an Interest Period for any SOFR Loan in the applicable Funding Notice or Conversion/Continuation Notice, the Borrower will be deemed to have selected an Interest Period of one month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, the Administrative Agent will determine (which determination will, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that will apply to the SOFR Loans for which an interest rate is then being determined for the applicable Interest Period and will promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrower and each Lender.

(d) Interest payable pursuant to Section 2.8(a) will be computed (i) in the case of Base Rate Loans on the basis of a 365-day year (or 366-day year, in the case of a leap year), and (ii) in the case of SOFR Loans on the basis of a 360-day year, in each case for the actual number of days elapsed in the

period during which it accrues (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365/366-day year). In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a SOFR Loan, the date of conversion of such SOFR Loan to such Base Rate Loan, as the case may be, will be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a SOFR Loan, the date of conversion of such Base Rate Loan to such SOFR Loan, as the case may be, will be excluded; *provided* that if a Loan is repaid on the same day on which it is made, one day's interest will be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan will accrue on a daily basis and be payable in arrears (i) on each Interest Payment Date applicable to that Loan; (ii) on the date of any repayment or prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the principal amount being repaid or prepaid; and (iii) at maturity, including final maturity (or, in the case of Revolving Loans, such earlier date on which the Revolving Credit Commitments are terminated) and, after such maturity (or termination), on each date on which demand for payment is made; *provided*, *however*, that, with respect to any voluntary prepayment of a Revolving Loan outstanding as a Base Rate Loan, accrued interest will instead be payable on the applicable Interest Payment Date; *provided*, *further,* that in the event of any conversion of any SOFR Loan prior to the end of the Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) The Borrower agrees to pay to the applicable Issuing Bank, with respect to drawings honored under any Letter of Credit, interest on the amount paid by such Issuing Bank in respect of each such honored drawing from the date such drawing is honored to but excluding the date such amount is reimbursed by or on behalf of the Borrower at a rate equal to (i) for the period from the date such drawing is honored to but excluding the applicable Reimbursement Date, the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans, and (ii) thereafter, a rate which is 2.00% per annum in excess of the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans.

(g) Interest payable pursuant to Section 2.8(f) will be computed on the basis of a 365/366-day year for the actual number of days elapsed in the period during which it accrues, and will be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by an Issuing Bank of any payment of interest pursuant to Section 2.8(f), such Issuing Bank will distribute to the Administrative Agent, which will in turn distribute to each Lender, out of the interest received by such Issuing Bank in respect of the period from the date such drawing is honored to but excluding the date on which such Issuing Bank is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Revolving Loans), the amount that such Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit. In the event an Issuing Bank will have been reimbursed by the Lenders for all or any portion of such honored drawing, such Issuing Bank will distribute to each Lender which has paid all amounts payable by it under Section 2.4(e) with respect to such honored drawing such Lender's Pro Rata Share of any interest received by such Issuing Bank in respect of that portion of such honored drawing so reimbursed by the Lenders for the period from the date on which such Issuing Bank was so reimbursed by the Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by the Borrower.

(h) Term SOFR Conforming Changes. In connection with the use or administration of 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 Credit 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 Credit 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 Term SOFR.

2.9 Conversion/Continuation.

(a) Subject to Section 2.18 and (other than in the case of a conversion of a SOFR Loan to a Base Rate Loan) so long as no Event of Default will have occurred and then be continuing, the Borrower will have the option:

(i) to convert at any time all or any part of any Term Loan or Revolving Loan equal to $100,000 and integral multiples of $50,000 in excess of that amount from one Type of Loan to another Type of Loan; *provided* that a SOFR Loan may only be converted on the expiration of the Interest Period applicable to such SOFR Loan unless the Borrower will pay all amounts due under Section 2.18 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any SOFR Loan, to continue all or any portion of such Loan equal to $100,000 and integral multiples of $50,000 in excess of that amount as a SOFR Loan.

(b) The Borrower will deliver a Conversion/Continuation Notice to the Administrative Agent by Electronic Transmission no later than 11:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three U.S. Government Securities Business Days in advance of the proposed Conversion/Continuation Date (in the case of a conversion to, or a continuation of, a SOFR Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any SOFR Loans will be irrevocable on and after the related Interest Rate Determination Date, and the Borrower will be bound to effect a conversion or continuation in accordance therewith.

2.10 Default Interest. Upon the occurrence and during the continuance of an Event of Default under Section 8.1(a), 8.1(f) or 8.1(g), the overdue principal amount of any Loans and, to the extent permitted by applicable law and due and owing, any overdue interest payments on the Loans and any other overdue fees and other overdue amounts, will bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) from the date of such Event of Default, payable on demand at a rate that is 2.00% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2.00% per annum in excess of the interest rate otherwise payable hereunder for Initial Term Loans outstanding as Base Rate Loans); *provided* that in the case of SOFR Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, such SOFR Loans will thereupon become Base Rate Loans and will thereafter bear interest payable upon demand at a rate that is 2.00% per annum in excess of the interest rate otherwise payable hereunder for such Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.10 is not a permitted alternative to timely payment and will not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Administrative Agent or any Lender.

2.11 Fees.

(a) Revolving Commitment Fee. The Borrower agrees to pay to the Lenders having Revolving Credit Exposure the following fees:

(i) commitment fees equal to the Unused Line Fee Rate multiplied by the amount by which the Revolving Credit Commitments (other than Revolving Credit Commitments of a Defaulting Lender) exceed the average daily balance of outstanding Revolving Loans (other than Swing Line Loans); and

(ii) letter of credit fees equal to (A) the Applicable Margin for Revolving Loans that are SOFR Loans, times (B) the face amount of all Letters of Credit issued and outstanding under this Agreement (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination); *provided* that, in the case of Foreign Currency Letters of Credit, such calculation will be based on the Dollar Equivalent of the face amount thereof.

All fees referred to in this Section 2.11(a) will be paid to the Administrative Agent at the Payment Office and upon receipt, the Administrative Agent will promptly distribute to each Lender its Pro Rata Share thereof.

(b) Letter of Credit Fees. The Borrower agree to pay to the Administrative Agent (in Dollars), for the account of each Issuing Bank, the following fees:

(i) a fronting fee equal to 0.125% per annum, times the average aggregate daily maximum amount available to be drawn under all Letters of Credit issued by it and outstanding under this Agreement (determined as of the close of business on any date of determination); *provided* that, in the case of Foreign Currency Letters of Credit, such calculation will be based on the Dollar Equivalent of the maximum amount available to be drawn thereunder; and

(ii) such documentary and processing charges for any Issuance, amendment, transfer or payment of a Letter of Credit as are in accordance with such Issuing Bank's standard schedule for such charges and as in effect at the time of such Issuance, amendment, transfer or payment, as the case may be.

(c) [Reserved].

(d) [Reserved].

(e) All fees referred to in Section 2.11(a) and 2.11(b) (except 2.11(b)(i)) will be calculated on the basis of a 360-day year and the actual number of days elapsed. The fees referred to in Sections 2.11(a) and 2.11(b)(i) will be payable quarterly in arrears on the last Business Day of each Calendar Quarter of each year during the Revolving Credit Commitment Period, commencing on the first such date to occur at the end of the first full Calendar Quarter ending after the Closing Date, and on the Revolving Credit Commitment Termination Date.

(f) In addition to the foregoing fees, the Borrower agree to pay to Agents such other fees in the amounts and at the times separately agreed upon.

(g) Once paid, none of the foregoing fees will be refundable under any circumstances.

2.12 Scheduled Payments.

(a) The Borrower will repay to the Administrative Agent:

(i) for the ratable account of the applicable Lenders holding Initial Term Loans, on the last Business Day of each Fiscal Quarter (commencing with the first full Fiscal Quarter ending after the Second Amendment Effective Date) an aggregate principal amount of the original aggregate principal amount of all Initial Term Loans outstanding on the Second Amendment Effective Date (after giving effect to the prepayment of Initial Term Loans that occurred on such date) as follows:

(1) for the first four such payment dates, 1.25% of the original principal amount of all Initial Term Loans outstanding on the Second Amendment Effective Date;

(2) for the next eight such payment dates after the first four such payment dates, 1.875% of the original principal amount of all Initial Term Loans outstanding on the Second Amendment Effective Date; and

(3) for the next eight such payment dates after the first twelve such payment dates, 2.50% of the original principal amount of all Initial Term Loans outstanding on the Second Amendment Effective Date;

(ii) for the ratable account of the applicable Lenders holding Initial Term Loans, on the Term Loan Maturity Date, the aggregate principal amount of all Initial Term Loans outstanding on such date.

(b) The Borrower will repay to the Administrative Agent:

(i) for the ratable account of the Term A-1 Loan Lenders, on the last Business Day of each Fiscal Quarter (commencing with the first full Fiscal Quarter ending after the Second Amendment Effective Date) an aggregate principal amount of the original aggregate principal amount of all Term A-1 Loans outstanding on the Second Amendment Effective Date as follows:

(1) for the first four such payment dates, 1.25% of the original principal amount of all Term A-1 Loans outstanding on the Second Amendment Effective Date;

(2) for the next eight such payment dates after the first four such payment dates, 1.875% of the original principal amount of all Term A-1 Loans outstanding on the Second Amendment Effective Date; and

(3) for the next eight such payment dates after the first twelve such payment dates, 2.50% of the original principal amount of all Term A-1 Loans outstanding on the Second Amendment Effective Date;

(ii) for the ratable account of the Term A-1 Loan Lenders, on the Term A-1 Loan Maturity Date, the aggregate principal amount of all Term A-1 Loans outstanding on such date

(c) The Borrower will repay to the Administrative Agent:

(i) for the ratable account of the Term A-2 Loan Lenders, on the last Business Day of each Fiscal Quarter (commencing September 30, 2022) an aggregate principal amount of the original aggregate principal amount of all Term A-2 Loans outstanding on the Third Amendment Effective Date as follows:

(1) for the first two such payment dates, 1.25% of the original principal amount of all Term A-2 Loans outstanding on the Third Amendment Effective Date;

(2) for the next eight such payment dates after the first two such payment dates, 1.875% of the original principal amount of all Term A-2 Loans outstanding on the Third Amendment Effective Date; and

(3) for the next eight such payment dates after the first ten such payment dates, 2.50% of the original principal amount of all Term A-2 Loans outstanding on the Third Amendment Effective Date;

(iii) for the ratable account of the Term A-2 Loan Lenders, on the Term A-2 Loan Maturity Date, the aggregate principal amount of all Term A-2 Loans outstanding on such date.

(d) In the event any Incremental Term Loans, Extended Term Loans or Refinancing Term Loans are made, such Incremental Term Loans, Extended Term Loans or Refinancing Term Loans will be repaid in such installments as may be set forth in the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment, as applicable.

(e) Notwithstanding the foregoing clauses (a), (b), (c) and (d):

(i) any installment payments contemplated by clause (a), (b), (c) or (d) above will be reduced in connection with any voluntary or mandatory prepayments of the Term Loans in accordance with Sections 2.13, 2.14 and 2.15, as applicable;

(ii) the rate of amortization (or the amount of any installment) with respect to any Class of Loans may be increased (and the provisions of clause (a)(i), (b)(i), (c)(i) or the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment may be amended accordingly) without the consent of the Lenders or the Administrative Agent in connection with the incurrence of any subsequent Incremental Term Loans, Extended Term Loans or Refinancing Term Loans that also comprise part of such Class of Loans; and

(iii) the Term Loans, together with all other amounts owed hereunder with respect thereto, will, in any event, be paid in full no later than the applicable Term Loan Maturity Date.

2.13 Voluntary Prepayments/Commitment Reductions.

(a) Voluntary Prepayments. Any time and from time to time, with respect to any Type of Loan, the Borrower may prepay the Loans of any Class, in whole or in part, on any Business Day in whole or in part, in an aggregate minimum amount of and integral multiples in excess of that amount (or, in each case, if less the entire amount thereof), and upon prior written notice given to the Administrative Agent or any applicable Swing Line Lender, as the case may be, by 12:00 noon (New York City time) on the applicable date indicated below, in each case, as set forth in the following table:

Class of Loans	Minimum Amount	Integral Multiple	Prior Notice
Base Rate Loans (other than Swing Line Loans)	$100,000	$50,000	One Business Day
SOFR Loans	$100,000	$50,000	Three U.S. Government Securities Business Days
Swing Line Loans	$50,000	$50,000	Same Day

Any amounts received after such time on such date will be deemed to have been received on the next succeeding Business Day or U.S. Government Securities Business Day, as applicable. Upon the giving of any such notice, the principal amount of the Loans specified in such notice will become due and payable without premium or penalty (subject to Section 2.18(c)) on the prepayment date specified therein; *provided* that such notice may be conditioned on receiving the proceeds necessary for such prepayment in a refinancing or otherwise. Any such voluntary prepayment will be applied as specified in Section 2.15(a).

(b) Voluntary Commitment Reductions. The Borrower may, upon not less than three Business Days' prior written notice, at any time and from time to time terminate in whole or permanently reduce in part, without premium or penalty, the Revolving Credit Commitments in an amount up to the amount by which the Revolving Credit Limit exceeds the Total Utilization of Revolving Credit Commitments at the time of such proposed termination or reduction; *provided* that any such partial reduction of the Revolving Credit Commitments must be in an aggregate minimum amount of $100,000 and integral multiples of $50,000 in excess of that amount (or, in each case, if less the entire amount thereof); *provided, further*, that the Borrower may rescind any notice of termination under this Section 2.13(b) if such notice was delivered in connection with a refinancing or other transaction, that is not consummated or is otherwise delayed. The Borrower's notice to the Administrative Agent will designate the date (which must be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Credit Commitments will be effective on the date specified in the Borrower's notice and will reduce the Revolving Credit Commitment of each Lender proportionately to its Pro Rata Share thereof.

2.14 Mandatory Prepayments/Commitment Reductions.

(a) Asset Sales. No later than the fifth Business Day following the date of receipt by the Borrower or any Subsidiary of any Net Cash Proceeds from Asset Sales made pursuant to Section 6.8(e) or (h), together with the Net Cash Proceeds from Casualty Events pursuant to clause (b) below, in excess of $~~$5,000,000~~**250,000** in any Fiscal Year, the Borrower will prepay, or cause to be prepaid Loans in accordance with Section 2.15(b) in an aggregate amount equal to 100% of such excess; *provided* that**, other than during the Covenant Adjustment Period,** the Borrower will have the option, directly or through one or more of its Subsidiaries, to invest such Net Cash Proceeds within three hundred sixty-five (365) days of receipt thereof in assets of the type used or useful in the Businesses of the Borrower and the Subsidiaries; *provided further*, that**, other than during the Covenant Adjustment Period,** if the Borrower or any Subsidiary enters into a legally binding commitment to invest such Net Cash Proceeds within such 365-day period, it may directly or through one or more of its Subsidiaries, so invest such Net Cash Proceeds within one hundred eighty (180) days following the end of such initial 365-day period; *provided, further,* that pending any such investment such Net Cash Proceeds may be applied to prepay Revolving Loans to the extent then outstanding (without a reduction in Revolving Credit Commitments).

(b) Casualty Events. No later than the fifth Business Day following the date of receipt by the Borrower or any Subsidiary of any Net Cash Proceeds from a Casualty Event, together with the Net Cash Proceeds from Asset Sales pursuant to clause (a) above, in excess of $~~$5,000,000~~**250,000** in any Fiscal Year, the Borrower will prepay, or cause to be prepaid, the Loans in accordance with Section 2.15(b) in an aggregate amount equal to 100% of such excess; *provided* that**, other than during the Covenant Adjustment Period,** (i) the Borrower will have the option, directly or through one or more of its Subsidiaries, to invest such Net Cash Proceeds within three hundred sixty-five (365) days of receipt thereof in assets used or useful in the Businesses of the Borrower and the Subsidiaries, which investment may include the repair, restoration or replacement of the applicable assets thereof; *provided*, *further*, that**, other than during the Covenant Adjustment Period,** if the Borrower or any Subsidiary enters into a legally binding commitment to invest such Net Cash Proceeds within such 365-day period, it may directly or through one or more of its Subsidiaries, so invest such Net Cash Proceeds within one hundred eighty (180) days following the end of such initial 365-day period; *provided, further,* that pending any such investment such Net Cash Proceeds may be applied to prepay Revolving Loans to the extent then outstanding (without a reduction in Revolving Credit Commitments).

(c) Issuance of Debt. No later than the first Business Day following receipt by the Borrower or any Subsidiary of any Net Cash Proceeds from the incurrence of any Indebtedness of the Borrower or any Subsidiary (other than any Indebtedness permitted to be incurred or issued pursuant to Section 6.1 (but, for the avoidance of doubt, excluding Credit Agreement Refinancing Indebtedness and Replacement Term Loans)), the Borrower will prepay the Term Loans in accordance with Section 2.15(b) in an aggregate amount equal to 100% of such Net Cash Proceeds.

(d) Reductions of the Revolving Credit Commitments. On each of December 31, 2023 and June 30, 2024, the Revolving Credit Commitments will automatically and without further action permanently reduce by $5,000,000.

(e) Excess Cash. If at any time the aggregate amount of Unrestricted Cash (excluding any Unrestricted Cash in an aggregate amount reasonably estimated to cover payroll for a two-week period) exceeds $20,000,000 for four (4) consecutive Business Days, the Borrower shall, on the next Business Day, thereafter prepay (without a permanent reduction in the Revolving Credit Commitments) outstanding Revolving Loans in an aggregate principal amount equal to the amount of such excess.

(f) ~~**(d)**~~ Prepayment Certificate. Concurrently with any prepayment of the Loans pursuant to Sections 2.14(a) through 2.14(c), the Borrower will deliver to the Administrative Agent a calculation of the amount of the applicable Net Cash Proceeds. In the event that the Borrower will subsequently determine that the actual amount received exceeded the applied pursuant to this Section 2.14, the Borrower will promptly make an additional prepayment of the Loans in an amount equal to such excess, and the Borrower will concurrently therewith deliver to the Administrative Agent a calculation of such excess.

2.15 Application of Prepayments/Reductions.

(a) Application of Voluntary Prepayments. Subject to Section 2.15(d), any prepayment of any Class of Loans pursuant to Section 2.13(a) will be applied to the scheduled payments (including the payments at maturity) of such Class of Loans as specified by the Borrower in the applicable notice of prepayment and absent any such direction, in direct order of maturity; *provided* that in any event, any prepayment shall be applied ratably among holders of the same Class of Loans.

(b) Application of Mandatory Prepayments. Subject to Section 2.15(d), any amount required to be paid pursuant to Sections 2.14(a), 2.14(b) or 2.14(c) will be applied as follows:

(i) except as set forth in any Refinancing Amendment, Extension Amendment or Incremental Amendment with respect to such applicable Refinancing Term Loans, Extended Term Loans or Incremental Term Loans, as applicable, such prepayment will be applied to each Class of Term Loans on a pro rata basis (in accordance with the respective outstanding principal amounts thereof); *provided* that any prepayment of Term Loans with the Net Cash Proceeds of Credit Agreement Refinancing Indebtedness will be applied solely to each applicable Class of Refinanced Indebtedness; and

(ii) such prepayment will be applied to the next eight (8) installments of each applicable Class of Term Loans in direct order of maturity, with the balance, if any, applied to the amount due at maturity.

Notwithstanding anything to the contrary in any Credit Document, the Borrower may use a portion of the amounts required to be paid pursuant to Sections 2.14(a) and 2.14(b) to prepay, repurchase, redeem, defease or otherwise repay, or offer to prepay, repurchase, redeem, defease or otherwise repay, with such amounts other Pari Passu Lien Indebtedness and the amount required to be paid pursuant to such Sections will be ratably reduced; *provided* that the definitive documentation in respect of such Pari Passu Lien Indebtedness requires the issuer or borrower thereof to prepay, repurchase, redeem, defease or otherwise repay, or offer to prepay, repurchase, redeem, defease or otherwise repay, such Pari Passu Lien Indebtedness with such amounts, in each case, on a pro rata basis with the outstanding principal amount of Term Loans.

(c) Application of Prepayments of Loans to Base Rate Loans and SOFR Loans. Considering each Class of Loans being prepaid separately, any prepayment thereof will be applied first to Base Rate Loans to the full extent thereof before application to SOFR Loans, in each case, in a manner that minimizes the amount of any payments required to be made by the Borrower pursuant to Section 2.18(c).

(d) Application of Payments or Proceeds. During the continuance of an Event of Default, the Administrative Agent may and will upon the direction of the Required Lenders apply any and all payments received by the Administrative Agent in respect of any Obligation in accordance with Section 8.2. All payments made by a Credit Party to the Administrative Agent after any or all of the Obligations have been accelerated (so long as such acceleration has not been rescinded), including proceeds of Collateral, will be applied in accordance with Section 8.2.

(e) Waivable Mandatory Prepayment. Anything contained herein to the contrary notwithstanding, so long as any Term Loans are outstanding, in the event the Borrower is required to make any mandatory prepayment pursuant to Section 2.14(a) through (c) (other than any mandatory prepayment with the Net Cash Proceeds of any Credit Agreement Refinancing Indebtedness) (a "**Waivable Mandatory Prepayment**"), not less than three Business Days prior to the date (the "**Required Prepayment Date**") on which the Borrower is required to make such Waivable Mandatory Prepayment, the Borrower will notify the Administrative Agent of the amount of such prepayment. Each such Lender may exercise its option to refuse any Waivable Mandatory Prepayment by giving written notice to the Borrower and the Administrative Agent of its election to do so on or before the first Business Day prior to the Required Prepayment Date (it being understood that any Lender that does not notify the Borrower and the Administrative Agent of its election to exercise such option on or before the first Business Day prior to the Required Prepayment Date will be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, the Borrower will pay to the Administrative

Agent the amount of the Waivable Mandatory Prepayment, which amount will be applied to those Lenders that have elected not to exercise such option, as prepayment of the Term Loans (which prepayment will be applied to the scheduled installments of principal of the Term Loans of Lenders not electing to exercise such option, in accordance with Section 2.15(b)), with any balance of the Waivable Mandatory Prepayment to be retained by the Borrower and used for any purpose permitted by the terms of this Agreement.

(f) Repatriation; Foreign Considerations. Notwithstanding any provisions of Section 2.14 or this Section 2.15 to the contrary:

(i) to the extent that any or all of the Net Cash Proceeds of any Asset Sale by a Foreign Subsidiary giving rise to a prepayment event pursuant to Section 2.14(a) (a "**Foreign Disposition**"), the Net Cash Proceeds of any Casualty Event from a Foreign Subsidiary giving rise to a prepayment event pursuant to Section 2.14(b) (a "**Foreign Casualty Event**") attributable to Foreign Subsidiaries, FSHCOs or any Domestic Subsidiary of the foregoing are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Cash Proceeds so affected will not be required to be applied to repay Term Loans at the times provided in Section 2.14 but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all commercially reasonable actions required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Cash Proceeds is permitted under the applicable local law, such repatriation will be effected promptly and such repatriated Net Cash Proceeds will be promptly (and in any event not later than three (3) Business Days after such repatriation) applied (net of additional Taxes (including Tax Payments) payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to Section 2.14 to the extent provided therein, and

(ii) to the extent that the Borrower has reasonably determined in good faith that repatriation of any of or all the Net Cash Proceeds of any Foreign Disposition, Net Cash Proceeds of any Foreign Casualty Event would result in adverse Tax consequences (that are not de minimis) to the Borrower, its Subsidiaries or any direct or indirect equity owners of the Borrower, the Net Cash Proceeds so affected may be retained by the applicable Foreign Subsidiary (the Borrower hereby agreeing to promptly take and cause such Foreign Subsidiary to take all commercially reasonable actions to eliminate or minimize any such adverse Tax consequences in furtherance of allowing the repatriation of such Net Cash Proceeds, provided that in no event will Borrower be required to undertake any action that would result in any material costs or Taxes payable by the Borrower or its Affiliates).

2.16 General Provisions Regarding Payments.

(a) All payments by the Borrower of principal, interest, fees and other Obligations will be made in Dollars in same day funds and by wire transfer or ACH transfer (which will be the exclusive means of payment hereunder), without defense, setoff or counterclaim, free of any restriction or condition, and delivered to the Administrative Agent not later than 2:00 p.m. (New York City time) on the date due at the Payment Office (or such other address as the Administrative Agent may from time to time specify in accordance with Section 10.1) for the account of the Lenders entitled to such payment; for purposes of computing interest and fees, funds received by the Administrative Agent after that time on such due date will be deemed to have been paid by the Borrower on the next succeeding Business Day.

(b) All payments of the principal amount of any Term Loan made pursuant to Section 2.13 will be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments will be applied to the payment of interest then due and payable before application to principal.

(c) The Administrative Agent (or its agent or sub-agent appointed by it) will promptly distribute to each Lender entitled to such payment at such address as such Lender may indicate in writing, (i) such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due

to such Lender pursuant to Sections 2.8, 2.10, 2.12, 2.13 or 2.14, and (ii) all other amounts due to such Lender, including all fees payable with respect thereto, to the extent received by the Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any SOFR Loans, the Administrative Agent will give effect thereto in apportioning payments received thereafter.

(e) Subject to the provisos set forth in the definition of "Interest Period," whenever any payment to be made hereunder is stated to be due on a day that is not a Business Day, such payment will be made on the next succeeding Business Day and such extension of time will be included in the computation of the payment of interest hereunder or of the Revolving Credit Commitment fees hereunder.

(f) [Reserved].

(g) The Administrative Agent will deem any payment by or on behalf of the Borrower hereunder that is not made in same day funds prior to 2:00 p.m. (New York City time) to be a non-conforming payment. Any such payment will not be deemed to have been received by the Administrative Agent until the later of (i) the time such funds become available funds and (ii) the applicable next Business Day or U.S. Government Securities Business Day, as applicable. The Administrative Agent will give prompt written notice to the Borrower if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a). Interest will continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.10 from the date such amount was due and payable until the date such amount is paid in full.

(h) Notwithstanding any other provisions hereof, so long as no Event of Default has occurred and is continuing, if any prepayment of any SOFR Loan is required to be made prior to the last day of the Interest Period therefor, in lieu of making any payment in respect of any such SOFR Loan prior to the last day of the Interest Period therefor, the Borrower may, in the sole discretion of the Borrower deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into an escrow account designated by the Administrative Agent until the last day of such Interest Period, at which time the Administrative Agent will be authorized (without any further action by or notice to or from the Borrower or any other Credit Party) to apply such amount to the prepayment of such Loans in accordance with the provisions of this Agreement otherwise applicable to such payment. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent will also be authorized (without any further action by or notice to or from the Borrower or any other Credit Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the provisions of this Agreement otherwise applicable to such payment.

2.17 Ratable Sharing. The Lenders hereby agree among themselves that, except as otherwise provided in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code or as a distribution in connection with a plan of reorganization, plan of liquidation or similar dispositive plan, receive payment or reduction of a proportion of the aggregate amount of principal, interest, amounts payable in respect of Letters of Credit, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) which is greater than the proportion received by any other relevant Lender that is entitled to a payment in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment will (a) notify the Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it will be deemed to have purchased from each seller of a participation

simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders entitled to a payment in respect of such Aggregate Amounts Due so that all such recoveries of Aggregate Amounts Due will be shared by all of the Lenders in proportion to the Aggregate Amounts Due to them; *provided* that if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of the Borrower or otherwise, those purchases will be rescinded and the purchase prices paid for such participations will be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. The Borrower expressly consents to the foregoing arrangement and agree that any holder of a participation so purchased may exercise any and all rights of banker's lien, set-off or counterclaim with respect to any and all monies owing by the Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.17 will not be construed to apply to (i) any payment made by a Credit Party pursuant to and in accordance with the express terms of this Agreement or any other Credit Document, (ii) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it, (iii) the exchange of any Loans held by a Lender for all or a portion of a new tranche of Loans issued hereunder or (iv) the acceptance of the Waivable Mandatory Prepayment in accordance with Section 2.15(e).

2.18 Changed Circumstances.

(a) Circumstances Affecting Benchmark Availability. Subject to clause (c) below, in connection with any request for a SOFR Loan or a conversion to or continuation thereof or otherwise, if for any reason (i) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for ascertaining Adjusted Term SOFR for the applicable Interest Period with respect to a proposed SOFR Loan on or prior to the first day of such Interest Period or (ii) the Required Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that Adjusted Term SOFR does not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans during such Interest Period and, in the case of clause (ii), the Required Lenders have provided notice of such determination to the Administrative Agent, then, in each case, the Administrative Agent shall promptly give notice thereof to the Borrower. Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make SOFR Loans, and any right of the Borrower to convert any Loan to or continue any Loan as a SOFR Loan, shall be suspended (to the extent of the affected SOFR Loans or the affected Interest Periods) until the Administrative Agent (with respect to clause (ii), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (A) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans or the affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans in the amount specified therein and (B) any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. 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 2.18(c).

(b) Laws Affecting SOFR Availability. If, after the date hereof, the introduction of, or any change in, any applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any of the Lenders (or any of their respective Lending Offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for any of the Lenders (or any of their respective Lending Offices) to honor its obligations hereunder to make or maintain any SOFR Loan, or to determine or charge interest based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR (such Lender, an "**Affected Lender**"), such Affected Lender shall promptly give notice thereof to the Administrative Agent and the Administrative Agent shall promptly give notice to the Borrower and the other Lenders (an "**Illegality Notice**"). Thereafter, until each Affected Lender notifies the Administrative Agent and the Administrative Agent notifies the Borrower that the circumstances giving rise to such determination no longer exist, (i) any obligation of the Lenders to make SOFR Loans, and any right of the Borrower to convert any Loan to a SOFR Loan or continue any Loan as a SOFR Loan (the "**Affected Loans**"), shall be suspended and (ii) if

necessary to avoid such illegality, the Administrative Agent shall compute the Base Rate without reference to clause (c) of the definition of "Base Rate". 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 SOFR Loans to Base Rate Loans (in each case, if necessary to avoid such illegality, the Administrative Agent shall compute the Base Rate without reference to clause (c) of the definition of "Base Rate"), on the last day of the Interest Period therefor, if all Affected Lenders may lawfully continue to maintain such SOFR Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such SOFR Loans to such day. 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 2.18(c). Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a SOFR Loan then being requested by the Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Borrower will have the option, subject to the provisions of Section 2.18(c), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving written notice to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission the Administrative Agent will promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Section 2.18(b) will affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, Eurodollar Rate Loans in accordance with the terms hereof.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. In the event of (i) any payment or prepayment (voluntary or otherwise) of any principal of any SOFR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (ii) the conversion of any SOFR Loan on a date other than the last day of the Interest Period therefor (including as a result of an Event of Default), (iii) any failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto or (iv) the assignment of any 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 2.23, then, in any such event, the Borrower shall compensate each Lender for the actual loss, cost and expense incurred by such Lender which may arise, be attributable to or result due to or as a consequence of such event (including any loss, cost or expense arising from the liquidation or reemployment of funds or from any fees payable excluding loss of anticipated profits or margin and without giving to any applicable SOFR "floor"). A certificate of any Lender computing any amount or amounts that such Lender is entitled to receive pursuant to this Section in reasonable detail will be delivered to the Borrower and will be conclusively presumed correct (absent manifest error). The Borrower will pay such Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) Booking of SOFR Loans. Any Lender may make, carry or transfer SOFR Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Benchmark Replacement Setting.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Credit Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Borrower may amend this Agreement to replace the 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. 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. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.18(e)(i) will occur prior to the applicable Benchmark Transition Start Date.

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent (in consultation with the Borrower) will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit 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 Credit Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.18(e)(iv) or (y) the commencement 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 2.18(e), 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 to this Agreement or any other Credit Document, except, in each case, as expressly required pursuant to this Section 2.18(e).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Credit Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (1) 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 (2) 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 (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) 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.

(v) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (A) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of 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 Base Rate Loans and (B) any outstanding affected SOFR Loans will be deemed to have been converted to Base Rate Loans at the end of the applicable Interest Period. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

2.19 Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.20 (which will be controlling with respect to the matters covered thereby), in the event that any Lender (which term includes each Issuing Bank for purposes of this Section 2.19(a)) determines in good faith (which determination will, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a Governmental Authority, in each case that becomes effective after the Closing Date, or compliance by such Lender with any guideline, request

or directive issued or made after the Closing Date by any central bank or other Governmental Authority: (i) subjects such Lender (or its applicable Lending Office) to any additional Tax (other than (x) Indemnified Taxes and (y) Excluded Taxes) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable Lending Office) of principal, interest, fees or any other amount payable hereunder or thereunder; (ii) imposes, modifies or holds applicable any reserve (including pursuant to regulations issued from time to time by the Board of Governors for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of the Board of Governors, as amended and in effect from time to time)), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender; or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable Lending Office) or its obligations hereunder; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable Lending Office) with respect thereto; then, in any such case, the Borrower will pay to such Lender, within ten (10) Business Days of receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion may determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender will deliver to the Borrower (with a copy to the Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.19(a), which statement will be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender (which term includes each Issuing Bank for purposes of this Section 2.19(b)) determines that the adoption, effectiveness, phase-in or applicability after the Closing Date of any law, rule or regulation (or any provision thereof) regarding capital or liquidity requirements, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its applicable Lending Office) or any entity controlling any Lender with any guideline, request or directive regarding capital or liquidity requirements (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of such Lender or any entity controlling such Lender as a consequence of, or with reference to, such Lender's Loans or Revolving Credit Commitments or Letters of Credit, or participations therein or other obligations hereunder with respect to the Loans or the Letters of Credit to a level below that which such Lender or such controlling entity could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling entity with regard to capital or liquidity requirements), then from time to time, within five Business Days after receipt by the Borrower from such Lender of the statement referred to in the next sentence, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling entity for such reduction. Such Lender will deliver to the Borrower (with a copy to the Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.19(b), which statement will be conclusive and binding upon all parties hereto absent manifest error.

(c) Dodd-Frank; Basel III. Notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines 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 of America or foreign regulatory authorities, in each case in respect of this clause (ii) pursuant to Basel III, will, in each case, be deemed to be a change in law, treaty or governmental rule, regulation or order under subsection (a) above and/or a change in law, rule or regulation (or any provision thereof) regarding capital or liquidity requirements under subsection (b) above, as applicable, regardless of the date enacted, adopted or issued.

(d) Delay in Requests. The failure or delay on the part of any Lender (which term will include each Issuing Bank for purposes of this Section 2.19(d)) to demand compensation pursuant to the foregoing provisions of this Section 2.19 will not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower will not be required to compensate a Lender pursuant to the foregoing provisions of this Section 2.19 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender sends the Borrower written notice of such Lender's intention to claim compensation therefor; *provided further*, that if the circumstance giving rise to such increased costs or reductions suffered is retroactive, then the 180-day period referred to above will be extended to include the period of retroactive effect thereof.

2.20 Taxes; Withholding, etc.

(a) Except as required by Law or otherwise provided in this Section 2.20, each payment by any Credit Party under any Credit Document will be made free and clear of all Taxes with respect thereto.

(b) If any Taxes will be required by any Law to be deducted from or in respect of any amount payable under any Credit Document to any Recipient (as determined in the good faith discretion of the applicable withholding agent) (i) to the extent such Taxes required to be deducted are Indemnified Taxes, such amount will be increased as necessary to ensure that, after all required deductions for Indemnified Taxes are made (including deductions for Indemnified Taxes applicable to any increases to any amount under this Section 2.20(b)(i)), such Recipient receives the amount it would have received had no such deductions for Indemnified Taxes been made, (ii) the relevant Credit Party or the Administrative Agent, as applicable, will make such deductions, (iii) the relevant Credit Party or the Administrative Agent, as applicable, will timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable Law and (iv) as soon as practicable after any such payment by a Credit Party is made, the relevant Credit Party will deliver to the Administrative Agent an original or certified copy of a receipt evidencing such payment or other evidence of payment reasonably satisfactory to the Administrative Agent.

(c) In addition, the Credit Parties will timely pay to the relevant Governmental Authority, in accordance with applicable law, any Other Taxes. As soon as practicable after the date of any payment of Other Taxes by any Credit Party pursuant to this Section 2.20(c), the Borrower will deliver to the Administrative Agent the original or a certified copy of a receipt evidencing payment thereof or other evidence of payment reasonably satisfactory to the Administrative Agent.

(d) Without duplication of Section 2.20(b) or Section 2.20(c), the Credit Parties will jointly and severally indemnify and reimburse, within ten (10) days after receipt of a demand therefor (with copy to the Administrative Agent), each Recipient for all Indemnified Taxes (including any Indemnified Taxes imposed by any jurisdiction on amounts payable under this Section 2.20) imposed on or with respect to any payment made by the Credit Parties hereunder, and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally asserted. Any Recipient claiming indemnity pursuant to this Section 2.20(d) will notify the Credit Parties of the imposition of the relevant Indemnified Taxes as soon as practicable after the Recipient becomes aware of such imposition. A certificate of the Recipient (or of the Administrative Agent on behalf of such Recipient) claiming any compensation under this clause (d), setting forth in reasonable detail the amounts to be paid thereunder and delivered to the Borrower with copy to the Administrative Agent, will be conclusive, binding and final for all purposes, absent manifest error.

(e) Without limiting Section 2.21, any Lender claiming any additional amounts payable pursuant to this Section 2.20 will use its reasonable efforts (consistent with its internal policies and Law) to change the jurisdiction of its Lending Office if such a change would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, subject such Lender to any unreimbursed cost or expense and would not be otherwise disadvantageous to such Lender. The Credit Parties hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such change.

(f) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document will deliver to the Borrower and the

Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation 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, will 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 2.20(f)(ii)(1), Section 2.20(f)(ii)(2) and Section 2.20(f)(ii)(4) below) will 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:

(1) any U.S. Lender will deliver to the Borrower and the Administrative Agent, on or prior to the date on which such Lender becomes a party to this Agreement 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 U.S. Lender is exempt from U.S. federal backup withholding tax);

(2) Any Non-U.S. Lender will, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as will be requested by the recipient), on or prior to the date on which such Non-U.S. Lender becomes a party to 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:

i) in the case of a Non-U.S. 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 Credit Document, executed originals of IRS Form W-8BEN or W-8BEN-E 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 Credit Document, executed originals of IRS Form W-8BEN or W-8BEN-E 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;

ii) executed originals of IRS Form W-8ECI or W-8EXP;

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

iv) to the extent a Non-U.S. Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W- 8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of **Exhibit F-2** or **Exhibit F-3**, IRS Form W-9 and/or other certification documents from each beneficial owner, as applicable; *provided* that, if the Non-U.S. Lender is a partnership and one or more direct or indirect partners of such Non-U.S. Lender are claiming the portfolio interest exemption,

such Non-U.S. Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit F-4** on behalf of each such direct and indirect partner;

(3) any Non-U.S. Lender will, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as will be requested by the recipient), on or prior to the date on which such Non-U.S. Lender becomes a party to 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; and

(4) if a payment made to a Recipient under any Credit 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 Internal Revenue Code, as applicable), such Recipient will 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 Internal Revenue 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 Section 2.20(f)(ii)(4), "FATCA" will include any amendments made to FATCA after the date of this Agreement.

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

(g) Any Administrative Agent that (i) is a United States person (within the meaning of Section 7701(a)(30) of the Internal Revenue Code) will deliver to the Borrower, on or prior to the date on which it becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or when any form or certification it previously provided expires or becomes obsolete or inaccurate in any respect), duly completed copies of IRS Form W-9 certifying that such Administrative Agent is exempt from U.S. federal backup withholding tax or (ii) is not a United States person (within the meaning of Section 7701(a)(30) of the Internal Revenue Code) will deliver to the Borrower, on or prior to the date on which it becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or when any form or certification it previously provided expires or becomes obsolete or inaccurate in any respect), duly completed copies of IRS Form W-8IMY evidencing its agreement with the Borrower to be treated as a United States person (within the meaning of Section 7701(a)(30) of the Internal Revenue Code) with respect to payments received by it from the Borrower.

(h) If any Recipient 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 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it will pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made or additional amounts paid under this Section 2.20 with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses of such Recipient and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). The Borrower, upon the request of such Recipient, will repay to such Recipient the amount paid over pursuant to this Section 2.20(h) (*plus* any penalties, interest or other charges properly imposed by the relevant Governmental Authority) in the event that such Recipient is required to repay such refund to such Governmental

Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the Recipient be required to pay any amount to a Credit Party pursuant to this paragraph (h) the payment of which would place the Recipient in a less favorable net after-Tax position than the Recipient 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 with respect to such Tax had never been paid. This paragraph will not be construed to require any Recipient to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Credit Party or any other Person.

(i) Each Lender will severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.6(g) 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 Credit 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 will 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 Credit Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 2.20(i).

(j) Each party's obligations under this Section 2.20 will survive the resignation or replacement of the Administrative Agent or any assignment of right by, or the replacement of, a Recipient.

2.21 Obligation to Mitigate. Each Lender (which term includes each Issuing Bank for purposes of this Section 2.21) agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans or Letters of Credit, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section 2.18, 2.19 or 2.20, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts (a) to make, Issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender, or (b) to take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.18, 2.19 or 2.20 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, Issuing, funding or maintaining of such Revolving Credit Commitments, Loans or Letters of Credit through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Revolving Credit Commitments, Loans or Letters of Credit or the interests of such Lender; *provided* that such Lender will not be obligated to utilize such other office pursuant to this Section 2.21 unless the Borrower agree to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by the Borrower pursuant to this Section 2.21 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to the Borrower (with a copy to the Administrative Agent) will be conclusive absent manifest error.

