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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

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

FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2016.

OR

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

FOR THE TRANSITION PERIOD FROM TO .

Commission File Number 0-18592

MERIT MEDICAL SYSTEMS, INC.

(Exact name of Registrant as specified in its charter)

Utah	**87-0447695**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Identification No.)

1600 West Merit Parkway, South Jordan, UT, 84095
(Address of Principal Executive Offices, including Zip Code)

(801) 253-1600
(Registrant's telephone number, including area code)

Indicate by check mark whether the Registrant: (1) has filed all reports required to be filed by Sections 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 o

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files). Yes ☒ No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer x	Accelerated Filer o
Non-Accelerated Filer o	Smaller Reporting Company o

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

Indicate the number of shares outstanding of each of the Registrant's classes of common stock, as of the latest practicable date.

Common Stock	44,393,291
Title or class	Number of Shares Outstanding at August 5, 2016

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PART I - FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

MERIT MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
June 30, 2016 and December 31, 2015
(In thousands)

	June 30, 2016	December 31, 2015
ASSETS	(unaudited)	
CURRENT ASSETS:		
Cash and cash equivalents	$ 10,487	$ 4,177
Trade receivables — net of allowance for uncollectible accounts — 2016 — $1,498 and 2015 — $1,297	76,792	70,292
Employee receivables	165	217
Other receivables	4,742	6,799
Inventories	109,858	105,999
Prepaid expenses	7,829	5,634
Prepaid income taxes	3,044	2,955
Deferred income tax assets	7,017	7,025
Income tax refund receivables	43	905
Total current assets	219,977	204,003
PROPERTY AND EQUIPMENT:		
Land and land improvements	19,400	19,307
Buildings	139,140	136,595
Manufacturing equipment	166,034	158,775
Furniture and fixtures	42,478	39,301
Leasehold improvements	29,267	27,561
Construction-in-progress	31,795	26,292
Total property and equipment	428,114	407,831
Less accumulated depreciation	(151,628)	(140,053)
Property and equipment — net	276,486	267,778
OTHER ASSETS:		
Intangible assets:		
Developed technology — net of accumulated amortization — 2016 — $44,401 and 2015 — $38,497	76,111	69,861
Other — net of accumulated amortization — 2016 — $28,569 and 2015 — $26,603	40,587	39,493
Goodwill	187,034	184,472
Other assets	14,770	13,121
Total other assets	318,502	306,947
TOTAL	$ 814,965	$ 778,728

See condensed notes to consolidated financial statements.

(continued)

MERIT MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
June 30, 2016 and December 31, 2015
(In thousands)

	June 30, 2016	December 31, 2015
LIABILITIES AND STOCKHOLDERS' EQUITY	(unaudited)	
CURRENT LIABILITIES:		
Trade payables	$ 31,286	$ 37,977
Accrued expenses	40,196	37,846
Current portion of long-term debt	10,000	10,000
Advances from employees	473	589
Income taxes payable	3,138	1,498
Total current liabilities	85,093	87,910
LONG-TERM DEBT	221,719	197,593
DEFERRED INCOME TAX LIABILITIES	11,024	10,985
LIABILITIES RELATED TO UNRECOGNIZED TAX BENEFITS	768	768
DEFERRED COMPENSATION PAYABLE	9,103	8,500
DEFERRED CREDITS	2,635	2,721
OTHER LONG-TERM OBLIGATIONS	4,633	4,148
Total liabilities	334,975	312,625
COMMITMENTS AND CONTINGENCIES (Notes 5, 9, 10, and 13)		
STOCKHOLDERS' EQUITY:		
Preferred stock — 5,000 shares authorized as of June 30, 2016 and December 31, 2015; no shares issued		
Common stock, no par value; shares authorized — 100,000; issued and outstanding as of June 30, 2016 - 44,318 and December 31, 2015 - 44,267	200,015	197,826
Retained earnings	285,405	273,764
Accumulated other comprehensive loss	(5,430)	(5,487)
Total stockholders' equity	479,990	466,103
TOTAL	$ 814,965	$ 778,728

See condensed notes to consolidated financial statements. (concluded)

MERIT MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME
FOR THE THREE AND SIX MONTHS ENDED JUNE 30, 2016 AND 2015
(In thousands, except per share amounts - unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
NET SALES	$ 151,071	$ 138,082	$ 289,148	$ 267,659
COST OF SALES	84,217	77,196	162,193	151,390
GROSS PROFIT	66,854	60,886	126,955	116,269
OPERATING EXPENSES:				
Selling, general and administrative	43,653	39,321	85,358	76,206
Research and development	11,529	9,202	22,116	18,874
Contingent consideration expense	91	121	193	243
Total operating expenses	55,273	48,644	107,667	95,323
INCOME FROM OPERATIONS	11,581	12,242	19,288	20,946
OTHER INCOME (EXPENSE):				
Interest income	16	79	25	132
Interest expense	(1,768)	(1,713)	(3,097)	(3,287)
Other income (expense) — net	33	(85)	(447)	195
Other expense — net	(1,719)	(1,719)	(3,519)	(2,960)
INCOME BEFORE INCOME TAXES	9,862	10,523	15,769	17,986
INCOME TAX EXPENSE	2,572	3,122	4,128	5,411
NET INCOME	$ 7,290	$ 7,401	$ 11,641	$ 12,575
EARNINGS PER COMMON SHARE:				
Basic	$ 0.16	$ 0.17	$ 0.26	$ 0.29
Diluted	$ 0.16	$ 0.17	$ 0.26	$ 0.28
AVERAGE COMMON SHARES:				
Basic	44,308	44,055	44,297	43,880
Diluted	44,703	44,517	44,647	44,332

See condensed notes to consolidated financial statements.

MERIT MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
FOR THE THREE AND SIX MONTHS ENDED JUNE 30, 2016 AND 2015
(In thousands - unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Net income	$ 7,290	$ 7,401	$ 11,641	$ 12,575
Other comprehensive income (loss):				
Interest rate swap	(152)	98	(881)	(800)
Less income tax benefit (expense)	59	(38)	343	311
Foreign currency translation adjustment	(423)	702	805	(1,609)
Less income tax benefit (expense)	(120)	(33)	(209)	73
Total other comprehensive income (loss)	(636)	729	58	(2,025)
Total comprehensive income	$ 6,654	8,130	$ 11,699	$ 10,550

See condensed notes to consolidated financial statements.

MERIT MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE SIX MONTHS ENDED JUNE 30, 2016 AND 2015
(In thousands - unaudited)

	Six Months Ended June 30,	
	2016	**2015**
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	$ 11,641	$ 12,575
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	19,705	18,256
Losses on sales and/or abandonment of property and equipment	44	53
Write-off of patents and intangible assets	90	14
Acquired in-process research and development	100	—
Amortization of deferred credits	(85)	(85)
Amortization of long-term debt issuance costs	521	494
Deferred income taxes	141	383
Excess tax benefits from stock-based compensation	12	(1,420)
Stock-based compensation expense	1,410	1,085
Changes in operating assets and liabilities, net of effects from acquisitions:		
Trade receivables	(6,459)	(2,793)
Employee receivables	51	20
Other receivables	2,126	942
Inventories	(1,403)	166
Prepaid expenses	(2,226)	(631)
Prepaid income taxes	(118)	(43)
Income tax refund receivables	872	(78)
Other assets	(762)	(2,887)
Trade payables	(5,147)	5,222
Accrued expenses	3,039	4,475
Advances from employees	(119)	262
Income taxes payable	1,620	2,909
Deferred compensation payable	603	822
Other long-term obligations	(212)	641
Total adjustments	13,803	27,807
Net cash provided by operating activities	25,444	40,382
CASH FLOWS FROM INVESTING ACTIVITIES:		
Capital expenditures for:		
Property and equipment	(21,222)	(25,366)
Intangible assets	(989)	(875)
Proceeds from sale-leaseback transactions	—	2,017
Proceeds from the sale of property and equipment	—	6
Proceeds from sale of cost method investment	1,089	—
Cash paid in acquisitions, net of cash acquired	(22,800)	(2,250)
Net cash used in investing activities	(43,922)	(26,468)

See condensed notes to consolidated financial statements.

(continued)

MERIT MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE SIX MONTHS ENDED JUNE 30, 2016 AND 2015
(In thousands - unaudited)

	Six Months Ended June 30,	
	2016	**2015**
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of common stock	$ 791	$ 5,144
Proceeds from issuance of long-term debt	93,812	65,339
Payments on long-term debt	(69,687)	(80,056)
Excess tax benefits from stock-based compensation	(12)	1,421
Contingent payments related to acquisitions	(183)	(180)
Payment of taxes related to an exchange of common stock	—	(660)
Net cash provided by (used in) financing activities	24,721	(8,992)
EFFECT OF EXCHANGE RATES ON CASH	67	(175)
NET INCREASE IN CASH AND CASH EQUIVALENTS	6,310	4,747
CASH AND CASH EQUIVALENTS:		
Beginning of period	4,177	7,355
End of period	$ 10,487	$ 12,102
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION		
Cash paid during the period for:		
Interest (net of capitalized interest of $194 and $185, respectively)	$ 2,912	$ 3,279
Income taxes	$ 1,580	$ 2,209
Property and equipment purchases in accounts payable	$ 1,497	$ 2,352
Contingent receivable received in exchange for sale of cost method investment	$ 681	$ —
Acquisition purchases in accrued expenses	$ —	$ 1,500
Merit common stock surrendered (0 and 166 shares, respectively) in exchange for exercise of stock options	$ —	$ 3,317

See condensed notes to consolidated financial statements. (concluded)

MERIT MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Basis of Presentation. The interim consolidated financial statements of Merit Medical Systems, Inc. ("Merit," "we" or "us") for the three and six-month periods ended June 30, 2016 and 2015 are not audited. Our consolidated financial statements are prepared in accordance with the requirements for unaudited interim periods and, consequently, do not include all disclosures required to be made in conformity with accounting principles generally accepted in the United States of America. In the opinion of our management, the accompanying consolidated financial statements contain all adjustments, consisting of normal recurring accruals, necessary for a fair presentation of our financial position as of June 30, 2016 and December 31, 2015, and our results of operations and cash flows for the three and six-month periods ended June 30, 2016 and 2015. The results of operations for the three and six-month periods ended June 30, 2016 and 2015 are not necessarily indicative of the results for a full-year period. These interim consolidated financial statements should be read in conjunction with the financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2015 filed with the Securities and Exchange Commission (the "SEC").

2. Inventories. Inventories at June 30, 2016 and December 31, 2015 consisted of the following (in thousands):

	June 30, 2016	December 31, 2015
Finished goods	$ 52,997	$ 59,170
Work-in-process	12,703	8,540
Raw materials	44,158	38,289
Total	$ 109,858	$ 105,999

3. Stock-Based Compensation. Stock-based compensation expense before income tax expense for the three and six-month periods ended June 30, 2016 and 2015, consisted of the following (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Cost of goods sold	$ 141	$ 109	$ 264	$ 202
Research and development	54	32	96	59
Selling, general and administrative	591	424	1,050	824
Stock-based compensation expense before taxes	$ 786	$ 565	$ 1,410	$ 1,085

As of June 30, 2016, the total remaining unrecognized compensation cost related to non-vested stock options, net of expected forfeitures, was approximately $8.6 million and is expected to be recognized over a weighted average period of 3.61 years.

During the three and six-month periods ended June 30, 2016, we granted awards representing 220,875 and 784,375 shares of our common stock, respectively. During the three and six-month periods ended June 30, 2015, we granted awards representing 150,000 and 596,800 shares of our common stock, respectively. We use the Black-Scholes methodology to value the stock-based compensation expense for options. In applying the Black-Scholes methodology to the options granted during the six-month periods ended June 30, 2016 and 2015, the fair value of our stock-based awards granted was estimated using the following assumptions for the periods indicated below:

	Six months ended June 30,	
	2016	2015
Risk-free interest rate	1.25% - 1.40%	1.53% - 1.57%
Expected option life	5.0	5.0
Expected dividend yield	—%	—%
Expected price volatility	36.50% - 37.06%	34.00% - 35.11%

For purposes of the foregoing analysis, the average risk-free interest rate is determined using the U.S. Treasury rate in effect as of the date of grant, based on the expected term of the stock option. The expected term of the stock options is determined using the historical exercise behavior of employees. The expected price volatility is determined using a weighted average of daily historical

volatility of our stock price over the corresponding expected option life and implied volatility based on recent trends of the daily historical volatility. Compensation expense is recognized on a straight-line basis over the service period, which corresponds to the related vesting period.