2.22 Defaulting Lenders. Anything contained herein to the contrary notwithstanding, in the event that any Lender becomes a Defaulting Lender, then:

(a) during any Default Period with respect to such Defaulting Lender, such Defaulting Lender will be deemed not to be a "Lender" for purposes of voting on any matters (including the granting of any consents or waivers, except with respect to Section 10.5(b) to the extent that any such matter disproportionately affects such Defaulting Lender) with respect to any of the Credit Documents;

(b) to the extent permitted by applicable law, until such time as the Default Excess with respect to such Defaulting Lender has been reduced to zero, any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.4 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank or Swing Line Lender hereunder; *third*, to cash collateralize the Issuing Banks' fronting exposure with respect to such Defaulting Lender in accordance with Section 2.4(h); *fourth*, as the Borrower may request (so long as no Default or Event of Default has occurred and is continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) cash collateralize the Issuing Banks' future fronting exposure with respect to such Defaulting Lender with respect to such future Letters of Credit issued under this Agreement, in accordance with Section 2.4(h); *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Banks or Swing Line Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Banks or Swing Line Lenders against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or Letter of Credit Usage in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 3.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and Letter of Credit Usage owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or Letter of Credit Usage owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letter of Credit Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Commitments under the applicable Facility without giving effect to Section 2.22(c). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 2.22(a) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto. Such Defaulting Lender will not be entitled to receive (i) any interest calculated at the Default rate pursuant to Section 2.10 and (ii) any fee pursuant to Section 2.11(a), in each case, in respect of any Default Period with respect to such Defaulting Lender;

(c) all or any part of a Defaulting Lender's participation in Letter of Credit Obligations and Swing Line Loans will be reallocated among the non-defaulting Lenders holding Revolving Credit Commitments on a pro rata basis according to their Revolving Credit Commitments (calculated without regard to such Defaulting Lender's Revolving Credit Commitment) but only to the extent that such reallocation does not cause any non-defaulting Lender's Revolving Credit Exposure (defined, solely for purposes of this clause (c), by reference to clause (b) of the definition of "Revolving Credit Exposure") at such time to exceed such Lender's Revolving Credit Commitment (it being understood that no reallocation hereunder will constitute a waiver or release of any claim of a non-defaulting Lender against a Defaulting Lender as a result of such non-defaulting Lender's increased exposure following such reallocation); *provided* that:

(i) if the reallocation described in this clause (c) cannot, or can only partially, be effected, the Borrower will, without prejudice to any right or remedy available to it hereunder or under Law, within one Business Day following written notice by the Administrative Agent (A) first, prepay the Swing Line Loans of such Defaulting Lender in an amount equal to the amount by which such Defaulting Lender's Swing Line Loans exceed the amount of such Defaulting Lender's Swing Line Loans reallocated pursuant to this clause (c) (after giving effect to any partial reallocation pursuant to this clause (c)) and (B) second, cash collateralize such Defaulting

Lender's portion of the Revolving Credit Exposure in respect of Letters of Credit (after giving effect to any partial reallocation pursuant to this clause (c)) in accordance with the procedures set forth in Section 2.4(h) for so long as such Revolving Credit Exposure in respect of Letters of Credit is outstanding;

(ii) if the Borrower cash collateralize any portion of such Defaulting Lender's Revolving Credit Exposure in respect of Letters of Credit pursuant to this proviso, the Borrower will not be required to pay any letter of credit participation fee to such Defaulting Lender during the period such Defaulting Lender's Revolving Credit Exposure in respect of Letters of Credit is cash collateralized;

(iii) if the Revolving Credit Exposure in respect of Letters of Credit of the non-Defaulting Lenders is reallocated pursuant to this clause (c), then the fees payable to the Lenders pursuant to Section 2.11(a)(i) will be adjusted in accordance with such non-Defaulting Lenders' reallocated Revolving Credit Exposure in respect of Letters of Credit; and

(iv) if any Defaulting Lender's Revolving Credit Exposure in respect of Letters of Credit is neither cash collateralized nor reallocated pursuant to this clause (c), then, without prejudice to any rights or remedies of the Issuing Banks or any Lender hereunder, all commitment 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 Revolving Credit Exposure in respect of Letters of Credit) and letter of credit participation fee payable with respect to such Defaulting Lender's Revolving Credit Exposure in respect of Letters of Credit will be payable to the applicable Issuing Banks until such Revolving Credit Exposure in respect of Letters of Credit is cash collateralized and/or reallocated; and

(d) the Total Utilization of Revolving Credit Commitments as at any date of determination will be calculated as if such Defaulting Lender has funded all Defaulted Loans. No Revolving Credit Commitment of any Lender will be increased or otherwise affected, and, except as otherwise expressly provided in this Section 2.22, performance by the Borrower of its obligations hereunder and the other Credit Documents will not be excused or otherwise modified as a result of any Funding Default or the operation of this Section 2.22. The rights and remedies against a Defaulting Lender under this Section 2.22 are in addition to other rights and remedies that the Borrower may have against such Defaulting Lender with respect to any Funding Default and that the Administrative Agent or any Lender may have against such Defaulting Lender with respect to any Funding Default.

For purposes of this Agreement, (i) "Funding Default" means, with respect to any Defaulting Lender, the occurrence of any of the events set forth in the definition of "Defaulting Lender," and (ii) "Defaulted Loan" means any Loan of a Defaulting Lender with respect to which such Defaulting Lender is a Defaulting Lender.

2.23 Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that:

(a) (i) any Lender (an "**Increased Cost Lender**") gives notice to Borrower that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.18, 2.19 or 2.20, (ii) the circumstances that have caused such Lender to be an Affected Lender or that entitle such Lender to receive such payments remain in effect, and (iii) such Lender fails to withdraw such notice within five Business Days after the Borrower's request for such withdrawal; or

(b) (i) any Lender becomes a Defaulting Lender, (ii) the Default Period for such Defaulting Lender remains in effect, and (iii) such Defaulting Lender fails to cure the default as a result of which it has become a Defaulting Lender within five Business Days after the Borrower's request that it cure such default; or

(c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions of a Credit Document as contemplated by Section 10.5(b), the consent of Required Lenders with respect to which has been obtained but the consent of one or more

of such other Lenders (each a "**Non-Consenting Lender**") whose consent is required has not been obtained;

then, with respect to each such Increased Cost Lender, Defaulting Lender or Non-Consenting Lender (the "**Terminated Lender**"), the Borrower may, by giving written notice to the Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans and its Revolving Credit Commitments, if any, in full to one or more Eligible Assignees (each a "**Replacement Lender**") in accordance with the provisions of Section 10.6 and the Borrower will pay the fees, if any, payable thereunder in connection with any such assignment from an Increased Cost Lender or a Non-Consenting Lender and the Defaulting Lender will pay the fees, if any, payable thereunder in connection with any such assignment from such Defaulting Lender; *provided* that (1) on the date of such assignment, the Replacement Lender must pay to a Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.11; (2) on the date of such assignment, the Borrower must pay any amounts payable to such Terminated Lender pursuant to Section 2.11, 2.18(c), 2.19 or 2.20; and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender will consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender; *provided* that the Borrower may not make such election with respect to any Terminated Lender that is also an Issuing Bank unless, prior to the effectiveness of such election, the Borrower has caused each outstanding Letter of Credit Issued thereby to be cancelled, backstopped or cash collateralized. Upon the assignment of all amounts owing to any Terminated Lender and the termination or assignment of such Terminated Lender's Revolving Credit Commitments, if any, such Terminated Lender will no longer constitute a "Lender" for purposes hereof; *provided* that any rights of such Terminated Lender to indemnification hereunder will survive as to such Terminated Lender. Each Lender agrees that if the Borrower exercises its option hereunder to cause an assignment by such Lender as a Non-Consenting Lender or Terminated Lender, such Lender will, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with Section 10.6. In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one Business Day after receipt of such notice, each Lender hereby grants to the Administrative Agent an irrevocable power of attorney (which power of attorney will be coupled with an interest) to execute and deliver such documentation as may be required to give effect to an assignment in accordance with Section 10.6 on behalf of a Non-Consenting Lender or Terminated Lender and any such documentation so executed by the Administrative Agent will be effective for purposes of documenting an assignment pursuant to Section 10.6.

2.24 Incremental Facilities.

(a) Notice. At any time and from time to time **(other than during the Covenant Adjustment Period)**, on one or more occasions, the Borrower may, by notice to the Administrative Agent, (i) increase the aggregate principal amount of any outstanding tranche of Term Loans or add one or more additional tranches of term loans under the Credit Documents (the "**Incremental Term Facilities**" and the term loans made thereunder, the "**Incremental Term Loans**") or (ii) increase the aggregate principal amount of Revolving Credit Commitments on the same terms as the then-existing Revolving Credit Commitments, including ratably increasing the Letter of Credit Sublimit (with the consent of the Issuing Banks) and the Swing Line Sublimit (with the consent of the Swing Line Lender) (the "**Incremental Revolving Facilities**" and the revolving loans and other extensions of credit made thereunder, the "**Incremental Revolving Loans**") (each such increase or tranche pursuant to clauses (i) and (ii), an "**Incremental Facility**" and the loans or other extensions of credit made thereunder, the "**Incremental Loans**").

(b) Ranking. Incremental Facilities will (i) rank *pari passu* in right of payment and security with the Initial Term Loans, the Initial Revolving Commitments, the Term A-1 Loans and the Term A-2 Loans (in each case, subject to Section 8.2) and (ii) be secured by the same Liens (with the same ranking in priority) that secure the Initial Revolving Commitments, the Initial Term Loans, the Term A-1 Loans and the Term A-2 Loans.

(c) Size. The aggregate principal amount of Incremental Facilities on any date Indebtedness thereunder is first incurred (or in the case of Incremental Revolving Facilities, first committed), together with the aggregate principal amount of Incremental Equivalent Debt incurred as of such date, will not exceed an amount equal to the sum of the Incremental Fixed Amount and the Incremental Ratio Amount (the "**Incremental Amount**"). Calculation of the Incremental Ratio Amount, if used, will be made on a Pro Forma Basis. Each Incremental Amendment executed in connection with an Incremental Facility will identify whether all or any portion of such Incremental Facility is being incurred pursuant to the Incremental Fixed Amount or the Incremental Ratio Amount. For the avoidance of doubt, if the Borrower shall incur indebtedness under an Incremental Facility under the Incremental Fixed Amount substantially concurrently with the incurrence of indebtedness under the Incremental Ratio Amount, then the First Lien Net Leverage Ratio will be calculated with respect to such incurrence under the Incremental Ratio Amount without regard to any incurrence of indebtedness under the Incremental Fixed Amount. Unless the Borrower elects otherwise, each Incremental Facility will be deemed incurred first under the Incremental Ratio Amount to the extent permitted, with the balance incurred under the Incremental Fixed Amount. If the First Lien Net Leverage Ratio test for the incurrence of any Incremental Facility would be satisfied on a Pro Forma Basis as of the end of any Fiscal Quarter, the classification described in the preceding sentence shall be deemed to have occurred automatically. Each Incremental Facility will be in an integral multiple of $500,000 and in an aggregate principal amount that is not less than $2,500,000 (or such lesser minimum amount approved by the Administrative Agent in its reasonable discretion); *provided* that such amount may be less than such minimum amount or integral multiple amount if such amount represents all the remaining availability under the limit set forth above.

(d) Incremental Lenders. Incremental Facilities may be provided by any existing Lender (it being understood that no existing Lender will have an obligation to make all or any portion of any Incremental Loan) or by any Additional Lender on terms permitted by this Section 2.24; *provided* that the Administrative Agent, each Issuing Bank and each Swing Line Lender will have consented (in each case, such consent not to be unreasonably withheld, conditioned or delayed) to any such Person's providing Incremental Revolving Facilities if such consent would be required under Section 10.6(c)(ii) for an assignment of Revolving Loans or Revolving Credit Commitments to such Person.

(e) Incremental Facility Amendments; Use of Proceeds. Each Incremental Facility will become effective pursuant to an amendment (each, an "**Incremental Amendment**") to this Agreement and, as appropriate, the other Credit Documents, executed by the Borrower, each Person providing such Incremental Facility and the Administrative Agent. Incremental Amendments may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable good faith opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.24. An Incremental Amendment may at the election of the Borrower and the Administrative Agent effect such amendments as may be reasonably necessary or advisable so that such Incremental Term Loans and the applicable existing Term Loans form the same Class of Term Loans or so that such Incremental Term Loans are fungible with other outstanding Loans, including by (i) adding equivalent "call protection" to any existing tranche of Term Loans, and (ii) amending the schedule of amortization payments relating to any existing tranche of Term Loans, including amendments to Section 2.12(a), 2.12(b) and/or 2.12(c) (*provided* that any such amendment will not decrease any amortization payment to any Lender that would have otherwise been payable to such Lender immediately prior to the effectiveness of the applicable Incremental Amendment); *provided* that such amendments are not adverse to the existing Term Loan Lenders (as determined in good faith by the Borrower). Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Amendment, this Agreement and the other Credit Documents, as applicable, will be amended to the extent necessary to reflect the existence and terms of the Incremental Facility and the Incremental Loans evidenced thereby. This Section 2.24 will supersede any provisions in Section 2.17 or 10.5 to the contrary. The Borrower may use the proceeds of the Incremental Loans for any purpose permitted by this Agreement.

(f) Conditions. Subject to the provisions set forth in Section 1.5 with respect to any Limited Condition Transaction, the availability of Incremental Facilities under this Agreement will be subject solely to the following conditions:

(i) no Default or Event of Default will have occurred and be continuing on the date such Incremental Loans are incurred or Revolving Credit Commitments under such Incremental Revolving Facilities are committed, or would occur immediately after giving effect thereto;

(ii) the representations and warranties in the Credit Documents will be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be true and correct in all respects) immediately prior to, and immediately after giving effect to, the incurrence of such Incremental Facility, or in the case of an Incremental Facility incurred in connection with a Limited Condition Transaction, the Specified Representations and the Specified Acquisition Agreement Representations (to the extent applicable) shall be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be true and correct in all respects) immediately prior to, and immediately after giving effect to, the incurrence of such Incremental Facility; and

(iii) the Borrower and its Subsidiaries shall be in compliance with the Financial Covenants (after giving effect to any increase to the Financial Covenant level set forth in Section 6.7(a)(i) as a result of a Material Permitted Acquisition), determined on a Pro Forma Basis as of the last day of the most recently ended Test Period, as if any Incremental Loans or Revolving Credit Commitments under any Incremental Revolving Facilities, as applicable, incurred or committed, as applicable, under such Incremental Facilities had been outstanding on the last day of such Fiscal Quarter for testing compliance therewith, and, in each case (x) with respect to any Incremental Revolving Facility, assuming a borrowing of the maximum amount of Loans available thereunder, and (y) without netting the cash proceeds of any such Incremental Loans (but otherwise giving effect to the use of such proceeds).

(g) Terms. Each Incremental Amendment will set forth the amount and terms of the relevant Incremental Facility. The other terms of each Incremental Revolving Facility will be on terms and pursuant to documentation applicable to the Revolving Credit Commitments then in effect; *provided* that to the extent an Incremental Revolving Facility has a greater All-In Yield than the Revolving Credit Facility, the All-In Yield on the Revolving Credit Facility shall be increased to match the All-In Yield of such Incremental Revolving Facility. The other terms of each tranche of Incremental Term Loans will be as agreed between the Borrower and the Persons providing such Incremental Term Loans; *provided* that:

(i) the final maturity date of such Incremental Term Loans will be no earlier than the Latest Term Loan Maturity Date of the Initial Term Loans, the Term A-1 Loans and the Term A-2 Loans;

(ii) the Weighted Average Life to Maturity of such Incremental Term Loans will be no shorter than the longest remaining Weighted Average Life to Maturity of the Initial Term Loans, the Term A-1 Loans or the Term A-2 Loans;

(iii) any such Incremental Term Loans may participate on a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any voluntary or mandatory repayments or prepayments of the Initial Term Loans, the Term A-1 Loans and the Term A-2 Loans (other than pursuant to a refinancing or with respect to greater than *pro rata* payments to an earlier maturing tranche); and

(iv) to the extent such terms and documentation are not consistent with, in the case of an Incremental Term Facility, the Initial Term Loan Facility, they shall be no more favorable (taken as a whole as determined by the Borrower and the Administrative Agent) to the lenders providing such Incremental Term Facility than those applicable to the Initial Term Loan Facility; *provided* that this clause (iv) will not apply to (1) interest rate, fees, funding discounts and other pricing terms, (2) redemption, prepayment or other premiums, (3) optional prepayment terms, and (4) covenants and other terms that are (i) applied to the Term Loans existing at the time of incurrence of such Incremental Term Facility (so that existing Lenders also receive the benefit of such provisions) and/or (ii) applicable only to periods after the Latest Term Loan Maturity Date at

the time of incurrence of such Indebtedness (the requirements in this clause (iv), collectively, "**Other Applicable Incurrence Requirements**").

(h) Pricing. The interest rate, fees, and original issue discount for any Incremental Term Loans will be as determined by the Borrower and the Persons providing such Incremental Term Loans; *provided* that the MFN Adjustment will apply to any Incremental Term Loans.

(i) Adjustments to Revolving Loans. Upon each increase in the Revolving Credit Commitments pursuant to this Section 2.24,

(i) each Revolving Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each lender providing a portion of such increase (each an "**Incremental Revolving Facility Lender**"), and each such Incremental Revolving Facility Lender will automatically and without further act be deemed to have assumed, a portion of such Revolving Lender's participations hereunder in outstanding Letters of Credit and Swing Line Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (1) participations hereunder in Letters of Credit and (2) participations hereunder in Swing Line Loans held by each Revolving Lender will equal the percentage of the aggregate Revolving Credit Commitments of all Lenders represented by such Revolving Lender's Revolving Credit Commitments; and

(ii) if, on the date of such increase, there are any Revolving Loans outstanding, such Revolving Loans will on or prior to the effectiveness of such Incremental Revolving Facility be prepaid from the proceeds of Incremental Revolving Loans made hereunder (reflecting such increase in Revolving Credit Commitments), which prepayment will be accompanied by accrued interest on the Revolving Loans being prepaid and any costs incurred by any Revolving Lender in accordance with Section 2.18(c). The Administrative Agent and the Lenders hereby agree that the minimum borrowing, *pro rata* borrowing and *pro rata* payment requirements contained elsewhere in this Agreement will not apply to the transactions effected pursuant to the immediately preceding sentence.

2.25 [Reserved].

2.26 Credit Agreement Refinancing Indebtedness; Refinancing Amendments.

(a) Refinancing Loans. At any time after the Closing Date, the Borrower may obtain (i) from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness in the form of Refinancing Loans or Refinancing Commitments, in each case pursuant to a Refinancing Amendment, or (ii) from any bank, other financial institution or institutional investor that agrees to provide any portion of any Credit Agreement Refinancing Indebtedness in any other form, such other Credit Agreement Refinancing Indebtedness, in each case to refinance (and to reduce on a dollar-for-dollar or greater basis) all or any portion of the Term Loans then outstanding under this Agreement.

(b) Refinancing Amendments. The effectiveness of any Refinancing Amendment will be subject only to the satisfaction on the date thereof of such of the conditions set forth in Sections 3.1 and 3.2 as may be requested by the providers of applicable Refinancing Loans. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement will be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Refinancing Loans incurred pursuant thereto (including any amendments necessary to treat the Term Loans or Revolving Loans subject thereto as Refinancing Term Loans or Refinancing Revolving Loans, respectively).

(c) Required Consents. Any Refinancing Amendment may, without the consent of any Person other than the Administrative Agent (which consent shall not be unreasonably withheld, conditioned or delayed), the Borrower and the Persons providing the applicable Refinancing Loans, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate,

in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.26. This Section 2.26 supersedes any provisions in Section 2.17 or Section 10.5 to the contrary.

(d) Providers of Refinancing Loans. Refinancing Loans may be provided by any existing Lender (it being understood that no exiting Lender will have an obligation to make all or any portion of any Refinancing Loan) or by any Additional Lender on terms permitted by this Section 2.26; *provided* that the Administrative Agent, each Issuing Bank and the Swing Line Lender will have consented (in each case, such consent not to be unreasonably withheld, conditioned or delayed) to any such Person's providing Refinancing Loans or Refinancing Commitments if such consent would be required under Section 10.6(c), respectively, for an assignment of Loans or Commitments to such Person.

SECTION 3. CONDITIONS PRECEDENT

3.1 Closing Date. The obligation of the Lenders on the Closing Date to make the initial Credit Extension(s) on the Closing Date (the "**Initial Credit Extension**") is subject to the satisfaction, or waiver by the Administrative Agent, of the following conditions on or before the Closing Date:

(a) Credit Documents. The Administrative Agent will have received a copy of each of the following Credit Documents, in each case where applicable, executed and delivered by the Borrower and each Guarantor Subsidiary: (A) this Agreement; (B) the Pledge and Security Agreement; (C) each of the Notes (if such Notes have been requested at least three (3) Business Days prior to the date the closing would otherwise occur); (D) the Intercompany Subordination Agreement and (E) the Perfection Certificate.

(b) Organizational Documents; Incumbency; Resolutions; Good Standing Certificates. The Administrative Agent will have received:

(i) *Organizational Documents*. A copy of each Organizational Document of the Borrower and each Guarantor Subsidiary and, to the extent applicable, certified as of a recent date by the appropriate governmental official, each dated the Closing Date or a recent date prior thereto.

(ii) *Incumbency Certificate*. A signature and incumbency certificate of the officers or other authorized representatives of the Borrower and each Guarantor Subsidiary executing the Credit Documents referenced in Section 3.1(a).

(iii) *Resolutions*. Resolutions of the Board of Directors or similar governing body of the Borrower and each Guarantor Subsidiary approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary (or any other officer with an equivalent role) as being in full force and effect without modification or amendment.

(iv) *Good Standing Certificates*. A good standing certificate from the applicable Governmental Authority of the jurisdiction of incorporation, organization or formation of the Borrower and each Guarantor Subsidiary.

(c) Funding Notice. The Administrative Agent will have received a fully executed and delivered Funding Notice as required pursuant to Section 2.1 and/or 2.2, as applicable (or, in the case of the Issuance of a Letter of Credit, an Application or Issuance Notice pursuant to Section 2.4); *provided* that all certifications made under such Funding Notice will be made (or deemed made) as of the Closing Date; *provided further* that utilization of the Initial Revolving Commitments on the Closing Date will be limited to the Initial Revolving Borrowing.

(d) Closing Date Certificate and Attachments. The Administrative Agent will have received an executed Closing Date Certificate, together with all attachments thereto, certifying to the satisfaction of the condition set forth in Section 3.2(a)(iii) and (iv).

(e) [Reserved].

(f) Financial Statements. The Administrative Agent and the Lenders will have received the unaudited consolidated balance sheet and related consolidated statement of income of the Borrower and its Subsidiaries as of September 30, 2019 (and the Administrative Agent and the Lenders hereby acknowledge satisfactory receipt of such financial statements).

(g) Solvency. The Administrative Agent will have received a solvency certificate in the form attached as **Exhibit D** from the chief financial officer or other officer with equivalent duties of the Borrower certifying to the solvency of the Borrower and the Subsidiaries on a consolidated basis after giving effect to the Transactions.

(h) Existing Debt. On the Closing Date, the Administrative Agent will have received one or more fully executed customary payoff letters and lien terminations regarding the repayment in full of all amounts outstanding under the Existing Credit Agreement on the Closing Date substantially concurrently with the Initial Credit Extension and providing that all Indebtedness, liens, guarantees and commitments to extend credit thereunder will terminate upon the receipt of the proceeds of the Initial Credit Extension applied to repay such indebtedness; *provided* that such payoff letter may provide that the Lien releases thereunder be subject to the receipt of either cash collateral or a back-to-back letter of credit, in each case in respect of the outstanding letters of credit under the Existing Credit Agreement.

(i) Personal Property Collateral. The Collateral Agent will have received:

(i) *Deliverables, Etc*. In connection with the pledge of the Capital Stock of each Guarantor Subsidiary and each direct Subsidiary of the Borrower and each Guarantor Subsidiary, and the pledge of Indebtedness owing to the Credit Parties, in each case to the extent required under the Security Agreement, the Borrower and each applicable Guarantor Subsidiary will deliver, or cause to be delivered, to the Collateral Agent, to the extent required under the Pledge and Security Agreement, an original stock certificate or other instruments representing such pledged Capital Stock or Indebtedness, together with customary blank stock or other equity transfer powers and instruments of transfer and irrevocable powers duly executed in blank.

(ii) *Lien Searches*. The results of customary lien searches with regard to the Borrower and each Guarantor Subsidiary; and

(iii) UCC financing statements in appropriate form for filing under the UCC, and any short form Intellectual Property security agreement to be filed with the United States Patent and Trademark Office and United States Copyright Office and all other documents and instruments necessary to establish and perfect the Collateral Agent's first priority Lien in the Collateral (subject to Permitted Liens), in each case, executed and delivered (if applicable, in proper form for filing) by the Borrower and the Guarantors;

provided that, to the extent any liens on the Collateral have not attached or are not perfected on the Closing Date (other than to the extent that a lien on such Collateral may be perfected by (A) the filing of a financing statement under the Uniform Commercial Code or (B) the delivery of certificated securities representing equity of the direct wholly-owned material Domestic Subsidiaries of the Borrower) after the Borrower's use of commercially reasonable efforts to do so, such attachment or perfection will not constitute a condition precedent to the borrowing on the Closing Date, but will be required in accordance with Section 5.15.

(j) Opinion of Counsel to Credit Parties. The Administrative Agent and its counsel will have received copies of (and each Credit Party hereby instructs such counsel to deliver such opinions to the Administrative Agent and the Lenders) customary legal opinions, each dated as of the Closing Date, of Latham & Watkins LLP, special counsel to the Borrower and each Guarantor Subsidiary.

(k) Fees and Expenses. All costs, fees, expenses (including reasonable, documented, out-of-pocket legal fees and expenses of consultants and other advisors) and other compensation payable to the Lead Arrangers, Administrative Agent and the Lenders will have been paid (or will concurrently be paid)

to the extent then due; *provided* that an invoice of such expenses will have been presented no less than two (2) Business Days prior to the Closing Date.

(l) "Know-Your-Customer." The Administrative Agent will have received all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations including the PATRIOT Act at least three (3) Business Days prior to the Closing Date. The Borrower shall have delivered to the Administrative Agent, and directly to any Lender requesting the same, a Beneficial Ownership Certification in relation to it.

For purposes of determining compliance with the conditions specified in this Section 3.1, (i) each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto and (ii) transactions occurring (or to occur) on the Closing Date in accordance with, and as expressly set forth in, the funds flow memorandum delivered to (and approved by) the Administrative Agent shall be deemed to occur and have occurred substantially simultaneously with the Initial Credit Extension.

3.2 Conditions to Each Credit Extension.

(a) Conditions Precedent. Except as may be limited in respect of certain conditions precedent as set forth in Section 2.24(f) with respect to Incremental Term Loans or in Section 1.5 with respect to any Limited Condition Transaction and other related Specified Transactions after the Third Amendment Effective Date, the obligation of each Lender to make any Loan (other than a Term A-2 Loan, which shall be governed exclusively by the Third Amendment), or each Issuing Bank to Issue any Letter of Credit, on any Credit Date, including the Initial Credit Extension on the Closing Date, are subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions precedent:

(i) *Notice*. The Administrative Agent will have received a fully executed and delivered Funding Notice, Application or Issuance Notice, as the case may be;

(ii) *Revolving Credit Limit*. After making the Credit Extensions requested on such Credit Date, the Total Utilization of Revolving Credit Commitments will not exceed the Revolving Credit Limit then in effect;

(iii) *Representations and Warranties*. As of such Credit Date, the representations and warranties contained herein and in the other Credit Documents will be true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which will be true and correct in all respects) on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties will have been true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which will have been true and correct in all respects) on and as of such earlier date; and

(iv) *No Default or Event of Default*. As of such Credit Date, no event will have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute a Default or an Event of Default.

Each borrowing by and issuance of a Letter of Credit on behalf of the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such Credit Extension that the conditions contained in this Section 3.2(a) have been satisfied.

(b) Letters of Credit. In addition, with respect to any Letter of Credit, the Administrative Agent will have received all other information required by the applicable Application or Issuance Notice,

and such other documents or information as the applicable Issuing Bank may reasonably require in connection with the Issuance of such Letter of Credit.

(c) Notices. Any Notice will be executed by an Authorized Officer in a writing delivered to the Administrative Agent. The Administrative Agent, any Lender or any Issuing Bank will not have any obligation to verify the veracity of any such notice referred to above nor will the Administrative Agent, any Lender or any Issuing Bank incur any liability to the Borrower in acting upon any notice referred to above that the Administrative Agent believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of the Borrower. Each delivery of a Notice will constitute a representation and warranty that as of the date of any Credit Extension (both immediately before and immediately after such Credit Extension) the conditions contained in Section 3.2 have been satisfied.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders, each Agent and each Issuing Bank to enter into this Agreement and to make each Credit Extension to be made thereby, each Credit Party represents and warrants to the Lenders, the Agents and the Issuing Banks, on the Closing Date and on each Credit Date, that the following statements are true and correct:

4.1 Organization; Requisite Power and Authority; Qualification. The Borrower and each Subsidiary (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (b) has all requisite organizational power and authority to (i) own and operate its properties, to lease the property it operates as lessee, to carry on its business as now conducted and as proposed to be conducted, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect and (ii) to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing as a foreign entity in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2 Capital Stock and Ownership. The Capital Stock of the Borrower and each Subsidiary has been duly authorized and validly issued in compliance with all applicable federal, state and other Laws and is fully paid and non-assessable (except to the extent such concepts are not applicable under the applicable Law of such Subsidiary's jurisdiction of formation). Except as set forth on Schedule 4.2, as of the Third Amendment Effective Date, there is no existing option, warrant, call, right, commitment or other agreement (including preemptive rights) (other than stock options granted to employees or directors and directors' qualifying shares) to which the Borrower or any Subsidiary is a party requiring, and there is no membership interest or other Capital Stock of the Borrower or any Subsidiary outstanding which upon conversion or exchange would require, the issuance by the Borrower or any Subsidiary of any additional membership interests or other Capital Stock of the Borrower or any Subsidiary or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of the Borrower or any Subsidiary. On the Third Amendment Effective Date, immediately after giving effect to the Transactions, there are no Unrestricted Subsidiaries. As of the Third Amendment Effective Date, Schedule 4.2 sets forth the name and jurisdiction of incorporation, formation or organization of the Borrower and each Subsidiary and, as to each such Person, the percentage of each class of Capital Stock owned by any Credit Party, and, with respect to Subsidiaries, whether such Person is a Guarantor.

4.3 Due Authorization. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

4.4 No Conflict. The execution, delivery and performance by the Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not (a)(i) violate any of the Organizational Documents of such Credit Parties or (ii) otherwise require any approval of any stockholder, member or partner of such Credit Parties, except for such approvals or consents which will be obtained on or before the Closing Date; (b) violate any provision of any law, rule, regulation, order, judgment or decree of any Governmental Authority applicable to or otherwise binding on such Credit Parties, except to the extent such violation could not

reasonably be expected to have a Material Adverse Effect; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of such Credit Parties (other than any Liens created under any of the Credit Documents in favor of the Collateral Agent, on behalf of the Secured Parties); or (d) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under, or otherwise require any approval or consent of any Person under, any Contractual Obligation of such Credit Parties, except to the extent such conflict, breach or default could not reasonably be expected to have a Material Adverse Effect, and except for such approvals or consents which will be obtained on or before the Closing Date and have been disclosed in writing to the Administrative Agent.

4.5 Governmental Consents. The execution, delivery and performance by the Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, except for such filings and recordings with respect to the Collateral to be made, or otherwise delivered to the Collateral Agent for (a) filing and/or recordation, as of the Closing Date and (b) except for such registrations, consents, approvals, notices and other actions that failure of which to obtain, deliver or perform could not reasonably expected to have a Material Adverse Effect.

4.6 Binding Obligation. Each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.7 Historical Financial Statements. The Historical Financial Statements were prepared in conformity with GAAP applied on a consistent basis throughout the periods covered thereby, except as may be indicated in the notes thereto, and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. As of the Closing Date, except (a) as reserved for in the Historical Financial Statements, (b) liabilities incurred on behalf of the Borrower and its Subsidiaries in connection with the Credit Documents in accordance with the terms thereof, and (c) liabilities incurred since December 31, 2018 in the ordinary course of business (none of which results from or arises out of any material breach of or material default under any contract (whether written or oral), material breach of warranty, tort, material infringement or material violation of Law), none of the Borrower or any Subsidiary has any material liabilities or obligations of a nature (whether accrued, absolute, contingent or otherwise) required by GAAP (as modified by the first sentence of this Section 4.7) to be set forth on a combined consolidated balance sheet of the Borrower and its Subsidiaries (or the notes thereto) prepared in accordance with GAAP (as modified by the first sentence of this Section 4.7).

4.8 Projections. On and as of the Closing Date, the projections of the Borrower and its Subsidiaries for the period from the Closing Date through and including December 31, 2024 (the "**Projections**") are based on good faith estimates and assumptions made by the management of the Borrower; *provided* that (i) forecasts are as to future events and are not to be viewed as facts, (ii) any forecasts are subject to significant uncertainties and contingencies, many of which are beyond the control of the Credit Parties, (iii) no assurance can be given that any particular forecasts will be realized and (iv) actual results may differ significantly from the forecasted results and such differences may be material.

4.9 No Material Adverse Effect. Except as set forth on Schedule 4.9, since December 31, 2020, no event or change has occurred that has caused or would reasonably be expected to cause, either in any case or in the aggregate, a Material Adverse Effect.

4.10 Adverse Proceedings. Except as set forth on Schedule 4.10, there are no Adverse Proceedings (a) with respect to this Agreement or any other Credit Document or any of the Transactions contemplated hereby or thereby, or (b) which, individually or in the aggregate, could reasonably be

expected to have a Material Adverse Effect. None of the Borrower nor the Subsidiaries is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

4.11 Payment of Taxes. Except as otherwise permitted under Section 5.3 or as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Borrower and the Subsidiaries have timely filed with the appropriate United States federal, state, local and foreign taxing authorities all tax returns and reports that were required to be filed and have timely paid all Taxes owed by them, whether or not shown on such tax returns or reports, and all such tax returns are true, correct and complete in all material respects. No Executive Officer of the Borrower has any knowledge of any proposed Tax assessment against the Borrower or any Subsidiary with respect to material Taxes which is not being actively contested by the Borrower or such Subsidiary in good faith and by appropriate proceedings; *provided* that such reserves or other appropriate provisions, if any, as will be required in conformity with GAAP will have been made or provided therefor.

4.12 Title and Intellectual Property. The Borrower and each Subsidiary has (a) good, sufficient and legal title to (in the case of fee interests in real property), (b) valid leasehold interests in (in the case of leasehold interests in real or tangible personal property) and (c) good title to (in the case of all other tangible personal property), all of their respective properties and material assets reflected in their Historical Financial Statements referred to in Section 4.7 and in the most recent financial statements delivered pursuant to Section 5.1, in each case, to the extent necessary to conduct the Businesses as of the date of such financial statements, except (i) for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.8 and (ii) as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as permitted by this Agreement or as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, all such properties and assets are free and clear of Liens. The Borrower and each Subsidiary owns or has a valid right to use all Intellectual Property that is used in the operation of their respective businesses as currently conducted, except where the failure of the foregoing could not reasonably be expected to have a Material Adverse Effect. Except to the extent the same could not reasonably be expected to have a Material Adverse Effect, no material claim has been asserted or is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property owned by any of the Borrower or its Subsidiaries, nor does the Borrower or any Subsidiary know of any valid basis for any such claim. To the knowledge of any Executive Officer of the Borrower, the operation of their respective businesses by the Borrower and each Subsidiary does not infringe upon, misappropriate, violate or otherwise conflict with the Intellectual Property of any other Person, except, in each case, as could not reasonably be expected to have a Material Adverse Effect.

4.13 Real Estate Assets. Each Credit Party has title in fee simple to, or a valid leasehold interest in, all its real property, and good title to, or a valid leasehold interest in, all its other property, free and clear of any Lien except as permitted hereunder and except where the failure to have such title or valid leasehold interest would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Schedule 4.13 is a complete and correct list as of the Closing Date of (a) all fee owned Real Estate Assets and (b) all material leases, subleases or assignments of material leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of any Credit Party, regardless of whether such Credit Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in clause (b) of the immediately preceding sentence is (x) in full force and effect and (y) no Executive Officer of the Borrower has any knowledge of any default that has occurred and is continuing thereunder which could reasonably be expected, either individually or together with other defaults, to have a Material Adverse Effect; and each such agreement constitutes the legally valid and binding obligation of each applicable Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles or except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Borrower represents and warrants that prior to the date hereof, Borrower has cooperated with

Administrative Agent in order for Administrative Agent to obtain a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination (together with notices about special flood hazard area status and flood disaster assistance relating thereto, duly executed by the Borrower) with respect to each Material Real Estate Asset subject to a Mortgage.

4.14 Environmental Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(i)none of the Borrower, any Subsidiary or any of their respective Facilities or operations are subject to any actual or, to the knowledge of the Borrower, threatened Environmental Claim, or any Environmental Liability, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Borrower, any Subsidiary or any of their respective Facilities or operations;

(ii)there are and have been, no conditions, occurrences, or Hazardous Materials Activities, including to the knowledge of the Borrower, at any third-party location, which could reasonably be expected to form the basis of an Environmental Claim against the Borrower or any Subsidiary or give rise to any Environmental Liabilities of the Borrower or any Subsidiary; and

(iii)none of the Borrower, any Subsidiary or any of their respective Facilities or operations has failed to comply with any Environmental Law or to obtain, maintain or comply with any Governmental Authorizations required under any Environmental Law.

4.15 No Defaults. None of the Borrower or any Subsidiary is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except in each case where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

4.16 Governmental Regulation. None of the Borrower or any Subsidiary is an "investment Company", "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.17 Margin Stock. None of the Borrower or any Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of any Credit Extension made to or for the benefit of any Credit Party or any of its Subsidiaries will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors, as in effect from time to time or any other regulation thereof or to violate the Exchange Act.

4.18 Employee Matters. None of the Borrower or any Subsidiary is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against the Borrower or any Subsidiary, or to the knowledge of any Executive Officer of the Borrower, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is pending against the Borrower or any Subsidiary or to the knowledge of any Executive Officer of the Borrower, threatened against any of them, (b) no strike or work stoppage in existence or, to the knowledge of any Executive Officer of the Borrower, threatened involving the Borrower or any Subsidiary, (c) there are no collective bargaining agreements covering the employees of any Credit Party or any of its Subsidiaries as of the Closing Date and (d) to the knowledge of any Executive Officer of the Borrower, no pending proceeding before the National Labor Relations Board seeking union representation with respect to the employees of the Borrower or any Subsidiary and, to the knowledge of any Executive Officer of the Borrower, no union organization activity that is taking place, except, with respect to any matter specified in clause (a), (b) or (d) above, either individually or in the aggregate, as could not be reasonably likely to result in a Material Adverse Effect.

4.19 Employee Benefit Plans. (a) The Borrower and each Subsidiary and each of their respective ERISA Affiliates is in compliance in all material respects with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan, (b) each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and, to the knowledge of any Executive Officer of the Borrower, nothing has occurred subsequent to the issuance of such determination letter which would cause such Employee Benefit Plan to lose its qualified status, (c) no Liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan (except in the ordinary course) or any trust established under Title IV of ERISA has been or is expected to be incurred by the Borrower, any Subsidiary or any of their respective ERISA Affiliates, (d) no ERISA Event has occurred or is reasonably expected to occur, (e) except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of the Borrower, any Subsidiary or any of their respective ERISA Affiliates, (f) the present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by the Borrower, any Subsidiary or any of their respective ERISA Affiliates, (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan, (g) as of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of the Borrower, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA is zero, (h) the Borrower, each Subsidiary and each of their respective ERISA Affiliates has complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan, (i) each Employee Benefit Plan has been operated in compliance with its terms and the applicable provisions and requirements of ERISA, the Internal Revenue Code and other Laws, and (j) there has been no Prohibited Transaction or violation of the fiduciary responsibility rules with respect to any Employee Benefit Plan or Pension Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect; in each case (a) through (i), except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect.