4. Earnings Per Common Share (EPS). The computation of weighted average shares outstanding and the basic and diluted earnings per common share for the following periods consisted of the following (in thousands, except per share amounts):

	Three Months			Six Months		
	Net Income	Shares	Per Share Amount	Net Income	Shares	Per Share Amount
Period ended June 30, 2016:						
Basic EPS	$ 7,290	44,308	$ 0.16	$ 11,641	44,297	$0.26
Effect of dilutive stock options and warrants		395			350	
Diluted EPS	$ 7,290	44,703	$ 0.16	$ 11,641	44,647	$0.26
Stock options excluded from the calculation of common stock equivalents as the impact was anti-dilutive		1,207			1,093	
Period ended June 30, 2015:						
Basic EPS	$ 7,401	44,055	$ 0.17	$ 12,575	43,880	$ 0.29
Effect of dilutive stock options and warrants		462			452	
Diluted EPS	$ 7,401	44,517	$ 0.17	$ 12,575	44,332	$ 0.28
Stock options excluded from the calculation of common stock equivalents as the impact was anti-dilutive		529			456	

5. Acquisitions and Strategic Investments. On February 4, 2016, we purchased the HeRO®Graft device and other related assets from CryoLife, Inc., a developer of medical devices based in Kennesaw, Georgia ("CryoLife"). The purchase price was $18.5 million, which was paid in full during the first quarter 2016. We accounted for this acquisition as a business combination. The purchase price was allocated as follows (in thousands):

Assets Acquired	
Inventories	2,455
Fixed Assets	290
Intangibles	
Developed Technology	12,100
Trademarks	700
Customer Lists	400
Goodwill	2,555
Total assets acquired	18,500

We are amortizing the developed HeroGraft technology asset over ten years, the related trademarks over 5.5 years, and the associated customer lists over 12 years. The weighted average life of the intangible HeROGraft assets acquired is approximately 9.82 years. Acquisition-related costs related to the HeROGraft device and other related assets during the six months ended June 30, 2016, which are included in selling, general and administrative expenses in the accompanying consolidated statements of income, were not material. The results of operations related to this acquisition have been included in our cardiovascular segment since the acquisition date. During the three and six-month periods ended June 30, 2016, our net sales of the products acquired from CryoLife were approximately $2.1 million and $3.4 million, respectively. It is not practical to separately report the earnings related to the

products acquired from CryoLife, as we cannot split out sales costs related to those products, principally because our sales representatives are selling multiple products (including the HeROGraft device) in the cardiovascular business segment. The pro forma consolidated results of operations acquired from CryoLife are not presented, as we believe the pro forma financial effect of the transaction is not material.

On January 20, 2016, we paid $2.0 million for 2.0 million preferred limited liability company units of Cagent Vascular, LLC, a medical device company ("Cagent"). During the three months ended June 30, 2016, we paid $500,000 for an additional 500,000 preferred limited liability company units of Cagent. Our total purchase price paid for the Cagent preferred limited liability company units as of June 30, 2016, which represents an ownership interest of approximately 18.6% of the Cagent, has been accounted for at cost.

On December 4, 2015, we entered into a license agreement with ArraVasc Limited, an Irish medical device company, for the right to manufacture and sell certain percutaneous transluminal angioplasty balloon catheter products. As of December 31, 2015, we had paid $500,000 in connection with the license agreement. During the three-month period ended March 31, 2016, we paid an additional $500,000 as certain milestones set forth in the license agreement were met during that period. During the three-month period ended June 30, 2016, we paid an additional $500,000 as certain milestones set forth in the license agreement were met during that period. We are obligated to pay an additional $500,000 if additional milestones set forth in the license agreement are reached. We accounted for the transaction as an asset purchase and intend to amortize the license agreement intangible asset over a period of 12 years.

On July 14, 2015, we entered into an asset purchase agreement with Quellent, LLC, a California limited liability company ("Quellent"), for superabsorbent pad technology. The purchase price for the asset was $1.0 million, payable in two installments. We accounted for this acquisition as a business combination. The first payment of $500,000 was paid as of December 31, 2015, and the second payment of $500,000 was recorded as an accrued liability as of December 31, 2015 and paid in the first quarter of 2016. We also recorded $270,000 of contingent consideration related to royalties payable to Quellent pursuant to the asset purchase agreement as of December 31, 2015. The sales and results of operations related to this acquisition have been included in our cardiovascular segment since the acquisition date and were not material. The purchase price was allocated as follows: $1.21 million to a developed technology intangible asset and $60,000 to goodwill as of December 31, 2015. We intend to amortize the developed technology intangible asset over 13 years. The pro forma consolidated results of operations are not presented, as we believe the pro forma financial effect of the transaction is not material.

The goodwill arising from the acquisitions discussed above consists largely of the synergies and economies of scale we hope to achieve from combining the acquired assets and operations with our historical operations (see Note 12). The goodwill recognized from these acquisitions is expected to be deductible for income tax purposes.

6. Segment Reporting. We report our operations in two operating segments: cardiovascular and endoscopy. Our cardiovascular segment consists of cardiology and radiology medical device products which assist in diagnosing and treating coronary artery disease, peripheral vascular disease and other non-vascular diseases and includes embolotherapeutic, cardiac rhythm management ("CRM"), and electrophysiology ("EP") devices. Our endoscopy segment consists of gastroenterology and pulmonology medical device products which assist in the palliative treatment of expanding esophageal, tracheobronchial and biliary strictures caused by malignant tumors. We evaluate the performance of our operating segments based on operating income.

Financial information relating to our reportable operating segments and reconciliations to the consolidated totals for the three and six-month periods ended June 30, 2016 and 2015 are as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Revenues				
Cardiovascular	$ 145,525	$ 132,789	$ 278,069	$ 257,552
Endoscopy	5,546	5,293	11,079	10,107
Total revenues	$ 151,071	138,082	$ 289,148	$ 267,659
Operating income				
Cardiovascular	10,880	11,258	17,529	19,327
Endoscopy	701	984	1,759	1,619
Total operating income	11,581	12,242	19,288	20,946

7. Recent Accounting Pronouncements. In April 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standard Update ("ASU") No. 2016-10, *Revenue from Contracts with Customers (Topic 606)*, which amends certain aspects of the FASB's new revenue standard, ASU No. 2014-09, *Revenue from Contracts with Customers*. The core principle of the guidance in Topic 606 is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The amendments in this ASU clarify the following two aspects of Topic 606: identifying performance obligations and the licensing implementation guidance, while retaining the related principles for those areas. The standard should be adopted concurrently with adoption of ASU No. 2014-09 which is effective for annual and interim periods beginning after December 15, 2017. We are assessing the impact this new standard is anticipated to have on our consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-09, *Improvements to Employee Share-Based Payment Accounting*. ASU 2016-09 requires companies to record excess tax benefits and deficiencies in income rather than the current requirement to record them through equity. ASU 2016-09 also allows companies the option to recognize forfeitures of share-based awards when they occur rather than the current requirement to make an estimate upon the grant of the awards. ASU 2016-09 is effective for public companies for annual reporting periods beginning after December 15, 2016, and interim periods within that reporting period. Early adoption of ASU 2016-09 will be permitted in any interim or annual period, with any adjustments reflected as of the beginning of the fiscal year of adoption. We are assessing the impact ASU 2016-09 is anticipated to have on our consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, *Leases*, which eliminates the current tests for lease classification under U.S. GAAP and requires lessees to recognize the right-to-use assets and related lease liabilities on the balance sheet for all leases greater than one year in duration. ASU 2016-02 is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. Early adoption is permitted. ASU 2016-02 provides that lessees (for capital and operating leases) and lessors (for sales-type, direct financing, and operating leases) must apply a modified retrospective transition approach for leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements. The modified retrospective approach would not require any transition accounting for leases that expired before the earliest comparative period presented. Lessees and lessors may not apply a full retrospective transition approach. We are assessing the impact ASU 2016-02 is anticipated to have on our consolidated financial statements.

In January 2016, the FASB issued ASU No. 2016-01, *Financial Instruments-Overall: Recognition and Measurement of Financial Assets and Financial Liabilities*, which amends the guidance regarding the classification and measurement of financial instruments. Changes to the current guidance primarily affect the accounting for equity investments, financial liabilities under the fair value option, and the presentation and disclosure requirements for financial instruments. In addition, ASU 2016-01 clarifies guidance related to the valuation allowance assessment when recognizing deferred tax assets resulting from unrealized losses on available-for-sale debt securities. ASU 2016-01 is effective for fiscal years and interim periods beginning after December 15, 2017. Early adoption is not permitted except for the provision to record fair value changes for financial liabilities under the fair value option resulting from instrument-specific credit risk in other comprehensive income. Upon adoption of ASU 2016-01, an entity should apply the amendments by means of a cumulative-effect adjustment to the balance sheet at the beginning of the first reporting period in which the guidance is effective. We are assessing the impact ASU 2016-01 is anticipated to have on our consolidated financial statements.

In November 2015, the FASB issued Accounting Standards Update ASU 2015-17, *Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes*, which will require deferred tax assets and deferred tax liabilities to be presented as noncurrent within a classified balance sheet. ASU 2015-17 simplifies the current guidance which requires an entity to separate deferred income tax liabilities and assets into current and noncurrent amounts in a classified balance sheet. The current requirement that deferred tax assets and liabilities of a tax-paying component of an entity be offset and presented as a single amount is not affected. ASU 2015-17 is effective for financial statements issued for annual periods beginning after December 15, 2016, and interim periods within those annual periods. Earlier application is permitted for all entities as of the beginning of an interim or annual reporting period, and ASU 2015-17 may be applied either prospectively to all deferred tax assets and liabilities or retrospectively to all periods presented. We have elected not to early adopt ASU 2015-17, and we are evaluating whether to apply the provisions prospectively or retrospectively upon adoption. We do not presently anticipate that the adoption of ASU 2015-17 will have a material impact on our financial statements.

In July 2015, the FASB issued ASU 2015-11, *Simplifying the Measurement of Inventory*. ASU 2015-11 requires that inventory be measured at the lower of cost or net realizable value. Net realizable value is the estimated selling price in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. Inventory measured using last-in, first-out or the retail inventory method are excluded from the scope of ASU 2015-11 which is effective for fiscal years beginning after December 15, 2016, and interim periods within those fiscal years. We do not anticipate that the implementation of ASU 2015-11 will have a material impact on our consolidated financial statements.

In May 2014, the FASB issued authoritative guidance amending the FASB Accounting Standards Codification and creating a new Topic 606, *Revenue from Contracts with Customers*. The new guidance clarifies the principles for recognizing revenue and develops a common revenue standard for U.S. GAAP applicable to revenue transactions. This guidance provides that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The existing industry guidance will be eliminated when the new guidance becomes effective and annual disclosures will be substantially revised. Additional disclosures will also be required under the new standard. In July 2015, the FASB approved a proposal that extended the required implementation date one year to the first quarter of 2018 but also would permit companies to adopt the standard at the original effective date of January 1, 2017. Implementation of the new standard may be either through retrospective application to each period from the first quarter of 2016 or with a cumulative effect adjustment upon adoption in 2018. We are assessing the impact this new standard is anticipated to have on our consolidated financial statements.

8. Income Taxes. Our overall effective tax rate for the three months ended June 30, 2016 and 2015 was 26.1% and 29.7%, respectively, which resulted in a provision for income taxes of $2.6 million and $3.1 million, respectively. Our overall effective tax rate for the six months ended June 30, 2016 and 2015 was 26.2% and 30.1%, respectively, which resulted in a provision for income taxes of $4.1 million and $5.4 million, respectively. The decrease in the effective income tax rate for both periods, when compared to the prior year periods, was due primarily to the reinstatement of the federal research and development credit and a higher mix of earnings from our foreign operations, which are generally taxed at lower rates than our U.S. operations.

9. Long-term Debt. We entered into an Amended and Restated Credit Agreement, dated December 19, 2012, with the lenders who are or may become party thereto (collectively, the "Lenders") and Wells Fargo Bank, National Association ("Wells Fargo"), as administrative agent for the Lenders, which was amended on February 3, 2016 by a Third Amendment to the Amended and Restated Credit Agreement by and among Merit, certain subsidiaries of Merit, the Lenders and Wells Fargo as administrative agent for the Lenders (as amended, the "Credit Agreement"). Pursuant to the terms of the Credit Agreement, the Lenders have agreed to make revolving credit loans up to an aggregate amount of $225 million. The Lenders also made a term loan in the amount of $100 million, repayable in quarterly installments in the amounts provided in the Credit Agreement until the maturity date of December 19, 2017, at which time the term and revolving credit loans, together with accrued interest thereon, will be due and payable. In addition, certain mandatory prepayments are required to be made upon the occurrence of certain events described in the Credit Agreement. Wells Fargo has agreed, upon satisfaction of certain conditions, to make swingline loans from time to time through the maturity date in amounts equal to the difference between the amounts actually loaned by the Lenders and the aggregate revolving credit commitment. The Credit Agreement is collateralized by substantially all of our assets. At any time prior to the maturity date, we may repay any amounts owing under all revolving credit loans, term loans, and all swingline loans in whole or in part, subject to certain minimum thresholds, without premium or penalty, other than breakage costs.

The term loan and any revolving credit loans made under the Credit Agreement bear interest, at our election, at either (i) the base rate (described below) plus 0.25% (subject to adjustment if the Consolidated Total Leverage Ratio, as defined in the Credit Agreement, is at or greater than 2.25 to 1), (ii) the London Inter-Bank Offered Rate (“LIBOR”) Market Index Rate (as defined in the Credit Agreement) plus 1.25% (subject to adjustment if the Consolidated Total Leverage Ratio, as defined in the Credit Agreement, is at or greater than 2.25 to 1), or (iii) the LIBOR Rate (as defined in the Credit Agreement) plus 1.25% (subject to adjustment if the Consolidated Total Leverage Ratio, as defined in the Credit Agreement, is at or greater than 2.25 to 1). Initially, the term loan and revolving credit loans under the Credit Agreement bear interest, at our election, at either (x) the base rate plus 1.00%, (y) the LIBOR Market Index Rate, plus 2.00%, or (z) the LIBOR Rate plus 2.00%. Swingline loans bear interest at the LIBOR Market Index Rate plus 1.25% (subject to adjustment if the Consolidated Total Leverage Ratio, as defined in the Credit Agreement, is at or greater than 2.25 to 1). Initially, swingline loans bear interest at the LIBOR Market Index Rate plus 2.00%. Interest on each loan featuring the base rate or the LIBOR Market Index Rate is due and payable on the last business day of each calendar month; interest on each loan featuring the LIBOR Rate is due and payable on the last day of each interest period selected by us when selecting the LIBOR Rate as the benchmark for interest calculation. For purposes of the Credit Agreement, the base rate means the highest of (i) the prime rate (as announced by Wells Fargo), (ii) the federal funds rate plus 0.50%, and (iii) LIBOR for an interest period of one month plus 1.00%.

The Credit Agreement contains customary covenants, representations and warranties and other terms customary for revolving credit loans of this nature. In this regard, the Credit Agreement requires us to not, among other things, (a) permit the Consolidated Total Leverage Ratio (as defined in the Credit Agreement) to be greater than 3.00 to 1 as of any fiscal quarter ending during 2015 and no more than 3.25 to 1 as of any fiscal quarter ending thereafter; (b) for any period of four consecutive fiscal quarters, permit the ratio of Consolidated EBITDA (as defined in the Credit Agreement and subject to certain adjustments) to Consolidated Fixed Charges (as defined in the Credit Agreement) to be less than 1.75 to 1; (c) subject to certain adjustments, permit Consolidated Net Income (as defined in the Credit Agreement) for certain periods to be less than $0; or (d) subject to certain conditions and adjustments, permit the aggregate amount of all Facility Capital Expenditures (as defined in the Credit Agreement) in any fiscal year beginning in 2013 to exceed $30 million. Additionally, the Credit Agreement contains various negative covenants with which

we must comply, including, but not limited to, limitations respecting: the incurrence of indebtedness, the creation of liens or pledges on our assets, mergers or similar combinations or liquidations, asset dispositions, the repurchase or redemption of equity interests or debt, the issuance of equity, the payment of dividends and certain distributions, the entry into related party transactions and other provisions customary in similar types of agreements. As of June 30, 2016, we were in compliance with all covenants set forth in the Credit Agreement.

We had originally entered into an unsecured credit agreement, dated September 30, 2010, with certain lenders who were or became party thereto and Wells Fargo, as administrative agent for the lenders. Pursuant to the terms of that credit agreement, the lenders agreed to make revolving credit loans up to an aggregate amount of $175 million. Wells Fargo also agreed to make swingline loans from time to time through the maturity date of September 10, 2015 in amounts equal to the difference between the amount actually loaned by the lenders and the aggregate credit agreement. The unsecured credit agreement was amended and restated as of December 19, 2012, as the Credit Agreement.

In summary, principal balances under our long-term debt as of June 30, 2016 and December 31, 2015, consisted of the following (in thousands):

	June 30, 2016	December 31, 2015
Term loan	$ 59,962	$ 64,962
Revolving credit loans	171,757	142,631
Total long-term debt	231,719	207,593
Less current portion	10,000	10,000
Long-term portion	$ 221,719	$ 197,593

Future minimum principal payments on our long-term debt as of June 30, 2016, are as follows (in thousands):

Years Ending December 31	Future Minimum Principal Payments
2016	5,000
2017	226,719
Total future minimum principal payments	$ 231,719

As of June 30, 2016, we had outstanding borrowings of approximately $231.7 million under the Credit Agreement, with available borrowings of approximately $53.2 million, based on the leverage ratio in the terms of the Credit Agreement. Our interest rate as of June 30, 2016 was a fixed rate of 2.48% on $133.8 million as a result of an interest rate swap (see Note 10), a variable floating rate of 2.16% on approximately $98.0 million. Our interest rate as of December 31, 2015 was a fixed rate of 2.48% on $135.0 million as a result of an interest rate swap, variable floating rate of 1.74% on $65.8 million and a variable floating rate of 2.12% on approximately $6.8 million.

Subsequent to June 30, 2016, the Credit Agreement was amended and restated in its entirety. See Note 14.

10. Derivatives.

Interest Rate Swap. A portion of our debt bears interest at variable interest rates and, therefore, we are subject to variability in the cash paid for interest expense. In an effort to mitigate a portion of this risk, we use a hedging strategy to reduce the variability of cash flows in the interest payments associated with a portion of the variable-rate debt outstanding under the Credit Agreement that is solely due to changes in the benchmark interest rate.

On December 19, 2012, we entered into a pay-fixed, receive-variable interest rate swap having an initial notional amount of $150 million with Wells Fargo to fix the one-month LIBOR rate at 0.98%. The variable portion of the interest rate swap is tied to the one-month LIBOR rate (the benchmark interest rate). On a monthly basis, the interest rates under both the interest rate swap and the underlying debt reset, the swap is settled with the counterparty, and interest is paid. The notional amount of the interest rate swap is reduced quarterly by 50% of the minimum principal payment due under the terms of our Credit Agreement. The interest rate swap is scheduled to expire on December 19, 2017.

At June 30, 2016 and December 31, 2015, our interest rate swap qualified as a cash flow hedge. The fair value of our interest rate swap at June 30, 2016 was a liability of approximately $879,000, which was partially offset by approximately $342,000 in deferred

taxes. The fair value of our interest rate swap at December 31, 2015 was an asset of approximately $2,000, which was offset by approximately $1,000 in deferred taxes.

During the three and six-month periods ended June 30, 2016 and June 30, 2015, the amounts reclassified from accumulated other comprehensive income to earnings due to hedge effectiveness were included in interest expense in the accompanying consolidated statements of income and were not material.

Foreign Currency Forward Contracts. We forecast our net exposure to various currencies and enter into foreign currency forward contracts in an effort to mitigate that exposure. As of June 30, 2016, we had entered into the following foreign currency forward contracts (amounts in thousands and in local currencies):

Currency	Symbol	Forward Notional Amount
Euro	EUR	835
British Pound	GBP	592
Chinese Yuan Renminbi	CNY	56,250
Mexican Peso	MXN	30,000
Brazilian Real	BRL	3,600
Australian Dollar	AUD	1,900
Hong Kong Dollar	HKD	11,000
Canadian Dollar	CAD	1,900

We enter into similar transactions at various times during the year to partially offset exchange rate risks we bear throughout the year. These contracts are marked to market at each month-end, and the fair value of our open positions at June 30, 2016 was not material.

On October 23, 2015, we entered into a foreign currency forward contract to partially offset the currency risk related to an intercompany loan denominated in CNY. The loan matures and the forward contract is deliverable on September 16, 2016. The notional amount of the forward contract is approximately 46.3 million CNY. This contract is marked to market at each month-end. The fair value of our open position as of June 30, 2016 was a liability of approximately $231,000.

The effect on our consolidated statements of income for the three-month periods ended June 30, 2016 and June 30, 2015 of all forward contracts was not material.

11. Fair Value Measurements. Our financial assets and (liabilities) carried at fair value measured on a recurring basis as of June 30, 2016 and December 31, 2015, consisted of the following (in thousands):

		Fair Value Measurements Using		
Description	Total Fair Value at June 30, 2016	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant Unobservable inputs (Level 3)
Interest rate contracts (1)	$ (879)	$ —	$ (879)	$ —
Foreign currency contracts (2)	$ (231)	$ —	$ (231)	$ —

		Fair Value Measurements Using		
Description	Total Fair Value at December 31, 2015	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant Unobservable inputs (Level 3)
Interest rate contracts (1)	$ 2	$ —	$ 2	$ —
Foreign currency contracts (2)	$ (278)	$ —	$ (278)	$ —

(1) The fair value of the interest rate contracts is determined using Level 2 fair value inputs and is recorded as other long-term obligations or other long-term assets in the Consolidated Balance Sheets.

(2) The fair value of the foreign currency contracts is determined using Level 2 fair value inputs and is recorded as accrued expenses in the Consolidated Balance Sheets.

Certain of our business combinations involve the potential for the payment of future contingent consideration, generally based on a percentage of future product sales or upon attaining specified future revenue milestones. See Note 2 for further information regarding these acquisitions. The contingent consideration liability is re-measured at the estimated fair value at each reporting period with the change in fair value recognized within operating expenses in the accompanying consolidated statements of income. We measure the initial liability and re-measure the liability on a recurring basis using Level 3 inputs as defined under authoritative guidance for fair value measurements. Changes in the fair value of our contingent consideration liability during the three and six-month periods ended June 30, 2016 and 2015, consisted of the following (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Beginning balance	928	1,842	$ 1,024	$ 1,886
Fair value adjustments recorded to income during the period	(14)	121	57	243
Contingent payments made	(16)	(14)	(183)	(180)
Ending balance	$ 898	$ 1,949	$ 898	$ 1,949

The recurring Level 3 measurement of our contingent consideration liability includes the following significant unobservable inputs at June 30, 2016 and December 31, 2015 (amount in thousands):

Contingent consideration liability (asset)	Fair value at June 30, 2016	Valuation technique	Unobservable inputs	Range
Revenue-based payments	$ 898	Discounted cash flow	Discount rate	9.9% - 15%
			Probability of milestone payment	100%
			Projected year of payments	2016-2028
Contingent receivable	$ (576)	Discounted cash flow	Discount rate	10%
			Probability of milestone payment	62%
			Projected year of payments	2016-2019

Contingent consideration liability	Fair value at December 31, 2015	Valuation technique	Unobservable inputs	Range
Revenue-based payments	$ 874	Discounted cash flow	Discount rate	5% - 15%
			Probability of milestone payment	100%
			Projected year of payments	2016-2028
Other payments	$ 150	Discounted cash flow	Discount rate	—%
			Probability of milestone payment	100%
			Projected year of payments	2016

The contingent consideration liability is re-measured to fair value each reporting period using projected revenues, discount rates, probabilities of payment, and projected payment dates. Projected contingent payment amounts are discounted back to the current period using a discounted cash flow model. Projected revenues are based on our most recent internal operational budgets and long-range strategic plans. Increases (decreases) in discount rates and the time to payment may result in lower (higher) fair value measurements. A decrease in the probability of any milestone payment may result in lower fair value measurements. An increase (decrease) in either the discount rate or the time to payment, in isolation, may result in a significantly lower (higher) fair value measurement.

Our determination of the fair value of the contingent consideration liability could change in future periods based upon our ongoing evaluation of these significant unobservable inputs. We intend to record any such change in fair value to operating expenses as

part of our cardiovascular segment in our consolidated statements of income. As of June 30, 2016, approximately $813,000 was included in other long-term obligations and $85,000 was included in accrued expenses in our consolidated balance sheet. As of December 31, 2015, approximately $775,000 was included in other long-term obligations and $249,000 was included in accrued expenses in our consolidated balance sheet. The cash paid to settle the contingent consideration liability recognized at fair value as of the acquisition date (including measurement-period adjustments) has been reflected as a cash outflow from financing activities in the accompanying consolidated statements of cash flows.

During the first quarter of 2016, we sold a cost method investment for cash and for the right to receive additional payments based on various contingent milestones. We determined the fair value of the contingent payments using the inputs indicated in the table above, and we recorded a contingent receivable asset, which as June 30, 2016 had a value of approximately $576,000. We record any changes in fair value to operating expenses as part of our cardiovascular segment in our consolidated statements of income. During the three months ended June 30, 2016, we recorded a loss on the contingent receivable of approximately $105,000. As of June 30, 2016, approximately $436,000 was included in other long-term assets and approximately $140,000 was included in other receivables as a current asset in our consolidated balance sheet.

During the three and six-month periods ended June 30, 2016, we had losses of approximately $90,000 and $90,000, compared to $0 and $14,000, respectively, for the three and six-month periods ended June 30, 2015, related to the measurement of non-financial assets at fair value on a nonrecurring basis subsequent to their initial recognition.

The carrying amount of cash and cash equivalents, receivables, and trade payables approximates fair value because of the immediate, short-term maturity of these financial instruments. The carrying amount of long-term debt approximates fair value, as determined by borrowing rates estimated to be available to us for debt with similar terms and conditions. The fair value of assets and liabilities whose carrying value approximates fair value is determined using Level 2 inputs, with the exception of cash and cash equivalents, which are Level 1 inputs.

12. Goodwill and Intangible Assets. The changes in the carrying amount of goodwill for the six months ended June 30, 2016 were as follows (in thousands):

	2016
Goodwill balance at January 1	$ 184,472
Effect of foreign exchange	7
Additions as the result of acquisitions	2,555
Goodwill balance at June 30	$ 187,034

As of June 30, 2016, we had recorded $8.3 million of accumulated goodwill impairment charges. All of the goodwill balance as of June 30, 2016 and December 31, 2015 related to our cardiovascular segment.

Other intangible assets at June 30, 2016 and December 31, 2015, consisted of the following (in thousands):

	June 30, 2016		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Patents	$ 12,914	$ (2,829)	$ 10,085
Distribution agreements	5,626	(3,148)	2,478
License agreements	20,194	(2,790)	17,404
Trademarks	7,974	(2,861)	5,113
Covenants not to compete	1,029	(903)	126
Customer lists	21,152	(15,771)	5,381
Royalty agreements	267	(267)	—
Total	$ 69,156	$ (28,569)	$ 40,587

	December 31, 2015		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Patents	$ 12,014	$ (2,595)	$ 9,419
Distribution agreements	5,626	(2,853)	2,773
License agreements	19,109	(2,438)	16,671
Trademarks	7,259	(2,554)	4,705
Covenants not to compete	1,028	(873)	155
Customer lists	20,793	(15,023)	5,770
Royalty agreements	267	(267)	—
Total	$ 66,096	$ (26,603)	$ 39,493

Aggregate amortization expense for the three and six-month periods ended June 30, 2016 was approximately $4.0 million and $7.9 million, respectively, and approximately $3.7 million and $7.3 million for the three and six-month periods ended June 30, 2015, respectively.