4.20 Solvency. On the Closing Date, after giving effect to the Transactions, including the making of the Credit Extensions to be made on the Closing Date and giving effect to the application of the proceeds thereof, the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

4.21 Compliance with Laws.

(a) Generally. Except as set forth on Schedule 4.21, the Borrower and each Subsidiary is in compliance with all applicable Laws in respect of the conduct of its business as currently conducted and the ownership of its property, except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Anti-Terrorism Laws, Etc. Without limiting the foregoing, no Credit Party nor any of its Controlled Entities or any of their respective directors or officers nor, to the knowledge of any Credit Party or any of its Controlled Entities, any of their respective employees or agents (i) is organized or resident in a Sanctioned Country, (ii) is in material violation of any Anti-Terrorism Law, (iii) is a Blocked Person, (iv) has received formal notice that it is the target of any proceeding or investigation by any Governmental Authority in connection with any violation of Anti-Terrorism Law or (v) has been convicted by any Governmental Authority within the past five years of a violation of any Anti-Terrorism Law. No Credit Party nor any of its Controlled Entities directly or knowingly indirectly (1) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person in violation of any applicable Anti-Terrorism Law, or (2) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to

Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, in violation of any applicable Anti-Terrorism Law.

(c) Anti-Corruption Laws, Etc. Since five (5) years prior to the Closing Date, there has been no action taken by any Credit Party or any of its Controlled Entities or any officer, director, or employee, or to the knowledge of any Credit Party or any of its Controlled Entities, any agent, representative, sales intermediary, or other third party of any Credit Party or any of its Controlled Entities, in each case, acting on behalf of any Credit Party or any of its Controlled Entities in material violation of any applicable Anti-Corruption Law. None of the Credit Parties or any of their Controlled Entities has been convicted of violating any Anti-Corruption Laws or to the knowledge of any Credit Party or any of its Controlled Entities subjected to any investigation by a Governmental Authority for violation of any applicable Anti-Corruption Laws. There is no material suit, litigation, arbitration, claim, audit, action, proceeding or investigation pending or, to the knowledge of any Executive Officer of the Borrower, threatened against or affecting the Credit Parties or any of their Controlled Entities related to any applicable Anti-Corruption Law, before or by any Governmental Authority. None of the Credit Parties or any of their respective Subsidiaries made a voluntary, directed, or involuntary disclosure to any Governmental Authority with respect to any alleged act or omission arising under or relating to any noncompliance with any Anti-Corruption Law. In the five (5) years prior to the Closing Date, none of the Credit Parties or any of their respective Subsidiaries or Unrestricted Subsidiaries has received any written notice, request or citation for any actual or potential noncompliance with any of the foregoing.

4.22 Disclosure. None of the written information and data (other than any projections, any information of a forward-looking nature and any general economic or specific industry information developed by, and obtained from, third-party sources) heretofore furnished to any Agent or the Lenders by or on behalf of the Borrower on or prior to the ~~Closing~~**Fourth Amendment Effective** Date for use in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Credit Document, when taken as a whole, contains any untrue statement of a material fact or omits to state a material fact (known to any Executive Officer of the Borrower, in the case of any document not furnished by the Borrower) necessary in order to make the statements contained therein taken as a whole not materially misleading in light of the circumstances under which such statements were made (after giving effect to all supplements and updates to such written information and data, in each case, furnished after the date on which such written information or data was originally delivered and prior to the ~~Closing~~**Fourth Amendment Effective** Date). Any projections and information of a forward-looking nature furnished to any Agent or the Lenders by or on behalf of the Borrower have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time made (it being understood and agreed that such projections and information of a forward-looking nature are not to be viewed as a guarantee of financial performance or achievement, that such projections and information of a forward-looking nature are as to future events and are not to be viewed as facts, that such projections and information of a forward-looking nature are subject to significant uncertainties and contingencies, many of which are beyond your control, that no assurance can be given that any particular projections will be realized and that actual results may differ significantly from the Projections and such differences may be material). As of the ~~Third~~**Fourth** Amendment Effective Date, all of the information included in the Beneficial Ownership Certification is true and correct.

4.23 Perfection of Security Interests in the Collateral. On the Closing Date, the Collateral Documents create valid security interests in, and Liens on, the Collateral of the Credit Parties purported to be covered thereby on such date and described therein, which security interests and Liens will be first priority Liens (subject to Permitted Liens) with respect to personal property of the Credit Parties, to the extent such Liens are perfected by filing appropriate UCC-1 financing statements against each such Credit Party with the secretary of state of the state of incorporation or formation of each such Credit Party and appropriate filings with the U.S. Patent and Trademark Office and the U.S. Copyright Office, as applicable, or the pledge of original stock certificates representing Capital Stock and customary stock and other equity powers related thereto upon the timely and proper filings, deliveries, notations and other actions contemplated by the Collateral Documents (to the extent that such security interests and Liens may be perfected by such filings, deliveries, notations and other actions contemplated by the Collateral Documents).

4.24 Status as Senior Debt. The Obligations are "Designated Senior Debt," "Senior Debt," "Senior Obligations," "Senior Indebtedness," "Guarantor Senior Debt" and/or "Senior Secured Financing" (or any comparable term) under, and as defined in, any indenture or document governing any applicable Subordinated Debt.

4.25 Use of Proceeds. The Borrower has used (or will use) the proceeds of the Initial Term Loans, the Term A-1 Loans, the Term A-2 Loans, the Revolving Loans and the Swing Line Loans in accordance with Section 2.6.

4.26 EEA Financial Institutions. No Credit Party is an EEA Financial Institution.

SECTION 5. AFFIRMATIVE COVENANTS

The Borrower and each Guarantor Subsidiary covenants and agrees that so long as the Commitments have not been terminated and until the principal of and interest on each Loan, all fees and all other expenses or amounts payable under any Credit Document (other than amounts in respect of indemnification, expense reimbursement, yield protection or tax gross-up and contingent obligations, in each case that are not then owing or with respect to which no claim has been made) have been paid in full and all Letters of Credit have been cancelled, or have expired or have been cash collateralized or otherwise backstopped in a manner satisfactory to the applicable Issuing Bank and all amounts drawn thereunder have been reimbursed in full, it will perform, and the Borrower will cause each Subsidiary to perform (to the extent applicable to such Subsidiary), all covenants in this Section 5.

5.1 Financial Statements and Other Reports. The Borrower will deliver to the Administrative Agent by Electronic Transmission, and the Administrative Agent will deliver to the Lenders by Electronic Transmission:

(a) Annual Financial Statements. Within one hundred and twenty (120) days after the end of each Fiscal Year (or, in the case of the Fiscal Year ending December 31, 2019, one hundred and fifty (150) days after the end of such Fiscal Year), commencing with the Fiscal Year ending December 31, 2019, (i) the consolidated balance sheet of the Borrower and the Subsidiaries and Unrestricted Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of operations and comprehensive (loss) income, changes in members' or stockholders' equity and cash flows of the Borrower and the Subsidiaries and Unrestricted Subsidiaries for such Fiscal Year, setting forth, in each case, in comparative form the corresponding figures for the previous Fiscal Year delivered pursuant to this Section 5.1(a), together with a Financial Officer Certification and a Narrative Report with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of independent certified public accountants of recognized national or regional standing selected by the Borrower, or another accounting firm reasonably satisfactory to the Administrative Agent (which report **(other than such report delivered in connection with the financial statements for the Fiscal Year ended December 31, 2022)** will not be subject to any explanatory statement as to the Borrower's ability to continue as a "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (other than any such explanatory statement, qualification or exception with respect to (A) an upcoming maturity of the Term Loans or the Revolving Loans or (B) any actual or anticipated inability to satisfy the Financial Covenants)) and will state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Borrower, the Subsidiaries and the Unrestricted Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards.

(b) Quarterly Financial Statements. Within forty-five (45) days after the end of the first three Fiscal Quarters of each Fiscal Year, commencing with the Fiscal Quarter ending March 31, 2020, the consolidated balance sheet of the Borrower and the Subsidiaries and Unrestricted Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of operations and comprehensive (loss) income and cash flows of the Borrower and the Subsidiaries and Unrestricted Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth, in each case, commencing with the Fiscal Quarter ending March 31, 2021, in

comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year delivered pursuant to this Section 5.1(b), all in reasonable detail and in accordance with GAAP in all material respects (subject to normal year-end audit adjustments and the absence of footnotes), together with a Financial Officer Certification and a Narrative Report with respect thereto.

~~(c) [Reserved].~~

(c) Covenant Adjustment Period Reporting. During the Covenant Adjustment Period, in addition to the foregoing,

(i) Within four (4) Business Days after each Bi-Weekly Report Date, a thirteen-week cash flow projection of the Borrower and its Subsidiaries as of such Bi-Weekly Report Date in form and detail reasonably acceptable to the Administrative Agent, which shall be accompanied by (A) a report showing the aggregate ending cash balances as of the Bi-Weekly Report Date in each Deposit Account of a Credit Party maintained in the United States, and (B) commencing with the delivery of the second thirteen-week cash flow projection, a variance report reconciling the cash flow projection set forth in the immediately preceding thirteen-week cash flow projection delivered pursuant to this Section 5.1(c)(i) to the actual disbursements and receipts for the two-week period ending on such Bi-Weekly Report Date (the "Variance Report"). The Variance Report shall be in reasonable detail, in form reasonably satisfactory to the Administrative Agent, and shall include, without limitation, a narrative explanation of any significant variances from the immediately preceding thirteen-week cash flow projection delivered and shall be signed by an authorized officer of the Company.

(ii) Within thirty (30) days after the end of each calendar month, the consolidated balance sheet of the Borrower and the Subsidiaries and Unrestricted Subsidiaries as at the end of such calendar month and the related consolidated statements of operations and comprehensive (loss) income and cash flows of the Borrower and the Subsidiaries and Unrestricted Subsidiaries for such calendar month and for the period from the beginning of the then current Fiscal Year to the end of such calendar month, all in reasonable detail and in accordance with GAAP in all material respects (subject to normal year-end audit adjustments and the absence of footnotes), together with a Financial Officer Certification and a Narrative Report with respect thereto.

(iii) Within seventy-five (75) days following the Fourth Amendment Effective Date (or such later date as reasonably agreed by the Administrative Agent), an updated business plan prepared by the Borrower (with the assistance of the Borrower's financial advisor) in form and detail reasonably acceptable to Administrative Agent.

(iv) Within thirty (30) days following the Fourth Amendment Effective Date (or such later date as reasonably agreed by Administrative Agent), an updated Perfection Certificate in form and detail acceptable to Administrative Agent.

(v) Within thirty (30) days following the Fourth Amendment Effective Date (or such later date as reasonably agreed by Administrative Agent), updated searches reflecting all Intellectual Property registered or applied for in the United States Patent and Trademark Office and/or registered in the United States Copyright Office by the Borrower and each Guarantor Subsidiary.

(d) Information Regarding Unrestricted Subsidiaries. Notwithstanding anything to the contrary in this Section 5.1, if the Borrower has any Unrestricted Subsidiaries, the Borrower will include, together with each delivery of financial statements or a Financial Plan pursuant to Section 5.1(a), 5.1(b) or 5.1(k), consolidating information (which may be unaudited) that shows in reasonable detail in accordance with GAAP the breakdown of assets, liabilities, and revenues and expenses, between the Borrower and the Subsidiaries, on the one hand, and the Unrestricted Subsidiaries, on the other hand, as of the dates and for the periods covered by such financial statements.

(e) Compliance Certificate. Together with each delivery of financial statements of the Borrower and the Subsidiaries and Unrestricted Subsidiaries pursuant to Sections 5.1(a) and 5.1(b), a duly executed and completed Compliance Certificate.

(f) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in GAAP from those used in the preparation of the Historical Financial Statements, the consolidated financial statements of the Borrower and the Subsidiaries and Unrestricted Subsidiaries delivered pursuant to this Section 5.1 will differ in any material respect from the consolidated financial statements that would have been delivered had no such change in GAAP occurred, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form reasonably satisfactory to the Administrative Agent delivered during the Fiscal Year and immediately preceding Fiscal Year in which such change occurred.

(g) Accountants' Report. Promptly upon receipt thereof, copies of all final management letters identifying a material weakness or significant deficiency submitted by the independent certified public accountants referred to in Section 5.1(a) in connection with each annual, interim or special audit or review of any type of the financial statements or related internal control systems of the Borrower or any Subsidiary made by such accountants.

(h) Notice of Default. Promptly upon an Executive Officer of the Borrower obtaining knowledge:

(i) of the occurrence of any Default or Event of Default;

(ii) that any Person has given any notice to the Borrower or any Subsidiary or taken any other action with respect to any event or condition set forth in Section 8.1(b); or

(iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect;

in each case, together with a certificate of an Authorized Officer of the Borrower specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action the Borrower has taken, is taking and proposes to take with respect thereto.

(i) Notice of Litigation and Judgments. Promptly upon an Executive Officer of the Borrower obtaining knowledge of:

(i) the institution of, or non-frivolous threat of, any Adverse Proceeding not previously disclosed in writing by the Borrower to the Lenders that if adversely determined could be reasonably expected to result in a Material Adverse Effect; or

(ii) any material development in any Adverse Proceeding or the entry of any judgment that if adversely determined could be reasonably expected to result in a Material Adverse Effect; or

(iii) any change to the status of the OIG Matter that is materially adverse to the Borrower and its Subsidiaries since the delivery of the most recent financial statements pursuant to Section 5.1(a) or (b), as applicable,

written notice thereof by an Authorized Officer of the Borrower.

(j) ERISA. (i) Promptly upon an Executive Officer of the Borrower becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event that would reasonably be expected to result in a Material Adverse Effect, a written notice specifying the nature thereof, what action the Borrower, any Subsidiary or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department

of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of (A) all notices received by the Borrower, any Subsidiary or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event that would reasonably be expected to result in a Material Adverse Effect and (B) copies of such other documents or governmental reports or filings relating to any Pension Plan or Multiemployer Plan as the Administrative Agent will reasonably request.

(k) Financial Plan. No later than ninety (90) days after the beginning of each Fiscal Year, commencing with the Fiscal Year that begins January 1, 2020, a consolidated plan and financial forecast for such Fiscal Year (a "**Financial Plan**"), that includes (i) a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of the Borrower and the Subsidiaries for such Fiscal Year and an explanation of the assumptions on which such forecasts are based and (ii) forecasted consolidated statements of income and cash flows of the Borrower and the Subsidiaries for each Fiscal Quarter of such Fiscal Year, together with an explanation of the assumptions on which such forecasts are based.

(l) OFAC, Etc. The Borrower will notify the Administrative Agent (i) immediately if an Executive Officer of the Borrower has knowledge that any Credit Party or any of its Subsidiaries or its Unrestricted Subsidiaries or any of their respective directors, officers, and employees is (A) listed on the OFAC Lists or otherwise becomes a Blocked Person or (B) convicted on, pleads *nolo contendere* to, is indicted on, or is arraigned and held over on, charges involving money laundering or predicate crimes to money laundering, or (ii) promptly if an Executive Officer of the Borrower has knowledge that any Credit Party or any of its Subsidiaries or its Unrestricted Subsidiaries or any of their respective directors, officers, and employees is subject to or has received formal notice of any proceeding or investigation by any Governmental Authority in connection with any violation of Anti-Terrorism Laws.

(m) [Reserved].

(n) Other Information. Such other information and data with respect to the Borrower or any Subsidiary as from time to time may be reasonably requested by the Administrative Agent or any Lender (through the Administrative Agent).

(o) Intellectual Property. Concurrently with delivery of the financial statements referred to in Section 5.1(a), a list of any Intellectual Property registered or applied for in the United States Patent and Trademark Office and/or registered in the United States Copyright Office by the Borrower and each of its Subsidiaries, to the extent such Intellectual Property is included in the Collateral and has not been previously (i) identified in a short form Intellectual Property security agreement executed and delivered by the Borrower or its applicable Subsidiary pursuant to Section 3.1(i), or (ii) included on a list previously delivered by the Borrower and the Administrative Agent, as applicable, pursuant to this Section 5.1(o).

(p) Certification of Public Information. Concurrently with the delivery of any document or notice required to be delivered pursuant to this Section 5.1, the Borrower will indicate in writing whether such document or notice contains Nonpublic Information. The Borrower and each Lender acknowledge that certain of the Lenders may be "public-side" Lenders (Lenders that do not wish to receive Nonpublic Information, a "**Public Lender**") and, if documents or notices required to be delivered pursuant to this Section 5.1 or otherwise are being distributed by Electronic Transmission (including, through IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform approved by the Administrative Agent (the "**Platform**")), any document or notice that the Borrower has indicated contains Nonpublic Information will not be posted on that portion of the Platform designated for such public-side Lenders. If the Borrower has not indicated whether a document or notice delivered pursuant to this Section 5.1 contains Nonpublic Information, the Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive Nonpublic Information with respect to the Borrower, the Subsidiaries and their respective securities. Notwithstanding anything herein to the contrary, the Borrower shall not be obligated to mark any document or notice required to be delivered pursuant to this Section 5.1 as being suitable for posting to the portion of the Platform designated for Public Lenders.

The filing by the Borrower of a Form 10-K or Form 10-Q (or any successor or comparable forms) with the Securities and Exchange Commission (or any successor thereto) as at the end

of and for any applicable Fiscal Year or Fiscal Quarter will be deemed to satisfy the obligations under Section 5.1(a) or 5.1(b), as applicable, as to the Credit Parties and Subsidiaries covered by such filing to deliver financial statements and a Narrative Report. The obligations referred to in Sections 5.1(a) and 5.1(b) may be satisfied with respect to financial information of the Borrower and the Subsidiaries by furnishing (A) the applicable financial statements of any Parent of the Borrower or (B) any such Parent's Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC will constitute delivery under this Section 5.1); *provided* that with respect to each of the preceding clauses (A) and (B), (1) if and so long as such Parent has no material independent operations, such information is accompanied by consolidating information that need not be audited and that explains in reasonable detail the differences between the information relating to such Parent and its assets and operations, on the one hand, and the information relating to the Borrower and the Subsidiaries on a stand-alone basis, on the other hand, and (2) to the extent such information is in lieu of information required to be provided under Section 5.1(a) such materials are accompanied by a report and opinion of independent registered public accounting firm of nationally or regionally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (I) will be prepared in accordance with generally accepted auditing standards and (II) will not be subject to any qualification as to the scope of such audit or be subject to any explanatory statement as to the Borrower's ability to continue as a "going concern" or like qualification (other than with respect to (i) an upcoming maturity of the Term Loans or the Revolving Loans or (ii) any actual or anticipated inability to satisfy the Financial Covenants).

Any financial statements required to be delivered pursuant to Sections 5.1(a) or 5.1(b) will not be required to contain purchase accounting adjustments relating to the Transactions or any other transaction(s) permitted hereunder (including Permitted Acquisitions or other Investments permitted under Section 6.6) to the extent it is not practicable to include any such adjustments in such financial statements.

Notwithstanding anything to the contrary in any Credit Document, neither the Borrower nor any of its Subsidiaries will be required to deliver or disclose to the Administrative Agent or any Lender any financial information or data (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by applicable Laws, (iii) that is subject to bona fide attorney client or similar privilege or constitutes attorney work product or (iv) the disclosure of which is prohibited by binding agreements not entered into primarily for the purpose of qualifying for the exclusion in this clause (iv); *provided* the foregoing will not limit the Borrower's obligation to deliver financial statements or forecasts pursuant to Section 5.1(a), 5.1(b) and 5.1(k).

Borrower hereby authorizes the Administrative Agent to make the financial statements to be provided under Section 5.1(a) and 5.1(b) above, along with the Credit Documents, available to Public Lenders. The Borrower will not request that any other material be posted to Public Lenders without expressly representing and warranting to the Administrative Agent in writing that (A) such materials do not constitute material non-public information within the meaning of the federal securities laws ("**MNPI**") or that (B)(i) each of the Borrower, its Parent (if any) and each of their respective subsidiaries has no outstanding publicly traded securities, and (ii) if at any time the Borrower, its Parent (if any) or any of their respective subsidiaries issues publicly traded securities then prior to the issuance of such securities, the Borrower will make such materials that do constitute MNPI publicly available by press release or public filing with the Securities and Exchange Commission.

5.2 Existence. Except as otherwise permitted under Section 6.8, each Credit Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits required by applicable Laws, in each case unless (other than with respect to the preservation of the existence of the Borrower) the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.3 Payment of Taxes. Except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Borrower will, and will cause each Subsidiary to, pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of its Taxes when due; *provided* that no such payment need be paid if the amount or validity thereof is currently being contested in good faith by appropriate proceedings promptly instituted and diligently

conducted, so long as adequate reserve or other appropriate provisions, as may be required pursuant to GAAP, have been made therefor.

5.4 Maintenance of Properties. Except if the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and as otherwise permitted under Section 6.8, the Borrower will, and will cause each Subsidiary to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all tangible properties used or useful in the business of such Person and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof, and prosecute, protect, defend, preserve, maintain, renew and enforce all Intellectual Property (except to the extent the Borrower reasonably determines in good faith in consultation with the Administrative Agent that (a) such actions are not necessary or (b) the cost of such actions is excessive in relation to the value of such Intellectual Property).

5.5 Insurance. The Borrower will maintain or cause to be maintained, with financially sound and reputable unaffiliated insurers, such liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Borrower and the Subsidiaries as may customarily (in the reasonable determination of the Borrower) be carried or maintained under similar circumstances by Persons engaged in similar businesses, in each case, in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as may be customary for such Persons. Without limiting the generality of the foregoing, the Borrower will maintain or cause to be maintained (a) with respect to each Flood Hazard Property, (i) flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws, and (ii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent, including, without limitation, evidence of annual renewals of such insurance, and (b) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times customary (in the reasonable determination of the Borrower) carried or maintained under similar circumstances by Persons engaged in similar businesses. Subject to Section 5.15, each such policy of insurance will, (i) in the case of liability insurance, name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy, contain a lender loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the lender loss payee thereunder for any covered loss. The Borrower will use commercially reasonable efforts to cause such policy of insurance to provide for at least 10 days' prior written notice to the Collateral Agent of any modification or cancellation of the policy. To the extent that the requirements of this Section 5.5 are not satisfied on the Closing Date, the Borrower may satisfy such requirements within ninety (90) days after the Closing Date (as extended by the Administrative Agent in its reasonable discretion).

5.6 Books and Records; Inspections. Each Credit Party will, and the Borrower will cause its Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries will be made of all material dealings and transactions in relation to its business and activities. Subject to the second to last paragraph of Section 5.1, each Credit Party will, and the Borrower will cause its Subsidiaries to, permit the Administrative Agent and any Lender and their respective authorized representatives to visit and inspect any of the properties of such Person, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested; *provided* that (a) unless an Event of Default has occurred and is continuing, only the Administrative Agent on behalf of the Lenders may exercise rights under this Section 5.6, and ~~the~~**, other than during the Covenant Adjustment Period, the** exercise of such rights by the Administrative Agent may only be done once per calendar year and such visit shall be at the Borrower's expense and (b) in respect of any such discussions with any independent accountants, the Borrower or such Subsidiary, as the case may be, must receive reasonable advance notice thereof and a reasonable opportunity to participate therein and such discussions will be subject to the execution of any indemnity, non-reliance letter or other than requirements of such accountants.

5.7 Compliance with Laws. The Borrower will comply, and will cause the Subsidiaries to comply, with the requirements of all applicable Laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws, ERISA, FCPA, OFAC, PATRIOT Act and anti-money laundering Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.8 Compliance with Anti-Terrorism Laws, Anti-Corruption Laws and Beneficial Ownership Regulation. The Borrower will, within 90 days of the date of this Agreement (or such longer period as reasonably agreed by the Administrative Agent), amend and will thereafter maintain in effect, policies, procedures and internal controls reasonably designed to achieve compliance by the Borrower, the Subsidiaries, and their respective directors, officers, and employees with applicable Anti-Terrorism Laws and Anti-Corruption Laws. The Borrower will (a) concurrently with the delivery of the annual financial statements pursuant to Section 5.1(a) and (b), notify the Administrative Agent (which shall provide a copy of such notification to the Lenders) of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in such certification since the later of the date of such Beneficial Ownership Certification or the most recent list provided and (b) promptly upon the reasonable request of the Administrative Agent or any Lender, provide the Administrative Agent or directly to such Lender, as the case may be, any information or documentation requested by it for purposes of complying with the Beneficial Ownership Regulation.

5.9 Environmental.

(a) Environmental Disclosure. The Borrower will deliver to the Administrative Agent:

(i) *Audits, Etc*. As soon as reasonably practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of the Borrower or any Subsidiary or by independent consultants, governmental authorities or any other Persons, with respect to environmental matters at any Facility or which relate to any Environmental Claims against the Borrower or Subsidiary, which, in the case of any such environmental matter or Environmental Claim could reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect;

(ii) *Releases, Etc*. Promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws that could reasonably be expected to result in a Material Adverse Effect, (B) any Remedial Action taken by the Borrower or any other Person in response to (1) any Hazardous Materials Activities the existence of which could reasonably be expected to result in one or more Environmental Claims against the Borrower or any Subsidiary resulting in, individually or in the aggregate, a Material Adverse Effect, or (2) any Environmental Claims against the Borrower or any Subsidiary that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, and (C) the Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any then current Facility that could reasonably be expected to cause such Facility or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws that could reasonably be expected to result in a Material Adverse Effect; and

(iii) *Claims, Etc*. As soon as practicable following the sending or receipt thereof by the Borrower or any Subsidiary, a copy of any and all material written communications with respect to (A) any Environmental Claims against the Borrower or any Subsidiary that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, (B) any Release that could require Remedial Action by the Borrower or any Subsidiary that is required to be reported to any federal, state or local governmental or regulatory agency that could reasonably be expected to result in a Material Adverse Effect, and (C) any request for information from any governmental agency that suggests such agency is investigating whether the Borrower or any Subsidiary may be potentially responsible for any Hazardous Materials Activity that could reasonably be expected to result in a Material Adverse Effect.

(b) Hazardous Materials Activities, Etc. The Borrower will promptly take, and will cause each of its Subsidiaries promptly to take, any and all reasonable actions necessary to (i) cure any violation of applicable Environmental Laws by such Credit Party or such Subsidiaries that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (ii) make an appropriate response to any Environmental Claim against the Borrower or any Subsidiary and discharge any obligations it may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.10 Subsidiaries.

(a) In the event that any Person becomes a Subsidiary of the Borrower, such Person will be deemed to be a Subsidiary hereunder until such time as the Borrower has designated such Subsidiary as an Unrestricted Subsidiary in accordance with the terms hereof.

(b) In the event that any Person becomes a Subsidiary (other than an Excluded Subsidiary), the Borrower will, within 60 days (or such longer time as the Administrative Agent may agree in its sole discretion):

(i) cause such Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to the Administrative Agent and the Collateral Agent a Counterpart Agreement and such other Collateral Documents as may be reasonably requested by the Collateral Agent and take and cause such Subsidiary to take such actions as are required by the Collateral Documents or are reasonably requested (subject to the provisions of Section 7.3 of the Pledge and Security Agreement) by the Collateral Agent to perfect the security interests created by the Collateral Documents;

(ii) upon reasonable request by the Administrative Agent, take all such actions and execute and deliver, or cause to be executed and delivered, all appropriate resolutions, secretary certificates, certified Organizational Documents and customary legal opinions relating to the matters described in this Section 5.10(b); and

(iii) deliver to the Administrative Agent a supplement to Schedule 4.2, which will be deemed to supplement Schedule 4.2, for all purposes hereof.

(c) In the event that any Person becomes a Foreign Subsidiary or a Foreign Subsidiary Holding Company of the Borrower, and the ownership interests of such Foreign Subsidiary or Foreign Subsidiary Holding Company are owned by the Borrower or by any Guarantor Subsidiary, the Borrower will, or will cause such Subsidiary to (in the absence of any other applicable limitation hereunder), within 60 days (or such longer time as the Administrative Agent may agree in its sole discretion), deliver (subject to the provisions of Section 7.3 of the Pledge and Security Agreement) all such applicable documents, instruments and agreements necessary in the reasonable determination of the Administrative Agent to grant to the Collateral Agent a perfected Lien in such ownership interests in favor of the Collateral Agent, for the benefit of the Secured Parties, under the Pledge and Security Agreement; *provided* that in no event will (x) more than 65.0% of the Voting Capital Stock of any first-tier Foreign Subsidiary or first-tier Foreign Subsidiary Holding Company or (y) any Capital Stock owned directly or indirectly by any Foreign Subsidiary or Foreign Subsidiary Holding Company, in each case be required to be delivered or granted or perfected as a Lien for the benefit of the Secured Parties; *provided further*, that in no event will the Borrower or any Subsidiary be required to execute any document, instrument or agreement, complete any filing or take any other action (i) with respect to the perfection of the Collateral Agent's security interest in such ownership interests in any jurisdiction outside of the United States or any State thereof or (ii) that would violate applicable Law.

5.11 Material Real Estate Assets. In the event that any Credit Party acquires a Material Real Estate Asset or an Executive Officer of the Borrower discovers that a Real Estate Asset owned on the Closing Date becomes a Material Real Estate Asset and such interest has not otherwise been made subject to the Lien of the Collateral Documents in favor of the Collateral Agent, for the benefit of the Secured Parties, then such Credit Party, no later than ninety (90) days (or such later date agreed to by the Administrative Agent) following the acquisition of such Material Real Estate Asset or such discovery,

will take all such actions and execute and deliver, or cause to be executed and delivered, all such applicable Mortgages (in form and substance reasonably acceptable to the Borrower and Administrative Agent), endorsements to title insurance policies (to the extent available in the applicable jurisdiction and such title insurance policies shall be in an amount not to exceed the fair market value (determined in good faith by the Borrower) of the Material Real Estate Asset covered thereby), appraisals (only to the extent required by law), Phase I environmental assessments, A. L. T. A. survey plans (but new or updated surveys will not be required if an existing survey is available or zip map, express map or similar map is available in the applicable jurisdiction and, in either case, survey coverage is available for the title insurance policies without the need for such new or updated surveys and provided further this foregoing requirement shall only be in connection with any Material Real Estate Asset located in the United States), flood determination certificates, customary local counsel opinions and certificates that the Administrative Agent will, in each case, reasonably request to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a valid and perfected security interest in such Material Real Estate Assets. Notwithstanding the foregoing, the parties hereto acknowledge and agree that at least twenty (20) days prior to the execution and delivery of any Mortgage, the Lenders shall have received (which may be via electronic delivery) all flood determination certifications, acknowledgements and evidence of flood insurance and other flood-related documentation with respect to such Material Real Estate Asset reasonably sufficient to evidence compliance with Flood Insurance Laws.

5.12 Further Assurances. At any time or from time to time upon the request of the Administrative Agent, each Credit Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as the Administrative Agent or the Collateral Agent may reasonably request in order to effect fully the purposes of the Credit Documents. In furtherance and not in limitation of the foregoing, each Credit Party will take such actions as the Administrative Agent or the Collateral Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by the Collateral, including all of the outstanding Capital Stock of the Borrower and each Subsidiary to the extent constituting Collateral.

5.13 Designation of Subsidiaries and Unrestricted Subsidiaries. The Borrower may designate a Subsidiary as an Unrestricted Subsidiary or re-designate an Unrestricted Subsidiary as a Subsidiary, in each case, so long as immediately before and after giving effect to such designation or re-designation, (a) no Event of Default will have occurred and be continuing and (b) the Borrower and its Subsidiaries are in Pro Forma compliance with the Financial Covenants set forth in Section 6.7 hereto and, as a condition precedent to the effectiveness of any such designation, the Borrower shall deliver to the Administrative Agent a certificate setting forth in reasonable detail the calculations demonstrating such compliance. No Unrestricted Subsidiary may own any Capital Stock or Indebtedness of, or hold any Lien on any property of, Borrower or any Subsidiary; *provided* that for the avoidance of doubt, any Unrestricted Subsidiary may own Capital Stock or Indebtedness of, or hold a Lien on any property of, any other Unrestricted Subsidiary. **No Unrestricted Subsidiary may own any material Intellectual Property or any other material assets.**

5.14 Use of Proceeds. All proceeds of the Term Loans, the Revolving Loans and the Swing Line Loans will be used in accordance with Section 2.6 (including that no part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that would entail a violation of Regulation T, Regulation U or Regulation X).

5.15 Post-Closing Matters. The Borrower will, and will cause each Subsidiary to, take each of the actions set forth on Schedule 5.15 within the time period prescribed therefor on such schedule (as such time period may be extended by the Administrative Agent).

5.16 Borrower Financial Advisor.

(a) From the Fourth Amendment Effective Date until the end of the Covenant Adjustment Period, the Borrower shall engage a financial advisor ("Borrower Financial Advisor"), the identity and scope of engagement of which is reasonably acceptable to the Administrative Agent, on such terms and conditions that are reasonably acceptable to the Administrative Agent; provided that, it is understood and agreed that AlixPartners and the scope and terms of its engagement as in effect on the Fourth Amendment Effective Date, in each case, are reasonably

acceptable to the Administrative Agent. Prior to the end of the Covenant Adjustment Period, the Borrower shall not terminate the Borrower Financial Advisor unless the Borrower Financial Advisor is promptly replaced with a successor Borrower Financial Advisor whose identity and scope of engagement are reasonably acceptable to the Administrative Agent.

(b) The Borrower hereby agrees and acknowledges that (i) the Administrative Agent and the Lenders are authorized to communicate directly with the Borrower Financial Advisor and (ii) the Borrower shall exercise commercially reasonable efforts to cause the Borrower Financial Advisor to participate in periodic update conferences with the Administrative Agent and the Lenders at times to be mutually and reasonably agreed.

5.17 Lender Financial Advisor. With respect to any single financial advisor engaged by the Administrative Agent (or by counsel to the Administrative Agent), for the benefit of itself and the Lenders (the "Lender Financial Advisor"), the Borrower and each Subsidiary shall (i) provide the Lender Financial Advisor with reasonable access to the Borrower's and each Subsidiary's facilities, financial information and members of senior management at reasonable times and places as is reasonably necessary to perform the services required under such engagement and (ii) reimburse the Administrative Agent promptly upon demand for the reasonable out-of-pocket fees and expenses incurred in connection with the engagement of the Lender Financial Advisor.

SECTION 6. NEGATIVE COVENANTS

The Borrower and each Guarantor Subsidiary covenants and agrees that so long as the Commitments have not been terminated and until the principal of and interest on each Loan, all fees and all other expenses or amounts payable under any Credit Document (other than amounts in respect of indemnification, expense reimbursement, yield protection or tax gross-up and contingent obligations, in each case that are not then owing or with respect to which no claim has been made) have been paid in full and all Letters of Credit have been cancelled, or have expired or have been cash collateralized or otherwise backstopped in a manner satisfactory to the applicable Issuing Bank and all amounts drawn thereunder have been reimbursed in full, it will perform, and the Borrower will cause each Subsidiary to perform (to the extent applicable to such Subsidiary), all covenants in this Section 6.

6.1 Indebtedness. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, create, incur, assume or guaranty, or otherwise become directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations (including Incremental Term Facilities, Refinancing Term Loans, Extended Term Loans, all obligations arising under any Secured Rate Contract and all Bank Product Obligations, in each case to the extent constituting Obligations);

(b) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business;

(c) Indebtedness of the Borrower or any Subsidiary in existence on the Second Amendment Effective Date; provided that, any such Indebtedness with principal amount in excess of $2,000,000 is described on Schedule 6.1;

(d) Indebtedness of the Borrower or any Subsidiary with respect to Finance Leases and Purchase Money Indebtedness in an aggregate amount at any time outstanding not to exceed **(x) other than during the Covenant Adjustment Period,** the greater of (1) $16,000,000 and (2) an amount equal to 16% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination **and (y) during the Covenant Adjustment Period, $14,000,000**, in each case determined at the time of incurrence (but not any refinancings thereof); *provided* that (i) such Indebtedness is issued and any Liens securing such Indebtedness are created within 365 days after the acquisition, construction, lease or improvement of the asset financed and (ii) any such Indebtedness is secured only by the asset acquired, constructed, leased or improved in connection with the incurrence of such Indebtedness or proceeds thereof and related property; *provided further*, that individual financings

provided by a lender or group of lenders may be cross collateralized to other financings provided by such lender or group;

(e) Indebtedness in respect of Rate Contracts entered into for non-speculative purposes;

(f) Indebtedness of any Subsidiary owing to the Borrower or to any other Subsidiary, or of the Borrower owing to any Subsidiary; *provided* that (i) all such Indebtedness owed by a Credit Party to a Non-Credit Party is subject to the Intercompany Subordination Agreement and (ii) in the case of any Indebtedness of any such Subsidiary that is not a Guarantor Subsidiary owing to the Borrower or Guarantor Subsidiary, such Indebtedness is permitted under Section 6.6;

(g) **other than during the Covenant Adjustment Period,** Incremental Equivalent Debt;

(h) Credit Agreement Refinancing Indebtedness that does not constitute Obligations;

(i) **other than during the Covenant Adjustment Period,** Permitted Ratio Debt;

(j) **other than during the Covenant Adjustment Period,** Contribution Indebtedness;

(k) Indebtedness of a Person or Indebtedness attaching to assets of a Person that, in either case, becomes a Subsidiary, or Indebtedness attaching solely to assets that are acquired by the Borrower or any Subsidiary, in each case after the Closing Date; *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 or contemplation thereof, (ii) such and Indebtedness is not guaranteed by the Borrower or any Subsidiary (other than by any Person that becomes a Subsidiary in connection with the foregoing and its Subsidiaries), and (iii) after giving effect thereto, the Borrower and its Subsidiaries are in Pro Forma compliance with the Financial Covenants set forth in Section 6.7;

(l) Indebtedness incurred by the Borrower or any Subsidiary in the form of indemnification, incentive, non-compete, consulting, adjustment of purchase price or similar obligations (including "earn-outs" or similar obligations in connection with acquisitions) and other contingent obligations (other than in respect of Indebtedness for borrowed money of another Person), or guaranty securing the performance of the Borrower or any Subsidiary (both before and after liability associated therewith becomes fixed), in each case, incurred or assumed pursuant to any agreement entered into in connection with dispositions or acquisitions (including Permitted Acquisitions and other permitted Investments) of any business, assets or Subsidiary;

(m) Indebtedness pursuant to any guaranties, performance, surety, statutory, appeal or similar bonds or obligations incurred in the ordinary course of business or any bankers' acceptance, bank guarantees, letter of credit, warehouse receipt or similar facilities (including in respect of workers compensation claims, deferred compensation, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims) or tenant improvement loans incurred in the ordinary course of business;

(n) guaranties of the obligations of suppliers, customers, franchisees, lessors and licensees of the Borrower or any Subsidiary incurred in the ordinary course of business;

(o) Indebtedness in respect of letters of credit, bank guarantees and similar obligations issued for the account of the Borrower or any Subsidiary in the ordinary course of business;

(p) Indebtedness of the Borrower or any Subsidiary in connection with Bank Products incurred in the ordinary course of business;

(q) Indebtedness (x) in connection with the financing of insurance premiums in the ordinary course of business or (y) consisting of take or pay obligations contained in supply arrangements incurred in the ordinary course of business or consistent with past practice;

(r) **other than during the Covenant Adjustment Period,** Indebtedness by and among the Borrower and any Subsidiary in connection with a Permitted Reorganization or Permitted IPO Reorganization; *provided* that all such Indebtedness owed by a Credit Party to a Non-Credit Party is subject to the Intercompany Subordination Agreement;

(s) to the extent constituting Indebtedness, Investments permitted under Section 6.6 (other than under Section 6.6(n) or 6.6(q));

(t) additional Indebtedness of Non-Credit Parties in an aggregate principal amount not to exceed**, (x) other than during the Covenant Adjustment Period,** the greater of (1) $13,000,000 and (2) an amount equal to 13% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination **and (y) during the Covenant Adjustment Period, $5,000,000**;

(u) Indebtedness incurred in connection with deferred compensation or stock-based compensation, in each case to the extent incurred in the ordinary course of business or in connection with a Permitted Acquisition or similar Investment;

(v) **other than during the Covenant Adjustment Period,** Indebtedness consisting of promissory notes issued by the Borrower or any Subsidiary to current or former officers, managers, consultants, directors and employees (or their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) to finance the purchase or redemption of Capital Stock or securities convertible into Capital Stock of the Borrower or any Parent thereof permitted pursuant to Section 6.4(c);

(w) the incurrence by the Borrower or any Subsidiary of Indebtedness constituting a Permitted Refinancing in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge any Indebtedness (other than intercompany Indebtedness) that was permitted to be incurred under clause (c), (d), (g), (h), (i), (j), (k), (t), (y) or (bb) of this Section 6.1;

(x) (i) guaranties by the Borrower of Indebtedness of a Guarantor Subsidiary, (ii) guaranties by any Subsidiary of Indebtedness of the Borrower or any Guarantor Subsidiary, or (iii) guaranties by the Borrower or any Guarantor Subsidiary of Indebtedness of any Subsidiary that is not a Credit Party and that would have been permitted as an Investment by the Borrower or any Guarantor Subsidiary in such Subsidiary pursuant to Section 6.6, with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.1; *provided* that if the Indebtedness that is being guarantied is unsecured and/or Subordinated Debt, the guaranty will also be unsecured and/or be expressly subordinated in right of payment to the Obligations;

(y) **other than during the Covenant Adjustment Period,** additional Indebtedness of the Borrower or any Subsidiary in an aggregate principal amount, not to exceed the greater of (1) $16,000,000 and (2) an amount equal to 16% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination;

(z) Indebtedness representing any taxes, assessments or governmental charges to the extent (i) such taxes, assessments or governmental charges are being contested in good faith and adequate reserves have been provided therefor or (ii) that payment thereof shall not at any time be required to be made in accordance with Section 5.3;

(aa) Indebtedness arising as a direct result of judgments, in each case to the extent not constituting an Event of Default;

(bb) Indebtedness of CartiHeal or any of its Subsidiaries or Indebtedness attaching to assets of CartiHeal or any of its Subsidiaries; *provided* that (i) such Indebtedness existed at the time such Person became a Subsidiary and (ii) such Indebtedness is not guaranteed by the Borrower or any Subsidiary (other than CartiHeal or any of its Subsidiaries); and

(cc) ~~**Indebtedness in respect of the CartiHeal Milestone Payments**~~**[reserved]**;

provided that~~,~~ the aggregate principal amount of Indebtedness of Non-Credit Parties incurred in reliance on any clause of this Section 6.1 (other than Section 6.1(f), 6.1(bb) and 6.1(cc)) will not exceed~~,~~ at any ~~one~~ time outstanding**: (A) other than during the Covenant Adjustment Period**, the greater of (1) $26,000,000 and (2) an amount equal to 26% of TTM Consolidated Adjusted EBITDA ~~of the Borrower~~ on a Pro Forma Basis as of the applicable date of determination, and Permitted Refinancings of the foregoing**; and (B) during the Covenant Adjustment Period, $5,000,000 and Permitted Refinancings of the foregoing**.