Estimated amortization expense for the developed technology and other intangible assets for the next five years consists of the following as of June 30, 2016 (in thousands):

Year Ending December 31	
Remaining 2016	$ 9,313
2017	16,976
2018	16,429
2019	16,101
2020	15,117

13. Commitments and Contingencies. In the ordinary course of business, we are involved in various claims and litigation matters. These claims and litigation matters may include actions involving product liability, intellectual property, contractual, and employment or other matters that are significant to our business. Based upon our review of currently available information, we do not believe that any such actions are likely to be, individually or in the aggregate, materially adverse to our business, financial condition, results of operations or liquidity. However, in the event of unexpected further developments, it is possible that the ultimate resolution of these matters, or other similar matters, if unfavorable, may be materially adverse to our business, financial condition, results of operations or liquidity. Legal costs for these matters, such as outside counsel fees and expenses, are charged to expense in the period incurred.

14. Subsequent Events. We have evaluated whether any subsequent events have occurred from June 30, 2016 to the time of filing of this report that would require disclosure in the consolidated financial statements. We note the following two events below.

Acquisition of DFINE

On July 6, 2016, we acquired DFINE, Inc., a medical device company headquartered in San Jose, California ("DFINE"), in a merger transaction through which DFINE became our wholly-owned subsidiary. The total merger consideration we paid in the transaction was approximately $97.5 million, which amount includes certain indebtedness and is subject to a working capital adjustment. We are currently evaluating the accounting treatment of this purchase, as well as performing the valuation of the assets acquired and the related purchase price allocation.

Second Amended and Restated Credit Agreement

In connection with the transactions contemplated by the DFINE acquisition referenced above, we entered into a Second Amended and Restated Credit Agreement, dated July 6, 2016 (the “Second Amended Credit Agreement”), with the lenders who are or may become party thereto (collectively, the “Lenders”), Wells Fargo Bank, National Association, as administrative agent (the “Agent”), swingline lender and a Lender, and Wells Fargo Securities, LLC, as sole lead arranger and sole bookrunner. The Second Amended Credit Agreement amends and restates in its entirety our previously outstanding Credit Agreement and all amendments thereto. In addition to Wells Fargo Bank, National Association, Bank of America, N.A., U.S. Bank, National Association, and HSBC Bank USA, National Association, are parties to the Second Amended Credit Agreement as Lenders. Pursuant to the terms of the Second Amended Credit Agreement, the Lenders have agreed to make a term loan in the amount of $150.0 million and revolving credit loans up to an aggregate amount of $275.0 million, of which $25.0 million will be reserved to make swingline loans from time to time.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Disclosure Regarding Forward-Looking Statements

This Report includes “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All statements in this Report, other than statements of historical fact, are forward-looking statements for purposes of these provisions, including any projections of earnings, revenues or other financial items, any statements of the plans and objectives of our management for future operations, any statements concerning proposed new products or services, any statements regarding the integration, development or commercialization of the business or assets acquired from other parties, any statements regarding future economic conditions or performance, and any statements of assumptions underlying any of the foregoing. All forward-looking statements included in this Report are made as of the date hereof and are based on information available to us as of such date. We assume no obligation to update any forward-looking statement. In some cases, forward-looking statements can be identified by the use of terminology such as “may,” “will,” “expects,” “plans,” “anticipates,” “intends,” “believes,” “estimates,” “potential,” or “continue,” or the negative thereof or other comparable terminology. Forward-looking statements are neither historical facts nor assurances of future performance. Instead, they are based only on our current beliefs, expectations and assumptions regarding the future of our business, future plans and strategies, projections, anticipated events and trends, the economy and other future conditions. Our actual results will likely vary, and may vary materially, from those projected or assumed in the forward-looking statements. Our financial condition and results of operations, as well as any forward-looking statements, are subject to inherent risks and uncertainties, including risks relating to product recalls and product liability claims; potential restrictions on our liquidity or our ability to operate our business within the term of our current credit agreement, and the consequences of any default under that agreement; possible infringement of our technology or the assertion that our technology infringes the rights of other parties; the potential imposition of fines, penalties, or other adverse consequences if our employees or agents violate the U.S. Foreign Corrupt Practices Act or other laws or regulations; expenditures relating to research, development, testing and regulatory approval or clearance of our

products and the risk that such products may not be developed successfully or approved for commercial use; greater governmental scrutiny and regulation of the medical device industry; reforms to the 510(k) process administered by the U.S. Food and Drug Administration (the "FDA"); laws targeting fraud and abuse in the healthcare industry; potential for significant adverse changes in, or our failure to comply with, governing regulations; increases in the price of commodity components; negative changes in economic and industry conditions in the United States and other countries; termination or interruption of relationships with our suppliers, or failure of such suppliers to perform; our potential inability to successfully manage growth through acquisitions, including the inability to commercialize technology acquired through recent, proposed or future acquisitions; fluctuations in exchange rates of EUR, CNY, GBP, BRL, MXN, CAD, and other foreign currencies relative to the U.S. Dollar; our need to generate sufficient cash flow to fund our debt obligations, capital expenditures, and ongoing operations; concentration of our revenues among a few products and procedures; development of new products and technology that could render our existing products obsolete; market acceptance of new products; volatility in the market price of our common stock; modification or limitation of governmental or private insurance reimbursement policies; changes in health care markets related to health care reform initiatives; failures to comply with applicable environmental laws; changes in key personnel; work stoppage or transportation risks; uncertainties associated with potential healthcare policy changes which may have a material adverse effect on our business and results of operations; introduction of products in a timely fashion; price and product competition; availability of labor and materials; cost increases; fluctuations in and obsolescence of inventory; and other factors referred to in Part II, Item 1A "Risk Factors" of this Report, Part I, Item 1A "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2015, and other materials filed with the Securities and Exchange Commission. All subsequent forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by these cautionary statements. Financial estimates are subject to change and are not intended to be relied upon as predictions of future operating results, and we assume no obligation to update or disclose revisions to those estimates.

OVERVIEW

The following discussion and analysis of our financial condition and results of operation should be read in conjunction with the consolidated financial statements and related condensed notes thereto, which are included in Part I of this Report.

We design, develop, manufacture, and market medical products for interventional, diagnostic, and therapeutic procedures. For financial reporting purposes, we report our operations in two operating segments: cardiovascular and endoscopy. Our cardiovascular segment consists of cardiology and radiology devices, which assist in diagnosing and treating coronary arterial disease, peripheral vascular disease and other non-vascular diseases, as well as our embolotherapeutic, CRM, and EP products. Our endoscopy segment consists of gastroenterology and pulmonology devices which assist in the palliative treatment of expanding esophageal, tracheobronchial and biliary strictures caused by malignant tumors.

For the three months ended June 30, 2016, we reported sales of approximately $151.1 million, up approximately $13.0 million or 9.4%, over sales for the three months ended June 30, 2015 of approximately $138.1 million. For the six months ended June 30, 2016, we reported sales of approximately $289.1 million, up approximately $21.5 million or 8.0%, over sales for the six months ended June 30, 2015 of approximately $267.7 million.

Gross profit as a percentage of sales increased to 44.3% for the three-month period ended June 30, 2016 as compared to 44.1% for the three-month period ended June 30, 2015. Gross profit as a percentage of sales increased to 43.9% for the six-month period ended June 30, 2016 as compared to 43.4% for the six-month period ended June 30, 2015.

Net income for the three months ended June 30, 2016 was approximately $7.3 million, or $0.16 per share, as compared to $7.4 million, or $0.17 per share, for the quarter ended June 30, 2015. For the six-month period ended June 30, 2016, net income was approximately $11.6 million, or $0.26 per share, as compared to $12.6 million, or $0.28 per share, for the six-month period ended June 30, 2015.

During February 2016, we purchased the HeROGraft device and other related assets from CryoLife, Inc., a developer of medical devices based in Kennesaw, GA, for $18.5 million. Sales for the HeROGraft device were approximately $2.1 million and $3.4 million for the three and six-month periods ended June 30, 2016, respectively.

On July 6, 2016, we acquired DFINE in a merger transaction through which DFINE became our wholly-owned subsidiary. The total merger consideration we paid in the transaction was approximately $97.5 million, which amount includes certain indebtedness and is subject to a working capital adjustment. DFINE’s products are directed to vertebral augmentation (kyphoplasty and vertebralplasty), as well as targeted radiofrequency ablation of metastatic spinal tumors. See “The integration of the DFine business into our existing business will present significant challenges, which may harm our operations.” set forth in Part II, Item 1A “Risk Factors” below.

We continue to focus our efforts on expanding our presence in foreign markets, particularly Europe, Middle East and Africa, China, Southeast Asia, Japan, Brazil, Australia and Canada, in an effort to expand our market opportunities. These efforts have increased our selling, general and administrative expenses in the short term, but we believe over time they will help us improve our profitability.

RESULTS OF OPERATIONS

The following table sets forth certain operational data as a percentage of sales for the three and six-month periods ended June 30, 2016 and 2015, as indicated:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Net sales	100%	100%	100%	100%
Gross profit	44.3	44.1	43.9	43.4
Selling, general and administrative expenses	28.9	28.5	29.5	28.5
Research and development expenses	7.6	6.7	7.6	7.1
Contingent consideration expense	0.1	0.1	0.1	0.1
Income from operations	7.7	8.9	6.7	7.8
Other (expense) - net	(1.1)	(1.2)	(1.2)	(1.1)
Income before income taxes	6.5	7.6	5.5	6.7
Net income	4.8	5.4	4.0	4.7

Sales. Sales for the three months ended June 30, 2016 increased by 9.4%, or approximately $13.0 million, compared to the corresponding period of 2015. Sales for the six months ended June 30, 2016 increased by 8.0%, or approximately $21.5 million, compared to the corresponding period of 2015. Listed below are the sales by product category within each of our business segments for the three and six-month periods ended June 30, 2016 and 2015 (in thousands):

		Three Months Ended June 30,			Six Months Ended June 30,	
	% Change	2016	2015	% Change	2016	2015
Cardiovascular						
Stand-alone devices	17.5%	$ 46,394	$ 39,496	17.0%	$ 89,726	$ 76,674
Custom kits and procedure trays	—%	30,065	30,067	2.1%	58,944	57,753
Inflation devices	(0.1)%	18,691	18,701	(2.6)%	36,403	37,391
Catheters	19.5%	28,846	24,139	10.8%	52,745	47,596
Embolization devices	3.0%	11,948	11,603	3.3%	22,731	21,995
CRM/EP	9.1%	9,581	8,783	8.5%	17,520	16,143
Total	9.6%	145,525	132,789	8.0%	278,069	257,552
Endoscopy						
Endoscopy devices	4.8%	5,546	5,293	9.6%	11,079	10,107
Total	9.4%	$ 151,071	$ 138,082	8.0%	$ 289,148	$ 267,659

Our cardiovascular sales increased approximately $12.7 million, or 9.6%, for the three months ended June 30, 2016, on sales of approximately $145.5 million, compared to sales of $132.8 million for the corresponding period of 2015. Our cardiovascular sales increased approximately $20.5 million, or 8.0%, for the six months ended June 30, 2016, on sales of approximately $278.1 million, compared to sales of $257.6 million for the corresponding period of 2015. This improvement was largely the result of increased sales of our stand-alone devices (particularly our diagnostic guide wire product line, tubing product line and hydrophilic guide wire product line) and our catheters. The introduction of the HeROGraft product in the first quarter of 2016 also contributed to the increase in sales in the cardiovascular segment for the periods presented. The decrease in sales of inflation devices for the periods presented was primarily due to reduced sales to a large OEM customer and two large distributors.

Our endoscopy sales increased 4.8% for the three months ended June 30, 2016, on sales of approximately $5.5 million, when compared to sales for the corresponding period of 2015 of approximately $5.3 million. Our endoscopy sales increased 9.6% for the six months ended June 30, 2016, on sales of approximately $11.1 million, when compared to sales for the corresponding period of 2015 of approximately $10.1 million. This increase was primarily related to an increase in sales of our EndoMAXX™ fully covered esophageal stent, as well as related to the introduction of our Elation® Balloon Dilator.

Gross Profit. Gross profit as a percentage of sales increased to 44.3% for the three months ended June 30, 2016, compared to 44.1% for the corresponding period of 2015. Gross profit as a percentage of sales increased to 43.9% for the six months ended June 30, 2016, compared to 43.4% for the six months ended June 30, 2015. The increase in gross margin for the periods presented was primarily related to the increased focus on higher margin products and the suspension of the medical device tax in the United States.

Operating Expenses. Selling, general and administrative ("SG&A") expenses increased approximately $4.3 million, or 11.0%, for the three months ended June 30, 2016, compared to the three months ended June 30, 2015. As a percentage of sales, SG&A expenses increased to 28.9% of sales for the three months ended June 30, 2016, compared to 28.5% of sales for the three months ended June 30, 2015. For the six months ended June 30, 2016, SG&A expenses as a percentage of sales increased to 29.5%, compared to 28.5% for the six months ended June 30, 2015. The increase in SG&A expense in both periods was primarily related to increased acquisition costs, severance expenses and foreign market expansion costs, which were partially offset by decreases of approximately $262,000 for the three months ended June 30, 2016 and approximately $780,000 for the six months ended June 30, 2016 in our foreign currency-denominated SG&A expense, which in turn was due primarily to the strengthening of the U.S. Dollar against the Euro during the three and six months ended June 30, 2016 compared to the three and six months ended June 30, 2016.

Research and Development Expenses. Research and development ("R&D") expenses were 7.6% of sales for the three months ended June 30, 2016, compared to 6.7% of sales for the three months ended June 30, 2015. Research and development expenses were 7.6% of sales for the six months ended June 30, 2016, compared to 7.1% of sales for the six months ended June 30, 2015. The increase in both periods was largely due to hiring of additional research and development personnel to support various new product developments.