For purposes of determining compliance with this Section 6.1:

(1) the principal amount in Indebtedness outstanding under any clause of this Section 6.1 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;

(2) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that is otherwise permitted will not be included in the determination of such amount of Indebtedness.

(3) (i) the accrual of interest, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest in the form of additional Indebtedness, (ii) the payment of premiums, fees, expenses, charges and additional or contingent interest on obligations and (iii) increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case, will not be deemed to be an incurrence of Indebtedness;

(4) for purposes of determining compliance with any Cap on the incurrence of Indebtedness, the Dollar equivalent principal amount of Indebtedness denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness is issued to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Dollar denominated Cap to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar denominated Cap will be deemed not to have been exceeded so long as the principal amount of such Refinancing Indebtedness does not exceed (i) the principal amount of such Indebtedness being refinanced *plus* (ii) the aggregate amount of accrued but unpaid interest, fees, underwriting discounts, defeasance costs, premiums (including tender premiums) and other costs and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with such refinancing;

(5) the principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP;

(6) in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the clauses of this Section 6.1, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this covenant; *provided* that (x) all Indebtedness created pursuant to the Credit Documents will be deemed to have been incurred in reliance on the exception in clause (a) above and shall not be permitted to be reclassified pursuant to this paragraph, (y) Indebtedness may be reclassified pursuant to this paragraph to clause (g) or (i) above or otherwise in a manner that would reclassify such Indebtedness as having been incurred in reliance on any calculation of the First Lien Net Leverage Ratio, Secured Net Leverage Ratio or Total Net Leverage Ratio tests described above (and, for the avoidance of doubt, if the Borrower or any Subsidiary incurs Indebtedness using a ratio-based test on the same date that it incurs Indebtedness under any Dollar-based Cap (or substantially concurrently with the incurrence of Indebtedness under any Dollar-based Cap), then the ratio-based test will be calculated with respect to such incurrence under the ratio-based test without

regard to any incurrence of Indebtedness under the Dollar-based Cap) and (z) the reclassification described in the preceding clause (y) shall be deemed to have automatically occurred if the applicable First Lien Net Leverage Ratio, Secured Net Leverage Ratio or Total Net Leverage Ratio test is satisfied on a Pro Forma Basis as of the end of any Fiscal Quarter after the incurrence of the relevant amount; and

(7) in the case of any Permitted Refinancing of Indebtedness, (x) the original amount of Refinanced Indebtedness (including with respect to successive Permitted Refinancings) will continue to be considered to have been incurred under the clause of this Section 6.1 in reliance on which such Refinanced Indebtedness was initially incurred (or to which such Refinanced Indebtedness at such time has been classified, as applicable), and (y) if Refinanced Indebtedness was initially incurred in reliance on (or at such time has been classified to, as applicable) a clause of this Section 6.1 that is subject to a Cap, and such Permitted Refinancing would cause such Cap to be exceeded, then such Cap will be deemed not to be exceeded to the extent that the aggregate principal amount of the Refinancing Indebtedness incurred to replace the Refinanced Indebtedness does not exceed the Maximum Refinancing Amount.

6.2 Liens. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any of its property or assets (including any document or instrument in respect of goods or accounts receivable) of the Borrower or any Subsidiary, whether now owned or hereafter acquired, or any income or profits therefrom, except the following (collectively, "**Permitted Liens**"):

(a) Liens securing the Obligations (including Incremental Facilities, Refinancing Commitments, Refinancing Loans, Extended Revolving Credit Commitments, Extended Term Loans, and all obligations arising under any Secured Rate Contract and all Bank Product Obligations, in each case to the extent constituting Obligations);

(b) [reserved];

(c) Liens in existence on the Second Amendment Effective Date, including the replacement, extension or renewal of any such Lien upon or in the same property subject thereto (including, if such Lien secures Indebtedness, Liens securing any Permitted Refinancing thereof); provided that, if such Lien secures Indebtedness or other obligations in aggregate principal amount in excess of $2,000,000, such Lien is described on Schedule 6.2 hereof;

(d) Liens securing Indebtedness in respect of Finance Leases and Purchase Money Indebtedness, in each case permitted pursuant to Section 6.1(d), and Permitted Refinancings thereof;

(e) Liens granted to (and in favor of) a Credit Party;

(f) Liens on the Collateral securing (i) Incremental Equivalent Debt, (ii) Credit Agreement Refinancing Indebtedness or (iii) Permitted Ratio Debt permitted under Sections 6.1(g), (h) or (i), respectively, and Permitted Refinancings thereof;

(g) Liens on assets acquired, or on assets of a Person that is acquired, securing Indebtedness permitted pursuant to Section 6.1(k) (*provided* that such (i) Liens were existing at the time of such acquisition and were not created in anticipation or contemplation of such acquisition and (ii) do not extend to property not subject to such Liens at the time of such acquisition (other than improvements thereon)); and Permitted Refinancings thereof;

(h) Liens (x) solely on any cash earnest money deposits made by the Borrower or any Subsidiary in connection with any letter of intent or purchase agreement permitted hereunder or (y) consisting of an agreement to dispose of any property pursuant to a disposition permitted hereunder;

(i) Liens of landlords, carriers, warehousemen, mechanics, repairmen, lessors, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 430(k) of the Internal Revenue Code or by Section 303(k) or 4068 of ERISA), in each case incurred in the ordinary course of business overdue for a period of more than forty-five (45) days or, if more than forty-five (45) days overdue, are unfiled and no other action has been taken to enforce such Lien or that are

being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(j) Liens for Taxes not yet due or to the extent the Borrower and the Subsidiaries are in compliance with Section 5.3 with respect thereto;

(k) deposits and other Liens to secure the performance of (i) tenders, bids, trade contracts, governmental contracts, trade contracts, performance and return-of-money bonds and other similar contracts (other than obligations for the payment of Indebtedness for borrowed money) and (ii) leases, subleases, statutory obligations, surety, stay, judgment and appeal bonds, performance bonds and other obligations of a like nature, in each case incurred in the ordinary course of business;

(l) Liens incurred by the Borrower or any Subsidiary in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security;

(m) Liens created in the ordinary course of business on deposits to secure liability for premiums to insurance carriers or securing insurance premium financing arrangements;

(n) (i) Liens that are contractual or common law rights of set-off or rights of pledge relating to (A) the establishment of depository relations in the ordinary course of business with banks or other deposit-taking financial institutions not given in connection with the incurrence of Indebtedness or (B) pooled deposit or sweep accounts of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and the Subsidiaries, or (C) purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business or consistent with past practice and (ii) Liens securing cash management obligations (that do not constitute Indebtedness) and obligations in respect of Bank Products incurred in the ordinary course of business;

(o) Liens (i) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on the items in the course of collection, (ii) encumbering reasonable customary initial deposits and margin deposits, (iii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business or consistent with past practice and not for speculative purposes and (iv) in favor of a banking or other financial institution arising as a matter of law encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry;

(p) possessory Liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the Closing Date and in connection with Investments not otherwise prohibited by this Agreement; *provided* that such Liens (i) attach only to such Investments and (ii) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing or otherwise;

(q) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions, and other similar charges, encumbrances and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of the Borrower or any Subsidiary;

(r) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(s) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(t) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business or consistent with past practice (or other agreement under which the Borrower or any Subsidiary has granted rights to end users to access and use the Borrower's or any Subsidiary's products,

technologies, facilities or services) which do not (x) interfere in any material respect with the business of the Borrower and the Subsidiaries, taken as a whole, or (y) secure any Indebtedness;

(u) non-exclusive outbound licenses or sub-licenses of Intellectual Property rights granted by the Borrower or any Subsidiary in the ordinary course of business;

(v) Liens arising in connection with conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Borrower or any Subsidiary in the ordinary course of business permitted by this Agreement, purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business;

(w) purported Liens (i) evidenced by the filing of precautionary financing statements relating solely to operating leases of personal property entered into in the ordinary course of business or (ii) arising from equipment or other materials which are not owned by the Borrower or any Guarantor Subsidiary located on the premises of the Borrower or a Guarantor Subsidiary (but not in connection with, or as part of, the financing thereof) from time to time in the ordinary course of business and consistent with current practices of the Borrower and the Guarantor Subsidiaries and precautionary financing statement filings in respect thereof;

(x) Liens on cash or Cash Equivalents used to defease or to satisfy and discharge Indebtedness; *provided* that such defeasance or satisfaction and discharge is not prohibited hereunder;

(y) trustees' Liens granted pursuant to any indenture governing any Indebtedness not otherwise prohibited by this Agreement in favor of the trustee under such indenture and securing only obligations to pay compensation to such trustee, to reimburse such trustee of its expenses and to indemnify such trustee under the terms of such indenture;

(z) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods and Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit permitted under Section 6.1 issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(aa) Liens on Capital Stock in Joint Ventures securing obligations of such Joint Venture;

(bb) judgment Liens not constituting an Event of Default under Section 8.1(h);

(cc) Liens securing letters of credit or cash collateralization (which includes Liens over both the applicable cash or Cash Equivalents and the accounts into which the same are deposited) of letters of credit, in each case issued for the account of the Borrower or any Subsidiary in the ordinary course of business;

(dd) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(ee) Liens securing Indebtedness and/or other obligations of, or on assets of, Subsidiaries that are not Credit Parties, to the extent such Indebtedness was permitted to be incurred under Section 6.1;

(ff) Liens securing obligations, including Indebtedness, in an aggregate amount not to exceed, on the date such Liens are granted**: (A) other than during the Covenant Adjustment Period**, the greater of**:** (1) $16,000,000 and (2) an amount equal to 16% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination, and Permitted Refinancings thereof; **and (B) during the Covenant Adjustment Period, $5,000,000, and Permitted Refinancings thereof;**

(gg) Liens on assets of CartiHeal or any of its Subsidiaries securing Indebtedness permitted pursuant to Section 6.1(bb) and Permitted Refinancings thereof; *provided* that such (i) Liens were existing at the time of such acquisition and (ii) do not extend to property not subject to such Liens at the time of such acquisition; and

(hh) ~~**Liens on the Capital Stock and other assets (including intellectual property) of CartiHeal in favor of the Securityholders (as defined in the CartiHeal Equity Purchase Agreement) to secure Indebtedness in respect of the CartiHeal Milestone Payments.**~~**[reserved].**

For purposes of determining compliance with this Section 6.2:

(1) the increase in the amount of any obligation secured by a Lien by virtue of (i) the accretion or amortization of original issue discount, (ii) the payment of interest, fees and other amounts in the form of Indebtedness, and (iii) as a result of fluctuations in the exchange rate of currencies, in each case will not be deemed to be an incurrence or existence of additional Liens;

(2) if any Liens securing obligations are incurred to refinance Liens securing obligations initially incurred in reliance on a clause of this Section 6.2 measured by a Cap, and such refinancing would cause such Cap to be exceeded, then such clause will be deemed not to be exceeded to the extent that the aggregate principal amount of the new obligations incurred to replace such existing obligations does not exceed the Maximum Refinancing Amount; and

(3) in the event that any Lien (or any portion thereof) meets the criteria of more than one of the clauses of this Section 6.2, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Lien (or any portion thereof) in any manner that complies with this covenant; *provided* that (x) all Liens created pursuant to the Credit Documents will be deemed on the Closing Date to have been incurred in reliance on the exception in clauses (a) or (f)(i) above and shall not be permitted to be reclassified pursuant to this paragraph, (y) Liens may be reclassified pursuant to this paragraph to clause (f) or (ff) above or otherwise in a manner that would reclassify such Liens as having been incurred in reliance on any calculation of the First Lien Net Leverage Ratio, Secured Net Leverage Ratio or Total Net Leverage Ratio tests described above (and, for the avoidance of doubt, if the Borrower or any Subsidiary incurs Liens using a ratio-based test on the same date that it incurs Liens under any Dollar-based Cap (or substantially concurrently with the incurrence of Liens under any Dollar-based Cap), then the ratio-based test will be calculated with respect to such incurrence under the ratio-based test without regard to any incurrence of Liens under the Dollar-based Cap) and (z) the reclassification described in the preceding clause (y) shall be deemed to have automatically occurred if the applicable First Lien Net Leverage Ratio, Secured Net Leverage Ratio or Total Net Leverage Ratio test is satisfied on a Pro Forma Basis as of the end of any Fiscal Quarter after the incurrence of the relevant amount.

6.3 No Further Negative Pledges. The Borrower will not, nor will it permit any Subsidiary to, enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, to secure the Obligations other than:

(a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale or other disposition described in the definition of "Asset Sale";

(b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements, asset sale agreements, stock sale agreements and similar agreements entered into to the extent permitted hereunder; *provided* that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses, joint venture agreements, asset sale agreements, stock sale agreements or similar agreements, as the case may be;

(c) [reserved];

(d) restrictions set forth in any document governing Incremental Equivalent Debt, Permitted Ratio Debt, Extended Term Loans and Credit Agreement Refinancing Indebtedness, in each case, so long as such restrictions do not restrict or otherwise impair the rights of the Agents, the Lenders or any other Secured Party under this Agreement or any other Credit Document or any refinancing thereof;

(e) restrictions under any subordination or intercreditor agreement reasonably acceptable to the Administrative Agent with respect to Indebtedness permitted under Section 6.1;

(f) restrictions on non-Guarantor Subsidiaries pursuant to Indebtedness permitted under Section 6.1;

(g) restrictions on Persons or property at the time such Person or property is acquired (including under Indebtedness permitted to be incurred pursuant to Section 6.1(k)); *provided* such restrictions were existing at the time of such acquisition and were not created in anticipation or contemplation thereof and are limited to the Person or property so acquired;

(h) restrictions on assets financed or acquired pursuant to Section 6.1(d) (to the extent such restrictions were not created in contemplation of such acquisition of assets and do not extend to any assets other than such assets so acquired except to the extent permitted by Section 6.1(d));

(i) restrictions that exist on the Second Amendment Effective Date and (to the extent not otherwise permitted by this Section 6.3) are listed on Schedule 6.3 hereto and to the extent such restrictions are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such restrictions;

(j) apply by reason of any applicable Law, rule, regulation or order or are required by any Governmental Authority having jurisdiction over the Borrower or any Subsidiary;

(k) restrictions arise in connection with cash or other deposits permitted under Section 6.2;

(l) restrictions imposed by any agreement governing Indebtedness entered into after the Closing Date and permitted under Section 6.1 that are, taken as a whole, in the good faith judgment of the Borrower, not materially more restrictive with respect to the Borrower or any Subsidiary than customary market terms for Indebtedness of such type (and, in the case of any term indebtedness, are no more restrictive than the restrictions contained in this Agreement), so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required or to provide security hereunder; and

(m) other restrictions or encumbrances imposed by any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of the contracts, instruments or obligations referred to in the preceding clauses of this Section; provided that no such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith determination of the Borrower, materially more restrictive with respect to such encumbrances and other restrictions, taken as a whole, than those in effect prior to the relevant amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

6.4 Restricted Junior Payments. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, pay or make any Restricted Junior Payment except:

(a) (i) payments to any member, partner or Parent of the Borrower or Affiliate thereof constituting Tax Payments and payments as are needed to pay any amounts owed under any customary tax sharing agreement or customary tax receivable agreement entered into in connection with a Permitted Tax Reorganization or a Permitted IPO Reorganization; and (ii) payments to any Parent of the Borrower or Affiliate thereof (A) to the extent necessary to permit such Parent or Affiliate to pay operating costs and expenses (including, following the consummation of a Qualifying IPO, Public Company Costs) of

such Parent that does not own any Subsidiaries other than the Borrower, any Subsidiary and any other Parent of the Borrower incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), in each case which are reasonable and customary and incurred in the ordinary course of business, attributable to the ownership or operations of the Borrower and the Subsidiaries, (B) the proceeds of which shall be used to pay costs, fees and expenses (other than to Affiliates) related to any successful or unsuccessful equity or debt offering permitted by this Agreement, (C) the proceeds of which shall be used to pay customary salary, bonus and other benefits payable to officers and employees of such Parent to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and its Subsidiaries, or (D) the proceeds of which shall be used to pay franchise taxes and other fees, Taxes and expenses required to maintain any of such Parent's or Affiliate's corporate or legal existence; *provided* that (x) the aggregate payments pursuant to clause (a)(i) in respect of any taxable year shall not exceed the amount of Tax Payments that would have been payable as Tax Payments in respect of such taxable year had such Permitted Reorganization or a Permitted IPO Reorganization not occurred, and (y) the aggregate payments pursuant to clause (a)(ii) in any Fiscal Year shall not exceed the greater of (1) $6,000,000 and (2) an amount equal to 6% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination;

(b) payments of (or payments to any Parent of the Borrower to allow such Parent to pay) (i) indemnity and documented reimbursable expenses payable pursuant to any venture capital operating company management letters or in connection with board observer rights related to debt or equity financings the proceeds of which are contributed (whether in cash or other property or assets) to the Borrower and the Subsidiaries and (ii) reasonable director fees and reasonable out-of-pocket expenses of directors payable by such Parent thereof; *provided* that the aggregate payments pursuant to this clause (b) in any Fiscal Year shall not exceed the greater of (1) $4,000,000 and (2) an amount equal to 4% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination;

(c) (i) so long as no Event of Default has occurred and is continuing or would be caused thereby **and other than during the Covenant Adjustment Period**, the redemption or repurchase of (or payments to any Parent of the Borrower to enable such Parent to redeem or repurchase) Capital Stock from officers, directors, employees, advisors or consultants or their respective estates, trusts, family members or former spouses of any Credit Party or any of its Subsidiaries (or their Affiliates), upon termination of employment, in connection with the exercise of stock options, stock appreciation rights or other equity incentives or equity based incentives or in connection with the death or disability of such officers, directors, employees, advisors or consultants (or Affiliate), (ii) so long as no Event of Default has occurred and is continuing or would be caused thereby, payments by the Borrower or any Subsidiary (or payments to any Parent of the Borrower to enable such Parent) to pay amounts due to officers, directors, employees, advisors or consultants or their respective estates, trusts, family members or former spouses of any Credit Party or any of its Subsidiaries (or their Affiliates) pursuant to the Borrower's profit interest plans or phantom profit interest plans; *provided* that in all such cases under clauses (i) and (ii) of this clause (c), the aggregate amount of such payments in respect of all such Capital Stock so redeemed or repurchased or amounts due (x) prior to a Qualifying IPO does not exceed $2,000,000 (with unused amounts in any Fiscal Year rolled over to the next two following Fiscal Years) and (y) after a Qualifying IPO does not exceed the greater of (1) $3,000,000 and (2) an amount equal to 3% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination (with unused amounts in an Fiscal Year rolled over to the next two following Fiscal Years), *plus* (A) an amount not to exceed the cash proceeds of key man life insurance policies received by the Borrower or any Subsidiary after the Closing Date, (B) the amount of net cash proceeds from the sale of Capital Stock of any Parent of the Borrower contributed to the Borrower (other than Disqualified Capital Stock) to officers, directors, employees, advisors or consultants, to the extent not otherwise used under this Agreement or applied to the Available Amount and (C) and the amount of any cash bonuses or other compensation otherwise payable to any future, present or former director, employee, consultant or distributor of Borrower, Subsidiary, any Parent of the Borrower that are foregone in return for the receipt of Capital Stock of any Parent of the Borrower; (iii) the cancellation of Indebtedness owing to a Credit Party from officers, directors, employees, advisors or consultants of a Credit Party or any of its Subsidiaries in connection with any repurchase of Capital Stock; and (iv) cashless repurchases of Capital Stock deemed to occur upon the exercise of stock options, warrants, settlements or vesting if such stock

represents a portion of the exercise price thereof; *provided* that in all cases under clause (iii) of this clause (c), after giving effect thereto the Borrower and its Subsidiaries shall be in *Pro Forma* compliance with the Financial Covenants set forth in Section 6.7;

(d) payments in the form of Capital Stock of any Parent of the Borrower or in the form of proceeds of Capital Stock of, or contributions by, any Parent of the Borrower (other than Disqualified Capital Stock and to the extent not otherwise used under this Agreement or applied to the Available Amount);

(e) payments to any Parent of the Borrower for payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock;

(f) (i) subject to the terms of any applicable subordination provisions, the Borrower or any Subsidiary may (A) make all regularly scheduled payments of principal, interest, fees and premiums and all payments of indemnities and expenses in respect of any Junior Financing when due, (B) pay customary closing, consent and similar fees related to any Junior Financing, (C) make mandatory prepayments, mandatory redemptions and mandatory purchases, in each case pursuant to the terms governing any Junior Financing as in effect on the date of incurrence or issuance (including in connection with a refinancing thereof) of such Junior Financing, (D) prepay Indebtedness (x) of the Borrower or any Subsidiary owed to the Borrower or any Guarantor Subsidiary, (y) of any Non-Credit Party owed to any Non-Credit Party or (z) of the Borrower or any Guarantor Subsidiary to any Non-Credit Party to the extent the amount of such prepayment is treated as an Investment in Non-Credit Parties and may be made in compliance with Section 6.6, (E) prepay or refinance any Junior Financing (including the payment of any premium in connection therewith) with the proceeds of any other Junior Financing otherwise permitted by Section 6.1 (including any Permitted Refinancing thereof and/or with the proceeds of any sale of or contribution to the Capital Stock of the Borrower) and (F) convert any Junior Financing to Capital Stock (other than Disqualified Capital Stock) of the Borrower or any Parent of the Borrower, and (ii) after the fifth anniversary of the incurrence of any such Indebtedness, any payments necessary to prevent any such Indebtedness from being treated as "applicable high yield discount obligations" under Section 163(e)(5) or Section 163(i) of the Internal Revenue Code;

(g) **other than during the Covenant Adjustment Period,** the declaration and payment of any dividend or distribution by any Subsidiary on a ratable basis to its equity holders within sixty (60) days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Agreement;

(h) [reserved];

(i) so long as no Event of Default has occurred and is continuing or would result therefrom **and other than during the Covenant Adjustment Period**, Restricted Junior Payments made from the net cash proceeds received by the Borrower after the Closing Date pursuant to contributions by third parties to its common equity capital or issuances of its Capital Stock (other than Disqualified Capital Stock) or of any Parent thereof (other than Specified Equity Contributions or to the extent used under this Agreement or applied to the Available Amount) that are used substantially contemporaneously to make such Restricted Junior Payment;

(j) so long as no Event of Default has occurred and is continuing at the time of declaration thereof **and other than during the Covenant Adjustment Period**, the declaration and payment of dividends on the Borrower's common stock, or common stock of any Parent of the Borrower, following the first public offering of the Borrower's common stock or the common stock of any Parent of the Borrower after the Closing Date in an amount not to exceed per annum 6% of the net cash proceeds received by or contributed to the Borrower in or from any public offering;

(k) payments required to be made to former employees of the Borrower or any of its Subsidiaries pursuant to profit interest plans or phantom profit interest plans (in each case, as such plans are in effect on the Second Amendment Effective Date) and taxes associated therewith, in an aggregate principal amount pursuant to this clause (k) not to exceed $11,000,000;

(l) **other than during the Covenant Adjustment Period,** Restricted Junior Payments in an aggregate amount not to exceed the Available Amount as in effect immediately before such Restricted Junior Payment; *provided* that (i) no Event of Default has occurred and is continuing or would result therefrom; (ii) the Total Net Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period, is less than or equal to 2.50:1.00; *provided* that the foregoing clause (ii) will not apply if the Restricted Junior Payments are being made exclusively in reliance on clauses (a)(iii) and/or (a)(iv) of the definition of "Available Amount" and (iii) substantially concurrently with the making of such Restricted Junior Payment, the Borrower shall provide the Administrative Agent a reasonably detailed calculation of the Available Amount prior to and after giving effect to such Restricted Junior Payment;

(m) **other than during the Covenant Adjustment Period,** Restricted Equity Payments and Restricted Debt Payments, so long as (i) no Event of Default has occurred and is continuing at such time or would result after giving effect to such Restricted Equity Payment or Restricted Debt Payment and (ii) the Total Net Leverage Ratio (calculated on a Pro Forma Basis to account for the making of such Restricted Equity Payment or Restricted Debt Payment and the use of proceeds thereof) for the Test Period immediately preceding the incurrence of such Restricted Equity Payment or Restricted Debt Payment is less than or equal to (x) prior to a Qualifying IPO, 1.50:1.00 or (y) after a Qualifying IPO, 2.00:1.00;

(n) additional Restricted Junior Payments in an aggregate amount, together with any Investments made pursuant to Section 6.6(z), not to exceed**: (A) other than during the Covenant Adjustment Period,** the greater of $19,000,000 and 19% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination; and **(B) during the Covenant Adjustment Period, $0;**

~~**(o) Restricted Debt Payments in the form of CartiHeal Milestone Payments, so long as at the time of making of each such Restricted Debt Payment, (i) the amount of such Restricted Debt Payment shall not exceed the amount of the applicable CartiHeal Milestone Payment due at such time, (ii) no Event of Default has occurred and is continuing at such time or would result after giving effect to such Restricted Debt Payment and (iii) after giving effect thereto, the incurrence of any Indebtedness in connection therewith and the use of proceeds thereof, the Borrower and its Subsidiaries shall be in Pro Forma compliance with the Financial Covenants set forth in Section 6.7.~~

(o) [reserved].

The amount set forth in Section 6.4(n) (without duplication) may, in lieu of Restricted Junior Payments, be utilized by the Borrower or any Subsidiary to make or hold any Investments without regards to Section 6.6.

The amount of any Restricted Junior Payment at any time shall be the amount of cash and the fair market value of other property used to make the Restricted Junior Payment at the time such Restricted Junior Payment is made. In the event that any Restricted Junior Payment (or any portion thereof) meets the criteria of more than one of the clauses of this Section 6.4, the Borrower may, in its sole discretion, at the time of the making of such Restricted Junior Payment, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Restricted Junior Payment (or any portion thereof) in any manner that complies with this covenant; *provided* that (x) Restricted Junior Payments may be reclassified pursuant to this paragraph to clause (m) above or otherwise in a manner that would reclassify such Restricted Junior Payments as having been incurred in reliance on any calculation of the Total Net Leverage Ratio test described above (and, for the avoidance of doubt, if the Borrower or any Subsidiary makes any Restricted Junior Payment using a ratio-based test on the same date that it makes any Restricted Junior Payment under any Dollar-based Cap (or substantially concurrently with the making of Restricted Junior Payments under any Dollar-based Cap), then the ratio-based test will be calculated with respect to such incurrence under the ratio-based test without regard to any making of Restricted Junior Payments under the Dollar-based Cap) and (y) the reclassification described in the preceding clause (x) shall be deemed to have automatically occurred if the Total Net Leverage Ratio test described in clause

(m) above is satisfied on a Pro Forma Basis as of the end of any Fiscal Quarter after the making of the relevant Restricted Junior Payment.

6.5 Restrictions on Subsidiary Distributions. Except as provided herein, the Borrower will not, nor will it permit any Subsidiary to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary to (i) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by the Borrower or any other Subsidiary; (ii) repay or prepay any Indebtedness owed by such Subsidiary to the Borrower or any other Subsidiary; (iii) make loans or advances to the Borrower or any other Subsidiary; or (iv) transfer any of its property or assets to the Borrower or any other Subsidiary, in each case, other than restrictions:

(a) in agreements evidencing Indebtedness permitted in accordance with Section 6.1(a), (c), (d) (that impose restrictions on the property so acquired, constructed, leased or improved), (g), (h), (i), (j), (k) (limited to such acquired Person or asset) and (y);

(b) in agreements evidencing Permitted Refinancing of Indebtedness permitted in accordance with Section 6.1(w) or other Indebtedness issued or incurred (including by means of the extension or renewal of existing Indebtedness) to refinance, refund, extend, defease, discharge, renew or replace other Indebtedness; *provided* that the encumbrances, restrictions and conditions under any such refinancing are not materially more restrictive, taken as a whole, than those contained in the documentation governing the Indebtedness being refinanced (as determined by the Borrower in good faith);

(c) by reason of customary provisions restricting assignments, subletting, or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business;

(d) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement;

(e) apply by reason of any applicable Law, rule, regulation or order or are required by any Governmental Authority having jurisdiction over the Borrower or any Subsidiary;

(f) restrictions on Subsidiaries that are not Credit Parties pursuant to Indebtedness permitted under Section 6.1 and pursuant to restrictions in agreements related to Investments and acquisitions permitted by Section 6.6;

(g) restrictions on Persons or property at the time such Person or property is acquired; *provided* such restrictions were existing at the time of such acquisition and were not created in anticipation or contemplation thereof;

(h) under licensing, sub-licensing, leasing or sub-leasing agreements entered into by the Borrower or any Subsidiary, in each case entered into in the ordinary course of business and provisions restricting assignment of any agreement entered into by a Subsidiary in the ordinary course of business;

(i) restrictions that exist on the Closing Date;

(j) restrictions imposed by any agreement governing Indebtedness entered into after the Closing Date and permitted under Section 6.1 that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Subsidiary than customary market terms for Indebtedness of such type (and, in any event, are no more restrictive than the restrictions contained in this Agreement), so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required hereunder;

(k) negative pledges that are permitted pursuant to Section 6.3;

(l) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(m) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business and restrictions that arise in connection with cash or other deposits permitted hereunder; and

(n) other restrictions or encumbrances imposed by any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of the contracts, instruments or obligations referred to in the preceding clauses of this Section; provided that no such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith determination of the Borrower, materially more restrictive with respect to such encumbrances and other restrictions, taken as a whole, than those in effect prior to the relevant amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

6.6 Investments. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, except:

(a) cash and Cash Equivalents; *provided* that any Investment which when made complies with the requirements of the definition of "Cash Equivalents" may continue to be held notwithstanding that such Investment if made thereafter would not comply with such requirements;

(b) Investments by (i) the Borrower in any Subsidiary and (ii) any Subsidiary in the Borrower or any other Subsidiary; *provided* that to the extent any Investment is made by Credit Parties in Non-Credit Parties, the aggregate amount of TTM Consolidated Adjusted EBITDA attributable to all such Investments made after the Closing Date (and, for the avoidance of doubt, excluding all Non-Credit Parties existing as of the Closing Date and Investments therein) after giving effect to the Transactions and in reliance on this Section 6.6(b) shall not exceed, together with the aggregate amount attributable to any Investments made in reliance on the proviso to Section 6.6(f) and clause (d) of the definition of "Permitted Acquisition", **(x) other than during the Covenant Adjustment Period,** the greater of $5,000,000 and 5% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination**, and (y) during the Covenant Adjustment Period, $10,000,000**;

(c) accounts receivable arising and trade credit granted in the ordinary course of business or consistent with past practice;

(d) Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors or pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such account debtors;

(e) deposits, prepayments and other credits to suppliers made in the ordinary course of business;

(f) capital expenditures in respect of the Borrower or any Subsidiary in accordance with GAAP (other than any expenditure that involves the acquisition, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Capital Stock of, or a business line or unit or a division of, any Person); *provided* that to the extent any capital expenditure is made in respect of Non-Credit Parties, the aggregate amount of TTM Consolidated Adjusted EBITDA attributable to all such capital expenditures made after the Closing Date (and, for the avoidance of doubt, excluding all Non-Credit Parties existing as of the Closing Date and Investments therein) after giving effect to the Transactions and in reliance on this Section 6.6(f) shall not exceed, together with the aggregate amount of Investments made in reliance on the proviso to Section 6.6(b) and clause (d) of the definition of "Permitted Acquisition", **(x) other than during the Covenant Adjustment Period,** the greater of $5,000,000 and 5% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination**, and (y) during the Covenant Adjustment Period, $10,000,000**;

(g) (i) advances, loans or extensions of credit by the Borrower or any Subsidiary in compliance with applicable laws to officers, directors, and employees of the Borrower or any Subsidiary for reasonable and customary travel, entertainment or relocation, out-of-pocket or other business-related expenses in an aggregate amount outstanding at any date of determination not to exceed the greater of (1) $4,000,000 and (2) 4% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination, (ii) Investments made pursuant to a "rabbi trust" or similar employee benefit plan or arrangement designed to defer the taxability of compensation to an employee, officer or director of purchase payments made in connection with an acquisitions (so long as the direct payment of such compensation would not otherwise be prohibited hereunder), (iii) loans by the Borrower or any Subsidiary in compliance with applicable laws to officers, directors, and employees of the Borrower or any Subsidiary the proceeds of which are used to pay taxes owed in connection with the vesting of Capital Stock of the Borrower or any Subsidiary and (iv) advances, loans or extensions of credit by the Borrower or any Subsidiary to officers, directors, and employees of the Borrower or any Subsidiary for any other purpose not to exceed the greater of (1) $4,000,000 and (2) 4% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination;

(h) **other than during the Covenant Adjustment Period,** cash and non-cash loans to officers, directors, and employees of the Borrower or any Subsidiary, the proceeds of which will be used to purchase Capital Stock of any Parent of the Borrower, if the proceeds of loans are contributed to the Borrower;

(i) advances of payroll payments to employees in the ordinary course of business;

(j) **other than during the Covenant Adjustment Period,** Permitted Acquisitions;

(k) Investments described on Schedule 6.6 in existence on the Third Amendment Effective Date and any modification, replacement, renewal, reinvestment or extension of any of such Investments; *provided* that the amount of any Investment permitted pursuant to this Section 6.6(k) is not increased from the amount of such Investment on the Third Amendment Effective Date except pursuant to the terms of such Investment as of the Third Amendment Effective Date or as otherwise permitted by another clause of this Section 6.6;

(l) **other than during the Covenant Adjustment Period,** Investments in an aggregate amount not to exceed the Available Amount as in effect immediately before such Investment; *provided* that substantially concurrently with the making of such Investment, the Borrower shall provide the Administrative Agent a reasonably detailed calculation of the Available Amount prior to and after giving effect to such Investment;

(m) Investments of any Person that becomes a Subsidiary on or after the Closing Date; *provided* that (i) such Investments exist at the time such Person is acquired and (ii) such Investments are not made in anticipation or contemplation of such Person becoming a Subsidiary;

(n) Indebtedness permitted by Section 6.1 (other than Indebtedness permitted by Section 6.1(f)(ii), 6.1(s) or 6.1(x)(iii));

(o) bank deposits in the ordinary course of business;

(p) Investments made as a result of the receipt of non-cash consideration from a disposition made in compliance with Section 6.8;

(q) **other than during the Covenant Adjustment Period,** any Investments pursuant to (i) any Permitted Reorganization and (ii) any Permitted IPO Reorganization in an amount not to exceed, at any time outstanding for clauses (i) and (ii) in the aggregate at any date of determination, $1,000,000;

(r) (i) Investments by the Borrower or any Subsidiary made from the net cash proceeds received by the Borrower after the Closing Date pursuant to contributions to the common equity capital of the Borrower (other than Specified Equity Contributions) or issuances of its Capital Stock (other than Disqualified Capital Stock) or of any Parent thereof and (ii) Investments made by the Borrower or any

Subsidiary in exchange for Capital Stock (other than Disqualified Capital Stock) of the Borrower or any Parent thereof, in each case to the extent not otherwise used under this Agreement or applied to the Available Amount;

(s) Guarantees by (i) the Borrower of obligations of any Subsidiary and (ii) any Subsidiary of obligations of the Borrower or any other Subsidiary, in each case which obligations do not constitute Indebtedness;

(t) Investments in Rate Contracts entered into for non-speculative purposes;

(u) Investments made to effect the Transactions;

(v) Investments (including debt obligations and Capital Stock) (i) received in connection with the bankruptcy, workout, recapitalization or reorganization of, or in settlement of delinquent obligations of, or other disputes with, the issuer of such Investment or an Affiliate thereof, (ii) received in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured Investment, (iii) received in satisfaction of judgments against any other Person and (iv) as a result of the settlement, compromise or resolutions of litigation, arbitration or other disputes of the Borrower or any Subsidiary with Persons who are not Affiliates;

(w) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(x) to the extent constituting Investments, purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case in the ordinary course of business;

(y) **other than during the Covenant Adjustment Period,** Investments, so long as (i) no Event of Default has occurred and is continuing at such time or would result after giving effect to such Investment and (ii) the Total Net Leverage Ratio (calculated on a Pro Forma Basis after giving effect to such Investment and the use of proceeds thereof) for the Test Period immediately preceding the making of such Investment is less than or equal to (x) prior to a Qualifying IPO, 1.75:1:00 or (y) after a Qualifying IPO, 2.50:1.00;

(z) Investments that do not exceed, at any time outstanding, in the aggregate at any date of determination **(A) other than during the Covenant Adjustment Period**, together with any Restricted Junior Payments made pursuant to Section 6.4(n), the greater of $19,000,000 and 19% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination **and (B) during the Covenant Adjustment Period, together with any Restricted Junior Payments made pursuant to Section 6.4(n), $0**;

(aa) Investments in Unrestricted Subsidiaries, Joint Ventures and minority investments in an amount not to exceed, at any time outstanding in the aggregate at any date of determination, the greater of $1,000,000 and 1% of TTM Consolidated Adjusted EBITDA on a Pro-Forma Basis as of the applicable date of determination;

(bb) Investments made pursuant to, or in connection with, each of the Oyster Mergers, the Oyster Reorganization and the Oyster Debt Assumption; and

(cc) (i) the CartiHeal Equity Purchase and (ii) the CartiHeal Reorganization and (iii) any Investments made pursuant to Section 3.09(a)(iv) of the CartiHeal Equity Purchase Agreement.

For purposes of determining compliance with this Section 6.6:

(1) to the extent any Investment in any Person is made in compliance with this Section 6.6 in reliance on a clause above that is subject to a Cap (without duplication of any amounts increasing the Available Amount pursuant to the definition thereof) and, subsequently, such Person returns to the Borrower, any other Credit Party or, to the extent applicable, any Subsidiary all or any portion of such Investment (in the form of a dividend, distribution, liquidation or otherwise but excluding intercompany Indebtedness), such return shall be deemed to be credited to the clause of this Section 6.6 against which the Investment is then charged, but in any event not in an amount that would result in the aggregate dollar amount able to be invested in reliance on such category to exceed such Cap;

(2) for purposes of determining compliance with any Cap on the making of Investments, the Dollar Equivalent amount of the Investment denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Investment was made; and

(3) in the event that any Investment (or any portion thereof) meets the criteria of more than one of the clauses of this Section 6.6, the Borrower may, in its sole discretion, at the time such Investment is made, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Investment (or any portion thereof) in any manner that complies with this covenant; *provided* that (x) Investments may be reclassified pursuant to this paragraph to clause (y) above or otherwise in a manner that would reclassify such Investments as having been incurred in reliance on any calculation of the Total Net Leverage Ratio test described above (and, for the avoidance of doubt, if the Borrower or any Subsidiary makes any Investment using a ratio-based test on the same date that it makes any Investment under any Dollar-based Cap (or substantially concurrently with the making of Investments under any Dollar-based Cap), then the ratio-based test will be calculated with respect to such incurrence under the ratio-based test without regard to any making of Investments under the Dollar-based Cap) and (y) the reclassification described in the preceding clause (x) shall be deemed to have automatically occurred if the Total Net Leverage Ratio test described in clause (y) above is satisfied on a Pro Forma Basis as of the end of any Fiscal Quarter after the making of the relevant Investment.

6.7 Financial Covenants; Equity Cure.

(a) Financial Covenants.

(i) Total Net Leverage Ratio. ~~**Commencing with the Test Period ending June 30, 2022, the**~~**The** Borrower will not permit the Total Net Leverage Ratio ~~**at the end of any Test Period**~~ (measured on a Pro Forma Basis) to exceed ~~**4.75:1.00; *provided* that (A) such ratio shall decrease to 4.50:1.00 commencing with**~~**: (A) 6.84:1.00 at the end of the Test Period ending March 31, 2023; (B) 6.50:1.00 at the end of the Test Period ending June 30, 2023; (C) 7.26:1.00 at the end of the Test Period ending September 30, 2023; (D) 5.64:1.00 at the end of** the Test Period ending December 31, 2023~~**,**~~**;** (~~**B**~~**E**) ~~**such ratio shall decrease to**~~**5.65:1.00 at the end of the Test Period ending March 31, 2024; (F)** 4.25:1.00 ~~**commencing with**~~**at the end of** the Test Period ending June 30, 2024 ~~**and (C) such ratio shall decrease to 4.00:1.00 commencing with**~~**; (G) 4.25:1.00 at the end of the Test Period ending September 30, 2024; and (H) 4.00:1.00 at the end of** the Test Period ending December 31, 2024 **and at the end of each Test Period occurring thereafter**; *provided* ~~***further***~~ that, beginning on December 31, 2024, the Borrower may, upon written notice to the Administrative Agent, elect to increase such ratio level **at the end of any Test Period** to 4.50:1.00 in connection with the consummation of any Material Permitted Acquisition and, if the Borrower shall have made the foregoing election, such increase shall continue to be in effect ~~**for the quarter-end test date**~~**at the end of the Test Period** in which such Material Permitted Acquisition occurs as well as for the next three Test Periods; *provided* ***further*** that there shall be at least two full Fiscal Quarters following the cessation of each such increase during which no such increase shall then be in effect.

(ii) Interest Coverage Ratio. ~~**Commencing with the Test Period ending June 30, 2022, the**~~**The** Borrower will not permit the Interest Coverage Ratio ~~**for any Test Period**~~ (measured on a Pro Forma Basis) to be less than**: (A)** 2.25:1.00~~**; *provided* that such ratio shall increase to 3.00:1.00 commencing with**~~ **at the end of the Test Period ending March 31, 2023; (B) 2.21:1.00 at the end of the Test Period ending June 30, 2023; (C) 1.70:1.00 at the end of the Test Period ending September 30, 2023; (D) 1.98:1.00 at the end of the Test Period**

ending December 31, 2023; (E) 2.25:1.00 at the end of the Test Period ending March 31, 2024; (F) 2.25:1.00 at the end of the Test Period ending June 30, 2024; (G) 2.25:1.00 at the end of the Test Period ending September 30, 2024; and (H) 3.00:1.00 at the end of the Test Period ending December 31, 2024 **and at the end of each Test Period occurring thereafter**.

(b) Equity Cure. In the event the Borrower fails to comply with the Financial Covenants as of any Test Date, any cash equity contribution (or qualified preferred equity or other equity on terms reasonably satisfactory to the Administrative Agent) in the Borrower after the beginning of the applicable Fiscal Quarter ending on such Test Date and on or prior to the day that is ten (10) Business Days after the day on which financial statements are required to be delivered for the Fiscal Quarter ended on such Test Date will, at the irrevocable election of the Borrower, be included in the calculation of Consolidated Adjusted EBITDA solely for the purposes of determining compliance with the Financial Covenants as of such Test Date and as of any subsequent Test Date that includes such Fiscal Quarter for purposes of determining compliance with the Financial Covenants (any such equity contribution so included in the calculation of Consolidated Adjusted EBITDA, a "**Specified Equity Contribution**"); *provided* that (i) no more than two Specified Equity Contributions may be made in any four consecutive Fiscal Quarter period and only three Specified Equity Contributions may be made during the term of this Agreement, (ii) the amount of any Specified Equity Contribution will be no greater than the amount required to cause the Borrower to be in compliance with the Financial Covenants, (iii) all Specified Equity Contributions will be disregarded for all other purposes, including the calculation of Consolidated Adjusted EBITDA ~~**for all purposes**~~, other than the compliance with the Financial Covenants for such applicable Test Period and subsequent Test Periods that include the Fiscal Quarter ending on the applicable Test Date, and including calculating basket levels and other items governed by reference to Consolidated Adjusted EBITDA, (iv) with respect to the Fiscal Quarter for which it is contributed to cure a breach of the Financial Covenants, any Specified Equity Contribution shall not reduce the outstanding Indebtedness of the Borrower for such Fiscal Quarter (it being understood and agreed that such limitation shall not apply in subsequent Fiscal Quarters if actually applied to repay Term Loans) and (v) the Borrower shall not, unless otherwise agreed by the Required Lenders under the Revolving Credit Facility, be permitted to incur Revolving Loans or request the issuance of Letters of Credit during the ten Business Day period referred to above unless and until the Borrower has received the proceeds of such Specified Equity Contribution.

6.8 Fundamental Changes; Disposition of Assets. The Borrower will not, nor will it permit any Subsidiary to, (i) enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), (ii) convey, sell, lease, exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired or leased or (iii) sell, assign, pledge or otherwise dispose of any Capital Stock of any of its Subsidiaries, except:

(a) any Parent or Subsidiary may merge or consolidate with the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that (x) the Borrower shall be the continuing or surviving Person, (y) such merger or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia and (z) in the case of a merger or consolidation of any Parent of the Borrower with and into the Borrower, (1) such Parent shall not be an obligor in respect of any Indebtedness that is not permitted to be Indebtedness of the Borrower under this Agreement and (2) such Parent shall have no direct Subsidiaries at the time of such merger or consolidation other than the Borrower;

(b) (i) any Subsidiary that is not a Credit Party may merge or consolidate with or into any other Subsidiary that is not a Credit Party, (ii) any Subsidiary may merge or consolidate with or into any other Subsidiary that is a Credit Party, (iii) any merger the sole purpose of which is to reincorporate or reorganize a Credit Party in another jurisdiction in the United States shall be permitted and (iv) any Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and its Subsidiaries and is not materially disadvantageous to the Lenders, *provided*, in the case of clauses (ii) through (iv), that (A) no Change of Control shall result therefrom and (B) the surviving Person (or, with respect to clause (iv), the Person who receives the assets of such dissolving or liquidated Subsidiary that is a Guarantor) shall be a Credit Party;

(c) any Subsidiary may dispose of all or substantially all of its assets to the Borrower or any other Subsidiary; *provided* that a Guarantor Subsidiary may not dispose of all or substantially all of its assets to a Non-Credit Party unless treated as an Investment that is permitted by Section 6.6.

(d) conveyances, sales, leases, exchanges, transfers or other dispositions that do not constitute Asset Sales;

(e) Asset Sales; *provided* that (i) the consideration received for such assets is in an amount at least equal to the fair market value thereof (determined in good faith by the Borrower), (ii) no less than 75% of which will paid in cash, and (iii) the Net Cash Proceeds thereof are applied as required by Section 2.14(a); *provided further*, that for the purposes of clause (ii), (A) any liabilities (as shown on the Borrower's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower that are assumed by the transferee with respect to the applicable Asset Sale and for which the Borrower and all of the Subsidiaries shall have been validly released by all applicable creditors in writing and (B) any Designated Non-Cash Consideration received in respect of such Asset Sale having an aggregate fair market value as reasonably determined by the Borrower in good faith, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (B) that is at that time outstanding, not in excess of the greater of (x) $4,000,000 and (y) an amount equal to 4% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis at the time of the receipt of such Designated Non-Cash Consideration, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash;

(f) the Borrower and the Subsidiaries may lease (as lessee) or license (as licensee) real or personal property, in each case in the ordinary course of business, so long as any such lease or license does not create a Finance Lease except to the extent permitted by Section 6.1(d);

(g) any transaction (other than an Asset Sale) in connection with a Permitted Acquisition or other Investment permitted by Section 6.6; *provided* that if the merging or consolidating Subsidiary is a Guarantor Subsidiary, the surviving entity is or becomes a Guarantor Subsidiary;

(h) sales, leases, assignments, conveyances, transfers, licenses, exchanges or dispositions of other assets for aggregate consideration of less than the greater of $10,000,000 and 10% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination in the aggregate during any Fiscal Year so long as the Net Cash Proceeds therefrom are applied pursuant to Section 2.14(a);

(i) dispositions of Investments in Joint Ventures to the extent required by, or pursuant to, customary agreements between the Joint Venture parties set forth in binding agreements between such parties;

(j) **other than during the Covenant Adjustment Period,** dispositions in connection with a Permitted Reorganization or Permitted IPO Reorganization;

(k) any transaction in connection with each of the Oyster Mergers, the Oyster Reorganization and the Oyster Debt Assumption; and

(l) any transaction in connection with the CartiHeal Equity Purchase and the CartiHeal Reorganization.

Notwithstanding anything to the contrary contained in this Section 6.8, it is understood and agreed among the parties to this Agreement that (i) **other than during the Covenant Adjustment Period,** the Borrower or any Subsidiary may effect a Permitted Reorganization or Permitted IPO Reorganization and (ii) the Borrower may change its corporate identity or type of organization (e.g., convert from a limited liability company to a corporation), so long as such change does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia; provided that, with respect to clause (ii), the Borrower will notify the Collateral Agent in accordance with Section 6.1 of the Pledge and Security Agreement.

6.9 Transactions with Affiliates. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Borrower, on terms that are less favorable to the Borrower or such Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such an Affiliate; *provided* that the foregoing restriction will not apply to:

(a) any transaction between or among any of the Credit Parties and/or any of their Subsidiaries to the extent not otherwise prohibited by this Agreement;

(b) indemnity provided to and reasonable and customary fees and expense reimbursement paid to members of the Board of Directors of the Borrower or any Subsidiary in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and/or its Subsidiaries, as applicable;

(c) (i) compensation, benefits and indemnification arrangements (including the payment of bonuses and other deferred compensation) for directors, officers and other employees of the Borrower or any Subsidiary, in each case entered into in the ordinary course of business or approved by the Board of Directors of the Borrower or the applicable Subsidiary, (ii) employment and severance agreements between the Borrower or any Subsidiary and their employees, officers or directors, entered into in the ordinary course of business, (iii) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options, stock ownership plans, including restricted stock plans, stock grants, directed share programs and other equity based plans (including the Borrower's profits interests plans and phantom profits interests plans) and the granting and stockholder rights of registration rights, in each case entered into in the ordinary course of business or approved by the Borrower's Board of Directors; and (iv) payments or loans (or cancellation of loans) to officers, directors and employees that are approved by the Borrower's Board of Directors, subject to the limitations set forth in Section 6.6;

(d) reimbursement of out-of-pocket expenses of the Permitted Holders' tax manager pursuant to the Borrower's Limited Liability Company Agreement not exceeding $1,000,000 in any fiscal year of the Borrower;

(e) transactions described in Schedule 6.9 in existence on the Second Amendment Effective Date;

(f) any purchase by any Parent of the Borrower of Capital Stock (other than Disqualified Capital Stock) of the Borrower, or any contribution by any Parent of the Borrower to the equity capital of the Borrower;

(g) the existence of, or the performance of obligations under the terms of, agreements entered into in connection with a Permitted Acquisition or other Investment permitted by Section 6.6 (including payments of earn-outs, contingent obligations and other similar payments);

(h) Restricted Junior Payments permitted by Section 6.4, Investments permitted by Section 6.6, Indebtedness permitted by Section 6.1 and transactions permitted by Section 6.8 (including Asset Sales and the exceptions thereto);

(i) the entering into or performance of any customary tax sharing agreement or customary tax receivable agreement; *provided* that any payments made thereunder shall comply with Section 6.4;

(j) transactions and activities necessary or advisable to effectuate a Permitted Reorganization or a Permitted IPO Reorganization;

(k) investments by the Sponsor in securities or Indebtedness of the Borrower or any Subsidiary so long as the investment is being offered generally to other investors on the same or more favorable terms;

(l) any transaction or series of related transactions involving consideration valued (as determined in good faith by the Borrower) at less than the greater of (1) $4,000,000 and (2) 4% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination;

(m) any transaction in connection with each of the Oyster Mergers, the Oyster Reorganization and the Oyster Debt Assumption; and

(n) any transaction in connection with the CartiHeal Equity Purchase and the CartiHeal Reorganization.

6.10 Conduct of Business. The Borrower will not, nor will it permit any Subsidiary to, engage in any material business other than the Businesses engaged in by the Borrower and the Subsidiaries on the Second Amendment Effective Date and other reasonably related or ancillary to such Businesses, or reasonable or logical extensions of such Businesses.

~~**6.11 [Reserved]**~~**Minimum Liquidity Covenant**.

(a) Commencing with the calendar month ending March 31, 2023, the Borrower will not permit Liquidity to be less than $10,000,000 as of the end of any calendar month ending prior to the end of the Covenant Adjustment Period.

(b) In the event the Borrower fails to comply with the Minimum Liquidity Covenant as of the end of any calendar month, any cash equity contribution (or qualified preferred equity or other equity on terms reasonably satisfactory to the Administrative Agent) in the Borrower after the end of the applicable calendar month and on or prior to the day that is ten (10) Business Days after the end of such calendar month will, at the irrevocable election of the Borrower, be included in the calculation of Liquidity for the purposes of determining compliance with the Minimum Liquidity Covenant as of the end of such calendar month (any such equity contribution so included in the calculation of Liquidity, a "Liquidity Covenant Equity Contribution"); ***provided*** **that: (i) no more than two Liquidity Covenant Equity Contributions may be made during the Covenant Adjustment Period, and Liquidity Covenant Equity Contributions may not be made with respect to consecutive calendar months; (ii) the amount of any Liquidity Covenant Equity Contribution will be no greater than the amount required to cause the Borrower to be in compliance with the Minimum Liquidity Covenant as of the end of the calendar month most recently ended; (iii) all Liquidity Covenant Equity Contributions will be disregarded for all other purposes, including the calculation of Consolidated Adjusted EBITDA, other than compliance with the Minimum Liquidity Covenant for the applicable calendar month(s); (iv) with respect to the calendar month for which it is contributed to cure a breach of the Minimum Liquidity Covenant, any Liquidity Covenant Equity Contribution shall not reduce the outstanding Indebtedness of the Borrower for such calendar month (it being understood and agreed that such limitation shall not apply in subsequent calendar months if actually applied to repay Term Loans); and (v) the Borrower shall not, unless otherwise agreed by the Required Lenders under the Revolving Credit Facility in their sole discretion, be permitted to incur Revolving Loans or request the issuance of Letters of Credit during the ten Business Day period referred to above unless and until the Borrower has received the proceeds of such Liquidity Covenant Equity Contribution.**

6.12 Certain Amendments or Waivers. The Borrower will not, nor will it permit any Subsidiary to, (a) amend, supplement, waive or otherwise modify any provision of its Organizational Documents in a manner that would be materially adverse to the interests of the Lenders; (b) change or amend the terms of the documentation with regard to any Indebtedness that is Junior Financing (except to the extent such changes or amendments are not prohibited by any applicable intercreditor or subordination provisions applicable to such Junior Financing), in each case in a manner that would be materially adverse to the interests of the Lenders; it being agreed that any amendment, modification, waiver or other change that, in the case of any such Junior Financing, would extend the maturity or reduce the amount of any payment of principal thereof or reduce the rate or extend any date for payment of interest thereon is not materially adverse to the interests of the Lenders or (c) after the Third Amendment Effective Date, amend, supplement, waive or otherwise modify any provision of the CartiHeal Milestone Payments or to add any similar payments under the CartiHeal Equity Purchase Agreement in a manner that would be

materially adverse to the interests of the Lenders; it being agreed that any amendment, modification, waiver or other change that would reduce, or extend the due date of, any payments thereunder required to be made by the Borrower or any of its Subsidiaries is not materially adverse to the interests of the Lenders.

6.13 Fiscal Year. Make any change in fiscal year; *provided*, *however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

SECTION 7. GUARANTY

7.1 Guaranty of the Obligations. Subject to Section 7.16, each Guarantor jointly and severally hereby irrevocably and unconditionally guarantees to the Administrative Agent for the ratable benefit of the Secured Parties the due and punctual payment in full of all Obligations when the same will become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)). Each Guarantor hereby jointly and severally agrees that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Obligations, such Guarantor will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

7.2 Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the "**Contributing Guarantors**"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, and subject to the provisions of Section 7.5, in the event any payment or distribution is made on any date by a Guarantor (a "**Funding Guarantor**") under this Guaranty such that its Aggregate Payments exceed its Fair Share as of such date, such Funding Guarantor will be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the Obligations. "**Fair Share Contribution Amount**" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; *provided* that, solely for purposes of calculating the Fair Share Contribution Amount with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder will not be considered as assets or liabilities of such Contributing Guarantor. "**Aggregate Payments**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 7.2), *minus* (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder will be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 will not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

7.3 Liability of Guarantors Absolute. Each Guarantor acknowledges and agrees that its obligations hereunder are continuing, irrevocable, absolute, independent and unconditional and will not

be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability;

(b) this Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(c) the Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between the Borrower and any Secured Party with respect to whether such Event of Default has occurred and is continuing;

(d) the obligations of each Guarantor hereunder are independent of the obligations of the Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of the Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against the Borrower or any of such other guarantors and whether or not the Borrower is joined in any such action or actions;

(e) payment by any Guarantor of a portion, but not all, of the Obligations will in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Obligations which has not been paid. Without limiting the generality of the foregoing, if the Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Obligations, such judgment will not be deemed to release such Guarantor from its covenant to pay the portion of the Obligations that is not the subject of such suit, and such judgment will not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Obligations;

(f) any Secured Party, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Obligations and take and hold security for the payment hereof or the Obligations; (iv) release, surrender, exchange, sell, substitute, compromise, settle, rescind, waive, alter, renew, extend, amend, subordinate or modify, with or without consideration, any security for payment of the Obligations, any other guaranties of the Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Secured Party in respect hereof or the Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Secured Party may have against any such security, in each case as such Secured Party in its discretion may determine consistent herewith or the applicable Secured Rate Contract or Bank Product Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against the Borrower or any security for the Obligations; (vi) exercise any other rights available to it under the Credit Documents, the Secured Rate Contracts or the Bank Product Agreements; and amend, modify, supplement or terminate, in whole or in part, this Agreement and any other Credit Document as the Administrative Agent (or the Required Lenders or all Lenders, as the case may be) may deem advisable from time to time; and

(g) this Guaranty and the obligations of Guarantors hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Obligations), including the occurrence of any of the following, whether or not any Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of

court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents, the Secured Rate Contracts or the Bank Product Agreements, at law, in equity or otherwise) with respect to the Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Obligations; (ii) any renewal, extension, rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents, any of the Secured Rate Contracts, the Bank Product Agreements or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document, such Secured Rate Contract, such Bank Product Agreements or any agreement relating to such other guaranty or security; (iii) the Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents, any of the Secured Rate Contracts, any Bank Product Agreements or from the proceeds of any security for the Obligations, except to the extent such security also serves as collateral for indebtedness other than the Obligations) to the payment of indebtedness other than the Obligations, even though any Secured Party might have elected to apply such payment to any part or all of the Obligations; (v) any Secured Party's consent to the change, reorganization or termination of the corporate structure or existence of the Borrower or any Subsidiary and to any corresponding restructuring of the Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Obligations; (vii) any defenses, set-offs or counterclaims which the Borrower may allege or assert against any Secured Party in respect of the Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; (viii) the release of any other guarantor pursuant to Section 7.11; and (ix) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Obligations.

7.4 Waivers by Guarantors. To the fullest extent permitted by law, each Guarantor hereby waives, for the benefit of the Secured Parties: (a) any right to require any Secured Party, as a condition of payment or performance by such Guarantor, to (i) proceed against the Borrower, any other guarantor (including any other Guarantor) of the Obligations or any other Person, (ii) proceed against or exhaust any security held from the Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any credit on the books of any Secured Party in favor of the Borrower or any other Person, or (iv) pursue any other remedy in the power of any Secured Party whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any Guarantor from any cause other than payment in full of the Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Secured Party's errors or omissions in the administration of the Obligations, except behavior which amounts to bad faith (e) any defense based upon the validity or invalidity of this Agreement, this Guaranty or any other Credit Document; (f) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Secured Party protect, secure, perfect or insure any security interest or lien or any property subject thereto; (g) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, the Secured Rate Contracts, the Bank Product Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Obligations or any agreement related thereto, notices of any extension of credit to the Borrower and notices of any of the matters referred to in Section 7.3 and any right to consent to any thereof; and (h) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof. Each Guarantor further waives notice of or proof of reliance by any Secured Party upon this Guaranty or acceptance of this Guaranty, and the Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred

in reliance upon this Guaranty, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guaranty.

7.5 Guarantors' Rights of Subrogation, Contribution, etc. Until the Obligations will have been paid in full in cash and the Revolving Credit Commitments will have terminated and all Letters of Credit have been cancelled, or have expired or have been cash collateralized or otherwise backstopped in a manner satisfactory to the applicable Issuing Bank and all amounts drawn thereunder have been reimbursed in full, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against the Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against the Borrower with respect to the Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Secured Party now has or may hereafter have against the Borrower, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Secured Party. In addition, until the Obligations will have been paid in full in cash and the Revolving Credit Commitments will have terminated and all Letters of Credit have been cancelled, or have expired or have been cash collateralized or otherwise backstopped in a manner satisfactory to the applicable Issuing Bank and all amounts drawn thereunder have been reimbursed in full, each Guarantor will withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Obligations, including any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against the Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, will be junior and subordinate to any rights any Secured Party may have against the Borrower, to all right, title and interest any Secured Party may have in any such collateral or security, and to any right any Secured Party may have against such other guarantor. If any amount will be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Obligations will not have been finally and paid in full, such amount will be held in trust for the Administrative Agent on behalf of Secured Parties and will forthwith be paid over to the Administrative Agent for the benefit of Secured Parties to be credited and applied against the Obligations, whether matured or unmatured, in accordance with the terms hereof.

7.6 Subordination of Other Obligations. Any Indebtedness of the Borrower or any Guarantor now or hereafter held by any Guarantor (the "**Obligee Guarantor**") is hereby subordinated in right of payment to the Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing will be held in trust for the Administrative Agent on behalf of Secured Parties and will forthwith be paid over to the Administrative Agent for the benefit of Secured Parties to be credited and applied against the Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

7.7 Continuing Guaranty. This Guaranty is a continuing guaranty and shall apply to all Obligations whenever arising. This Guaranty will remain in effect until all of the Obligations will have been paid in full and the Revolving Credit Commitments will have terminated and all Letters of Credit have been cancelled, or have expired or have been cash collateralized or otherwise backstopped in a manner satisfactory to the Issuing Banks and all amounts drawn thereunder have been reimbursed in full. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Obligations. This Guaranty shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon each Guarantor and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Obligations notwithstanding.

7.8 Authority of Guarantors or Borrower. It is not necessary for any Secured Party to inquire into the capacity or powers of any Guarantor or the Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

7.9 Financial Condition of Borrower. Any Credit Extension may be made to the Borrower or continued from time to time, and any Rate Contracts may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of the Borrower at the time of any such grant or continuation or at the time such Rate Contracts is entered into, as the case may be. No Secured Party will have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of the Borrower. Each Guarantor has adequate means to obtain information from the Borrower on a continuing basis concerning the financial condition of the Borrower and its ability to perform its obligations under the Credit Documents and the Rate Contracts, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and of all circumstances bearing upon the risk of nonpayment of the Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Secured Party to disclose any matter, fact or thing relating to the business, operations or conditions of the Borrower now known or hereafter known by any Secured Party.

7.10 Bankruptcy, etc.

(a) The obligations of the Guarantors hereunder will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Borrower or any other Guarantor or by any defense which the Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Obligations if such case or proceeding had not been commenced) will be included in the Obligations because it is the intention of the Guarantors and Secured Parties that the Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve the Borrower of any portion of such Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay the Administrative Agent, or allow the claim of the Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Obligations are paid by the Borrower or any Guarantor, the obligations of Guarantors hereunder will continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Secured Party as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered will constitute Obligations for all purposes hereunder.

7.11 Discharge of Guaranty upon Sale of Guarantor. If, in compliance with the terms and provisions of the Credit Documents, all of the Capital Stock of any Guarantor or any of its successors in interest hereunder is sold, disposed of or otherwise transferred (such Guarantor, a "**Transferred Guarantor**") to any Person (other than any other Credit Party), such Transferred Guarantor will, upon the consummation of such sale, disposition or other transfer (including by merger or consolidation), automatically be discharged and released, without any further action by any Secured Party or any other Person, effective as of the time of such sale, disposition or other transfer, from its obligations under this Agreement (including under Sections 10.2 and 10.3) and the other Credit Documents, including its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of the sale of all of the Capital Stock of such Transferred Guarantor, the pledge of such Capital Stock to the Collateral Agent pursuant to the Collateral Documents will be released, and the Collateral Agent will take, and the Secured Parties hereby irrevocably authorize the Collateral Agent to take, such

actions as are necessary or desirable to effect each discharge and release described in this Section 7.11 in accordance with the relevant provisions of the Collateral Documents.

7.12 Instrument for Payment of Money. Each Guarantor hereby acknowledges that the guarantee in this Section 7 constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, will have the right to bring a motion-action under New York CPLR Section 3213.

7.13 General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 7.1 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 7.1, then, notwithstanding any other provision to the contrary, the amount of such liability will, without any further action by such Guarantor, any Credit Party or any other person, be automatically limited and reduced to the highest amount (after giving effect to the rights of subrogation and contribution established in Section 7.5) that is valid and enforceable, not void or voidable and not subordinated to the claims of other creditors as determined in such action or proceeding.

7.14 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honor all of its obligations under this Guaranty in respect of Swap Obligations (*provided*, *however*, that each Qualified ECP Guarantor will only be liable under this Section 7.14 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 7.14, or otherwise under this Guaranty, voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 7.14 will remain in full force and effect until the Obligations have been paid in full and the Revolving Credit Commitments will have terminated, and all Loans or other Obligations hereunder which are accrued and payable have been paid or satisfied and all Letters of Credit will have expired (without any pending drawing) or have been cancelled or cash collateralized in accordance with the terms of this Agreement. Each Qualified ECP Guarantor intends that this Section 7.14 constitute, and this Section 7.14 will be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

7.15 Remedies. Each Guarantor hereby jointly and severally agrees that, as between each Guarantor and the Lenders, the obligations of the Borrower under this Agreement, if any, may be declared to be forthwith due and payable as provided in Section 8 hereof (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8) for purposes of this Guaranty, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by each Guarantor for purposes of this Guaranty.

SECTION 8. EVENTS OF DEFAULT

8.1 Events of Default. If any one or more of the following conditions or events occurs:

(a) Failure to Make Payments When Due. Failure by the Borrower to pay (i) when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by mandatory prepayment or otherwise; or (ii) when due any amount payable to the applicable Issuing Bank in reimbursement of any drawing under a Letter of Credit (including any requirement to deposit cash collateral in connection therewith); or (iii) any interest on any Loan or any fee or any other amount due hereunder or under any other Credit Document within five (5) Business Days after the date due; or

(b) Default in Other Agreements.

(i) Failure of the Borrower or any Subsidiary (other than an Immaterial Subsidiary) to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) constituting Indebtedness in excess of the Threshold Amount, in each case beyond the grace period, if any, provided therefor; or

(ii) a breach or default by the Borrower or any Subsidiary (other than an Immaterial Subsidiary) with respect to any other material term of (1) one or more items of Indebtedness constituting Indebtedness in excess of the Threshold Amount or (2) any loan agreement, mortgage, indenture or other agreement relating to Indebtedness in excess of the Threshold Amount, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee or agent on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity;

provided, that (i) Section 8.1(b)(ii) will not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (ii) for the avoidance of doubt, for the purposes of Section 8.1(b)(ii), the occurrence of any termination events or equivalent events (in respect of which no Credit Party is an "Affected Party," as such term is defined in the 1992 or 2002 Master Agreement, as published by the International Swaps and Derivatives Association, as applicable) under Rate Contracts shall not constitute a "breach or default by the Borrower or any Subsidiary (other than an Immaterial Subsidiary)" under Section 8.1(b)(ii) and (iii) such failure is unremedied or is not duly waived or cured prior to any termination of commitments of acceleration hereunder; or

(c) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in Section 5.1(h)(i), 5.2 (as it relates to the Borrower only), 5.15 or Section 6; or

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any Credit Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing pursuant to the terms of or in connection with the Credit Documents was false in any material respect (or, to the extent such representation and warranty contains qualifications as to materiality, it was false in any respect) as of the date made or deemed made; or

(e) Breach of Other Covenants. Any Credit Party defaults in the performance of or compliance with any other term, covenant or provision in this Agreement or in any of the other Credit Documents, other than any such term, covenant or provision referred to in any other provision of this Section 8.1, and such default is not remedied, cured or waived within thirty (30) days after the earlier to occur of the date on which a Responsible Officer has knowledge of such default and the date of receipt by the Borrower of notice from the Administrative Agent of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) A court of competent jurisdiction enters a decree or order for relief in respect of the Borrower or any Subsidiary (other than an Immaterial Subsidiary) in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief is granted under any applicable federal or state law; or (ii) an involuntary case is commenced against the Borrower or any Subsidiary (other than an Immaterial Subsidiary) under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over the Borrower or any Subsidiary (other than an Immaterial Subsidiary), or over all or a substantial part of its property, is entered; or there occurs the involuntary appointment of an interim receiver, trustee or other custodian of the Borrower or any Subsidiary (other than an Immaterial Subsidiary) for all or a substantial part of its property; or a warrant of attachment, execution or similar process is issued against any substantial part of the property of the Borrower or any Subsidiary (other than an Immaterial Subsidiary), and any such event described in this clause (ii) continues for sixty (60) days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc.(i) The Borrower or any Subsidiary (other than an Immaterial Subsidiary) has an order for relief entered with respect to it or commences a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or consents to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or the Borrower or any Subsidiary (other than an Immaterial Subsidiary) makes any assignment for the benefit of creditors; or (ii) the Borrower or any Subsidiary (other than an Immaterial Subsidiary) becomes unable, or fails generally, or admits in writing its inability, to pay its debts as such debts become due; or the Board of Directors of the Borrower or any Subsidiary (other than an Immaterial Subsidiary) (or any committee thereof) adopts any resolution or otherwise authorizes any action to approve any of the actions referred to herein or in Section 8.1(f); or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process (including any settlement of the OIG Matter) involving in any individual case in an amount in excess of the Threshold Amount (other than any judgment, settlement, writ, warrant or similar process involving claims in any way relating to the OIG Matter, including but not limited to, claims or matters arising under the False Claims Act, 31 U.S.C. 3729 and any other Laws, so long as the aggregate amount of such judgments, settlements, writs, warrants or similar processes does not exceed $56,000,000) (to the extent not covered by insurance (as to which a solvent and unaffiliated insurance company has acknowledged coverage) or third-party indemnities (as to which the indemnitor has acknowledged responsibility)) is entered or filed against the Borrower or any Subsidiary (other than an Immaterial Subsidiary) or any of their respective assets and remains undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days (or in any event later than five (5) days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree is entered against the Borrower or any Subsidiary (other than an Immaterial Subsidiary) decreeing the involuntary dissolution or split up of such Credit Party and such order remains undischarged or unstayed for a period in excess of sixty (60) days; or

(j) Employee Benefit Plans. There occurs one or more ERISA Events that individually or in the aggregate results in or could reasonably be expected to result in a Material Adverse Effect; or

(k) Change of Control. A Change of Control occurs; or

(l) Guaranties, Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof:

(i) the Guaranty for any reason, other than the satisfaction in full of all Obligations, ceases to be in full force and effect (other than in accordance with its terms) or is declared to be null and void or any Guarantor repudiates its obligations thereunder;

(ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or is declared null and void, or the Collateral Agent does not have or ceases to have a valid and perfected Lien in any Collateral having a fair market value, individually or in the aggregate, in excess of the Threshold Amount purported to be covered by the Collateral Documents (except to the extent not required to be valid or perfected by the Credit Documents) with the priority required by the relevant Collateral Document, in each case, for any reason other than actions taken by or on behalf of the Collateral Agent or any Secured Party or the failure of the Collateral Agent or any Secured Party to take any action within its control and except as to Collateral consisting of real property to the extent that such losses are covered by a lender's title insurance policy; or

(iii) any Credit Party contests the validity or enforceability of any Credit Document in writing or denies in writing that it has any further liability, including with respect to future advances by the Lenders, under any Credit Document to which it is a party;

THEN, (1) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence of any other Event of Default, upon notice to the Borrower by the Administrative Agent (which notice may be given by the Administrative Agent, but must be given by the Administrative Agent at the request of the Required Lenders):

(i) the applicable Commitments and the obligation of the Issuing Banks to Issue any Letter of Credit will immediately terminate or be reduced (as specified by the Administrative Agent);

(ii) the aggregate principal of all applicable Loans, all accrued and unpaid interest thereon, all fees and all other Obligations under this Agreement and the other Credit Documents, together with an amount equal to 103% of the maximum amount that may at any time be drawn under all Letters of Credit then outstanding (regardless of whether any beneficiary under any such Letter of Credit will have presented, or will be entitled at such time to present, the drafts or other documents or certificates required to draw under such Letters of Credit), will become due and payable immediately, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Credit Party; *provided* that the foregoing will not affect in any way the obligations of the Lenders under Section 2.3(b)(iv) or Section 2.4(e);

(iii) the Borrower will immediately comply with the provisions of Section 2.4(h) with respect to the deposit of cash collateral to secure the existing Letter of Credit Usage and future payment of related fees; and

(iv) the Administrative Agent may, and may cause the Collateral Agent to, exercise any and all of its other rights and remedies under applicable law (including any applicable UCC) or at equity, hereunder and under the other Credit Documents.

Notwithstanding anything herein to the contrary, if a notice of a Specified **Equity Contribution or a Liquidity Covenant** Equity Contribution is delivered before or within the ten (10) Business Day period specified in Section 6.7(b) **or Section 6.11(b), as applicable**, so long as no other Event of Default has occurred and is continuing, the Lenders will not accelerate the Loans and other Obligations or terminate or reduce the Commitments or the obligation of the Issuing Bank to Issue any Letter of Credit or require the Borrower to comply with the provisions of Section 2.4(h) or exercise rights and remedies (including against the Collateral) on the basis of an Event of Default that would be cured by such Specified Equity Contribution **or Liquidity Covenant Equity Contribution, as applicable,** unless and until a breach of the Financial Covenants **or Minimum Liquidity Covenant, as applicable,** is not cured by such Specified Equity Contribution **or Liquidity Covenant Equity Contribution, as applicable,** on or prior to the end of such ten (10) Business Day period.

8.2 Application of Proceeds. Notwithstanding anything to the contrary contained in this Agreement or any other Credit Document, upon the occurrence and during the continuance of an Event of Default and after the acceleration of the principal amount of any of the Loans hereunder:

(a) each Credit Party irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by the Administrative Agent, the Collateral Agent or any Issuing Bank from or on behalf of any Credit Party, and, as between each Credit Party on the one hand and the Administrative Agent, the Collateral Agent, each Issuing Bank and the Lenders on the other, the Administrative Agent and each Issuing Bank will have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as the Administrative Agent (or, as applicable, such Issuing Bank) may deem advisable and consistent with this Agreement notwithstanding any previous application by Administrative Agent (or, as applicable, such Issuing Bank); and

(b) subject to Section 2.15(d), any and all payments received by any Secured Party, including proceeds of Collateral, will be applied:

(i) *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to the Administrative Agent or the Collateral Agent with respect to this Agreement,

the other Credit Documents or the Collateral, together with interest on each such amount from and after the date such amount is due, owing or unpaid until paid in full;

(ii) *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender or Issuing Bank with respect to this Agreement, the other Credit Documents or the Collateral, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(iii) *third*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts);

(iv) *fourth*, (A) to the principal amount of the Obligations, including, without limitation, with respect to the deposit of cash collateral to secure the existing Letter of Credit Usage and future payment of related fees in compliance with Section 2.4(h), (B) to any Obligations under any Secured Rate Contract for which the Administrative Agent has received written notice of such Obligations as being outstanding and (C) to any Obligation under any Bank Product Agreement for which the Administrative Agent has received written notice of such Obligations as being outstanding;

(v) *fifth*, to any other Indebtedness or obligations of any Credit Party owing to the Administrative Agent, the Collateral Agent, any Lender or any other Secured Party under the Credit Documents; and

(vi) *sixth*, to the Borrower or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct.

In carrying out the foregoing, (x) amounts received will be applied in the numerical order provided until exhausted prior to the application to the next succeeding category and (y) each of the Persons entitled to receive a payment in any particular category will receive an amount equal to its *pro rata* share of amounts available to be applied pursuant thereto for such category. Notwithstanding the foregoing, no amount received from any Guarantor shall be applied to any Excluded Swap Obligation of such Guarantor. In the event that any such proceeds are insufficient to pay in full the items described in clauses (b)(i) through (b)(vi) of this Section 8.2, the Credit Parties shall remain liable, jointly and severally, for any deficiency.

Notwithstanding the foregoing, Obligations under any Secured Rate Contract and any Bank Product Agreement shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable holders thereof following such acceleration or exercise of remedies and at least three (3) Business Days prior to the application of the proceeds thereof. Each holder of Obligations under any Secured Rate Contract or any Bank Product Agreement not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Section 9 for itself and its Affiliates as if a "Lender" party hereto.

SECTION 9. AGENTS

9.1 Appointment and Duties.

(a) Appointment of Agent. Each Lender and each Issuing Bank hereby appoints Wells Fargo Bank, National Association (together with any successor Agent pursuant to Section 9.9) as the Administrative Agent and the Collateral Agent hereunder and authorizes each such Agent to (i) execute and deliver the Credit Documents and accept delivery thereof on its behalf from any Credit Party, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to such Agent under such Credit Documents and (iii) exercise such powers as are reasonably incidental thereto. In furtherance of the foregoing, each of the Lenders (including in its capacity as a potential Secured Swap Provider or a Bank Product Provider) hereby irrevocably appoints

and authorizes the Collateral Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Credit Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Collateral Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Collateral Agent pursuant to Section 9.4 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Collateral Agent) will be entitled to the benefits of all provisions of this Section 9 (including Section 9.8(b), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Credit Documents) as if set forth in full herein with respect thereto. The provisions of this Section 9 (other than Sections 9.9, 9.10(a) and 9.10(b)) are solely for the benefit of the Agents, the Issuing Banks and the Lenders and no Credit Party will have any rights as a third party beneficiary of any of the provisions thereof (other than Sections 9.9, 9.10(a) and 9.10(b)). In performing its functions and duties hereunder, each Agent will act solely as an agent of the Lenders and does not assume and will not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Borrower or any Subsidiary.

(b) Duties as Collateral and Disbursing Agent. Without limiting the generality of clause (a) above, each of the Administrative Agent and the Collateral Agent, as applicable, will each have the right and authority (to the exclusion of the Lenders and the Issuing Banks), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders and the Issuing Banks with respect to all payments and collections arising in connection with the Credit Documents (including in any proceeding described in Section 8.1(f) or (g) or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Credit Document to any Secured Party is hereby authorized to make such payment to such Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in Section 8.1(f) or (g) or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Person), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Credit Documents, (vi) except as may be otherwise specified in any Credit Document, exercise all remedies given to such Agent and the other Secured Parties with respect to the Credit Parties and/or the Collateral, whether under the Credit Documents, applicable Law or otherwise and (vii) execute any amendment, consent or waiver under the Credit Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; *provided*, *however*, that each such Agent hereby appoints, authorizes and directs each Lender and the Issuing Bank to act as collateral sub-agent for such Agent, the Lenders and the Issuing Banks for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by a Credit Party with, and cash and Cash Equivalents held by, such Lender or Issuing Bank, and may further authorize and direct the Lenders and the Issuing Banks to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to such Agent, and each Lender and Issuing Bank hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) Limited Duties. Under the Credit Documents, each of the Administrative Agent and the Collateral Agent (i) is acting solely on behalf of the Secured Parties (except to the limited extent provided in Section 2.7(b) with respect to the Register), with duties that are entirely administrative in nature, notwithstanding the use of the defined terms "Administrative Agent," "Collateral Agent," "Agent," the terms "agent" and "collateral agent" and similar terms in any Credit Document to refer to such Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Credit Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender, Issuing Bank or other Person and (iii) will have no implied functions, responsibilities, duties, obligations or other liabilities under any Credit Document, and each Secured Party, by accepting the benefits of the Credit Documents, hereby waives and agrees not to assert any claim against such Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement with reference to the Administrative Agent or the Collateral Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law.

Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties.

9.2 Binding Effect. Each Secured Party, by accepting the benefits of the Credit Documents, agrees that (a) any action taken by the Administrative Agent, the Collateral Agent or the Required Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Credit Documents, (b) any action taken by the Administrative Agent or the Collateral Agent in reliance upon the instructions of Required Lenders (or, where so required, such greater proportion) and (c) the exercise by the Administrative Agent, the Collateral Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, will be authorized and binding upon all of the Secured Parties.

9.3 Use of Discretion.

(a) No Action without Instructions. Neither the Administrative Agent nor the Collateral Agent will be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (i) under any Credit Document or (ii) pursuant to instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders). Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Borrower and the Subsidiaries), accountants, experts and other professional advisors selected by it. No Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) Right Not to Follow Certain Instructions. Notwithstanding clause (a) above, neither the Administrative Agent nor the Collateral Agent will be required to take, or to omit to take, any action in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder (i) unless, upon demand, such Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to such Agent, any other Person) against all Liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against such Agent or any Related Person thereof or (ii) that is, in the opinion of such Agent or its counsel, may expose such Agent to liability or that is contrary to any Credit Document or applicable Law including, for the avoidance of doubt any action that may be in violation of the automatic stay or that may affect a foreclosure, modification or termination of property of a Defaulting Lender under any Bankruptcy Proceeding or under the Bankruptcy Code, and no Agent will have any duty to disclose or will be liable for the failure to disclose, any information relating to any Credit Party or any of its Affiliates that is communicated to or obtained by the person serving as such Agent or any of its Affiliates in any capacity.