Operating Income. The following table sets forth our operating income by business segment for the three and six-month periods ended June 30, 2016 and 2015 (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Operating Income				
Cardiovascular	10,880	11,258	17,529	19,327
Endoscopy	701	984	1,759	1,619
Total operating income	11,581	12,242	19,288	20,946

Cardiovascular Operating Income. During the three months ended June 30, 2016, we reported income from operations of approximately $10.9 million from our cardiovascular business segment, compared to income from operations from this segment of approximately $11.3 million for the corresponding period of 2015. The decrease in operating income in our cardiovascular segment was primarily the result of increased SG&A expenses relating to increased acquisition costs and increased R&D expenses, which were partially offset by a decrease of approximately $262,000 for the three months ended June 30, 2016 in our foreign currency-denominated SG&A expense, due primarily to the strengthening of the U.S. Dollar against the Euro during the three months ended June 30, 2016 compared to the three months ended June 30, 2015.

During the six months ended June 30, 2016, we reported income from operations of approximately $17.5 million from our cardiovascular business segment, compared to income from operations from this segment of approximately $19.3 million for the corresponding period of 2015. The decrease in operating income in our cardiovascular segment was primarily the result of increased SG&A expenses relating to increased acquisition costs and increased R&D expenses, which were partially offset by a decrease of approximately $780,000 for the six months ended June 30, 2016 in our foreign currency-denominated SG&A expense, due primarily to the strengthening of the U.S. Dollar against the Euro during the six months ended June 30, 2016 compared to the six months ended June 30, 2015.

Endoscopy Operating Income. During the three months ended June 30, 2016, we reported income from operations of approximately $701,000 from our endoscopy business segment, compared to income from operations from this segment of approximately $984,000 for the corresponding period of 2015. The decrease in operating income in our endoscopy segment was primarily the result of higher SG&A and R&D expenses as a percentage of sales.

During the six months ended June 30, 2016, we reported income from operations of approximately $1.8 million from our endoscopy business segment, compared to income from operations from this segment of approximately $1.6 million for the corresponding

period of 2015. The increase in operating income in our endoscopy segment was primarily the result of higher sales and gross profits, as well as SG&A expenses as a percentage of sales.

Other Expense - Net. Other expense, net, for the three months ended June 30, 2016 was approximately $1.7 million, compared to other expense, net, of approximately $1.7 million for the corresponding period of 2015. Other expense, net, for the six months ended June 30, 2016 was approximately $3.5 million, compared to other expense, net, of approximately $3.0 million for the corresponding period of 2015. The increase in other expense was principally the result of losses on changes in foreign exchange rates.

Income Taxes. Our overall effective tax rate for the three months ended June 30, 2016 and 2015 was 26.1% and 29.7%, respectively, which resulted in a provision for income taxes of $2.6 million and $3.1 million, respectively. Our overall effective tax rate for the six months ended June 30, 2016 and 2015 was 26.2% and 30.1%, respectively, which resulted in a provision for income taxes of $4.1 million and $5.4 million, respectively. The decrease in the effective income tax rate for both periods was due primarily to the reinstatement of the federal research and development credit and a higher mix of earnings from our foreign operations, which are generally taxed at lower rates than our U.S. operations.

Net Income. During the three months ended June 30, 2016, we reported net income of $7.3 million, a decrease of approximately 1.5% from $7.4 million for the corresponding period of 2015. During the six months ended June 30, 2016, we reported net income of $11.6 million, a decrease of approximately 7.4% from $12.6 million for the corresponding period of 2015.The decrease in net income was primarily due to higher operating expenses and research and development expenses as a percentage of sales and losses resulting from changes in foreign exchange rates, and was partially offset by higher gross margins and a lower effective income tax rate.

LIQUIDITY AND CAPITAL RESOURCES

Capital Commitments and Contractual Obligations

Our working capital as of June 30, 2016 and December 31, 2015 was approximately $134.9 million and $116.1 million, respectively. The increase in working capital as of June 30, 2016 compared to December 31, 2015 was primarily the result of increases in cash, trade receivables, and inventories, as well as a decrease in trade payables, which were partially offset by an increase in accrued expenses and a decrease in other receivables. As of June 30, 2016, we had a current ratio of 2.59 to 1.

At June 30, 2016 and December 31, 2015, we had cash and cash equivalents of approximately $10.5 million and $4.2 million respectively, of which $9.2 million and $3.7 million, respectively, were held by foreign subsidiaries. For each of our foreign subsidiaries, we make an evaluation as to whether the earnings are intended to be repatriated to the United States or held by the foreign subsidiary for permanent reinvestment. The cash held by our foreign subsidiaries for permanent reinvestment is used to fund the operating activities of our foreign subsidiaries and for further investment in foreign operations. A deferred tax liability has been accrued for the earnings that are available to be repatriated to the United States.

In addition, cash held by our subsidiary in China is subject to local laws and regulations that require government approval for the transfer of such funds to entities located outside of China. As of June 30, 2016 and December 31, 2015, we had cash and cash equivalents of approximately $2.0 million and $1.7 million, respectively, held by our subsidiary in China.

During the six months ended June 30, 2016, our inventory balance increased approximately $3.9 million, from approximately $106.0 million at December 31, 2015 to approximately $109.9 million at June 30, 2016. The increase in the inventory balance was due to several factors, including our acquisition of the HeROGraft device and increases in raw materials and work in process, as well as the launch of our direct sales activities in Canada, and was partially offset by a decrease in our finished good inventory as a result of increased sales. The trailing twelve months inventory turns as of June 30, 2016 decreased to 3.09, compared to 3.30 as of June 30, 2015.

Pursuant to the terms of the Credit Agreement, the Lenders have agreed to make revolving credit loans up to an aggregate amount of $225 million. The Lenders also made a term loan in the amount of $100 million, repayable in quarterly installments in the amounts provided in the Credit Agreement until the maturity date of December 19, 2017, at which time the term and revolving credit loans, together with accrued interest thereon, will be due and payable. In addition, certain mandatory prepayments are required to be made upon the occurrence of certain events described in the Credit Agreement. Wells Fargo has agreed, upon satisfaction of certain conditions, to make swingline loans from time to time through the maturity date in amounts equal to the difference between the amounts actually loaned by the Lenders and the aggregate revolving credit commitment. The Credit Agreement is collateralized by substantially all of our assets. At any time prior to the maturity date, we may repay any amounts owing under all revolving credit loans, term loans, and all swingline loans in whole or in part, subject to certain minimum thresholds, without premium or penalty, other than breakage costs.

The term loan and any revolving credit loans made under the Credit Agreement bear interest, at our election, at either (i) the base rate (described below) plus 0.25% (subject to adjustment if the Consolidated Total Leverage Ratio, as defined in the Credit Agreement, is at or greater than 2.25 to 1), (ii) the LIBOR Market Index Rate (as defined in the Credit Agreement) plus 1.25% (subject to adjustment if the Consolidated Total Leverage Ratio, as defined in the Credit Agreement, is at or greater than 2.25 to 1), or (iii) the LIBOR Rate (as defined in the Credit Agreement) plus 1.25% (subject to adjustment if the Consolidated Total Leverage Ratio, as defined in the Credit Agreement, is at or greater than 2.25 to 1). Initially, the term loan and revolving credit loans under the Credit Agreement bear interest, at our election, at either (x) the base rate plus 1.00%, (y) the LIBOR Market Index Rate, plus 2.00%, or (z) the LIBOR Rate plus 2.00%. Swingline loans bear interest at the LIBOR Market Index Rate plus 1.25% (subject to adjustment if the Consolidated Total Leverage Ratio, as defined in the Credit Agreement, is at or greater than 2.25 to 1). Initially, swingline loans bear interest at the LIBOR Market Index Rate plus 2.00%. Interest on each loan featuring the base rate or the LIBOR Market Index Rate is due and payable on the last business day of each calendar month; interest on each loan featuring the LIBOR Rate is due and payable on the last day of each interest period selected by us when selecting the LIBOR Rate as the benchmark for interest calculation. For purposes of the Credit Agreement, the base rate means the highest of (i) the prime rate (as announced by Wells Fargo), (ii) the federal funds rate plus 0.50%, and (iii) LIBOR for an interest period of one month plus 1.00%.

The Credit Agreement contains customary covenants, representations and warranties and other terms customary for revolving credit loans of this nature. In this regard, the Credit Agreement requires us to not, among other things, (a) permit the Consolidated Total Leverage Ratio (as defined in the Credit Agreement) to be greater than 4.75 to 1 through the end of 2013, no more than 4.00 to 1 as of the fiscal quarter ending March 31, 2014, no more than 3.75 to 1 as of the fiscal quarter ending June 30, 2014, no more than 3.50 to 1 as of the fiscal quarter ending September 30, 2014, no more than 3.25 to 1 as of the fiscal quarter ending December

31, 2014, no more than 3.00 to 1 as of any fiscal quarter ending during 2015, and no more than 3.25 to 1 as of any fiscal quarter ending thereafter; (b) for any period of four consecutive fiscal quarters, permit the ratio of Consolidated EBITDA (as defined in the Credit Agreement and subject to certain adjustments) to Consolidated Fixed Charges (as defined in the Credit Agreement) to be less than 1.75 to 1; (c) subject to certain adjustments, permit Consolidated Net Income (as defined in the Credit Agreement) for certain periods to be less than $0; or (d) subject to certain conditions and adjustments, permit the aggregate amount of all Facility Capital Expenditures (as defined in the Credit Agreement) in any fiscal year beginning in 2013 to exceed $30 million. Additionally, the Credit Agreement contains various negative covenants with which we must comply, including, but not limited to, limitations respecting: the incurrence of indebtedness, the creation of liens or pledges on our assets, mergers or similar combinations or liquidations, asset dispositions, the repurchase or redemption of equity interests and debt, the issuance of equity, the payment of dividends and certain distributions, the entrance into related party transactions and other provisions customary in similar types of agreements. As of June 30, 2016, we were in compliance with all covenants set forth in the Credit Agreement.

As of June 30, 2016, we had outstanding borrowings of approximately $231.7 million under the Credit Agreement, with available borrowings of approximately $53.2 million, based on the leverage ratio in the terms of the Credit Agreement. Our interest rate as of June 30, 2016 was a fixed rate of 2.48% on $133.8 million as a result of an interest rate swap (see Note 10), a variable floating rate of 2.16% on approximately $98.0 million. Our interest rate as of December 31, 2015 was a fixed rate of 2.48% on $135.0 million as a result of an interest rate swap, variable floating rate of 1.74% on $65.8 million and a variable floating rate of 2.12% on approximately $6.8 million.

Cash used in investing activities was approximately $43.9 million for the six months ended June 30, 2016, compared to approximately $26.5 million for the six months ended June 30, 2015, an increase of approximately $17.5 million. This increase was primarily a result of more cash paid for acquisitions during the six months ended June 30, 2016 compared to the six months ended June 30, 2105, principally the $18.5 million paid in the acquisition of the HeROGraft device and other related assets from CryoLife, Inc. (see Note 5 of the condensed notes to our consolidated financial statements). Capital expenditures for property and equipment were approximately $21.2 million and $25.4 million, respectively, for the six-month periods ended June 30, 2016 and 2015, a decrease of approximately $4.1 million.

Cash provided by financing activities for the six-month period ended June 30, 2016 was approximately $24.7 million, compared to cash used in financing actives of approximately $9.0 million for the six-month period ended ended June 30, 2015, a change of approximately $33.7 million. This change was primarily the result of increased debt financing related to acquisitions, principally our acquisition of the HeROGraft device and other related assets, as well as reduced proceeds from the issuance of common stock, during the six months ended June 30, 2016 compared to the six months ended June 30, 2015.

We currently believe that our existing cash balances, anticipated future cash flows from operations, equipment financing and borrowings under the Credit Agreement, as amended and restated, will be adequate to fund our current and currently planned future operations for the next twelve months and the foreseeable future.

On July 6, 2016, we acquired DFINE, Inc., a medical device company headquartered in San Jose, California ("DFINE"), in a merger transaction through which DFINE became our wholly-owned subsidiary. The total merger consideration we paid in the transaction was approximately $97.5 million, which amount includes certain indebtedness and is subject to a working capital adjustment. We are currently evaluating the accounting treatment of this purchase, as well as performing the valuation of the assets acquired and the related purchase price allocation.

In connection with the transactions contemplated by the DFINE acquisition referenced above, we entered into a Second Amended and Restated Credit Agreement, dated July 6, 2016 (the “Second Amended Credit Agreement”), with the lenders who are or may become party thereto (collectively, the “Lenders”), Wells Fargo Bank, National Association, as administrative agent (the “Agent”), swingline lender and a Lender, and Wells Fargo Securities, LLC, as sole lead arranger and sole bookrunner. The Second Amended Credit Agreement amends and restates in its entirety our previously outstanding Amended and Restated Credit Agreement and all amendments thereto. In addition to Wells Fargo Bank, National Association, Bank of America, N.A., U.S. Bank, National Association, and HSBC Bank USA, National Association, are parties to the Second Amended Credit Agreement as Lenders. Pursuant to the terms of the Second Amended Credit Agreement, the Lenders have agreed to make a term loan in the amount of $150.0 million and revolving credit loans up to an aggregate amount of $275.0 million, of which $25.0 million will be reserved to making swingline loans from time to time. See “The agreements and instruments governing our long-term debt contain restrictions, limitations and default remedies that could significantly affect our ability to operate our business, our liquidity and our ability to continue as a going concern.” set forth in Part II, Item 1A “Risk Factors” below.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The SEC has requested that all registrants address their most critical accounting policies. The SEC has indicated that a "critical accounting policy" is one which is both important to the representation of the registrant's financial condition and results and requires management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain. We base our estimates on past experience and on various other assumptions our management believes to be reasonable under the circumstances, the results of which form the basis for making judgments about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results will differ, and may differ materially from these estimates under different assumptions or conditions. Additionally, changes in accounting estimates could occur in the future from period to period. Our management has discussed the development and selection of our most critical financial estimates with the audit committee of our Board of Directors. The following paragraphs identify our most critical accounting policies:

Inventory Obsolescence. Our management reviews on a quarterly basis inventory quantities on hand for unmarketable and/or slow-moving products that may expire prior to being sold. This review includes quantities on hand for both raw materials and finished goods. Based on this review, we provide adjustments for any slow-moving finished good products or raw materials that we believe will expire prior to being sold or used to produce a finished good and any products that are unmarketable. This review of inventory quantities for unmarketable and/or slow moving products is based on forecasted product demand prior to expiration lives.

Forecasted unit demand is derived from our historical experience of product sales and production raw material usage. If market conditions become less favorable than those projected by our management, additional inventory write-downs may be required. During the years ended December 31, 2015, 2014 and 2013, we recorded obsolescence expense of approximately $2.8 million, $2.3 million, and $2.7 million, respectively, and wrote off approximately $2.5 million, $2.4 million, and $2.8 million, respectively. Based on this historical trend, we believe that our inventory balances as of June 30, 2016 have been accurately adjusted for any unmarketable and/or slow moving products that may expire prior to being sold.

Allowance for Doubtful Accounts. A majority of our receivables are with hospitals which, over our history, have demonstrated favorable collection rates. Therefore, we have experienced relatively minimal bad debts from hospital customers. In limited circumstances, we have written off bad debts as the result of the termination of our business relationships with foreign distributors. The most significant write-offs over our history have come from U.S. custom procedure tray manufacturers who bundle our products in surgical trays.

We maintain allowances for doubtful accounts relating to estimated losses resulting from the inability of our customers to make required payments. These allowances are based upon historical experience and a review of individual customer balances. If the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.

Stock-Based Compensation. We measure stock-based compensation cost at the grant date based on the value of the award and recognize the cost as an expense over the term of the vesting period. Judgment is required in estimating the fair value of share-based awards granted and their expected forfeiture rate. If actual results differ significantly from these estimates, stock-based compensation expense and our results of operations could be materially impacted.

Income Taxes. Under our accounting policies, we initially recognize a tax position in our financial statements when it becomes more likely than not that the position will be sustained upon examination by the tax authorities. Such tax positions are initially and subsequently measured as the largest amount of tax positions that has a greater than 50% likelihood of being realized upon ultimate settlement with the tax authorities assuming full knowledge of the position and all relevant facts. Although we believe our provisions for unrecognized tax positions are reasonable, we can make no assurance that the final tax outcome of these matters will not be different from that which we have reflected in our income tax provisions and accruals. The tax law is subject to varied interpretations, and we have taken positions related to certain matters where the law is subject to interpretation. Such differences could have a material impact on our income tax provisions and operating results in the period(s) in which we make such determination.

Goodwill and Intangible Assets Impairment and Contingent Consideration. We test our goodwill balances for impairment as of July 1 of each year, or whenever impairment indicators arise. We utilize several reporting units in evaluating goodwill for impairment. We assess the estimated fair value of reporting units using a combination of a market-based approach with a guideline public company method and a discounted cash flow method. If the carrying amount of a reporting unit exceeds the fair value of the reporting unit, an impairment charge is recognized in an amount equal to the excess of the carrying amount of the reporting unit goodwill over implied fair value of that goodwill. This analysis requires significant judgment, including estimation of future cash flows and the length of time they will occur, which is based on internal forecasts, and a determination of a discount rate based on our weighted average cost of capital. During our annual test of goodwill balances in 2015, which was completed during the

third quarter of 2015, we determined that the fair value of each reporting unit with goodwill exceeded the carrying amount by a significant amount.

We evaluate the recoverability of intangible assets whenever events or changes in circumstances indicate that an asset's carrying amount may not be recoverable. This analysis requires similar significant judgments as those discussed above regarding goodwill, except that undiscounted cash flows are compared to the carrying amount of intangible assets to determine if impairment exists. All of our intangible assets are subject to amortization.

Contingent consideration is an obligation by the buyer to transfer additional assets or equity interests to the former owner upon reaching certain performance targets. Certain of our business combinations involve the potential for the payment of future contingent consideration, generally based on a percentage of future product sales or upon attaining specified future revenue milestones. In connection with a business combination, any contingent consideration is recorded on the acquisition date based upon the consideration expected to be transferred in the future. We utilize a discounted cash flow method, which includes a probability factor for milestone payments, in valuing the contingent consideration liability. We re-measure the estimated liability each quarter and record changes in the estimated fair value through operating expense in our consolidated statements of income. Significant increases or decreases in our estimates could result in changes to the estimated fair value of our contingent consideration liability, as the result of changes in the timing and amount of revenue estimates, as well as changes in the discount rate or periods.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Currency Risk. Our principal market risk relates to changes in the value of the Euro (EUR), Chinese Yuan Renminbi (CNY), and British Pound (GBP) relative to the value of the U.S. Dollar (USD). We also have a limited market risk relating to the Hong Kong Dollar (HKD), Mexican Peso (MXN), Australian Dollar (AUD), Canadian Dollar (CAD), Brazilian Real (BRL), and the Swedish and Danish Kroner. Our consolidated financial statements are denominated in, and our principal currency is, the U.S. Dollar. For the three-month period ended June 30, 2016, a portion of our revenues (approximately $39.6 million, representing approximately 26% of our aggregate revenues), was attributable to sales that were denominated in foreign currencies. All other international sales were denominated in U.S. Dollars. Our Euro-denominated revenue represents our largest single currency risk. However, our Euro-denominated expenses associated with our European operations (manufacturing sites, a distribution facility and sales representatives) provide a natural hedge. Accordingly, changes in the Euro, and in particular a strengthening of the U.S. Dollar against the Euro, will positively affect our net income. A strengthening U.S. dollar against the Euro of 10% would increase net income by approximately $3.0 million dollars on an annual basis. Conversely, a weakening U.S. dollar against the Euro of 10% would decrease net income by approximately $3.0 million dollars on an annual basis. A strengthening U.S. dollar against the CNY of 10% would decrease net income by approximately $4.0 million dollars on an annual basis. Conversely, a weakening U.S. dollar against the CNY of 10% would increase net income by approximately $4.0 million dollars on an annual basis. During the three-month period ended June 30, 2016, exchange rate fluctuations of foreign currencies against the U.S. Dollar resulted in a decrease in our gross revenues of approximately $638,000, or 0.4%, and a decrease of 1.1% in gross profit, primarily as a result of unfavorable impacts to revenue due to sales denominated in CNY, GBP, and BRL, partially offset by favorable impacts due to increases in Irish manufacturing costs denominated in EUR.

We forecast our net exposure to various currencies and enter into foreign currency forward contracts to mitigate that exposure. As of June 30, 2016, we had entered into the following foreign currency forward contracts (amounts in thousands and in local currencies):

Currency	Symbol	Forward Notional Amount
Euro	EUR	835
British Pound	GBP	592
Chinese Yuan Renminbi	CNY	56,250
Mexican Peso	MXN	30,000
Brazilian Real	BRL	3,600
Australian Dollar	AUD	1,900
Hong Kong Dollar	HKD	11,000
Canadian Dollar	CAD	1,900

We enter into similar transactions at various times during the year to partially offset exchange rate risks we bear throughout the year. These contracts are marked to market at each month-end.

On October 23, 2015, we entered into a foreign currency forward contract to partially offset the currency risk related to an intercompany loan denominated in CNY. The loan matures and the forward contract is deliverable on September 16, 2016. The notional amount of the forward contract is approximately 46.3 million CNY. This contract is marked to market at each month-end.

The effect on our consolidated statements of income for the three-month periods ended June 30, 2016 and June 30, 2015 of all forward contracts, and the fair value of our open positions at June 30, 2016, were not material.

Interest Rate Risk. As discussed in Note 9 to our consolidated financial statements, as of June 30, 2016, we had outstanding borrowings of approximately $231.7 million under the Credit Agreement. Accordingly, our earnings and after-tax cash flow are affected by changes in interest rates. As part of our efforts to mitigate interest rate risk, on December 19, 2012, we entered into a LIBOR-based interest rate swap agreement having an initial notional amount of $150.0 million with Wells Fargo to fix the one-month LIBOR rate at 0.98%. As of June 30, 2016, a notional amount of $133.8 million remained on the interest rate swap agreement, which expires on December 19, 2017. This instrument is intended to reduce our exposure to interest rate fluctuations and was not entered into for speculative purposes. Excluding the amount that is subject to a fixed rate under the interest rate swap and assuming the current level of borrowings remained the same, it is estimated that our interest expense and income before income taxes would change by approximately $980,000 annually for each one percentage point change in the average interest rate under these borrowings.

In the event of an adverse change in interest rates, our management would likely take actions to mitigate our exposure. However, due to the uncertainty of the actions that would be taken and their possible effects, additional analysis is not possible at this time. Further, such analysis would not consider the effects of the change in the level of overall economic activity that could exist in such an environment.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as of June 30, 2016. In designing and evaluating the disclosure controls and procedures, management recognized 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 the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Based on that evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures are designed at a reasonable assurance level and are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

During the quarter ended June 30, 2016, there were no changes in our internal control over financial reporting that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934).

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

See Note 13 “Commitments and Contingencies” set forth in the notes to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report.

ITEM 1A. RISK FACTORS

In addition to other information set forth in this Report, readers should carefully consider the factors discussed in Part I, Item 1A. "Risk Factors" of our Annual Report on Form 10-K for the year ended December 31, 2015 (the "Form 10-K"), which could materially affect our business, financial condition or future results. The risks described in our Form 10-K are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially and adversely affect our business, financial condition and/or operating results.

The risk factors identified in Part I, Item 1A of the Form 10-K are supplemented by the following additional risk factors:

We may be unable to manage rapid increases in the demand for our products, particularly if the increase may not be sustained.

Due to regulatory issues experienced by a competitor, we have recently experienced an increase in demand for certain of our products. We do not know whether this increase will be short-term, medium-term or sustained, nor can we presently estimate the amount of the increase. As a result of this increase, demand for those products may exceed our inventory and manufacturing capacity. In response to the development, we have increased capacity at some of our existing facilities; however, this increase may not be sufficient to meet demand and could place stress on our human and other resources. It may also place stress on our relationships with third-party suppliers. In the short term, we cannot outsource this manufacturing because our products need to be manufactured to exact specifications, in a clean environment and by a manufacturer that satisfies certain regulatory requirements. This is forcing us to make allocation decisions among existing and new customers. We may be unable to efficiently manage this increase in demand for certain products. Failure to efficiently manage the situation could result in the loss of skilled employees or damage our existing supply relationships. A rapid increase in production may also lead to failures in our internal controls, including those related to quality, operations or financial reporting. Any such failures on our part may result in long-term declines in our profitability and results of operations.

The agreements and instruments governing our long-term debt contain restrictions, limitations and default remedies that could significantly affect our ability to operate our business, our liquidity and our ability to continue as a going concern.

We entered into the Second Amended Credit Agreement with certain lenders and Wells Fargo Bank, National Association as administrative agent, in connection with our acquisition by merger of DFINE. The Second Amended Credit Agreement contains a number of significant covenants that could limit or restrict our ability to operate our business, our liquidity or our results of operations. These covenants restrict, among other things, our incurrence of indebtedness, creation of liens or pledges on our assets, mergers or similar combinations or liquidations, asset dispositions, repurchases or redemptions of equity interests or debt, issuances of equity, payment of dividends and certain distributions, and entry into related party transactions.

We have pledged substantially all of our assets as collateral for the Second Amended Credit Agreement. Our breach of any covenant in the Second Amended Credit Agreement, not otherwise cured, waived or amended, could result in a default under the Second Amended Credit Agreement and could trigger acceleration of underlying obligations. The administrative agent and lenders under the Second Amended Credit Agreement have available to them the remedies typically available to lenders and secured parties, including the ability to foreclose on the collateral we have pledged. Any default under the Second Amended Credit Agreement would at a minimum harm ability to service our debt and to fund our prospective capital expenditures and ongoing operations. It could lead to an acceleration of indebtedness and foreclosure on our assets.

The Second Amended Credit Agreement provides for a total potential borrowing base of $425.0 million, which is $100.0 million more than the aggregate amount we were permitted to borrow under our prior Credit Agreement. As a result of this increase in indebtedness, it may be more difficult for us to comply with leverage ratios and other restrictive covenants. We may also have less cash available for operations and investments in our business, as we will be required to use additional cash to satisfy the minimum payments obligations associated with this increased indebtedness.

The integration of the DFINE business into our existing business will present significant challenges, which may harm our operations.

We may be unable to realize anticipated benefits, and may experience losses, in connection with our acquisition of DFINE. Prior to the acquisition, DFINE was not profitable or cash flow positive. In an effort to make the DFINE operations accretive to our results of operations, we plan to reduce the number of employees at DFINE, have our existing employees assume certain sales and other functions and consolidate a significant portion of the manufacturing activities related to the DFINE products, all without losing important supplier or customer relationships or experiencing a reduction in product quality. We also need to retain and integrate certain key employees and suppliers that are important for the continuation and success of the DFINE business. Although we anticipate delays, the loss of certain employees, suppliers or customers, culture clashes, unbudgeted costs and other issues at certain levels, we may experience any or all of such problems at levels that are more severe or more prolonged than anticipated. In addition, we may experience problems that can be associated with any acquisition in our industry, such as regulatory, infringement, product liability, discrimination or other legal claims or issues. If any such problems or issues arise, we may lose all or part of our investment in DFINE or fail to realize anticipated benefits.