(c) Exclusive Right to Enforce Rights and Remedies. Notwithstanding anything to the contrary contained herein or in any other Credit Document, the authority to enforce rights and remedies hereunder and under the other Credit Documents against the Credit Parties or any of them will be vested exclusively in, and all actions and proceedings in equity or at law in connection with such enforcement will be instituted and maintained exclusively by, the Administrative Agent and the Collateral Agent in accordance with the Credit Documents for the benefit of all the Lenders and the Issuing Banks; *provided* that the foregoing will not prohibit (i) each of the Administrative Agent and the Collateral Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as such Agent) hereunder and under the other Credit Documents, (ii) each Issuing Bank and each Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as Issuing Bank or Swing Line Lender, as the case may be) hereunder and under the other Credit Documents, (iii) any Lender from exercising setoff rights in accordance with Section 10.4 or (iv) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any bankruptcy or other debtor relief law; *provided further*, that if at

any time there is no Person acting as the Administrative Agent hereunder and under the other Credit Documents, then (A) the Required Lenders will have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.1 and (B) in addition to the matters set forth in clauses (ii), (iii) and (iv) of the preceding proviso and subject to Section 10.4, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

9.4 Delegation of Rights and Duties. Each of the Administrative Agent and the Collateral Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Credit Document by or through any trustee, co-agent, sub-agent, employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person will benefit from this Section 9 to the extent provided by such Agent. No Agent will be liable for any action taken or omitted to be taken, or for the negligence or misconduct of, any trustee, co-agent, sub-agent, employee, attorney-in-fact or other agent selected by it with reasonable care.

9.5 Reliance and Liability.

(a) Each of the Administrative Agent and the Collateral Agent may, without incurring any liability hereunder, (i) treat the payee of any Note as its holder until such Note has been assigned in accordance with Section 10.6, (ii) rely on the Register to the extent set forth in Section 10.6, (iii) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Credit Party) and (iv) rely and act upon any document and information (including those transmitted by Electronic Transmission) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(b) None of the Administrative Agent, the Collateral Agent and their respective Related Persons will be liable for any action taken or omitted to be taken by any of them under or in connection with any Credit Document, and each Secured Party, the Borrower and each other Credit Party hereby waive and will not assert (and the Borrower will cause each other Credit Party to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence, bad faith or willful misconduct of such Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, neither the Administrative Agent nor the Collateral Agent:

(i) will be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of such Agent, when acting on behalf of such Agent);

(ii) will be responsible to any Lender, Issuing Bank or other Person for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Credit Document;

(iii) makes any warranty or representation, or will be responsible, to any Lender, Issuing Bank or other Person for (A) any statement, document, information, including any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Credit Party to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any other Person liable for the payment of any Obligations, (B) any representation or warranty made or furnished by or on behalf of any Credit Party or any Related Person of any Credit Party in connection herewith or with any Credit Document or any transaction contemplated herein or therein or any other document, certificate or information with respect to any Credit Party, whether or not transmitted or (except for documents expressly required under any Credit Document to be transmitted to the Lenders) omitted to be transmitted by such Agent, including as to

completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by such Agent in connection with the Credit Documents, (C) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Credit Document or the occurrence of any Default, (D) the execution, effectiveness, genuineness, validity, enforceability, collectability, sufficiency or genuineness hereof or of any Credit Document or any other agreement, instrument or document or (E) the satisfaction of any condition set forth in Section 3 or elsewhere in any Credit Document, and (F) and, for each of the items set forth in clauses (A) through (E) hereof, each Lender and Issuing Bank hereby waives and agrees not to assert any right, claim or cause of action it might have against the Administrative Agent or the Collateral Agent based thereon; and

(iv) will have any duty to ascertain or to inquire as to the performance or observance of any provision of any Credit Document, whether any condition set forth in any Credit Document is satisfied or waived, as to the financial condition of any Credit Party or as to the occurrence or continuation or possible occurrence or continuation of any Default or Event of Default or will be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower or any Lender or Issuing Bank describing such Default or Event of Default and clearly labeled "notice of default" (in which case such Agent will promptly give notice of such receipt to all Lenders).

(c) Each party to this Agreement acknowledges and agrees that the Administrative Agent may from time to time use one or more outside service providers for the tracking of all Uniform Commercial Code financing statements (and/or other collateral related filings and registrations from time to time) required to be filed or recorded pursuant to the Credit Documents and the notification to the Administrative Agent, of, among other things, the upcoming lapse or expiration thereof. No Agent will be liable for any action taken or not taken by any such service provider.

9.6 Agent Individually. Each of the Administrative Agent and the Collateral Agent and their Affiliates may make loans and other extensions of credit to, acquire Capital Stock of, engage in any kind of business, including but not limited to any type of financial advisory business, with any Credit Party or Affiliate thereof as though it were not acting as an Agent and may receive separate fees and other payments therefor. To the extent the Administrative Agent, the Collateral Agent or any of their respective Affiliates makes any Loan or otherwise becomes a Lender hereunder, it will have and may exercise the same rights and powers hereunder and will be subject to the same obligations and liabilities as any other Lender and the terms "Lender," "Required Lender," and any similar terms will, except where otherwise expressly provided in any Credit Document, include such Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders, respectively.

9.7 Lender Credit Decision.

(a) Each Lender and Issuing Bank acknowledges that it will, independently and without reliance upon the Administrative Agent, the Collateral Agent, any Lender or Issuing Bank or any of their Related Persons or upon any document (including any offering and disclosure materials in connection with the syndication of the Loans) solely or in part because such document was transmitted by such Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Credit Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Credit Document or with respect to any transaction contemplated in any Credit Document, in each case based on such documents and information as it will deem appropriate. Each Lender further represents and warrants that it has reviewed the confidential information memorandum and each other document made available to it on the Platform in connection with this Agreement and has acknowledged and accepted the terms and conditions applicable to the recipients thereof (including any such terms and conditions set forth, or otherwise maintained, on the Platform with respect thereto). Except for documents expressly required by any Credit Document to be transmitted by the Administrative Agent or the Collateral Agent to the Lenders or Issuing Banks, no such Agent will have any duty or responsibility to provide any Lender or Issuing Bank with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Credit Party or any Affiliate of any Credit Party that may come in to the possession of such Agent or any of its Related Persons.

(b) If any Lender or Issuing Bank has elected to abstain from receiving Nonpublic Information concerning the Credit Parties or their Affiliates, such Lender or Issuing Bank acknowledges that, notwithstanding such election, the Administrative Agent and/or the Credit Parties will, from time to time, make available syndicate-information (which may contain Nonpublic Information) as required by the terms of, or in the course of administering the Loans to the credit contact(s) identified for receipt of such information on the Lender's administrative questionnaire who are able to receive and use all syndicate-level information (which may contain Nonpublic Information) in accordance with such Lender's compliance policies and contractual obligations and applicable Law, including federal and state securities laws; *provided* that if such contact is not so identified in such questionnaire, the relevant Lender or Issuing Bank hereby agrees to promptly (and in any event within one (1) Business Day) provide such a contact to the Administrative Agent and the Credit Parties upon request therefor by the Administrative Agent or the Credit Parties. Notwithstanding such Lender's or Issuing Bank's election to abstain from receiving material non-public information, such Lender or Issuing Bank acknowledges that if such Lender or Issuing Bank chooses to communicate with the Administrative Agent, it assumes the risk of receiving Nonpublic Information concerning the Credit Parties or their Affiliates. In the event that any Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither the Borrower nor the Administrative Agent has any responsibility for such Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Credit Documents.

(c) Each Lender, by delivering its signature page to this Agreement or an Assignment Agreement and funding its Loan, will be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, the Required Lenders or the Lenders, as applicable, on the Closing Date.

9.8 Expenses; Indemnities; Withholding.

(a) Each Lender and Issuing Bank agrees to reimburse the Administrative Agent, the Collateral Agent and each of their respective Related Persons (to the extent not reimbursed by any Credit Party) promptly upon demand, severally and ratably, for any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Credit Party) that may be incurred by such Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including preparation for and/or response to any subpoena or request for document production relating thereto) or otherwise) in respect of, or legal advice with respect to, its rights or responsibilities under, any Credit Document.

(b) Each Lender and Issuing Bank further agrees to indemnify the Administrative Agent, the Collateral Agent and each of their respective Related Persons (to the extent not reimbursed by any Credit Party), severally and ratably, in proportion to its Pro Rata Share, from and against Liabilities (including, to the extent not indemnified pursuant to Section 9.8(c), taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Lender) that may be imposed on, incurred by or asserted against such Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Credit Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by such Agent or any of its Related Persons under or with respect to any of the foregoing (**IN ALL CASES, WHETHER OR NOT CAUSED OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF ANY AGENT OR RELATED PERSON**); *provided*, *however*, that no Lender will be liable to the Administrative Agent, the Collateral Agent or any of their respective Related Persons to the extent such liability has resulted solely and directly for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, claims, suits, judgments, litigations, investigations, inquiries or proceedings, costs, expenses or disbursements which have resulted from the gross negligence, bad faith or willful misconduct of such Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. No Lender shall be liable under this

Section or otherwise for any failure of another Lender to satisfy such other Lender's obligations under the Credit Documents.

(c) To the extent required by any applicable law, the Administrative Agent and the Collateral Agent may withhold from any payment to any Lender under a Credit Document an amount equal to any applicable withholding tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that such Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate certification form was not delivered, was not properly executed, or fails to establish an exemption from, or reduction of, withholding tax with respect to a particular type of payment, or because such Lender failed to notify such Agent or any other Person of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), or such Agent reasonably determines that it was required to withhold taxes from a prior payment but failed to do so, such Lender will promptly indemnify such Agent fully for all amounts paid, directly or indirectly, by such Agent as tax or otherwise, including penalties and interest, and together with all expenses incurred by such Agent, including legal expenses of outside counsel and out-of-pocket expenses. Each of the Administrative Agent and the Collateral Agent may offset against any payment to any Lender under a Credit Document, any applicable withholding tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which such Agent is entitled to indemnification from such Lender under this Section 9.8(c).

9.9 Resignation of Administrative Agent, Collateral Agent or Issuing Bank.

(a) Each of the Administrative Agent and the Collateral Agent may resign at any time by delivering notice of such resignation to the Lenders and the Borrower, with such resignation becoming effective subject to and in accordance with the terms of this Section 9.9(a). If such Agent delivers any such notice, the Required Lenders will have the right, subject to the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) at all times other than during the continuation of an Event of Default under Section 8.1(a), (f) or (g), to appoint a successor Administrative Agent or Collateral Agent, as applicable. The Administrative Agent's resignation shall become effective on the earliest of (i) thirty (30) days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the appointment of a successor Administrative Agent by the Required Lenders or (iii) such other date, if any, agreed to by the Required Lenders. If, after thirty (30) days after the date of such retiring Agent's notice of resignation, no successor Administrative Agent or Collateral Agent, as applicable, has been appointed by the Required Lenders that has accepted such appointment, then such retiring Agent may, on behalf of the Lenders, and subject to the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) at all times other than during the continuation of an Event of Default under Section 8.1(a), (f) or (g), appoint a successor Administrative Agent or Collateral Agent, as applicable, from among the Lenders or a commercial banking institution organized under the laws of the United States (or any State thereof) or a United States branch or agency of a commercial banking institution, in each case, having combined capital and surplus of at least $500,000,000.

(b) Effective immediately upon its resignation, (i) any retiring Administrative Agent or Collateral Agent will be discharged from its duties and obligations under the Credit Documents, (ii) to the extent applicable, the Lenders will assume and perform all of the duties of such Agent until a successor Administrative Agent or Collateral Agent, as applicable, will have accepted a valid appointment hereunder, (iii) such retiring Agent and its Related Persons will no longer have the benefit of any provision of any Credit Document as Administrative Agent or Collateral Agent, as applicable, other than with respect to any actions taken or omitted to be taken while such retiring Agent was, or because such Agent had been, validly acting as Administrative Agent or Collateral Agent, as applicable, under the Credit Documents and (iv) subject to its rights under Section 9.3, such retiring Agent will take such action as may be reasonably necessary to assign to the applicable successor Administrative Agent or Collateral Agent its rights as Administrative Agent or Collateral Agent, as applicable, under the Credit Documents. After any retiring Administrative Agent's or Collateral Agent's resignation hereunder as the Administrative Agent, the provisions of this Section 9 and Sections 10.2, 10.3, 10.4, 10.10, 10.14, 10.15, and 10.16 will inure to its benefit, its sub-agents' and their respective affiliates' benefit as to any actions taken or omitted to be taken by any of them while it was Administrative Agent or Collateral Agent hereunder. Any resignation of the Administrative Agent pursuant to this Section will also constitute the

resignation of Wells Fargo Bank, National Association or its successor as a Swing Line Lender, and any successor Administrative Agent appointed pursuant to this Section will, upon its acceptance of such appointment, become a successor Swing Line Lender for all purposes hereunder. Effective immediately upon the acceptance of a valid appointment as Administrative Agent or Collateral Agent by a successor Administrative Agent or Collateral Agent, such successor Administrative Agent or Collateral Agent will succeed to, and become vested with, all the rights, powers, privileges and duties of such retiring Agent under the Credit Documents and the retiring Administrative Agent or Collateral Agent will promptly (A) transfer to its successor all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent or Collateral Agent under the Credit Documents, and (B) execute and deliver to such successor Administrative Agent or Collateral Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent or Collateral Agent of the security interests created under the Collateral Documents.

(c) Any Issuing Bank may resign at any time by delivering notice of such resignation to the Administrative Agent, effective on the date set forth in such notice or, if no such date is set forth therein, on the date such notice will be effective. Upon such resignation, the applicable Issuing Bank will remain an Issuing Bank and will retain its rights and obligations in its capacity as such (other than any obligation to Issue Letters of Credit but including the right to receive fees or to have Lenders participate in any Letter of Credit) with respect to Letters of Credit Issued by such Issuing Bank prior to the date of such resignation and will otherwise be discharged from all other duties and obligations under the Credit Documents.

9.10 Release of Collateral or Guarantors.

(a) Each Lender and Issuing Bank hereby consents to the release and hereby directs the Administrative Agent and the Collateral Agent to release (or, in the case of clause (a)(ii) below, release or subordinate) the following:

(i) any Guarantor from its guaranty of any Obligation pursuant to Section 7.11 or upon such Guarantor becoming an Excluded Subsidiary, and such Guarantor will be automatically released from its Obligations thereunder and its Obligations under all other Credit Documents (and any Liens on Collateral of such former Guarantor shall be released); *provided* that if such Guarantor becomes an Excluded Subsidiary by virtue of becoming a non-wholly owned Subsidiary, such release shall be subject to the consent of the Administrative Agent (such consent not to be unreasonably withheld); and

(ii) any Lien held by the Collateral Agent for the benefit of the Secured Parties against (1) any Collateral that is sold, transferred, conveyed or otherwise disposed of by a Credit Party in a transaction permitted by the Credit Documents (including pursuant to a valid waiver or consent) or any Collateral that becomes an Excluded Asset, (2) any property subject to a Lien permitted hereunder in reliance upon Section 6.2(d) and (3) all of the Collateral and all Credit Parties, upon (A) termination of the Revolving Credit Commitments, (B) payment and satisfaction in full of all Loans, all obligations to reimburse the Issuing Banks for drawings honored under Letters of Credit and all other Obligations under the Credit Documents (excluding contingent obligations as to which no claim has been asserted) and all Obligations arising under Secured Rate Contracts and Bank Product Agreements (or otherwise cash collateralized in amounts and on terms satisfactory to the Administrative Agent and the applicable holder of such Obligations arising under Secured Rate Contracts and Bank Product Agreements) that the Administrative Agent has theretofore been notified in writing by the holder of such Obligations are then due and payable and (C) deposit of cash collateral with respect to all contingent Letter of Credit Obligations (or, as an alternative to cash collateral, receipt by the applicable Issuing Bank of a back-up letter of credit) in amounts and on terms and conditions and with parties satisfactory to the Administrative Agent and the applicable Issuing Bank that is, or may be, owed such contingent Letter of Credit Obligations (excluding contingent Obligations (other than obligations to reimburse the Issuing Banks for drawings honored under Letters of Credit) as to which no claim has been asserted), and, in the case of this clause (3), the Collateral Documents, the

guarantees made herein, the Liens and all other security interests granted thereunder will automatically terminate.

(b) Each Lender and Issuing Bank hereby irrevocably authorizes the Administrative Agent and the Collateral Agent, and each of the Administrative Agent and the Collateral Agent hereby agrees, upon three (3) Business Days' (or such shorter period as is acceptable to the Administrative and the Collateral Agent) prior written request by the Borrower to the Administrative Agent, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guaranties and Liens when and as directed in this Section 9.10, subject to receipt by the Administrative Agent of a certification of the Borrower as to such matters as are reasonably required by the Administrative Agent (and the Collateral Agent may rely conclusively on such certification without further inquiry); *provided* that (i) neither the Administrative Agent nor the Collateral Agent shall be required to execute any such document on terms which, in such Agent's opinion, would expose such Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of the Borrower or any Guarantor in respect of) all interests retained by the Borrower or any Guarantor, including (without limitation) the proceeds of the sale, all of which shall continue to constitute part of the Collateral. Any execution and delivery by the Administrative Agent or the Collateral Agent of documents in connection with any such release shall be without recourse to or warranty by either the Administrative Agent or the Collateral Agent. Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's or the Collateral Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. To the extent any Collateral is disposed of as permitted by this Section to any Person other than a Credit Party, such Collateral will be sold free and clear of Liens created by the Credit Documents and the Administrative Agent will be authorized to take any actions deemed appropriate in order to effect the foregoing.

(c) In the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Collateral Agent (at the direction of the Required Lenders) or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders will otherwise agree in writing), at the direction of the Required Lenders, will be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition (including pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), the Collateral Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code). Any release of guarantee obligations will be deemed subject to the provision that such guarantee obligations will be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby will be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made. The Collateral Agent will not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor will the Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

9.11 Certain ERISA Matters.

(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, each Lead

Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84- 14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that the Administrative Agent, any Lead Arranger and their respective Affiliates 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 Credit Document or any documents related hereto or thereto).

9.12 Lead Arrangers, Syndication Agents and Documentation Agent. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Credit Document, none of the Lead Arrangers, the Syndication Agents or the Documentation Agent will have any duties or responsibilities, nor will any of such Agents have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities will be read into this Agreement or any other Credit Document or otherwise exist against any of such Agents. At any time that any Lender serving (or whose Affiliate is serving) as a Lead Arranger, Syndication Agent or Documentation Agent will have transferred to any other Person (other than any Affiliates) all of its interests in the Loans, such Lender (or an Affiliate of such Lender acting as a Lead Arranger, Syndication Agent or Documentation Agent) will be deemed to have concurrently resigned as such Lead Arranger, Syndication Agent or Documentation Agent.

9.13 Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim. In the case of pendency of any proceeding under any Bankruptcy Proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan will then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent will have made any demand on the Borrower) will be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, each Issuing Bank and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its respective agents and counsel and all other amounts due the Administrative Agent under Section 2, Section 10.2 and Section 10.3) allowed in such judicial proceeding; and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent will consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under this Agreement. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Administrative Agent, its agents and counsel, and any other amounts due the Administrative Agent under this Agreement out of the estate in any such proceeding, will be denied for any reason, payment of the same will be secured by a Lien on, and will be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing contained herein will be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

9.14 Erroneous Payments.

(a) Each Lender, each Issuing Bank and each other Secured Party hereby severally agrees that if (i) the Administrative Agent notifies (which such notice shall be conclusive absent manifest error) such Lender, such Issuing Bank or such Secured Party (or the Lender Affiliate of a Secured Party) that has received funds from the Administrative Agent or any of its Affiliates either for its own account or on behalf of a Lender, an Issuing Bank or a Secured Party (each such recipient, a "**Payment Recipient**") that the Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment 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 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, as applicable, (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) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient

otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this Section 9.14(a), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an "**Erroneous Payment**"), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided that nothing in this Section shall require the Administrative Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives 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 Payments, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify the Administrative Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and upon demand from the Administrative Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than one Business Day thereafter, 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 and in the currency so received, together with interest thereon 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 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 from time to time in effect.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an "**Erroneous Payment Return Deficiency**"), then at the sole discretion of the Administrative Agent and upon the Administrative Agent's written notice to such Lender (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the "**Erroneous Payment Impacted Class**") to the Administrative Agent or, at the option of the Administrative Agent, the Administrative Agent's applicable lending affiliate in an amount that is 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**") plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by the Administrative Agent or its applicable lending affiliate as the assignee of such Erroneous Payment Deficiency Assignment. Without limitation of its rights hereunder, the Administrative Agent may cancel any Erroneous Payment Deficiency Assignment at any time by written notice to the applicable assigning Lender and upon such revocation all of the Loans assigned pursuant to such Erroneous Payment Deficiency Assignment shall be reassigned to such Lender without any requirement for payment or other consideration. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of Section 10.6 and (3) the Administrative Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (x) in the event 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 (1) shall be subrogated to all the rights of such Payment Recipient with respect to such amount and (2) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Credit Document, or otherwise payable

or distributable by the Administrative Agent to such Payment Recipient from any source, against any amount due to the Administrative Agent under this Section 9.14 or under the indemnification provisions of this Agreement, (y) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by the Borrower or any other Credit Party and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received; provided that the foregoing clauses (x), (y) and (z) shall not apply to the extent 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 or any other Credit Party for the purpose of making a payment on the Obligations. For the avoidance of doubt, clause (d) above and this clause (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 Loans or interest thereon or any fees hereunder relative to the amount (and/or timing for payment) of the Loans or interest thereon or any fees that would have been payable had such Erroneous Payment not been made by the Administrative Agent.

(f) Each party's obligations under this Section 9.14 shall survive the resignation or replacement of the Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Credit Document.

(g) Nothing in this Section 9.14 will constitute a waiver or release of any claim of the Administrative Agent arising from any Payment Recipient's receipt of an Erroneous Payment.

SECTION 10. MISCELLANEOUS

10.1 Notices.

(a) Addresses. All notices and other communications required or expressly authorized to be made by this Agreement will be given in writing, unless otherwise expressly specified herein, and (i) addressed to the address set forth on Appendix B or otherwise indicated to the Borrower and the Administrative Agent in writing, (ii) posted to the Platform (to the extent such system is available and set up by or at the direction of the Administrative Agent prior to posting), (iii) posted to any other E-System approved by or set up by or at the direction of the Administrative Agent or (iv) addressed to such other address as will be notified in writing (A) in the case of the Borrower, the Administrative Agent, the Collateral Agent and the Swing Line Lenders, to the other parties hereto and (B) in the case of all other parties, to the Borrower, the Administrative Agent and the Collateral Agent. Transmissions made by electronic mail or E-Fax to the Administrative Agent will be effective only (x) for notices where such transmission is specifically authorized by this Agreement, (y) if such transmission is delivered in compliance with procedures of the Administrative Agent applicable at the time and previously communicated to Borrower, and (z) if receipt of such transmission is acknowledged by the Administrative Agent.

(b) Effectiveness. (i) All communications described in clause (a) above and all other notices, demands, requests and other communications made in connection with this Agreement will be effective and be deemed to have been received (i) if delivered by hand, upon personal delivery, (ii) if delivered by overnight courier service, one (1) Business Day after delivery to such courier service, (iii) if delivered by mail, three (3) Business Days after deposit in the mail, (iv) if delivered by facsimile (including electronic mail) other than to post to an E-System pursuant to clause (a)(ii) or (a)(iii) above, upon sender's receipt of confirmation of proper transmission, and (v) if delivered by posting to any E-System, on the later of the Business Day of such posting and the Business Day access to such posting is given to the recipient thereof in accordance with the standard procedures applicable to such E-System; *provided*, *however*, that no communications to the Administrative Agent pursuant to this Section 10.1 will be effective until received by the Administrative Agent.

(ii) The posting, completion and/or submission by any Credit Party of any communication pursuant to an E-System will constitute a representation and warranty by the

Credit Parties that any representation, warranty, certification or other similar statement required by the Credit Documents to be provided, given or made by a Credit Party in connection with any such communication is true, correct and complete except as expressly noted in such communication or E-System.

(c) Each Lender will notify the Administrative Agent and the Collateral Agent in writing of any changes in the address to which notices to such Lender should be directed, of addresses of its Lending Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as the Administrative Agent will reasonably request.

(d) Electronic Transmissions.

(i) Authorization. Subject to the provisions of Section 10.1(a), each of the Administrative Agent, the Collateral Agent, the Lenders, each Credit Party and each of their Related Persons, is authorized (but not required) to transmit, post or otherwise make or communicate, in its sole discretion, Electronic Transmissions in connection with any Credit Document and the transactions contemplated therein. Each Credit Party and each Secured Party hereto acknowledges and agrees that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

(ii) Signatures. Subject to the provisions of Section 10.1(a), (A)(1) no posting to any E-System will be denied legal effect merely because it is made electronically, (2) each E Signature on any such posting will be deemed sufficient to satisfy any requirement for a "signature" and (3) each such posting will be deemed sufficient to satisfy any requirement for a "writing," in each case including pursuant to any Credit Document, any applicable provision of any applicable UCC, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Law governing such subject matter, (B) each such posting that is not readily capable of bearing either a signature or a reproduction of a signature may be signed, and will be deemed signed, by attaching to, or logically associating with such posting, an E-Signature, upon which the Administrative Agent, the Collateral Agent, each other Secured Party and each Credit Party may rely and assume the authenticity thereof, (C) each such posting containing a signature, a reproduction of a signature or an E-Signature will, for all intents and purposes, have the same effect and weight as a signed paper original and (D) each party hereto or beneficiary hereto agrees not to contest the validity or enforceability of any posting on any E-System or E-Signature on any such posting under the provisions of any applicable Law requiring certain documents to be in writing or signed; *provided*, *however*, that nothing herein will limit such party's or beneficiary's right to contest whether any posting to any E-System or E-Signature has been altered after transmission.

(iii) Separate Agreements. All uses of an E-System will be governed by and subject to, in addition to Section 10.1, the separate terms, conditions and privacy policy posted or referenced in such E-System (or such terms, conditions and privacy policy as may be updated from time to time, including on such E-System) and related Contractual Obligations executed by the Administrative Agent and Credit Parties in connection with the use of such E-System.

(iv) LIMITATION OF LIABILITY. ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS WILL BE PROVIDED "AS IS" AND "AS AVAILABLE." NONE OF THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS WARRANTS THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY E-SYSTEMS OR ELECTRONIC TRANSMISSION AND DISCLAIMS ALL LIABILITY (WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN CONTRACT, TORT OR OTHERWISE)) FOR ERRORS OR OMISSIONS THEREIN. NO WARRANTY OF ANY KIND IS MADE BY THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT ANY LENDER OR ANY OF THEIR RELATED PERSONS IN CONNECTION WITH ANY E-

SYSTEMS OR ELECTRONIC COMMUNICATION, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS. The Borrower, each other Credit Party executing this Agreement and each Secured Party agrees that the Administrative Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

(e) Each Credit Party agrees that the Administrative Agent may make the communications described in clause (a) above available to the other Agents, the Lenders, the Swing Line Lenders or the Issuing Banks by posting such communications on any Platform.

(f) Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States federal and state securities laws, to make reference to information that is not made available through the "Public Side Information" portion of the Platform and that may contain Nonpublic Information with respect to the Borrower, the Subsidiaries or their respective securities for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither the Borrower nor the Administrative Agent has any responsibility for such Public Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Credit Documents.

10.2 Expenses. The Borrower agrees to pay promptly (a) all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent, the Collateral Agent, the Issuing Banks and the Agents associated with the preparation, execution, delivery and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto (and with respect to legal fees, expenses and disbursements, limited to fees, expenses and disbursements of one primary counsel and, if reasonably necessary, one local counsel in each relevant jurisdiction (which may be a single local counsel acting in multiple jurisdictions)); (b) [reserved]; (c) [reserved]; (d) all reasonable documented out-of-pocket costs and reasonable expenses of creating, perfecting and recording Liens in favor of the Collateral Agent, for the benefit of the Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums; (e) [reserved]; (f) all reasonable documented out-of-pocket costs and reasonable expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by the Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) [reserved]; (h) without duplication of payments described in Section 2.20(c), all Other Taxes; and (i) all reasonable documented out-of-pocket costs and expenses, including reasonable attorneys' fees and costs of settlement, incurred by any Agent, any Issuing Bank and the Lenders in enforcing any Obligations of or in collecting any payments due from any Credit Party hereunder or under the other Credit Documents and the preservation of any right or remedy under any Credit Document or in connection with any refinancing or restructuring of the credit arrangements provided hereunder whether in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings or otherwise, limited, in the case of legal fees and expenses, to fees, disbursements and expenses of one counsel to the Agents and the Lenders taken as a whole (and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may be a single local counsel acting in multiple jurisdictions) and, solely in the event of an actual or potential conflict of interest between any Agent and the Lenders, where the Person or Persons affected by such conflict of interest inform the Borrower in writing of such conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Persons similarly situated taken as a whole).

10.3 Indemnity; Certain Waivers.

(a) Indemnity. In addition to the payment of expenses pursuant to Section 10.2, each Credit Party agrees to indemnify, pay and hold harmless, each Agent, each Issuing Bank, each Lender and each of their respective Related Persons (each, an "**Indemnitee**"), from and against any and all Indemnified

Liabilities; *provided* that no Credit Party will have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities (i) arise from (A) the gross negligence, bad faith, or willful misconduct of that Indemnitee or its Related Persons as determined by a court of competent jurisdiction in a final non-appealable order or (B) any material breach of the obligations of that Indemnitee or its Related Persons under this Agreement or any other Credit Document as determined by a court of competent jurisdiction in a final non-appealable order, (ii) relate to any dispute solely among Indemnitees other than (A) claims against an Agent, in its capacity as such or in fulfilling its role as an Agent, and (B) claims arising out of any act or omission on the part of any Credit Party or any of its Subsidiaries or Affiliates or (iii) any settlement entered into by any Indemnitee or of any Related Person in connection with the foregoing without the Borrower's prior written consent (such consent not to be unreasonably withheld or delayed), but, if such settlement occurs with the Borrower's written consent or if there is a final judgment for the plaintiff in any action or claim with respect to any of the foregoing, the Borrower will be liable for such settlement or for such final judgment; provided, further, that any reimbursement of legal fees shall be limited to the reasonable and documented fees and disbursements of one counsel to all Indemnitees taken as a whole, and solely in the case of a conflict of interest, one additional counsel to all affected Indemnitee taken as a whole (and, if applicable, one local counsel in each appropriate jurisdiction to all affected indemnified persons taken as a whole and, solely in the case of a conflict of interest, one additional local counsel in each appropriate jurisdiction to all affected Indemnitee taken as a whole). To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party will contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. The Credit Parties agree, jointly and severally, that, without the prior written consent of the Administrative Agent, which consent will not be unreasonably withheld or delayed (provided that it shall not be unreasonable to withhold consent if clauses (i) and (ii) below are not satisfied), the Credit Parties will not enter into any settlement of a claim in respect of which indemnification could have been sought by an Indemnitee under this Section 10.3(a) unless such settlement (i) includes an unconditional release from the party bringing such claim of all Indemnitees which could have sought indemnification with respect to such claim under this Section 10.3(a) in form and substance reasonably satisfactory to such Indemnitee and (ii) does not include any statement as to any admission of fault. This Section 10.3 will not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. Notwithstanding the foregoing, each Indemnitee shall be obligated to refund and return promptly any and all amounts paid under the indemnification provisions of this Agreement to such Indemnitee for any Indemnified Liabilities to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(b) Without limiting the foregoing, and to the extent permitted by applicable law, the Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee.

(c) To the extent that the Credit Parties fail to pay any amount required to be paid by them to the Agents, the Issuing Banks or the Swing Line Lenders under Sections 10.3(a) in accordance with Section 9.8(b), each Lender severally agrees to pay to the Agents, the Issuing Banks or the Swing Line Lenders, as the case may be, such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (such indemnity will be effective whether or not the related losses, claims, damages, liabilities and related expenses are incurred or asserted by any party hereto or any third party); *provided* that the unreimbursed claim was incurred by or asserted against any of the Agents, the Issuing Banks or the Swing Line Lenders in its capacity as such.

(d) No Indemnitee will be liable for any damages arising from the use by others of information or other materials obtained through electronic, telecommunications or other information transmission systems (including the Platform) except to the extent any such damages arise from the gross negligence, bad faith or willful misconduct of, or breach of the Credit Documents by such Indemnitee, in each case, as determined by a final, nonappealable judgment of a court of competent jurisdiction. Neither

any Indemnitee nor any Credit Party (or any of their respective directors, officers, employees, controlling persons, controlled affiliates or agents) will be liable for any indirect, special, punitive or consequential damages in connection with the Transactions, this Agreement or any other Credit Document (including the Facilities and the use of proceeds hereunder), or with respect to any activities or other transactions related to the Facilities; *provided* that nothing contained in this sentence limits the Credit Parties' indemnity and reimbursement obligations to the extent such special, indirect, punitive or consequential damages are included in any third party claim in connection with which such Indemnitee is entitled to indemnification hereunder.

10.4 Set-Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender is hereby authorized by each Credit Party at any time or from time to time subject to the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Credit Party or to any other Person (other than the Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including (i) trust accounts and (ii) accounts into which Medicare and/or Medicaid receivables are deposited in accordance with the last two sentences of this Section 10.4) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Credit Party against and on account of the obligations and liabilities of any Credit Party to such Lender hereunder, the Letters of Credit and participations therein and under the other Credit Documents, including all claims of any nature or description arising out of or connected hereto, the Letters of Credit and participations therein or with any other Credit Document, irrespective of whether or not (a) such Lender will have made any demand hereunder or (b) the principal of or the interest on the Loans or any amounts in respect of the Letters of Credit or any other amounts due hereunder will have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured; *provided* that if any Defaulting Lender shall exercise any such right of setoff, (i) all amounts so set-off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of this Agreement and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Bank, the Swing Line Lenders and the Lenders and (ii) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the obligations owing to such Defaulting Lender as to which it exercised such right of set-off; *provided*, *further*, that to the extent prohibited by applicable law as described in the definition of "Excluded Swap Obligation," no amounts received from, or set off with respect to, any Guarantor shall be applied to any Excluded Swap Obligations of such Guarantor. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such application made by such Lender; *provided*, that the failure to give such notice shall not affect the validity of such application. Notwithstanding the foregoing, to the extent that the Administrative Agent or any Lender (the "***Affected Depositary***") is a depositary institution with which any Credit Party maintains an account into which Medicare or Medicaid payments are deposited (the "***Affected Account***"), the Affected Depositary hereby waives its rights of set-off under this Section 10.4 (as well as any right of set-off under applicable statute or common law) with respect to each such Affected Account; it being understood and agreed that, within one hundred eighty (180) days of the Closing Date (or such longer period as the Administrative Agent may agree in its reasonable discretion), no deposits shall be made into, and no funds shall be held in, any Affected Account other than Medicare and Medicaid payments. The foregoing waiver of rights of set-off are intended to comply with, and shall be construed in accordance with, The Centers for Medicare & Medicaid Services ("***CMS***") Publication 100-04 Chapter 1, Section 30.2.5 – Payment to Bank, and any applicable successor provisions.

10.5 Amendments and Waivers.

(a) Required Consents. Except as expressly provided in this Section 10.5 (or otherwise in this Agreement or the applicable Credit Document), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, will in any event be effective without the written concurrence of the Required Lenders, except the Administrative Agent may, with the consent of the Borrower only, (i) amend, modify or supplement this Agreement and any other Credit Document to cure any ambiguity, omission, defect, inconsistency or other manifest error or any other necessary or desirable technical change, so long as such amendment,

modification or supplement does not materially adversely affect the rights of any Lender or Issuing Bank, *provided* that no such amendment will become effective until the fifth (5th) Business Day after it has been posted to the Lenders, and then only if the Required Lenders have not objected in writing within such five (5) Business Day period, (ii) to enter into additional or supplemental Collateral Documents or (iii) to release Collateral or Guarantors in accordance with Section 9.10(a) and (b) of this Agreement. Notwithstanding the foregoing, the Wells Fee Letter may be amended by the parties thereto without the consent of any other Person.

(b) Affected Lenders' Consent. No amendment, modification, termination, or consent will be effective if the effect thereof would:

(i) extend the scheduled final maturity date of any Loan of any Lender without the written consent of such Lender; *provided* that no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default will constitute an extension of a final maturity date;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment or mandatory prepayment, which will be governed by Section 10.5(a)) of any Loan held by any Lender pursuant to Section 2.12 without the written consent of such Lender;

(iii) extend the stated expiration date of any Letter of Credit beyond the Revolving Credit Commitment Termination Date without the written consent of the applicable Issuing Bank (it being acknowledged and agreed that each Issuing Bank may agree to extend such stated expiration date in connection with an Extension under Section 10.5(g));

(iv) reduce the rate of interest on any Loan held by any Lender (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.10) or any fee payable to a Lender under this Agreement without the written consent of such Lender; *provided* that any amendment or modification of defined terms used in the Financial Covenants in this Agreement shall not constitute a reduction in the rate of interest or any fee payable to a Lender for purposes of this clause (iv);

(v) extend the time for payment of any such interest, fees or reimbursement obligation in respect of any Letter of Credit without the written consent of all the Lenders directly affected thereby (it being understood that the waiver of any mandatory prepayment will not constitute an extension of any time for payment of interest or fees);

(vi) reduce the principal amount of any Loan held by a Lender without the written consent of such Lender or reduce any reimbursement obligation in respect of any Letter of Credit without the written consent of the applicable Issuing Bank to which such reimbursement obligation is payable;

(vii) amend, modify, terminate or waive any provision of Section 10.5(a), this Section 10.5(b) or Section 10.5(c) without the written consent of all Lenders and, as applicable, all Issuing Banks;

(viii) amend the definition of "Required Lenders" or "Pro Rata Share" without the written consent of all Lenders; *provided* that, with the consent of the Required Lenders, additional extensions of credit pursuant hereto may be included in the determination of "Required Lenders" or "Pro Rata Share" on substantially the same basis as the Initial Term Loan Commitments, the Initial Term Loans, the Term A-1 Loan Commitments, the Term A-1 Loans, the Term A-2 Loan Commitments, the Term A-2 Loans, the Revolving Credit Commitments and the Revolving Loans are included on the Second Amendment Effective Date; *provided further*, that such definitions may also be amended in furtherance of any amendment permitted by another subsection of this Section 10.5(b) with the consent of such Persons as are required by such subsection;

(ix) amend, modify or waive Section 3.2 if the effect of such amendment, modification or waiver is to require the Revolving Lenders to make Revolving Loans when such Revolving Lenders would not otherwise be required to do so without the written consent of Revolving Lenders having or holding Revolving Credit Exposure representing more than 50% of the aggregate Revolving Credit Exposure of all of the Revolving Lenders;

(x) release or subordinate the Collateral Agent's Liens on, all or substantially all of the Collateral or release all or substantially all of the Guarantors from the Guaranty, except as expressly provided in the Credit Documents, or in connection with securing additional secured obligations equally and ratably with the other Secured Obligations in accordance with the Credit Documents, without the written consent of all Lenders;

(xi) consent to the assignment or transfer by the Borrower of any of its rights and obligations under any Credit Document without the written consent of all Lenders;

(xii) extend or increase any Commitments of any Lender without the written consent of such Lender;

(xiii) subordinate the Obligations under the Credit Documents to any other Indebtedness without the consent of all Lenders directly and adversely affected thereby;

(xiv) amend or modify the definition of "Secured Swap Provider", "Obligations", "Secured Rate Contracts", "Bank Products", and "Bank Product Provider", in each case, in a manner materially adverse to any Secured Swap Provider or Bank Product Provider (as applicable) holding outstanding Obligations under Secured Rate Contracts or Bank Products (as applicable) at such time without the written consent of such Person; or

(xv) amend, modify or waive any provision of Section 2.13(b) (in any way that would allocate any reduction in the Revolving Credit Commitments by less than each Lender's Pro Rata Share thereof) or Section 2.17 without the written consent of all Lenders in respect of each Class of Lenders adversely affected thereby.