ITEM 6. EXHIBITS

Exhibit No.	Description
2.1	Agreement and Plan of Merger by and among Merit, MMS Transaction Co., a wholly-owned subsidiary of Merit, DFine Inc., certain preferred stockholders and Shareholder Representative Services LLC as a stockholder representative*
10.1	Second Amended and Restated Credit Agreement dated July 6, 2016 with the Lenders party thereto and Wells Fargo Bank, National Association
10.2	Form of Indemnification Agreement, dated June 13, 2016, between the Company and each of the following individuals: Fred P. Lampropoulos, Kent W. Stanger, Nolan E. Karras, A. Scott Anderson, Richard W. Edelman, Franklin J. Miller, M.D., Michael E. Stillabower, M.D., F. Ann Millner, Ed. D., Bernard J. Birkett, Ronald A. Frost, Joseph C. Wright, Justin J. Lampropoulos, and Brian G. Lloyd**
10.3	Form of Employment Agreement, dated May 26, 2016 between the Company and each of the following individuals: Bernard J. Birkett, Ronald A. Frost, Joseph C. Wright, Justin J. Lampropoulos, and Brian G. Lloyd**
10.4	Employment Agreement, dated May 26, 2016 between the Company and Fred P. Lampropoulos**
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101	The following financial information from the quarterly report on Form 10-Q of Merit Medical Systems, Inc. for the quarter ended June 30, 2016, formatted in XBRL (eXtensible Business Reporting Language): (i) Consolidated Statements of Income, (ii) Consolidated Balance Sheets, (iii) Consolidated Statements of Comprehensive Income, (iv) Consolidated Statements of Cash Flows, and (v) Notes to the Consolidated Financial Statements

* Certain portions of this exhibit have been omitted pursuant to Rule 24b-z and are subject to a confidential treatment request.

** Management compensation agreement

SIGNATURES

Pursuant to the requirements 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.

MERIT MEDICAL SYSTEMS, INC.
REGISTRANT

Date: August 8, 2016

/s/ FRED P. LAMPROPOULOS
FRED P. LAMPROPOULOS
PRESIDENT AND CHIEF EXECUTIVE OFFICER

Date: August 8, 2016

/s/ BERNARD J. BIRKETT
BERNARD J. BIRKETT
CHIEF FINANCIAL OFFICER

Certain portions of this exhibit have been omitted pursuant to Rule 24b-2 and are subject to a confidential treatment request. Copies of this exhibit containing the omitted information have been filed separately with the Securities and Exchange Commission. The omitted portions of this document are marked with a *.**

Agreement and Plan of Merger

by and among

Merit Medical Systems, Inc.,

MMS Transaction Co.,

DFine, Inc.,

the Priority Preferred Stockholders,

solely for purposes of Article VII and VIII,

and

Shareholder Representative Services LLC,

solely in its capacity as the Stockholder Representative

dated as of

July 6, 2016

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EXHIBITS

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this "**Agreement**"), dated as of July 6, 2016, is entered into by and among Merit Medical Systems, Inc., a Utah corporation ("**Parent**"), MMS Transaction Co., a Delaware corporation and a wholly-owned subsidiary of Parent ("**Merger Sub**"), DFine, Inc., a Delaware corporation (the "**Company**"), the Priority Preferred Stockholders, solely for purposes of **Article VII** and **Article VIII**, and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as the representative of the Priority Preferred Stockholders (the "**Stockholder Representative**").

RECITALS

WHEREAS, the Company is a corporation duly formed and validly existing under the Laws of the State of Delaware;

WHEREAS, Parent is a corporation duly formed and validly existing under the Laws of the State of Utah, and Merger Sub, a wholly-owned subsidiary of Parent, is a corporation duly formed and validly existing under the laws of the State of Delaware;

WHEREAS, the parties intend that Merger Sub be merged with and into the Company, with the Company surviving the merger on the terms and subject to the conditions set forth herein (the "**Merger**");

WHEREAS, the board of directors of the Company (the "**Company Board**") and the board of directors of each of Parent and Merger Sub have (a) determined that this Agreement and the transactions contemplated hereby, including the Merger, are in the best interests of their respective companies and stockholders, and (b) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger; and

WHEREAS, the Company Board and the board of directors of Merger Sub have each resolved to recommend adoption of this Agreement by their respective stockholders in accordance with the Delaware General Corporation Law (the "**DGCL**").

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Article I
DEFINITIONS

The following terms have the meanings specified or referred to in this **Article I**:

"**Accounting Principles**" means GAAP, applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the fiscal year ended December 31, 2015, so long as such methods, practices, principles, policies and procedures were consistent with GAAP.

"**Acquired Companies**" means the Company and each of its Subsidiaries

"**Action**" means any action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity, in each case, by or before any Governmental Authority.

"**Actual Cash**" has the meaning set forth in **Section 2.16(b)**.

"**Actual Indebtedness**" has the meaning set forth in **Section 2.16(b)**.

"**Actual Transaction Expenses**" has the meaning set forth in **Section 2.16(b)**.

"**Actual Working Capital**" has the meaning set forth in **Section 2.16(b)**.

"**Actual Working Capital Adjustmen**t" means Actual Working Capital, minus Target Working Capital.

"**Adjusted Closing Merger Consideration**" means the Enterprise Value, plus (a) the Actual Working Capital Adjustment (which may be a positive or negative number), minus (b) the amount, if any, by which Actual Cash is less than $1,000,000 (and otherwise $0), minus (c) the amount of Actual Indebtedness, minus (d) the amount of Actual Transaction Expenses, minus (e) the Indemnification Escrow Amount, minus (f) the Integration Cost Escrow Amount, minus (g) the Stockholder Representative Expense Amount.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning set forth in the preamble.

"**Ancillary Documents**" means the Escrow Agreement and the Distribution Agent Agreement.

"**Audited Financial Statements**" has the meaning set forth in **Section 3.06**.

"**Balance Sheet**" has the meaning set forth in **Section 3.06**.

"**Balance Sheet Date**" has the meaning set forth in **Section 3.06**.

"**Benefit Plan**" has the meaning set forth in **Section 3.20(a)**.

"**Business Day**" means any day except Saturday, Sunday or any other day on which commercial banks located in Salt Lake City, Utah or in San Jose, California are authorized or required by Law to be closed for business.

"**Cap**" has the meaning set forth in **Section 7.04(c)**.

"**Capital Stock**" means shares of Common Stock and Preferred Stock.

"**Cash**" means, as of any date of determination, all cash and cash equivalents of the Acquired Companies, including deposits and checks in transit, less the aggregate amount of all outstanding and unpaid checks issued by or on behalf of any of the Acquired Companies.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

"**Certificate**" has the meaning set forth in **Section 2.11(a)**.

"**Certificate of Merger**" has the meaning set forth in **Section 2.04**.

"**Closing**" has the meaning set forth in **Section 2.02**.

"**Closing Statement**" has the meaning set forth in **Section 2.16(a)**.

"**Closing Date**" has the meaning set forth in **Section 2.02**.

"**Closing Merger Consideration**" means the Enterprise Value, plus (a) the Estimated Working Capital Adjustment (which may be a positive or negative number), minus (b) the amount, if any, by which Estimated Cash is less than $1,000,000 (and otherwise $0), minus (c) the amount of Estimated Indebtedness, minus (d) the amount of Estimated Transaction Expenses, minus (e) the Indemnification Escrow Amount, minus (f) the Integration Cost Escrow Amount, minus and (g) the Stockholder Representative Expense Amount.

"**Closing Per Share Merger Consideration**" means, with respect to each share of Capital Stock, the amount of Closing Merger Consideration, if any, to be distributed with respect to such share of Capital Stock, as set forth on the Consideration Spreadsheet. For the avoidance of doubt, the Closing Per Share Merger Consideration with respect to shares of a class or series of Capital Stock may be zero ($0.00).

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Common Stock**" means the common stock, par value $0.001 per share, of the Company.

"**Company**" has the meaning set forth in the preamble.

"**Company Board**" has the meaning set forth in the recitals.

"**Company Board Recommendation**" has the meaning set forth in **Section 3.02(b)**.

"**Company Charter Documents**" has the meaning set forth in **Section 3.03**.

"**Company Intellectual Property**" means all Intellectual Property that is owned by any Acquired Company.

"**Company IP Agreements**" means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, relating to Intellectual Property to which an Acquired Company is a party, beneficiary or otherwise bound.

"**Company IP Registrations**" means all Company Intellectual Property that is subject to any issuance registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

"Confidential Information" means all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or indirectly to: business processes, practices, methods, policies, plans, publications, documents, research, operations, services, strategies, techniques, designs, agreements, contracts, transactions, negotiations, know-how, trade secrets, computer software, applications or systems, work-in-process, records, systems, materials, prospect information, client information, customer information, supplier information, vendor information, financial information, marketing information, pricing information, staffing and personnel information, employee lists, developments, reports, security procedures, graphics, market studies and competition information, notes, inventions, original works of authorship and discoveries of the Parent, Merger Sub or the Surviving Corporation or their respective businesses or any existing or prospective client, customer, supplier or other associated third party of the Parent, Merger Sub or the Surviving Corporation. Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.

"**Consideration Spreadsheet**" has the meaning set forth in **Section 2.17(a)**.

"**Contracts**" means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements and legally binding commitments and arrangements, whether written or oral.

"**Current Assets**" means all current assets of the Acquired Companies, determined in accordance with the Accounting Principles. Notwithstanding the foregoing, "Current Assets" shall exclude Cash and deferred Tax assets, but shall include all prepaid Taxes, such as prepaid property taxes or similar Taxes, for which Parent will receive the benefit following the Closing.

"**Current Liabilities**" means all current liabilities of the Acquired Companies, determined in accordance the Accounting Principles. Notwithstanding the foregoing, for purposes of determining Estimated Working Capital, "Current Liabilities" shall not include any items included as Estimated Indebtedness or Estimated Transaction Expenses, and for purposes of determining Actual Working Capital, "Current Liabilities" shall not include any items included as Actual Indebtedness or Actual Transaction Expenses.

"**Deductible**" has the meaning set forth in **Section 7.04(a)**.

"**D&O Indemnified Party**" has the meaning set forth in **Section 5.03(a)**.

"**D&O Tail Policy**" has the meaning set forth in **Section 5.03(c)**.

"**DGCL**" has the meaning set forth in the recitals.

"**Direct Claim**" has the meaning set forth in **Section 7.05(c)**.

"**Disclosure Schedules**" means the Disclosure Schedules delivered by the Company and Parent concurrently with the execution and delivery of this Agreement.

"**Disputed Amounts**" has the meaning set forth in **Section 2.16(c)(iii)**.

"**Dissenting Shares**" has the meaning set forth in **Section 2.10**.

"**Distribution Agent**" means Citibank, N.A.

"**Distribution Agent Agreement**" means the Distribution Agent Agreement, dated as of the Closing Date, by and among Parent, the Stockholder Representative and the Distribution Agent, a copy of which is attached hereto as Exhibit E.

"**Dollars or $**" means the lawful currency of the United States.

"**Effective Time**" has the meaning set forth in **Section 2.04**.

"**Employee Bonus Plan**" means that certain 2016 Change of Control Incentive Plan of the Company, effective as of immediately prior to the Closing, a copy of which is attached hereto as Exhibit A.

"**Encumbrance**" means any charge, community property interest, pledge, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"**Enterprise Value**" means $97,500,000.

"**Environmental Attributes**" means any emissions and renewable energy credits, energy conservation credits, benefits, offsets and allowances, emission reduction credits or words of similar import or regulatory effect (including emissions reduction credits or allowances under all applicable emission trading, compliance or budget programs, or any other federal, state or regional emission, renewable energy or energy conservation trading or budget program) that have been held, allocated to or acquired for the development, construction, ownership, lease, operation, use or maintenance of the Acquired Companies as of: (a) the date of this Agreement; and (b) future years for which allocations have been established and are in effect as of the date of this Agreement.

"**Environmental Claim**" means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

"**Environmental Law**" means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term "Environmental Law" includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the

Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

"**Environmental Notice**" means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

"**Environmental Permit**" means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

"**Equity Right**" means any warrant, option, convertible note, acquisition right or other right exercisable for, convertible into or exchangeable for Capital Stock or any other equity securities of any Acquired Company, other than the Options.

"**Equity Right Termination Agreement**" means a termination agreement substantially in the form attached as Exhibit B.

"**Equity Right Holder**" means a holder of an Equity Right.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"**ERISA Affiliate**" means all employers (whether or not incorporated) that would be treated together with the Company or any of its Subsidiaries as a "single employer" within the meaning of Section 414 of the Code.

"**Escrow Agent**" means Wells Fargo Bank, National Association.

"**Escrow Agreement**" means the Escrow Agreement, dated as of the Closing Date, by and among Parent, the Stockholder Representative and the Escrow Agent, a copy of which is attached hereto as Exhibit C.

"**Escrow Funds**" has the meaning set forth in **Section 2.12(b)**.

"**Estimated Cash**" has the meaning set forth in **Section 2.16(a)**.

"**Estimated Indebtedness**" has the meaning set forth in **Section 2.16(a)**.

"**Estimated Transaction Expenses**" has the meaning set forth in **Section 2.16(a)**.