(c) Other Consents. No amendment, waiver or consent will, unless in writing and signed by the Administrative Agent, the Collateral Agent, the Swing Line Lenders or the Issuing Banks, as the case may be, in addition to the Required Lenders or all Lenders directly affected thereby, as the case may be (or by Administrative Agent with the consent of the Required Lenders or all the Lenders directly affected thereby, as the case may be), affect the rights or duties of the Administrative Agent, the Collateral Agent, the Swing Line Lenders or the Issuing Banks, as applicable, in its capacity as such, under this Agreement or any other Credit Document. Further, no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, will:

(i) increase or extend any Revolving Credit Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; *provided* that no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default will constitute an increase in any Revolving Credit Commitment of any Lender;

(ii) amend, modify, terminate or waive any provision hereof relating to the Swing Line Sublimit or the Swing Line Loans without the consent of the Swing Line Lenders, or amend, extend or increase the Swing Line Commitment of any Lender without the written consent of such Lender;

(iii) alter the required application of any repayments or prepayments (including payments made from proceeds of Collateral) as between Classes pursuant to Section 2.15 or Section 8.2 or modify Section 2.17 without the consent of all Lenders of each Class which is being allocated a lesser repayment or prepayment (including payments made from proceeds of Collateral) as a result thereof; *provided* that any Lender may waive, in whole or in part, any Waivable Mandatory Prepayment so long as the application, as between Classes, of any portion of such prepayment which is still required to be made is not altered;

(iv) amend, modify, terminate or waive any obligation of the Lenders relating to the purchase of participations in Letters of Credit as provided in Section 2.4(e) without the written consent of the Administrative Agent and of the Issuing Banks;

(v) amend, modify, terminate or waive any provision of Section 9 as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent; or

(vi) amend, modify or waive any provision of Section 2.4 without the written consent of each Issuing Bank to the extent such proposed amendment, modification and/ or wavier affects the rights or duties of, or any fees or other amounts payable to, such Issuing Bank under this Agreement.

(d) Execution of Amendments, etc. The Administrative Agent may, but will have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent will be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case will entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 will be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit will not be construed as a waiver of any Default, regardless of whether any Agent, any Lender or Issuing Bank may have had notice or knowledge of such Default at the time. No notice or demand on the Borrower or any other Credit Party in any case will entitle the Borrower or any other Credit Party to any other or further notice or demand in similar or other circumstances.

(e) Subordination and Intercreditor Agreements. Notwithstanding anything to the contrary in this Agreement, no Lender consent is required to effect any amendment or supplement to any Pari Passu Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement that is (A) for the purpose of adding the holders of Subordinated Debt, Pari Passu Lien Indebtedness, Junior Lien Indebtedness, Incremental Equivalent Debt or Credit Agreement Refinancing Indebtedness in each case permitted hereunder (or a debt representative with respect thereto) as parties thereto, as expressly contemplated by the terms of such Pari Passu Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as determined by the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (B) expressly contemplated by any Pari Passu Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement.

(f) Additional Amendments Provisions.

(i) Nothing herein will be deemed to prohibit an amendment and/or amendment and restatement of this Agreement consented to by the Required Lenders, the Borrower and the Administrative Agent (A) to add one or more additional credit facilities (including any Incremental Term Facility) to this Agreement (it being understood that no Lender will have any obligation to provide or to commit to provide all or any portion of any such additional credit facility or Incremental Term Facility) and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Credit Documents with the Term Loans and Revolving Loans and the accrued interest and fees in respect thereof and (B) to effect the amendments contemplated by the proviso in Section 10.5(b)(viii) and such other amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the opinion of the Administrative Agent to provide for such additional credit facility.

(ii) In addition, notwithstanding anything herein to the contrary, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the relevant Replacement Term Loans (as defined below) to permit the refinancing or

exchange of all outstanding Term Loans of any tranche ("**Refinanced Term Loans**") with a replacement term loan tranche hereunder ("**Replacement Term Loans**"); *provided* that (A) the aggregate principal amount of such Replacement Term Loans will not exceed the aggregate principal amount of such Refinanced Term Loans plus any interest, premium or other amount due with respect to such Refinanced Term Loans, (B) the scheduled final maturity of such Replacement Term Loans will not be sooner than the scheduled final maturity of such Refinanced Term Loans at the time of such refinancing, (C) the Weighted Average Life to Maturity of such Replacement Term Loans will not be shorter than the Weighted Average Life to Maturity of such Refinanced Term Loans at the time of such refinancing, and (D) the other terms applicable to such Indebtedness are either (i) substantially identical to or (taken as a whole as determined by the Borrower and the Administrative Agent) are no more favorable to the lenders providing such Replacement Term Loans than, those applicable to the Initial Term Loans, the Term A-1 Loans and the Term A-2 Loans or (ii) otherwise on customary market terms as determined in good faith by the Borrower in its reasonable judgment, including with respect to high yield debt securities to the extent applicable; *provided* that this clause (ii) will not apply to (1) interest rate, fees, funding discounts and other pricing terms, (2) redemption, prepayment or other premiums, (3) optional prepayment terms, and (4) covenants and other terms that are (i) applied to the Term Loans existing at the time of incurrence of such Replacement Term Loans (so that existing Lenders also receive the benefit of such provisions) and/or (ii) applicable only to periods after the Latest Term Loan Maturity Date at the time of incurrence of such Indebtedness.

(iii) In addition, notwithstanding anything herein to the contrary, the Borrower and the Administrative Agent may, without the consent of any Lender or Issuing Bank, amend, supplement and/or waive this Agreement, any guaranty, security agreement, pledge agreement and/or related document (if any) executed in connection with this Agreement, enter into amendments or modifications to this Agreement or any of the other Credit Documents or enter into additional Credit Documents in order to (A) implement any Benchmark Replacement or any Conforming Changes or otherwise effectuate the terms of Section 2.18(e) in accordance with the terms of Section 2.18(e) as the Administrative Agent and the Borrower reasonably deem appropriate, (B) comply with any Laws or (C) cause any such guaranty, security agreement, pledge agreement or other document to be consistent with this Agreement and/or the relevant other Credit Documents.

(g) Extension.

(i) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an "**Extension Offer**") made from time to time by the Borrower to all Lenders holding Term Loans with a like maturity date or all Lenders having Revolving Credit Commitments with a like commitment termination date, in each case on a *pro rata* basis (based on the aggregate outstanding principal amount of such respective Term Loans or amounts of Revolving Credit Commitments) and on the same terms to each such Lender, the Borrower is hereby permitted to consummate from time to time transactions with individual Lenders that accept the terms contained in such Extension Offers to extend the maturity date and/or commitment termination of each such Lender's Term Loans and/or Revolving Credit Commitments of such class, and, subject to the terms hereof, otherwise modify the terms of such Term Loans and/or Revolving Credit Commitments pursuant to the terms of the relevant Extension Offer (including by increasing the interest rate and/or fees payable in respect of such Term Loans and/or Revolving Credit Commitments (and related outstandings) and/or modifying the amortization schedule in respect of such Lender's Term Loans) (each, an "**Extension**" and each group of Term Loans or Revolving Credit Commitments, as applicable, in each case as so extended, as well as the original Term Loans and the original Revolving Credit Commitments (in each case not so extended), being a separate "**tranche**"), so long as the following terms are satisfied:

(1) no Default or Event of Default will have occurred and be continuing at the time the Extension Offer is delivered to the Lenders or at the time of such Extension;

(2) except as to interest rates, fees and final commitment termination date (which will be determined by the Borrower and set forth in the relevant Extension Offer, subject to acceptance by the applicable Lenders), the Revolving Credit Commitment of any Lender that agrees to an Extension with respect to such Revolving Credit Commitment extended pursuant to an Extension (an "**Extended Revolving Credit Commitment**") and the related outstandings will be a Revolving Credit Commitment (or related outstandings, as the case may be) with the same terms (or terms not less favorable to existing Lenders holding Revolving Credit Commitments) as the original Revolving Credit Commitments (and related outstandings); *provided* that (1) the borrowing and payments (except for (A) payments of interest and fees at different rates on Extended Revolving Credit Commitments (and related outstandings), (B) repayments required upon the commitment termination date of the non-extending tranche of Revolving Credit Commitments and (C) repayment made in connection with a permanent repayment and termination of commitments) of Revolving Loans with respect to Extended Revolving Credit Commitments after the applicable Extension date will be made on a *pro rata* basis with all other Revolving Credit Commitments, (2) subject to Section 10.5(c), all Swing Line Loans and Letters of Credit will be participated in on a *pro rata* basis by all Lenders with Revolving Credit Commitments (including Extended Revolving Credit Commitments) in accordance with their percentage of the Revolving Credit Commitments, (3) assignments and participations of Extended Revolving Credit Commitments and related Revolving Loans will be governed by the same assignment and participation provisions applicable to the other Revolving Credit Commitments and Revolving Loans and (4) at no time will there be Revolving Credit Commitments hereunder (including Extended Revolving Credit Commitments and any existing Revolving Credit Commitments) which have more than two (2) different maturity dates;

(3) except as to interest rates, fees, amortization, final maturity date, premium, required prepayment dates and participation in prepayments (which will, subject to the immediately succeeding clauses (4), (5) and (6), be determined by the Borrower and set forth in the relevant Extension Offer, subject to acceptance by the Extended Term Lenders), the Term Loans of any Lender that agrees to an Extension with respect to such Term Loans owed to it (an "**Extended Term Lender**") extended pursuant to any Extension ("**Extended Term Loans**") will have the same terms as the tranche of Term Loans subject to such Extension Offer (except for covenants or other provisions contained therein or other provisions contained therein applicable only to periods after the then Latest Term Loan Maturity Date);

(4) the final maturity date of any Extended Term Loans will be no earlier than the Latest Term Loan Maturity Date of the Term Loans extended thereby;

(5) the Weighted Average Life to Maturity of any Extended Term Loans will be no shorter than the Weighted Average Life to Maturity of the Term Loans extended thereby;

(6) any Extended Term Loans may participate on a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis except for prepayments with the proceeds of Credit Agreement Refinancing Indebtedness and in respect of an earlier maturing tranche) with non-extending tranches of Term Loans in any voluntary or mandatory prepayments hereunder, in each case as specified in the respective Extension Offer;

(7) there will be no more than three (3) Extended Term Loan tranches at any time during the term of this Agreement; and

(ii) if the aggregate principal amount of Term Loans (calculated on the outstanding principal amount thereof) or Revolving Credit Commitments in respect of which a Lender will have accepted the relevant Extension Offer will exceed the maximum aggregate principal amount of Term Loans or Revolving Credit Commitments offered to be extended by the Borrower

pursuant to such Extension Offer, then the Term Loans or Revolving Credit Commitments of such Lender will be extended ratably up to such maximum amount based on the respective principal or commitment amounts with respect to which such Lender have accepted such Extension Offer. With respect to all Extensions consummated by the Borrower pursuant to this Section, (i) such Extensions will not constitute voluntary or mandatory payments or prepayments for purposes of Sections 2.13 or 2.14 and (ii) no Extension Offer is required to be in any minimum amount or any minimum increment; *provided* that the Borrower may at its election specify as a condition to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower's sole discretion and may be waived by the Borrower) of Term Loans or Revolving Credit Commitments (as applicable) of any or all applicable tranches be tendered. The Administrative Agent, the Collateral Agent, the Issuing Banks, the Swing Line Lenders and the Lenders hereby consent to the transactions contemplated by this Section (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans and/or Extended Revolving Credit Commitments on the such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement or any other Credit Document that may otherwise prohibit or conflict with any such Extension or any other transaction contemplated by this Section.

(iii) No consent of any Lender, any Issuing Bank, any Swing Line Lender, the Collateral Agent or the Administrative Agent will be required to effectuate any Extension, other than (A) the consent of each Lender agreeing to such Extension with respect to one or more of its Term Loans and/or Revolving Credit Commitments (or a portion thereof) and (B) with respect to any Extension of the Revolving Credit Commitments, the consent of the Issuing Banks and the Swing Line Lenders. All Extended Term Loans, Extended Revolving Credit Commitments and all obligations in respect thereof will be Obligations under this Agreement and the other Credit Documents and secured by the same Liens on the Collateral that secure all other applicable Obligations. The Lenders hereby irrevocably authorize the Administrative Agent and the Collateral Agent to enter into amendments to this Agreement and the other Credit Documents with the Borrower (on behalf of all Credit Parties) as may be necessary in order to establish new tranches or sub-tranches in respect of Term Loans or Revolving Credit Commitments so extended and such technical amendments as may be necessary in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section (any such amendment, an "**Extension Amendment**"). In addition, if so provided in such amendment and with the consent of the Issuing Banks, participations in Letters of Credit expiring on or after the applicable commitment termination date will be re-allocated from Lenders holding non-extended Revolving Credit Commitments to Lenders holding Extended Revolving Credit Commitments in accordance with the terms of such amendment; *provided*, *however*, that such participation interests will, upon receipt thereof by the relevant Lenders holding Revolving Credit Commitments, be deemed to be participation interests in respect of such Revolving Credit Commitments and the terms of such participation interests will be adjusted accordingly. Without limiting the foregoing, in connection with any Extensions the applicable Credit Parties will (at their expense) amend (and the Collateral Agent is hereby directed by the Lenders to amend) any Mortgage that has a maturity date prior to the then latest maturity date so that such maturity date referenced therein is extended to the then latest maturity date (or such later date as may be advised by local counsel to the Collateral Agent). The Administrative Agent will promptly notify each Lender of the effectiveness of each such Extension Amendment.

(iv) In connection with any Extension, the Borrower will provide the Administrative Agent at least five (5) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and will agree to such procedures (including regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such Extension), if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 10.5(g). This Section 10.5(g) will supersede any provisions of this Section 10.5 or Section 2.17 or 10.4 to the contrary.

10.6 Successors and Assigns; Participations.

(a) Generally. This Agreement will be binding upon the parties hereto and their respective successors and assigns and will inure to the benefit of the parties hereto and the successors and assigns of the Lenders. No Credit Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Credit Party without the prior written consent of all of the Lenders. Nothing in this Agreement, expressed or implied, will be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Each Credit Party, the Administrative Agent and the Lenders will deem and treat the Persons listed as the Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan (whether or not evidenced by a Note) will be effective, in each case, unless and until recorded in the Register following receipt of an Assignment Agreement effecting the assignment or transfer thereof, together with the required forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in Section 10.6(d). Each assignment will be recorded in the Register on the Business Day the Assignment Agreement is received by the Administrative Agent, if received by 12:00 noon New York City time, and on the following Business Day if received after such time, prompt notice thereof will be provided to the Borrower and a copy of such Assignment Agreement will be maintained. The date of such recordation of a transfer will be referred to herein as the "**Assignment Effective Date**." Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender will be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(c) Right to Assign. Each Lender will have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment or Loans owing to it or other Obligations (*provided* that, *pro rata* assignments will not be required, but each such assignment will be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any Loan and any related Commitment):

(i) to any Person meeting the criteria of clause (a) or clause (c) of the definition of "Eligible Assignee" upon the giving of notice to the Administrative Agent and the Borrower and, for any assignment of Revolving Credit Commitments and/or Revolving Loans, consented to by each of the Swing Line Lenders and the Issuing Banks (such consent not to be unreasonably withheld or delayed); and

(ii) to any Person meeting the criteria of clause (b) of the definition of "Eligible Assignee" and consented to by each of the Borrower and the Administrative Agent and, for any assignment of Revolving Credit Commitments and/or Revolving Loans, the Swing Line Lenders and the Issuing Banks (each such consent not to be (x) unreasonably withheld or delayed and (y) in the case of the Borrower required at any time an Event of Default will have occurred and then be continuing under Section 8.1(a), (f) or (g)); *provided* that (1) the Borrower's refusal to accept an assignment to a Disqualified Lender will be deemed to be reasonable, (2) the Borrower's consent will be required with respect to any assignments to Disqualified Lenders and (3) the Borrower will be deemed to have consented to any such assignment (other than to an assignment to a Disqualified Lender) unless it will object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received written notice thereof; *provided further*, that each such assignment pursuant to this Section 10.6(c)(ii) will be in an aggregate amount of not less than (A) $5,000,000 (or such lesser amount as may be agreed to by the Borrower and the Administrative Agent or as will constitute the aggregate amount of the Revolving Credit Commitments and Revolving Loans of the assigning Lender) with respect to the assignment of the Revolving Credit Commitments and Revolving Loans and (B) $1,000,000 (or such lesser amount as may be agreed to by the Borrower and the Administrative Agent or as will constitute the aggregate amount of the Term Loan of the assigning Lender) with respect to the assignment of Term Loans.

Notwithstanding anything to the contrary contained in this Agreement, no Lender may sell, assign or transfer all or any portion of its rights and obligations under this Agreement to (i) a Person that is a Defaulting Lender, (ii) a Person that is a Disqualified Lender, (iii) a natural Person or (iv) the Borrower or any of its Subsidiaries or Affiliates.

(d) Mechanics. Assignments and assumptions of Loans and Commitments will only be effected by manual execution and delivery to the Administrative Agent of an Assignment Agreement and will be effective as of the applicable Assignment Effective Date. In connection with all assignments there will be delivered to the Administrative Agent such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver pursuant to Section 2.20(f), together with payment to the Administrative Agent of a registration and processing fee of $3,500; *provided* that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment.

(e) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) (A) it is an Eligible Assignee and (B) it is not a Disqualified Lender, it being acknowledged by the Credit Parties, the Lenders and the other Secured Parties that the Administrative Agent will be entitled to rely on such representations and warranties set forth in this clause (i) without any diligence in respect to the accuracy of such representations and warranties and any breach of such representations and warranties by such Lender will not give rise to any liability on the part of the Administrative Agent; and (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be.

(f) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the Assignment Effective Date (i) the assignee thereunder will have the rights and obligations of a "Lender" hereunder to the extent of its interest in the Loans and Commitments as reflected in the Register and will thereafter be a party hereto and a "Lender" for all purposes hereof; (ii) the assigning Lender thereunder will, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender will cease to be a party hereto on the Assignment Effective Date; *provided* that anything contained in any of the Credit Documents to the contrary notwithstanding, (A) the Issuing Banks will continue to have all rights and obligations thereof with respect to such Letters of Credit until the cancellation or expiration of such Letters of Credit and the reimbursement of any amounts drawn thereunder and (B) such assigning Lender will continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments will be modified to reflect the Commitment of such assignee and any Revolving Credit Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender will, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to the Administrative Agent for cancellation, and thereupon the Borrower will issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Revolving Credit Commitments and/or outstanding Loans of the assignee and/or the assigning Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with clauses (b) through (f) will 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 (g).

(g) Participations. Each Lender will have the right at any time to sell one or more participations to any Person (other than to a Disqualified Lender or a Defaulting Lender) in all or any part of its Commitments, Loans or in any other Obligation; *provided* that with respect to any participation by a Lender to a Disqualified Lender or, to the extent the Borrower's consent is required under this Section 10.6, to any other Person, such participation will not be rendered void as a result but the Borrower shall be entitled to pursue any remedy available to it (whether at law or in equity, but excluding specific performance to unwind such participation) against the Lender and such Disqualified Lender, but in no

case shall the Borrower or any other Person be entitled to pursue any remedy against the Administrative Agent. The holder of any such participation, other than an Affiliate of the Lender granting such participation, will not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of any Loan, Note or Letter of Credit (unless such Letter of Credit is not extended beyond the Revolving Credit Commitment Termination Date) in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment will not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan will be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement or (iii) release all or substantially all of the Collateral under the Collateral Documents (except as expressly provided in the Credit Documents) supporting the Loans hereunder or release all or substantially all of the Guarantees in which such participant is participating. The Borrower agrees that each participant will be entitled to the benefits of Sections 2.18(c), 2.19 and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (c) of this Section; *provided* that (i) the participant agrees to be subject to the provisions of Sections 2.21 and 2.23 as if it were an assignee under Section 10.6(c), (ii) a participant will not be entitled to receive any greater payment under Sections 2.19 or 2.20 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with the Borrower's prior written consent to the participant or 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 and (iii) a participant that would be a Non-U.S. Lender if it were a Lender will not be entitled to the benefits of Section 2.20 unless such participant agrees, for the benefit of the Borrower to comply with Section 2.20 as though it were a Lender (it being understood that the documentation required under Section 2.20(f) will be delivered to the participant). 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 Sections 2.21 and 2.23 with respect to any participant. To the extent permitted by law, each participant also will be entitled to the benefits of Section 10.4 as though it were a Lender; *provided* that such participant agrees to be subject to Section 2.17 as though it were a Lender. Each Lender that sells a participation, acting solely for this purpose as a non-fiduciary agent of the Borrower will maintain a register on which it records the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans and Commitments (each, a "**Participant Register**"). The entries in the Participant Register will be conclusive absent manifest error, and such Lender, the Borrower and the Administrative Agent will treat each Person whose name is recorded in the Participant Register pursuant to the terms hereof as the owner of such Loans and Commitments for all purposes of this Agreement, notwithstanding any notice to the contrary. No Lender will have any obligation to disclose all or any portion of the Participant Register to any Person (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 Credit Document) except to the extent that such disclosure is necessary to establish that such commitment, loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. Notwithstanding anything to the contrary contained in this Agreement, no Lender may sell participations to (i) a Person that is a Defaulting Lender, (ii) a natural Person, (iii) the Borrower or any of its Subsidiaries or Affiliates or (iv) a Disqualified Lender.

(h) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.6, any Lender may assign and/or pledge all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender, including, without limitation, to any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank or any central bank; provided that no Lender, as between the Borrower and such Lender, will be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided, further, in no event will the applicable Federal Reserve Bank, central bank, pledgee or trustee be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to

take any action hereunder. Without limiting the foregoing, in the case of any Lender that is a fund that invests in bank loans or similar extensions of credit, such Lender may, without the consent of Borrower, the Issuing Banks, the Swing Line Lenders, the Administrative Agent or any other person, collaterally assign or pledge all or any portion of its rights under this Agreement, including the Loans and Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities. For the avoidance of doubt, the Administrative Agent (in its capacity as the Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(i) [Reserved].

(j) [Reserved].

(k) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle (an "**SPC**"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; *provided* that (i) nothing herein will constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender will be obligated to make such Loan pursuant to the terms hereof; *provided further*, that nothing herein will make the SPC a "Lender" for the purposes of this Agreement, obligate the Borrower or any other Credit Party or the Administrative Agent to deal with such SPC directly, obligate the Borrower or any other Credit Party in any manner to any greater extent than they were obligated to the Granting Lender, or increase costs or expenses of the Borrower. The Credit Parties and the Administrative Agent will be entitled to deal solely with, and obtain good discharge from, the Granting Lender and will not be required to investigate or otherwise seek the consent or approval of any SPC, including for the approval of any amendment, waiver or other modification of any provision of any Credit Document. The making of a Loan by an SPC hereunder will utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC will be liable for any indemnity or similar payment obligation under this Agreement (all liability for which will remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement will survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States of America or any state thereof. In addition, notwithstanding anything to the contrary contained in this Section 10.6(k), any SPC may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and the Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC.

(l) Electronic Signatures, Etc. The words "execution," "signed," "signature," and words of like import in any Assignment Agreement will be deemed to include electronic signatures or the keeping of records in electronic form, each of which will be of the same legal effect, validity or enforceability as a manually executed signature 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.

10.7 Independence of Covenants; Interpretation. All covenants hereunder will be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant will not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. Any dispute regarding the occurrence or continuance of a Default or Event of Default

will be resolved by the Borrower and the Required Lenders (or Administrative Agent), no Person other than the Required Lenders (or the Administrative Agent) will assert that a Default or Event of Default will have occurred and be continuing. Any Default or Event of Default that has been cured (including by means of delivery or performance of an obligation after the date by which such delivery or performance was due) or waived will be deemed to no longer be continuing.

10.8 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein will survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Sections 2.18, 2.19, 2.20, 10.2, 10.3, 10.14, 10.15 and 10.16 and the agreements of the Lenders set forth in Sections 2.17, 9.5, 9.6 and 9.8 will survive the termination of all Commitments, the cancellation or expiration of the Letters of Credit and the reimbursement of any amounts drawn thereunder, and the termination hereof, and the payment in full of all other Obligations.

10.9 No Waiver; Remedies Cumulative. No failure or delay on the part of any Agent or any Lender in the exercise of any power, right, remedy or privilege hereunder or under any other Credit Document will impair such power, right, remedy or privilege or be construed to be a waiver of any default or acquiescence therein, nor will any single or partial exercise of any such power, right, remedy or privilege preclude other or further exercise thereof or of any other power, right, remedy or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and will be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents or any of the Secured Rate Contracts or any of the Bank Product Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

10.10 Marshalling; Payments Set Aside. No Agent or any Lender will be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to the Administrative Agent or the Lenders (or to the Administrative Agent, on behalf of the Lenders), or the Administrative Agent or the Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law, any equitable cause or any intercreditor arrangement contemplated hereunder, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, will be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11 Severability. In case any provision in or obligation hereunder or any Note will be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, will not in any way be affected or impaired thereby.

10.12 Obligations Several; Independent Nature of the Lenders' Rights.

(a) The obligations of the Lenders hereunder are several and no Lender will be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by the Lenders pursuant hereto or thereto, will be deemed to constitute the Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender will be a separate and independent debt, and each Lender will be entitled to protect and enforce its rights arising out hereof and it will not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

(b) Each Lender acknowledges and agrees that it will act collectively through the Administrative Agent and, without limiting the delegation of authority to the Administrative Agent set forth herein, the Required Lenders will direct the Administrative Agent with respect to the exercise of rights and remedies hereunder (including with respect to alleging the existence or occurrence of, and

exercising rights and remedies as a result of, any Default or Event of Default in each case that could be waived with the consent of the Required Lenders), and such rights and remedies will not be exercised other than through the Administrative Agent.

10.13 Headings. Section headings herein are included herein for convenience of reference only and will not constitute a part hereof for any other purpose or be given any substantive effect.

10.14 Applicable Law. This Agreement and the rights and obligations of the parties hereunder will be governed by, and will be construed and enforced in accordance with, the laws of the State of New York.

10.15 Consent to Jurisdiction. By executing and delivering this Agreement, each Credit Party, for itself and in connection with its properties, and each other party hereto irrevocably (a) accepts generally and unconditionally the exclusive jurisdiction and venue of each state or Federal court of competent jurisdiction in the State, County and City of New York; (b) waives any defense of forum non conveniens; (c) agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to the applicable Credit Party at its address provided in accordance with Section 10.1; (d) agrees that service as provided in clause (c) above is sufficient to confer personal jurisdiction over the applicable Person in any such proceeding in any such court, and otherwise constitutes effective and binding service in every respect; and (e) notwithstanding anything to the contrary herein, agrees that Agents and Lenders retain the right to serve process in any other manner permitted by law or to bring proceedings against any Credit Party in the courts of any other jurisdiction.

10.16 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH OF THE PARTIES HERETO WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

10.17 Confidentiality; Tombstones; Etc.

(a) Confidentiality. Each Agent, each Issuing Bank and each Lender will (A) not furnish any Information identified as such by the Borrower to any other Person and (B) treat all Information with the same degree of care as it treats its own confidential information, it being understood and agreed by the Borrower that, in any event, an Agent, an Issuing Bank or a Lender may make (i) disclosures of such information to creditors of any such Lender, Affiliates of such Agent, such Issuing Bank or such Lender, to their and such Affiliates' shareholders, officers, directors, employees, legal counsel, independent auditors and other experts, advisors or agents who need to know such information in connection with the transactions contemplated hereby, are informed of the confidential nature of such information and are instructed to keep such information confidential (and to other persons authorized by an Agent, Issuing Bank or Lender to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17) other than any Disqualified Lender, (ii) disclosure to any rating agency when required by it, (iii) disclosures required or requested by any governmental agency or self-regulatory authority or representative thereof or by the NAIC or pursuant to legal or judicial process, including in connection with assignments or pledges made pursuant to Section 10.6(h); *provided* that, unless specifically prohibited by applicable law, court order or any Governmental Authority or representative thereof, each Agent, each Issuing Bank and each Lender will notify the Borrower of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Agent, such Issuing Bank or such Lender by such Governmental Authority or representative thereof

or self-regulatory authority or any such request pursuant to the Right to Financial Privacy Act of 1978) for disclosure of any such Information prior to disclosure of such information, (iv) disclosures in connection with the enforcement of its rights under any Credit Document, (v) disclosures to any other party to this Agreement, (vi) disclosures to any assignee or participant or any prospective assignee or participant (*provided* that such assignee, participant, prospective assignee or prospective participant is not a Disqualified Lender and is advised of and agrees to be bound by either the provisions of this Section 10.17 or other provisions at least as restrictive as this Section 10.17; *provided, further*, that notwithstanding anything to the contrary contained herein, the disclosure of the Disqualified Lender List to any assignee, participant, prospective assignee or prospective assignee, regardless of whether such Person is a Disqualified Lender, shall be permitted), (vii) disclosures with the consent of the Borrower, (viii) disclosures to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section 10.17 or (B) becomes available to such Agent, such Issuing Bank or such Lender on a non-confidential basis from a source other than the Borrower, any Subsidiary or any of their respective Affiliates that is not known by such Agent, such Issuing Bank or such Lender to be subject to confidentiality obligations to the Borrower, any Subsidiary or their respective Affiliate, (ix) to a Person that is a trustee, investment advisor, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization and (x) to any direct or indirect contractual counterparties (or the advisors thereto) to any swap or derivative transaction relating to the Borrower or its Subsidiaries or its or their obligations (*provided* that such counterparty or advisor is not a Disqualified Lender and is advised of and agrees to be bound by either the provisions of this Section 10.17 or other provisions at least as restrictive as this Section 10.17). For the purposes of this Section, "**Securitization**" shall mean a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in party, by the Loans. In addition, each Agent, each Issuing Bank and each Lender may disclose the existence of this Agreement and the certain limited generic information about this Agreement (but not any Information) to market data collectors, similar services providers to the lending industry, and service providers to the Agents, the Issuing Banks and the Lenders, in each case limited to the extent necessary to obtain league table credit. For the avoidance of doubt, in no event will any Agent, any Issuing Bank or any Lender disclose Information to any Disqualified Lender unless such disclosure is otherwise consented to by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section 10.17 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. For purposes of this Section, "**Information**" shall mean all information received from any Credit Party or any Subsidiary thereof relating to any Credit Party or its business, other than any such information that is available to any Agent, the Issuing Banks, the Swing Line Lenders or any Lender on a non-confidential basis prior to disclosure by such Person other than as a result of a breach of this Section 10.17 and other than information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry; *provided* that, after a Qualifying IPO, in the case of information received from a Credit Party, such information is clearly identified at the time of delivery as confidential.

Each Lender acknowledges that information furnished to it pursuant to this Agreement or the other Credit Documents 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 or the other Credit Documents will be syndicate-level information, which may contain material non-public information about the Borrower and its Affiliates 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.

(b) Tombstones. Each Credit Party consents to the publication by the Administrative Agent of advertisements in financial and other newspapers and periodicals or on a home page or similar place for dissemination of information on the Internet or worldwide web as it may choose (subject to the Borrower's right to approve any such advertisements, which approval will not be unreasonably withheld or delayed), and the circulation, on a confidential basis, of promotional materials, on and following the Closing Date in the form of a "tombstone" or "case study", containing information customarily included in such promotional materials, including (i) the names of the Borrower and its Affiliates (or any of them), (ii) the Administrative Agent and its Affiliates' titles and roles in connection with the Transactions and (iii) the amount, type and closing date of the Commitments and the Loans.

10.18 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law will not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder will bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Borrower will pay to the Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of the Lenders and the Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess will be cancelled automatically and, if previously paid, will at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to the Borrower.

10.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or Electronic Transmission will be as effective as delivery of a manually executed counterpart hereof. The words "execute," "execution," "signed," "signature," "delivery" and words of like import in or related to this Agreement, any other Credit Document or any document, amendment, approval, consent, waiver, modification, information, notice, certificate, report, statement, disclosure, or authorization to be signed or delivered in connection with this Agreement or any other Credit Document or the transactions contemplated hereby shall be deemed to include Electronic Signatures or execution in the form of an Electronic Record, and contract formations on electronic platforms approved by the Administrative Agent, 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 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. Each party hereto agrees that any Electronic Signature or execution in the form of an Electronic Record shall be valid and binding on itself and each of the other parties hereto to the same extent as a manual, original signature. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the parties of a manually signed paper which has been converted into electronic form (such as scanned into PDF format), or an electronically signed paper converted into another format, for transmission, delivery and/or retention. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided that without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept such Electronic Signature from any party hereto, the Administrative Agent and the other parties hereto shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the executing party without further verification and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature

shall be promptly followed by an original manually executed counterpart thereof. Without limiting the generality of the foregoing, each party hereto hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and any of the Credit Parties, electronic images of this Agreement or any other Credit Document (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (B) waives any argument, defense or right to contest the validity or enforceability of the Credit Documents based solely on the lack of paper original copies of any Credit Documents, including with respect to any signature pages thereto.

10.20 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

10.21 Effectiveness; Entire Agreement. This Agreement will become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by the Borrower and the Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof.

10.22 No Fiduciary Duty. Each Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the "**Lenders**"), may have economic interests that conflict with those of the Credit Parties. Each Credit Party acknowledges and agrees:

(a) nothing in the Credit Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Lenders and each Credit Party, its stockholders or its affiliates;

(b) the transactions contemplated by the Credit Documents are arm's-length commercial transactions between the Lenders, on the one hand, and each Credit Party, on the other;

(c) in connection therewith and with the process leading to such transaction each of the Lenders is acting solely as a principal and not the agent or fiduciary of any Credit Party, its management, stockholders, creditors or any other person;

(d) no Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether any Lender or any of its affiliates has advised or is currently advising any Credit Party on other matters) or any other obligation to any Credit Party except the obligations expressly set forth in the Credit Documents;

(e) each Credit Party has consulted its own legal and financial advisors to the extent it deemed appropriate;

(f) each Credit Party is responsible for making its own independent judgment with respect to such transactions and the process leading thereto; and

(g) no Credit Party will claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to any Credit Party, in connection with such transaction or the process leading thereto.

10.23 No Third Parties Benefit. This Agreement is made and entered into for the sole protection and legal benefit of the Borrower, the Lenders, the Issuing Banks party hereto, the Agents and each other Secured Party, and their permitted successors and assigns, and no other Person will be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Credit Documents. No Agent or any Lender will have any obligation to any Person not a party to this Agreement or the other Credit Documents.

10.24 PATRIOT Act. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Credit Parties that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of each Credit Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Credit Parties in accordance with the PATRIOT Act.

10.25 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Credit Document, to the extent such liability is unsecured, 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 liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such 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 liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

10.26 Judgment Currency.

(a) The Credit Parties' obligations hereunder and under the other Credit Documents to make payments in Dollars shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than Dollars, except to the extent that such tender or recovery results in the effective receipt by the Administrative Agent, the respective Lender or the applicable Issuing Bank of the full amount of Dollars expressed to be payable to the Administrative Agent or such Lender or such Issuing Bank under this Agreement or the other Credit Documents. If, for the purpose of obtaining or enforcing judgment against any Credit Party in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than Dollars (such other currency being hereinafter referred to as the "**Judgment Currency**") an amount due in Dollars, the conversion shall be made at the Dollar Equivalent determined as of the Calculation Date immediately preceding the day on which the judgment is given.

(b) If there is a change in the rate of exchange prevailing between the Calculation Date described in clause (a) above and the date of actual payment of the amount due, the Credit Parties shall pay, or cause to be paid, such additional amounts, if any (but in any event not a lesser amount) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of Dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate of exchange prevailing on the Calculation Date.

(c) For purposes of determining the Dollar Equivalent or any other rate of exchange for this Section 10.26, such amounts shall include any premium and costs payable in connection with the purchase of Dollars.

10.27 Acknowledgement Regarding Any Supported QFCs. To the extent that the Credit Documents provide support, through a guarantee or otherwise, for Rate Contracts 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 Credit 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).

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 Credit 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 Credit 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.

[Signature Pages Intentionally Omitted]

Summary report: Litera® Change-Pro for Word 10.14.0.46 Document comparison done on 3/30/2023 7:31:13 PM	
Style name: L&W with Moves	
Intelligent Table Comparison: Active	
Original DMS: iw://usdocs.lw.com/US-DOCS/132519535/10	
Modified DMS: iw://usdocs.lw.com/US-DOCS/140362323/5	
Changes:	
Add	273
~~**Delete**~~	137
~~*Move From*~~	0
Move To	0
Table Insert	6
~~**Table Delete**~~	6
Table moves to	0
~~*Table moves from*~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	422

Exhibit 21.1

Legal Name	Jurisdiction of Incorporation
Bioventus Inc.	Delaware
Bioventus LLC	Delaware
Bioventus Holdings LLC (1)	North Carolina
Bioventus Coöperatief U.A.(2)	The Netherlands
Bioventus Canada, Ulc (3)	British Columbia
Bioventus Germany GmbH (3)	Germany
Bioventus UK, Ltd (3)	United Kingdom
CartiHeal (2009) Ltd. (4)	Israel
CartiHeal Inc. (5)	New Jersey
Misonix LLC (1)	Delaware
Misonix OpCo, LLC (6)	Delaware
Perseus Intermediate, Inc. (1)	Delaware
Bioness Inc. (7)	Delaware
Bioness Neuromodulation Ltd. (8)	Israel
Bioness Europe B.V. (9)	The Netherlands

(1) Wholly owned subsidiary of Bioventus LLC
(2) Joint partnership between Bioventus LLC and Bioventus Holdings LLC
(3) Wholly owned subsidiary of Bioventus Coöperatief U.A.
(4) Owned subsidiary of Bioventus Coöperatief U.A. and Bioventus LLC
(5) Wholly owned subsidiary of CartiHeal (2009) Ltd.
(6) Wholly owned subsidiary of Misonix LLC
(7) Wholly owned subsidiary of Perseus Intermediate, Inc.
(8) Wholly owned subsidiary of Bioness Inc.
(9) Wholly owned subsidiary of Bioness Neuromodulation Ltd.

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated March 31, 2023, with respect to the consolidated financial statements included in the Annual Report of Bioventus Inc. on Form 10-K for the year ended December 31, 2022. We consent to the incorporation by reference of said report in the Registration Statements of Bioventus Inc. on Forms S-8 (File No. 333-260603; File No. 333-252981; File No. 333-264050; File No. 333-263496) and Form S-4 (File No. 333-259392).

/s/ GRANT THORNTON LLP

Raleigh, North Carolina

March 31, 2023

Exhibit 31.1

CERTIFICATIONS

I, Kenneth M. Reali, certify that:

1. I have reviewed this Annual Report on Form 10-K of Bioventus 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 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 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.

/s/ Kenneth M. Reali

Name: Kenneth M. Reali

Title: Chief Executive Officer and Director (Principal Executive Officer)

Date: March 31, 2023

Exhibit 31.2

CERTIFICATIONS

I, Mark L. Singleton, certify that:

1. I have reviewed this Annual Report on Form 10-K of Bioventus 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 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 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.

/s/ Mark L. Singleton

Name: Mark L. Singleton

Title: Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

Date: March 31, 2023

Exhibit 32

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

Pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, in connection with the Annual Report on Form 10-K of Bioventus Inc. (the Company) for the period ended December 31, 2022, as filed with the Securities and Exchange Commission on the date hereof (the Report), each of Kenneth M. Reali, Chief Executive Officer and Director of the Company and Mark L. Singleton, Senior Vice President and Chief Financial Officer of the Company, hereby certifies, that, to such officer's knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Kenneth M. Reali

Name: Kenneth M. Reali
Title: Chief Executive Officer and Director (Principal Executive Officer)

/s/ Mark L. Singleton

Name: Mark L. Singleton
Title: Senior Vice President and Chief Financial Officer (Principal Financial Officer)

Date: March 31, 2023

Exhibit 99.1

List of patents issued and pending patent applications

Country	Application Number	Filing Date	Patent Number	Application Status	Expected Expiration Date	Description	Product
AU	2009324417	December 13, 2009	2009324417	Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
AU	2014259553	November 14, 2014	2014259553	Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
AU	2016213839	August 11, 2016	2016213839	Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
CA	2746668	December 13, 2009	2746668	Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
CN	200980155596.X	December 13, 2009	200980155596.X	Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
CN	201410000000	August 20, 2014	2.0141E+11	Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
EP	9832666.3	December 13, 2009	2389205	Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
HK	15105678.1	June 16, 2015	HK1205007	Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
IN	2567/KOLNP/2011	February 4, 2016	365827	Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
KR	10-2011-7016270	July 2, 2019	10-1713346	Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
US	15/016072	December 13, 2009	10383974	Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
US	16/459778	February 4, 2016	11491260	Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
GB	9832666.3	December 13, 2009		Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
FR	9832666.3	December 13, 2009		Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
DE	9832666.3	December 13, 2009		Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
IT	9832666.3	December 13, 2009		Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
CH	9832666.3	December 13, 2009		Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
BE	9832666.3	December 13, 2009		Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
ES	9832666.3	December 13, 2009		Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
PT	9832666.3	December 13, 2009		Issued	Dec-29	Directed to methods of making osteoinductive implants	OsteoAMP
US	09/925,193	August 9, 2001	7429248	Granted	Jul-25	Directed to applying ultrasound to tissue using a modal converter having a plurality of angled sides.	Exogen
AU	2006203281	August 1, 2006	2006203281	Granted	Aug-25	Directed to treating a neuropathy disease with ultrasound using a specific frequency and pulse rate for the signal	Exogen
US	11/462271	August 3, 2006	8048006	Granted	Feb-29	Directed to treating a neuropathy disease with ultrasound using a specific frequency and pulse rate for the signal	Exogen
US	12/296,333	April 7, 2007	8226582	Granted	Jun-28	Directed to applying ultrasound to tissue using a modal converter having an oblique angle and speed of sound similar to human tissue	Exogen
US	17/097,350	November 13, 2020		Pending	Nov-40	Directed to placental tissue particulates compositions, methods of treating musculoskeletal or orthopedic conditions, methods of treating pain associated with osteoarthritis, kits and methods of making the compositions	MOTYS
PCT	PCT/US20/60393	November 13, 2020		Completed	Nov-40	Directed to placental tissue particulates compositions, for use in treating musculoskeletal or orthopedic conditions, methods of treating pain associated with osteoarthritis, kits and methods of making the compositions	MOTYS
AU	2010326076	December 1, 2010	2010326076	Issued	Dec-30	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
CA	2780328	December 1, 2010	2780328	Issued	Dec-30	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
EP	8827776.9	August 25, 2008	2180918	Issued	Aug-28	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
EP	17195472	December 1, 2010	3299061	Issued	Dec-30	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter

Country	Application Number	Filing Date	Patent Number	Application Status	Expected Expiration Date	Description	Product
FR	8827776.9	August 25, 2008	2180918	Issued	Aug-28	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
FR	17195472	December 1, 2010	3299061	Issued	Dec-30	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
DE	8827776.9	August 25, 2008	2180918	Issued	Aug-28	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
DE	60 2010 064 767.6	December 1, 2010	3299061	Issued	Dec-30	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
JP	2010-522104	August 25, 2008	5425077	Issued	Aug-28	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
JP	2012-542152	December 1, 2010	5667205	Issued	Dec-30	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
GB	8827776.9	August 25, 2008	2180918	Issued	Aug-28	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
GB	17195472	December 1, 2010	3299061	Issued	Dec-30	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
US	11/867,454	October 4, 2007	8,483,820	Issued	Nov-30	Directed to a system and method for percutaneous delivery of electrical stimulation to a target body tissue	StimRouter
US	12/197,849	August 25, 2008	8,467,880	Issued	Nov-31	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
US	12/628,273	December 1, 2009	8,738,137	Issued	Nov-28	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
US	14/630,329	February 24, 2015	9,757,554	Issued	Aug-28	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
US	13/513,318	December 1, 2010	9,072,896	Issued	May-29	Directed to a system for transmitting electrical current to a bodily tissue	StimRouter
US	11/993,393	June 28, 2006	8,332,029	Issued	April 2028	Directed to an implant, system and method using implanted passive conductors for routing electrical current	StimRouter
US	13/618,739	September 14, 2012	8,538,517	Issued	Jun-26	Directed to an implant, system and method using implanted passive conductors for routing electrical current	StimRouter
US	14/027,930	September 16, 2013	8,862,225	Issued	Jun-26	Directed to an implant, system and method using implanted passive conductors for routing electrical current	StimRouter
US	12/187,662	August 7, 2008	8,494,650	Issued	April 2030	Directed to insertion tools and method for an electrical stimulation implant	StimRouter
US	12/407,097	March 19, 2009	8,167,640	Issued	December 2029	Directed to flexible connector for implantable electrical stimulation lead	StimRouter
AU	2009262237	June 24, 2009	2009262237	Issued	Jun-29	Directed to treatment of indications using electrical stimulation	L300
AU	2006314072	November 16, 2006	2006314072	Issued	November 2026	Directed to gait modulation system and methods	L300
AU	2011254054	November 16, 2006	2011254054	Issued	Nov-26	Directed to gait modulation system and methods	L300
AU	2013260668	November 16, 2006	2013260668	Issued	Nov-26	Directed to gait modulation system and methods	L300
AU	2017202373	November 16, 2006	2017202373	Issued	Nov-26	Directed to gait modulation system and methods	L300
AU	2007245258	May 1, 2007	2007245258	Issued	May 2027	Directed to improved functional electrical stimulation systems	L300
AU	2013273609	May 1, 2007	2013273609	Issued	May-27	Directed to improved functional electrical stimulation systems	L300
AU	2015201998	May 1, 2007	2015201998	Issued	May-27	Directed to improved functional electrical stimulation systems	L300
AU	2019200793	May 1, 2007	2019200793	Issued	May-27	Directed to improved functional electrical stimulation systems	L300
AU	2019202303	November 16, 2006	2019202303	Issued	Nov-26	Directed to gait modulation system and method	L300
AU	2012277312	June 26, 2012	2012277312	Issued	Jun-32	Directed to an electrode for muscle stimulation	L300
AU	2015236546	March 17, 2015	2015236546	Issued	Mar-35	Directed to systems and apparatus for gait modulation and methods of use	L300
AU	2017206723	January 11, 2017	2017206723	Issued	Jan-37	Directed to systems and apparatus for gait modulation and methods of use	L300
CA	2632196	November 16, 2006	2632196	Issued	Nov-26	Directed to gait modulation system and method	L300
CA	2794533	November 16, 2006	2794533	Issued	Nov-26	Directed to gait modulation system and method	L300
CA	2930077	November 16, 2006	2930077	Issued	Nov-26	Directed to a sensor device for a gait modulation system	L300
CA	2649663	May 1, 2007	2649663	Issued	May-27	Directed to improved functional electrical stimulation systems	L300
CA	2956427	May 1, 2007	2956427	Issued	May-27	Directed to improved functional electrical stimulation systems	L300

Country	Application Number	Filing Date	Patent Number	Application Status	Expected Expiration Date	Description	Product
CA	3033963	November 16, 2006	3033963	Issued	Nov-26	Directed to gait modulation system and method	L300
CA	2840167	June 26, 2012	2840167	Issued	Jun-32	Directed to an electrode for muscle stimulation	L300
DK	6821561.5	November 16, 2006	1951365	Issued	Nov-26	Directed to gait modulation system and method	L300
EP	9770922.4	June 24, 2009	2291220	Issued	Jun-29	Directed to treatment of indications using electrical stimulation	L300
EP	6821561.5	November 16, 2006	1951365	Issued	Nov-26	Directed to gait modulation system and method	L300
EP	7736271.3	May 1, 2007	2012669	Issued	May 2027	Directed to improved functional electrical stimulation systems	L300
EP	12197261.6	May 1, 2007	2586489	Issued	May-27	Directed to improved functional electrical stimulation systems	L300
EP	12803925.2	June 26, 2012	2723442	Issued	Jun-32	Directed to an electrode for muscle stimulation	L300
EP	17738843.6	January 11, 2017	3402404	Issued	Jan-37	Directed to systems and apparatus for gait modulation and methods of use	L300
FR	6821561.5	November 16, 2006	1951365	Issued	Nov-26	Directed to gait modulation system and method	L300
FR	7736271.3	May 1, 2007	2012669	Issued	May-27	Directed to improved functional electrical stimulation systems	L300
FR	12197261.6	May 1, 2007	2586489	Issued	May-27	Directed to improved functional electrical stimulation systems	L300
FR	9770922.4	June 24, 2009	2291220	Issued	Jun-29	Directed to treatment of indications using electrical stimulation	L300
FR	12803925.2	June 26, 2012	2723442	Issued	Jun-32	Directed to an electrode for muscle stimulation	L300
FR	17738843.6	January 11, 2017	3402404	Issued	Jan-37	Directed systems and apparatus for gait modulation and methods of use	L300
DE	602006000000	November 16, 2006	1951365	Issued	Nov-26	Directed to gait modulation system and method	L300
DE	7736271.3	May 1, 2007	2012669	Issued	May-27	Directed to improved functional electrical stimulation systems	L300
DE	12197261.6	May 1, 2007	2586489	Issued	May-27	Directed to improved functional electrical stimulation systems	L300
DE	602009000000	June 24, 2009	2291220	Issued	Jun-29	Directed to treatment of indications using electrical stimulation	L300
DE	602012000000	June 26, 2012	2723442	Issued	Jun-32	Directed to an electrode for muscle stimulation	L300
DE	17738843.6	January 11, 2017	3402404	Issued	Jan-37	Directed to systems and apparatus for gait modulation and methods of use	L300
JP	2009-517597	May 1, 2007	5324438	Issued	May 2027	Directed to improved functional electrical stimulation systems	L300
JP	2013-149122	May 1, 2007	5739944	Issued	May-27	Directed to improved functional electrical stimulation systems	L300
JP	2015-088947	May 1, 2007	6178359	Issued	May-27	Directed to improved functional electrical stimulation systems	L300
JP	2016-547617	March 17, 2015	6563934	Issued	Mar-35	Directed to systems and apparatus for gait modulation and methods of use	L300
JP	2018-534781	January 11, 2017	7036728	Issued	Jan-37	Directed to systems and apparatus for gait modulation and methods of use	L300
SE	6821561.5	November 16, 2006	1951365	Issued	Nov-26	Directed to gait modulation system and method	L300
GB	6821561.5	November 16, 2006	1951365	Issued	Nov-26	Directed to gait modulation system and method	L300
GB	7736271.3	May 1, 2007	2012669	Issued	May-27	Directed to improved functional electrical stimulation systems	L300
GB	12197261.6	May 1, 2007	2586489	Issued	May-27	Directed to improved functional electrical stimulation systems	L300
GB	9770922.4	June 24, 2009	2291220	Issued	Jun-29	Directed to treatment of indications using electrical stimulation	L300
GB	12803925.2	June 26, 2012	2723442	Issued	Jun-32	Directed to an electrode for muscle stimulation	L300
GB	17738843.6	January 11, 2017	3402404	Issued	Jan-37	Directed to systems and apparatus for gait modulation and methods of use	L300
US	13/000,840	June 24, 2009	9,925,374	Issued	Jul-29	Directed to treatment of indications using electrical stimulation	L300
US	12/096,077	November 16, 2006	8,209,022	Issued	June 2029	Directed to gait modulation system and method	L300
US	13/532,603	June 25, 2012	8,972,017	Issued	October 2026	Directed to gait modulation system and method	L300
US	11/380,430	April 27, 2006	7,899,556	Issued	May 2029	Directed to an orthosis for a gait modulation system	L300
US	11/552,997	October 26, 2006	7,632,239	Issued	October 2026	Directed to a sensor device for gait enhancement	L300

Country	Application Number	Filing Date	Patent Number	Application Status	Expected Expiration Date	Description	Product
US	12/299,043	May 1, 2007	8,788,049	Issued	Jun-30	Directed to functional electrical stimulation systems	L300
US	12/631,095	December 4, 2009	8,382,688	Issued	January 2027	Directed to a sensor device for gait enhancement	L300
US	13/036,256	February 28, 2011	8,209,036	Issued	April 2026	Directed to an orthosis for a gait modulation system	L300
US	13/532,597	June 25, 2012	8,694,110	Issued	Apr-26	Directed to an orthosis for a gait modulation system	L300
US	14/245,597	April 4, 2014	10,080,885	Issued	Apr-26	Directed to an orthosis for a gait modulation system	L300
US	14/333,184	July 16, 2014	9,415,205	Issued	Nov-26	Directed to functional electrical stimulation systems	L300
US	14/636,628	March 3, 2015	10,076,656	Issued	Oct-26	Directed to gait modulation system and method	L300
US	15/237,208	August 15, 2016	10,016,598	Issued	Nov-26	Directed to functional electrical stimulation systems	L300
US	16/030,065	July 9, 2018	10,543,365	Issued	Nov-26	Directed to functional electrical stimulation systems	L300
US	16/139,927	September 24, 2018	11,058,867	Issued	Apr-26	Directed an orthosis for a gait modulation system	L300
US	10/222,878	August 19, 2002	7,337,007	Issued	June 2024	Directed to a surface neuroprosthetic device having a locating system	L300
US	13/169,553	June 27, 2011	8,868,217	Issued	Oct-31	Directed to an electrode for muscle stimulation	L300
US	14/223,340	March 24, 2014	9,867,985	Issued	Mar-34	Directed to systems and apparatus for gait modulation and methods of use	L300
US	15/872,634	January 16, 2018	10,086,196	Issued	Mar-34	Directed to systems and apparatus for gait modulation and methods of use	L300
US	16/146,368	September 28, 2018	10,850,098	Issued	Mar-34	Directed to systems and apparatus for gait modulation and methods of use	L300
US	16/031,721	January 11, 2017	11,077,300	Issued	Jan-37	Directed to systems and apparatus for gait modulation and methods of use	L300
US	16/773,610	January 27, 2020	11,247,048	Issued	July 2027	Directed to functional electrical stimulation systems	L300
CA	2936989	March 17, 2015		Pending	Mar-35	Directed to systems and apparatus for gait modulation and methods of use	L300
CA	3010880	January 11, 2017		Pending	January 2037	Directed to systems and apparatus for gait modulation and methods of use	L300
EP	18198317.2	June 26, 2012		Pending	Jun-32	Directed to an electrode for muscle stimulation	L300
EP	15770404	March 17, 2015		Pending	Mar-35	Directed to systems and apparatus for gait modulation and methods of use	L300
JP	2022-032802	January 11, 2017		Pending	Jan-37	Directed to systems and apparatus for gait modulation and methods of use	L300
US	17/103,249	November 24, 2020		Pending	March 2024	Directed to systems and apparatus for gait modulation and methods of use	L300
US	17/391,504	August 2, 2021		Pending	Jan-37	Directed to systems and apparatus for gait modulation and methods of use	L300
AU	2016215484	February 2, 2016	2016215484	Issued	Feb-36	Directed to methods and apparatus for body weight support system	Vector
AU	2016354524	November 11, 2016	2016354524	Issued	Nov-36	Directed to apparatus and methods for support track and power rail switching in a body weight support system	Vector
AU	2017322238	September 7, 2017	2017322238	Issued	Sep-37	Directed to methods and apparatus for body weight support system	Vector
CA	2897620	January 17, 2014	2897620	Issued	Jan-34	Directed to methods and apparatus for body weight support system	Vector
EP	16747097	February 2, 2016	3253354	Issued	Feb-36	Directed to body weight support system	Vector
EP	17849531.3	September 7, 2017	3509555	Issued	Sep-36	Directed to methods and apparatus for body weight support system	Vector
FR	16747097	February 2, 2016	3253354	Issued	Feb-36	Directed to a body weight support system	Vector
FR	17849531.3	September 7, 2017	3509555	Issued	Sep-36	Directed to methods and apparatus for body weight support system	Vector
DE	16747097	February 2, 2016	3253354	Issued	Feb-36	Directed to a body weight support system	Vector
DE	17849531.3	September 7, 2017	3509555	Issued	Sep-36	Directed to methods and apparatus for body weight support system	Vector
JP	2015-553851	January 17, 2014	6114838	Issued	Jan-34	Directed to methods and apparatus for body weight support system	Vector
JP	2017-052240	January 17, 2014	6480968	Issued	Jan-34	Directed to methods and apparatus for body weight support system	Vector
JP	2017-534701	February 2, 2016	6769966	Issued	Feb-36	Directed to methods and apparatus for body weight support system	Vector
JP	2019-508223	September 7, 2017	7088909	Issued	Sep-37	Directed to methods and apparatus for body weight support system	Vector

Country	Application Number	Filing Date	Patent Number	Application Status	Expected Expiration Date	Description	Product
GB	16747097	February 2, 2016	3253354	Issued	Feb-36	Directed to a body weight support system	Vector
GB	17849531.3	September 7, 2017	3509555	Issued	Sep-36	Directed to methods and apparatus for body weight support system	Vector
US	13/745,830	January 20, 2013	9,682,000	Issued	Jun-34	Directed to methods and apparatus for body weight support system	Vector
US	14/226,021	March 26, 2014	9,855,177	Issued	Jun-34	Directed to methods and apparatus for body weight support system	Vector
US	14/613,140	February 3, 2015	10,463,563	Issued	May-34	Directed to methods and apparatus for body weight support system	Vector
US	15/471,585	March 28, 2017	9,839,569	Issued	Jan-33	Directed to methods and apparatus for body weight support system	Vector
US	15/783,755	October 13, 2017	10,219,960	Issued	Jan-33	Directed to methods and apparatus for body weight support system	Vector
US	16/244,839	January 10, 2019	10,537,486	Issued	Jan-33	Directed to methods and apparatus for body weight support system	Vector
US	15/896,731	February 14, 2018	10,668,316	Issued	Apr-38	Directed to methods and apparatus for body weight support system	Vector
US	15/349,390	November 11, 2016	10,500,123	Issued	Apr-37	Directed to apparatus and methods for support track and power rail switching in a body weight support system	Vector
US	15/698,184	September 7, 2017	11,464,696	Issued	Dec-38	Directed to methods and apparatus for body weight support system	Vector
US	16/599,793	October 11, 2019	11,253,416	Issued	January 2034	Directed to methods and apparatus for body weight support system	Vector
US	16/742,543	January 14, 2020	11,246,780	Issued	January 2034	Directed to methods and apparatus for body weight support system	Vector
US	17/473,690	September 13, 2021	11,400,004	Issued	January 2034	Directed to methods and apparatus for body weight support system	Vector
US	17/473,700	September 13, 2021	11,324,651	Issued	January 2034	Directed to methods and apparatus for body weight support system	Vector
US	17/708,879	March 30, 2022	11,406,549	Issued	Jan-33	Directed to methods and apparatus for body weight support system	Vector
AU	2018220931	February 14, 2018		Pending	Feb-38	Directed to methods and apparatus for body weight support system	Vector
F384	2974391	February 2, 2016		Pending	Feb-36	Directed to methods and apparatus for body weight support system	Vector
CA	3035450	September 7, 2017		Pending	Sep-36	Directed to methods and apparatus for body weight support system	Vector
EP	14740676.3	January 17, 2014		Pending	Jan-34	Directed to methods and apparatus for body weight support system	Vector
EP	18753980.4	February 14, 2018		Pending	Feb-38	Directed to methods and apparatus for body weight support system	Vector
EP	16865093.5	November 11, 2016		Pending	Nov-36	Directed to apparatus and methods for support track and power rail switching in a body weight support system	Vector
JP	2022-009324	January 17, 2014		Pending	January 2034	Directed to methods and apparatus for body weight support system	Vector
JP	2019-539192	February 14, 2018		Pending	Feb-38	Directed to methods and apparatus for body weight support system	Vector
JP	2022-206819	February 14, 2018		Pending	Feb-38	Directed to methods and apparatus for body weight support system	Vector
US	17/188,714	March 1, 2021		Pending	February 2038	Directed to methods and apparatus for body weight support system	Vector
US	17/677,138	February 22, 2022		Pending	January 2033	Directed to methods and apparatus for body weight support system	Vector
US	17/882,251	August 5, 2022		Pending	Jan-33	Directed to methods and apparatus for body weight support system	Vector
AU	2016215482	February 2, 2016	2016215482	Issued	Feb-36	Directed to methods and apparatus for balance support systems	BITS
US	15/013,277	February 2, 2016	10,427,002	Issued	Nov-37	Directed to methods and apparatus for balance support systems	BITS
CA	2974384	February 2, 2016		Pending	February 2036	Directed to methods and apparatus for balance support systems	BITS
US	16/504,623	July 8, 2019	11,065,461	Issued	Jul-39	Directed to an implantable power adapter	TalisMann
AU	2020311913	July 8, 2020		Pending	Jul-40	Directed to apparatus and methods for providing electric energy to a subject	TalisMann
CA	3139126	July 8, 2020		Pending	Jul-40	Directed to apparatus and methods for providing electric energy to a subject	TalisMann
EP	20837675.6	July 8, 2020		Pending	Jul-40	Directed to apparatus and methods for providing electric energy to a subject	TalisMann
JP	2021-566334	July 8, 2020		Pending	Jul-40	Directed to apparatus and methods for providing electric energy to a subject	TalisMann
US	17/379,220	July 19, 2021		Pending	Jul-39	Directed to an implantable power adapter	TalisMann

Country	Application Number	Filing Date	Patent Number	Application Status	Expected Expiration Date	Description	Product
CA	3088074	January 10, 2019		Pending	Jan-39	Cutting with constant forward speed and voltage feedback	BoneScalpel
CN	201980000000	January 10, 2019		Pending	Jan-39	Cutting with constant forward speed and voltage feedback	BoneScalpel
JP	2020538829	January 10, 2019		Pending	Jan-39	Cutting with constant forward speed and voltage feedback	BoneScalpel
EP	19738214.6	January 10, 2019		Pending	Jan-39	Cutting with constant forward speed and voltage feedback	BoneScalpel
US	14938280	November 11, 2015	10471281	Issued	Feb-38	Directed to apparatus and methods for bone stimulation to promote healing	BoneScalpel
EP	1899238	August 1, 2011	1899238	Issued	Aug-36	Directed to bone-cutting blade with 1 or 2 serrated edges (design)	BoneScalpel
US	29/384867	February 4, 2011	680218	Issued	Apr-27	Directed to bone-cutting blade with single serrated edge (design)	BoneScalpel
JP	201117861	February 4, 2011	1445133	Issued	Jun-32	Directed to bone-cutting blade with single serrated edge (design)	BoneScalpel
US	29/422537	February 4, 2011	667117	Issued	Sep-26	Directed to bone-cutting blade with two serrated edges (design)	BoneScalpel
JP	2012503	February 4, 2011	1446424	Issued	Jun-23	Directed to bone-cutting blade with two serrated edges (design)	BoneScalpel
CA	2916914	June 26, 2013	2916914	Pending	Jun-34	Directed to flat blade with large shallow recess(es) for coolant	BoneScalpel
US	13931003	June 28, 2013	9387005	Issued	Apr-34	Directed to flat blade with large shallow recess(es) for coolant	BoneScalpel
US	29/446074	February 20, 2013	741481	Issued	Oct-29	Directed to hook blade with serrations	BoneScalpel
US	2006452608	June 14, 2006	8814870	Issued	Jan-31	Directed to hook-shaped ultrasonic cutting blade	BoneScalpel
EP	7809465	June 12, 2007	2032043	Issued	Jun-27	Directed to hook-shaped ultrasonic cutting blade	BoneScalpel
EP	15173566	June 12, 2007	2949279	Issued	Jun-27	Directed to hook-shaped ultrasonic cutting blade	BoneScalpel
US	14338009	July 22, 2014	9119658	Issued	Jun-26	Directed to hook-shaped ultrasonic cutting blade	BoneScalpel
CA	2655068	June 12, 2007	2655068	Issued	Jun-27	Directed to hook-shaped ultrasonic cutting blade	BoneScalpel
JP	2016523840	June 23, 2014	6450380	Issued	Jun-34	Directed to irrigation outlet(s) in shank	BoneScalpel
CA	2916838	June 23, 2014	2916838	Issued	Jun-34	Directed to irrigation outlet(s) in shank	BoneScalpel
US	29/414827	March 5, 2012	685087	Issued	Jun-27	Directed to laparoscopic cannula with distal end offset or window	BoneScalpel
US	15204788	July 7, 2016	9788852	Issued	Jun-33	Directed to large shallow recesses in flats of blade serving as reservoirs	BoneScalpel
JP	2016524182	June 26, 2014	6490065	Issued	Jun-34	Directed to large shallow recesses on side of blade	BoneScalpel
CN	201480000000	June 26, 2014	105491968	Issued	Jun-34	Directed to large shallow recesses on side of blade	BoneScalpel
EP	14817142	June 26, 2014	3013260	Issued	Jun-34	Directed to large shallow recesses on side of blade	BoneScalpel
HK	16111842.9	October 13, 2016	1223532	Issued	Jun-34	Directed to large shallow recesses on side of blade	BoneScalpel
US	14939668	November 12, 2015	10842587	Issued	May-39	Directed to method for minimally invasive surgery using therapeutic ultrasound to treat spine and orthopedic diseases, injuries and deformities	BoneScalpel
CN	201480000000	June 25, 2014	105451671	Issued	Jun-34	Directed to a microporous blade	BoneScalpel
HK	200160000000	September 23, 2016	1223007	Issued	Jun-34	Directed to a microporous blade	BoneScalpel
CA	3023055	April 24, 2017	3023055	Pending	Apr-37	Unitary bone cutting blade	BoneScalpel
CN	201780000000	April 24, 2017	109310453	Issued	Apr-37	Unitary bone cutting blade	BoneScalpel
CN	202211000000	April 24, 2017	1155309828	Pending	Apr-37	Method of manufacturing unitary bone cutting blade	BoneScalpel
HK	19127426	April 24, 2017		Pending	Apr-37	Unitary bone cutting blade	BoneScalpel
JP	2018558162	April 24, 2017	7128145	Issued	Apr-37	Unitary bone cutting blade	BoneScalpel
EP	17793008.8	April 24, 2017	3451952	Issued	Apr-37	Unitary bone cutting blade	BoneScalpel
US	13973711	August 22, 2013	9622766	Issued	Jul-35	Directed to a probe with head traversing window in deflectable sheath	BoneScalpel

Country	Application Number	Filing Date	Patent Number	Application Status	Expected Expiration Date	Description	Product
US	13927619	June 26, 2013	9320528	Issued	Apr-34	Directed to an ultrasonic blade with micro-pores for coolant conduction	BoneScalpel
JP	2016523885	June 25, 2014	6727122	Issued	Jun-34	Directed to an ultrasonic blade with micro-pores for coolant conduction	BoneScalpel
CA	2917015	June 25, 2014	2917015	Pending	Jun-34	Directed to an ultrasonic blade with micro-pores for coolant conduction	BoneScalpel
US	15091349	April 5, 2016	10219822	Issued	Nov-34	Directed to an ultrasonic blade with micro-pores for coolant conduction	BoneScalpel
US	2005196607	August 2, 2005	8343178	Issued	Feb-29	Directed to an ultrasonic blunt blade method	BoneScalpel
JP	201939303	March 5, 2019	6857203	Issued	Jun-34	Directed to an ultrasonic cutting blade with coolant conduction	BoneScalpel
US	2007809676	June 1, 2007	8353912	Issued	Aug-30	Directed to an ultrasonic discectomy method and tool	BoneScalpel
US	13833385	March 15, 2013	10076349	Issued	Mar-35	Directed to an ultrasonic drill	BoneScalpel
EP	14767324.8	March 11, 2014		Pending	Mar-34	Directed to an ultrasonic drill	BoneScalpel
US	16/116255	August 29, 2018	11272949	Issued	Jul-33	Directed to an ultrasonic drill	BoneScalpel
US	29/403580	October 7, 2011	700327	Issued	Feb-28	Directed to an ultrasonic osteotome design	BoneScalpel
US	29/468786	October 3, 2013	715434	Issued	Oct-28	Directed to an ultrasonic osteotome design	BoneScalpel
US	29/468789	October 3, 2013	715936	Issued	Oct-28	Directed to an ultrasonic osteotome design	BoneScalpel
US	29/468790	October 3, 2013	715435	Issued	Oct-28	Directed to an ultrasonic osteotome design	BoneScalpel
US	29/468793	October 3, 2013	715436	Issued	Oct-28	Directed to an ultrasonic osteotome design	BoneScalpel
US	13268057	October 7, 2011	8894673	Issued	Oct-31	Directed to an ultrasonic osteotome especially for skull and spine	BoneScalpel
CA	2851267	October 4, 2012	2851267	Issued	Oct-32	Directed to an ultrasonic osteotome especially for skull and spine	BoneScalpel
JP	2014534709	October 4, 2012	6129855	Issued	Oct-32	Directed to an ultrasonic osteotome especially for skull and spine	BoneScalpel
CN	201280000000	October 4, 2012	104066389	Issued	Oct-32	Directed to an ultrasonic osteotome especially for skull and spine	BoneScalpel
EP	12837901.3.0	October 4, 2012	2763603	Issued	Oct-32	Directed to an ultrasonic osteotome especially for skull and spine	BoneScalpel
US	14513923	October 14, 2014	9421028	Issued	Oct-31	Directed to an ultrasonic osteotome especially for skull and spine	BoneScalpel
US	13930170	June 28, 2013	9211137	Issued	Mar-34	Directed to an ultrasonic probe with irrigant outlets in probe shank	BoneScalpel
EP	14816983.2	June 23, 2014	3013259	Issued	Jun-34	Directed to an ultrasonic probe with irrigant outlets in probe shank	BoneScalpel
CN	201480000000	March 11, 2014	105377175	Issued	Mar-34	Directed to an ultrasonic surgical drill	BoneScalpel
JP	2016501240	March 11, 2014	6509802	Issued	Mar-34	Directed to an ultrasonic surgical drill	BoneScalpel
CA	2906512	March 14, 2014	2906512	Issued	Mar-34	Directed to an ultrasonic surgical drill	BoneScalpel
US	16/388512	April 18, 2019	11324531	Issued	Apr-39	Directed to an ultrasonic surgical drill, assembly and associated surgical method	BoneScalpel
US	15147323	May 5, 2016	10405875	Issued	May-37	Unitary bone cutting blade	BoneScalpel
US	16/540376	August 14, 2019	11406413	Issued	May-36	Unitary bone cutting blade	BoneScalpel
US	16/540532	August 14, 2019	11540853	Issued	May-36	Manufacturing of unitary bone cutting blade	BoneScalpel
US	13930148	June 28, 2013	10398463	Issued	Jan-36	Eccentric-head probe with transverse vibration damping	BoneScalpel/ Sonastar
CA	2916967	June 23, 2014	2916967	Issued	Jun-34	Directed to an eccentric-head ultrasonic probe with vibration damping	BoneScalpel/ Sonastar
EP	14818585.3	June 23, 2014	3013261	Issued	Jun-34	Directed to an eccentric-head ultrasonic probe with vibration damping	BoneScalpel/ Sonastar
US	2003404374	April 1, 2003	7442168	Issued	Oct-25	Directed to an ergonomic handpiece with vibration damping	BoneScalpel/ Sonastar
CN	201580000000	April 23, 2015	106572863	Issued	Apr-35	Directed to a light source on handpiece: induction power, removable	BoneScalpel/ Sonastar
HK	1236784	April 23, 2015	1236784	Issued	Apr-35	Directed to a light source on handpiece: induction power, removable	BoneScalpel/ Sonastar

Country	Application Number	Filing Date	Patent Number	Application Status	Expected Expiration Date	Description	Product
CA	2947279	April 23, 2015	2947279	Issued	Apr-35	Directed to a light source on handpiece: induction power, removable	BoneScalpel/ Sonastar
US	14733260	June 8, 2015	10092741	Issued	Aug-35	Directed to monitoring nerves, blood vessels during ultrasonic surgery	BoneScalpel/ Sonastar
US	16/126649	September 10, 2018	11096711	Issued	Jun-35	Directed to monitoring nerves, blood vessels during ultrasonic surgery	BoneScalpel/ Sonastar
EP	16808086.9	April 23, 2015	3322368	Issued	Apr-35	Directed to monitoring nerves, blood vessels during ultrasonic surgery	BoneScalpel/ Sonastar
JP	2018120871	June 26, 2018	6567738	Issued	Aug-34	Directed to a probe with head traversing window in deflectable sheath	BoneScalpel/ Sonastar
CN	201480000000	August 6, 2014	105658160	Issued	Aug-34	Directed to a probe with head traversing window in deflectable sheath	BoneScalpel/ Sonastar
EP	14838072	August 6, 2014	3035875	Issued	Aug-34	Directed to a probe with head traversing window in deflectable sheath	BoneScalpel/ Sonastar
EP	16808086	June 7, 2016	3319533	Issued	Jul-36	Directed to a probe with meltable plastic part as end-of-life indicator	BoneScalpel/ Sonastar
JP	2017564047	June 7, 2016	6836518	Issued	Jul-36	Directed to a probe with meltable plastic part as end-of-life indicator	BoneScalpel/ Sonastar
US	13931045	June 28, 2013	10182837	Issued	Jun-33	Directed to a reinforced sheath connector for use with bent probes	BoneScalpel/ Sonastar
JP	2016536284	August 6, 2014	6362700	Issued	Aug-34	Directed to a semi rigid sheath flexing to increase debriding depth	BoneScalpel/ Sonastar
CA	2820572	December 1, 2011	2820572	Issued	Dec-31	Directed to time-reversal manufacturing of ultrasonic probes	BoneScalpel/ Sonastar
EP	11846265.4	December 1, 2011	2667810	Issued	Dec-31	Directed to time-reversal manufacturing of ultrasonic probes	BoneScalpel/ Sonastar
CA	2921617	August 6, 2014	2921617	Issued	Aug-34	Directed to semi-rigid sheath flexing to increase debriding depth	BoneScalpel/ Sonastar
EP	14847151	September 17, 2014	3049001	Issued	Sep-34	Directed to an ultrasonic probe with end-of-life indicator	BoneScalpel/ Sonastar
CA	2988741	June 6, 2016		Pending	Jun-36	Directed to an ultrasonic surgery with nerve, blood monitoring	BoneScalpel/ Sonastar
CN	201680000000	June 6, 2016		Pending	Jun-36	Directed to an ultrasonic surgery with nerve, blood monitoring	BoneScalpel/ Sonastar
HK	20018112126	September 20, 2018		Pending	Jun-36	Directed to an ultrasonic surgery with nerve, blood monitoring	BoneScalpel/ Sonastar
US	15873607	January 17, 2018	10675052	Issued	Aug-36	Directed to debrider with cup-shaped head with serrated rim	BoneScalpel /SonicOne
EP	20160824918	July 7, 2016	3322355	Issued	Jul-36	Directed to debrider with cup-shaped head with serrated rim	BoneScalpel /SonicOne
US	14038463	September 26, 2013	10117666	Issued	Jul-36	Directed to ultrasonic instrument w/end-of-life indicators	BoneScalpel /SonicOne
CA	2992055	July 7, 2016		Pending	Jul-36	Directed to probe with meltable plastic component	BoneScalpel /SonicOne
US	14/795667	July 9, 2015	11298434	Issued	Mar-37	Directed to probe with meltable plastic part as end-of-life indicator	BoneScalpel /SonicOne
CN	201480000000	September 17, 2014	105764433	Issued	Sep-34	Directed to ultrasonic probe with end-of-life indicator	BoneScalpel /SonicOne
US	13307691	November 30, 2011	10470788	Issued	Nov-31	Ultrasonic instrument made by time reversal manufacture	BoneScalpel/ Sonastar
US	14264705	April 29, 2014	10398465	Issued	Apr-34	Ultrasonic instrument made by time reversal manufacture	BoneScalpel/ Sonastar
US	13558947	July 26, 2012	8659208	Issued	Jun-28	Directed to digital waveform generator	neXus
US	13930253	June 28, 2013	9070856	Issued	Aug-28	Directed to digital waveform generator	neXus
US	2007805940	May 25, 2007	8109925	Issued	Nov-30	Directed to ultrasonic breast fibroid treatment	Sonastar
US	15664663	July 31, 2017	10543012	Issued	Mar-38	Directed to reduction in electrical interference	Sonastar
CA	3032805	July 31, 2017		Pending	Jul-37	Directed to reduction in electrical interference	Sonastar
CN	201780000000	July 31, 2017	109561910	Issued	Jul-37	Directed to reduction in electrical interference	Sonastar
EP	17837470.8	July 31, 2017		Pending	Jul-37	Directed to reduction in electrical interference	Sonastar
US	14933784	November 5, 2015	10299809	Issued	Apr-37	Directed to method for reducing biofilm formation	SonicOne
US	16126737	September 10, 2018	10973537	Issued	Dec-36	Directed to method for reducing biofilm formation	SonicOne
US	16/269229	February 6, 2019	11147570	Issued	Sep-36	Directed to method for reducing biofilm formation	SonicOne
CA	3054427	March 5, 2018		Pending	Mar-38	Directed to biofilm removal from prostheses	SonicOne
CN	201880000000	March 5, 2018		Pending	Mar-38	Directed to biofilm removal from prostheses	SonicOne

Country	Application Number	Filing Date	Patent Number	Application Status	Expected Expiration Date	Description	Product
HK	62020007120	March 5, 2018		Pending	Mar-38	Directed to biofilm removal from prostheses	SonicOne
JP	2019548698	March 5, 2018	7159184	Issued	Mar-38	Directed to biofilm removal from prostheses	SonicOne
EP	18763856.4	March 5, 2018		Pending	Mar-38	Directed to biofilm removal from prostheses	SonicOne
CA	2992121	July 7, 2016		Pending	Jul-36	Ultrasonic wound treatment probe with cup-head serrated rim	SonicOne
CN	201680000000	July 7, 2016	107847240	Issued	Jul-36	Ultrasonic wound treatment probe with cup-head serrated rim	SonicOne
HK	18109516	July 23, 2018	1250000	Issued	Jul-36	Ultrasonic wound treatment probe with cup-head serrated rim	SonicOne
US	14797660	July 13, 2015	9872697	Issued	Aug-36	Ultrasonic wound treatment probe with cup-head serrated rim	SonicOne
US	14939552	November 12, 2015	10092308	Issued	Oct-36	Directed to method for reducing biofilm formation	SonicOne
US	17/228901	April 13, 2021		Pending	Nov-34	Directed to method for reducing biofilm formation	SonicOne
US	15450818	March 6, 2017	10470789	Issued	Jul-37	Method for reducing or removing biofilm from protheses and tools	SonicOne
US	2006582746	October 18, 2006	9693792	Issued	Dec-34	Directed to ultrasonic treatment method and apparatus with active pain suppression	SonicOne
CA	3032078	July 13, 2017		Pending	Jul-37	VacCurette probe: debrider head w/cavity w/inclined floor	SonicOne
CN	201780000000	July 13, 2017		Pending	Jul-37	VacCurette probe: debrider head w/cavity w/inclined floor	SonicOne
HK	19129580	July 13, 2017		Pending	Jul-37	VacCurette probe: debrider head w/cavity w/inclined floor	SonicOne
EP	17834961	July 13, 2017		Pending	Jul-37	VacCurette probe: debrider head w/cavity w/inclined floor	SonicOne
US	15221271	July 27, 2016	10463381	Issued	Sep-37	VacCurette probe: debrider head w/cavity w/inclined floor	SonicOne
US	29/404754	October 25, 2011	699839	Issued	Feb-28	Directed to surgical shield	SonicOne
US	2007986424	November 21, 2007	9636187	Issued	Mar-28	Directed to surgical shield	SonicOne
US	2006511853	August 29, 2006	8025672	Issued	Dec-26	Directed to ultrasonic debridement probe with healing mode	SonicOne
CA	2661917	August 17, 2007	2661917	Issued	Aug-27	Directed to ultrasonic debridement probe with healing mode	SonicOne
EP	2007837032	August 17, 2007	2059179	Issued	Aug-27	Directed to ultrasonic debridement probe with healing mode	SonicOne
EP	2008705586	January 11, 2008	2234556	Issued	Jan-28	Directed to ultrasonic debridement probe with scalloped head	SonicOne
CA	2711770	January 11, 2008	2711770	Issued	Jan-28	Directed to ultrasonic debridement probe with scalloped head	SonicOne
US	11511856	August 29, 2006	8430897	Issued	Mar-28	Directed to ultrasonic debridement probe with scalloped head	SonicOne
CA	2602485	February 23, 2006	2602485	Issued	Feb-26	Directed to ultrasonic debridement probe	SonicOne
US	200587451	March 23, 2005	7931611	Issued	Oct-27	Directed to ultrasonic debridement probe	SonicOne
US	14172566	February 4, 2014	9949751	Issued	Feb-34	Directed to ultrasonic debridement probe head with rake-like teeth	SonicOne
CN	201580000000	January 22, 2015	106163428	Issued	Jan-35	Directed to ultrasonic debridement probe head with rake-like teeth	SonicOne
HK	17105187	May 22, 2017	1231352	Issued	Jan-35	Directed to ultrasonic debridement probe head with rake-like teeth	SonicOne
EP	2015746296	January 22, 2015	3102126	Issued	Jan-35	Directed to ultrasonic debridement probe head with rake-like teeth	SonicOne
JP	20160d550183	January 22, 2015	6787784	Issued	Jan-35	Directed to ultrasonic debridement probe head with rake-like teeth	SonicOne
US	15936785	March 27, 2018	10980564	Issued	Jun-36	Directed to ultrasonic debridement probe head with rake-like teeth	SonicOne
CA	2938109	January 22, 2015		Pending	Jan-35	Directed to ultrasonic debridement probe head with rake-like teeth	SonicOne
JP	2019504026	July 13, 2017	7102392	Issued	Jul-37	VacCurette probe: debrider head w/cavity w/inclined floor	SonicOne
US	16/573703	September 17, 2019	11389183	Issued	Jul-36	VacCurette probe: debrider head w/cavity w/inclined floor	SonicOne
US	17/098906	November 16, 2020		Pending	Jan-39	Robotic ultrasonic surgical system for osseous transection	SonicOne
EP	1903303	August 11, 2011	1903303	Issued	Aug-36	Directed to ultrasonic wound treatment probe	SonicOne
EP	1736091	July 26, 2010	1736091	Issued	Jul-35	Directed to ultrasonic wound treatment probe	SonicOne

Country	Application Number	Filing Date	Patent Number	Application Status	Expected Expiration Date	Description	Product
US	29/372636	December 16, 2010	644326	Issued	Aug-25	Directed to ultrasonic wound treatment probe	SonicOne
EP	16824918	July 7, 2016		Pending	Jul-36	Directed to ultrasonic wound treatment apparatus and associated method	SonicOne
CA	3097746	April 18, 2019		Pending	Apr-39	Surgical drill, liquid through distal tip, interrupted force appln	Ultrasonic Waveform
CN	201980000000	April 18, 2019		Pending	Apr-39	Surgical drill, liquid through distal tip, interrupted force appln	Ultrasonic Waveform
JP	2020557971	April 18, 2019		Pending	Apr-39	Surgical drill, liquid through distal tip, interrupted force appln	Ultrasonic Waveform
EP	20119788288	April 18, 2019		Pending	Apr-39	Surgical drill, liquid through distal tip, interrupted force appln	Ultrasonic Waveform