"**Estimated Working Capital**" has the meaning set forth in **Section 2.16(a)**.

"**Estimated Working Capital Adjustmen**t" means Estimated Working Capital, minus Target Working Capital.

"**Exclusivity Fee Cancellation Agreement**" means that certain Exclusivity Fee Cancellation Agreement, dated as of the date hereof, by and between Parent and the Company.

"**FDA**" has the meaning set forth in **Section 3.23**.

"**Financial Statements**" has the meaning set forth in **Section 3.06**.

"**Fundamental Representations**" mean the representations and warranties set forth in **Section 3.01**, **Section 3.02(a)**, **Section 3.04**, **Section 3.29**, **Section 4.01** and **Section 4.04**.

"**GAAP**" means United States generally accepted accounting principles in effect from time to time.

"**Government Contracts**" has the meaning set forth in **Section 3.09(a)(viii)**.

"**Governmental Authority**" means any federal, state, provincial, local or foreign government or political subdivision thereof, or any agency, court or instrumentality of such government or political subdivision either with jurisdiction over any activities of any party to this Agreement or where a party to this Agreement conducts business, or any arbitrator, court or tribunal of competent jurisdiction.

"**Governmental Order**" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"**Hazardous Materials**" means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

"**Indebtedness**" means, with respect to the Acquired Companies, as of any date of determination and without duplication, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services, (c) long or short-term obligations evidenced by any note, bond, debenture or other instrument; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker's acceptance or similar credit transaction, to the extent drawn; (g) guarantees made by an Acquired Company on behalf of any third party in respect of any obligation of the kind referred to in the foregoing clauses (a) through (f); (h) unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (g).

"**Indemnifiable Taxes**" means (a) all Taxes of the Acquired Companies for all Pre-Closing Tax Periods; (b) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which any Acquired Company (or any predecessor of any Acquired Company) is or was a member on or prior to the Closing Date by reason of a liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of foreign, state or local Law; and (c) all Taxes of another Person imposed on any of the Acquired Companies arising under the principles of transferee or successor liability or by reason of a Tax Sharing Agreement or any contract providing for the payment of any Taxes of another person, in each case, relating to an event or transaction occurring before the Closing Date; *provided, that*, the defined term Indemnifiable Taxes shall not include any Taxes to the extent the Tax-related Loss in question results from Parent's violation of **Section 6.01(c)**.

"**Indemnification Escrow Amount**" means $9,750,000.

"**Indemnification Escrow Fund**" has the meaning set forth in **Section 2.12(a)**.

"**Indemnification Obligation Pro Rata Share"** means, with respect to each Priority Preferred Stockholder that executes the Merger Agreement on the Closing Date, and each Priority Preferred Stockholder that executes a joinder to the Merger Agreement following the Closing Date (other than any such joinder that is determined by a court of competent jurisdiction to be unenforceable), the quotient (expressed as a percentage) of (i) such Priority Preferred Stockholders' pro rata share of the Closing Merger Consideration divided by (ii) the Closing Merger Consideration.

"**Indemnified Party**" has the meaning set forth in **Section 7.05**.

"**Indemnifying Party**" has the meaning set forth in **Section 7.05**.

"**Independent Accountant**" has the meaning set forth in **Section 2.16(c)(iii)**.

"**Insurance Policies**" has the meaning set forth in **Section 3.16**.

"**Integration Cost Escrow Amount**" means $5,000,000.

"**Integration Cost Escrow Fund**" has the meaning set forth in **Section 2.12(b)**.

"**Integration Cost Target**" means $15,000,000.

"**Integration Costs**" has the meaning set forth in **Section 2.18(a)**.

"**Integration Period**" has the meaning set forth in **Section 2.18(a)**.

"**Intellectual Property**" means all intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, pursuant to the Laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all: (a) trademarks, service marks, trade names, brand names, logos, trade dress, design rights and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications and renewals for, any of the foregoing; (b) internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority, web addresses, web pages, websites and related content, accounts with Twitter, Facebook and other social media companies and the content found thereon and related thereto, and URLs; (c) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights, author, performer, moral and neighboring rights, and all registrations, applications for registration and renewals of such copyrights; (d) inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections and other confidential and proprietary information and all rights therein; (e) patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor's certificates, petty patents and patent utility models); and (f) software and firmware, including data files, source code, object code, application programming interfaces, architecture, files, records, schematics, computerized databases and other related specifications and documentation; and (g) mask works.

"**Interim Balance Sheet**" has the meaning set forth in **Section 3.06**.

"**Interim Balance Sheet Date**" has the meaning set forth in **Section 3.06**.

"**Interim Financial Statements**" has the meaning set forth in **Section 3.06**.

"**Key Employees**" means Greg Barrett, Rick Short and Scott Lynch.

"**Knowledge**" means, when used with respect to the Company or the Acquired Companies, the actual knowledge of Greg Barrett, Rick Short, Dan Balbierz, Linda Lechner and Cindee Van Vleck, and the knowledge that each such person would reasonably be expected to obtain in the course of performing his or her duties with the Acquired Companies, or after due inquiry of their respective direct reports or reasonable investigation.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

"**Letter of Transmittal**" has the meaning set forth in **Section 2.11(b)**.

"**Losses**" means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder; *provided, however,* that "**Losses**" shall not include exemplary or punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

"**Majority Holder**" has the meaning set forth in **Section 8.01(b)**.

"**Management Bonus Plan**" means that certain 2016 Management Bonus Plan of the Company, effective as of immediately prior to the Closing, a copy of which is attached hereto as Exhibit D.

"**Material Adverse Effect**" means any event, occurrence, fact, condition or change that is, or would reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Acquired Companies (taken as a whole), or (b) the ability of the Company to consummate the transactions contemplated hereby on a timely basis; *provided, however,* that "Material Adverse Effect" shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which any Acquired Company operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement; (vi) any changes in applicable Laws or accounting rules, including GAAP; (vii) the announcement, pendency or completion of the transactions contemplated by this Agreement; or (viii) the failure of any of the Acquired Companies to meet or achieve any projection or forecast; *provided, further,* that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has, or would reasonably be expected to have, a disproportionate effect on the Acquired Companies (taken as a whole) compared to other participants in the industries in which any Acquired Company conducts its businesses.

"**Material Contracts**" has the meaning set forth in **Section 3.09(a)**.

"**Material Customers**" has the meaning set forth in **Section 3.15(a)**.

"**Material Suppliers**" has the meaning set forth in **Section 3.15(b)**.

"**Merger**" has the meaning set forth in the recitals.

"**Merger Consideration**" means the Closing Merger Consideration, together with those portions of (i) the Escrow Funds, (ii) the Stockholder Representative Expense Fund and (iii) the Post-Closing Adjustment (if any) that the Priority Preferred Stockholders become entitled to receive pursuant to the terms of this Agreement and the Escrow Agreement.

"**Merger Sub**" has the meaning set forth in the preamble.

"**Non-Terminating Right**" has the meaning set forth in **Section 2.03(b)(ix)**.

"**Non-U.S. Benefit Plan**" has the meaning set forth in **Section 3.20(a)**.

"**Off-The-Shelf Agreements**" means generally commercially available off-the-shelf software licenses for Intellectual Property under which the annual recurring fees any Acquired Company is required to pay for use of such Intellectual Property are less than $10,000.

"**Option**" means any option to purchase Company Capital Stock granted under a Stock Option Plan and still outstanding as of immediately prior to the Effective Time.

"**Optionholder**" means a holder of an Option.

"**Organizational Documents**" has the meaning set forth in **Section 5.03(b)**.

"**Parent**" has the meaning set forth in the preamble.

"**Parent Closing Statement**" has the meaning set forth in **Section 2.16(b)**.

"**Parent Indemnitees**" has the meaning set forth in **Section 7.02**.

"**Permits**" means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

"Permitted Encumbrances" means those items set forth in **Section 1** of the Disclosure Schedules; liens for Taxes not yet delinquent; liens for Taxes the amount or validity of which is being contested in good faith by appropriate proceedings and which are disclosed in **Section 1** of the Disclosure Schedule; mechanics, carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the business of the Acquired Companies; or easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which are not, individually or in the aggregate, material to the business of the Acquired Companies.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

"**Personal Information**" means the type of information regulated by Privacy Laws and collected, used, disclosed or retained by any Acquired Company such as an individual's name, address, age, gender, identification number, family status, citizenship, employment, assets, liabilities, source of funds, payment records, credit information, personal references and health records.

"**Post-Closing Adjustment**" shall be an amount equal to the Adjusted Closing Merger Consideration, minus the Closing Merger Consideration.

"**Post-Closing Tax Period**" means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

"**Post-Closing Taxes**" means Taxes of the Acquired Companies for any Post-Closing Tax Period.

"**Pre-Closing Tax Period**" means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

"**Pre-Closing Taxes**" means Taxes of the Acquired Companies for any Pre-Closing Tax Period.

"**Preferred Stock**" means the preferred stock, par value $0.001 per share, of the Company, which is designated Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock.

"**Preferred Stockholder**" means a holder of Preferred Stock.

"**Priority Preferred Stock**" means the Series E Preferred Stock and the Series F Preferred Stock.

"**Priority Preferred Stockholder**" means a holder of Priority Preferred Stock.

"**Privacy Laws**" means all applicable Laws of any nation in which any Acquired Company operates governing the collection, use, disclosure and retention of Personal Information.

"**Pro Rata Share**" means, with respect to any Priority Preferred Stockholder, such Person's pro rata portion of the (i) Closing Merger Consideration, (ii) Post-Closing Adjustment, (iii) returned Indemnification Escrow Funds, (iv) returned Integration Cost Escrow Funds or (v) returned Seller Representative Expense Funds, as applicable.

"**Qualified Benefit Plan**" has the meaning set forth in **Section 3.20(c)**.

"**R&W Insurance Policy**" means a buyer-side representations and warranties insurance policy issued by AIG for the benefit of Parent and any additional insureds named by Parent with a retention amount equal to the R&W Insurance Policy Retention Amount and a coverage limit equal to the R&W Insurance Policy Coverage Limit.

"**R&W Insurance Policy Coverage Limit**" means $9,750,000.

"**R&W Insurance Policy Retention Amount**" means $1,462,500.

"**Real Property**" has the meaning set forth in **Section 3.10(a)**.

"**Release**" means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

"**Repaid Indebtedness**" has the meaning set forth in **Section 2.03(a)(i)**.

"**Representative**" means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

"**Representative Losses**" has the meaning set forth in **Section 8.01(c)**.

"**Requisite Company Vote**" has the meaning set forth in **Section 3.02(a)**.

"**Resolution Period**" has the meaning set forth in **Section 2.16(c)(ii)**.

"**Review Period**" has the meaning set forth in **Section 2.16(c)(i)**.

"**Stockholder Representative Expense Amount**" means $250,000.

"**Stockholder Representative Expense Fund**" has the meaning set forth in **Section 2.12(c)**.

"**Statement of Objections**" has the meaning set forth in **Section 2.16(c)(ii)**.

"**Stock Option Plan**" means each of the 2004 Stock Plan and the 2014 Stock Plan of the Company.

"**Stockholders**" means the holders of Capital Stock.

"**Stockholder Indemnitees**" has the meaning set forth in **Section 7.03**.

"**Stockholder Notice**" has the meaning set forth in **Section 5.01(b)**.

"**Stockholder Representative**" has the meaning set forth in the preamble.

"**Straddle Period**" has the meaning set forth in **Section 6.03**.

"**Subsidiaries**" means, when used with respect to any party, any corporation or other organization, whether incorporated or unincorporated, a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"**Surviving Corporation**" has the meaning set forth in **Section 2.01**.

"**Target Working Capital**" means $3,500,000.

"**Taxes**" means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, value added, transfer, franchise, registration, profits, license, lease, service, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, property (real or personal), windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

"**Tax Claim**" has the meaning set forth in **Section 6.04**.

"**Tax Return**" means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"**Tax Sharing Agreement**" means any agreement the primary purpose of which is (a) to allocate responsibility with respect to the payment of any Tax liabilities of any Person or (b) for the sharing or payment for any Tax attributes of any Person.

"**Third Party Claim**" has the meaning set forth in **Section 7.05(a)**.

"**Transaction Expenses**" means, as of any date of determination and without duplication, all unpaid fees and expenses incurred by the Acquired Companies or for which any Acquired Company is liable as of the Closing in connection with the preparation, negotiation and execution of this Agreement and the Ancillary Documents, and the performance and consummation of the Merger and the other transactions contemplated hereby and thereby, including (a) amounts payable pursuant to the Employee Bonus Plan, (b) any Taxes or other amounts required to be paid, withheld or contributed by the Acquired Companies under the Federal Insurance Contributions Act ("**FICA**"), Medicare or other similar Laws related to any amounts

payable pursuant to the Employee Bonus Plan, (c) the cost of obtaining the D&O Tail Policy, (d) the amount payable to AIG to obtain the R&W Insurance Policy, and (e) three (3) months of salary, bonus, benefits and other monetary compensation for each of the Key Employees and any Taxes or other amounts required to be paid, withheld or contributed by the Acquired Companies under the Federal Insurance Contributions Act ("**FICA**"), Medicare or other similar Laws in respect of such salary continuation. For the avoidance of doubt, "Transaction Expenses" shall not include any amounts payable pursuant to the Management Bonus Plan.

"**Undisputed Amounts**" has the meaning set forth in **Section 2.16(c)(iii)**.

"**Union**" has the meaning set forth in **Section 3.21(b)**.

"**WARN Act**" means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, and mass layoffs.

"**Working Capital**" means, as of any date of determination, Current Assets minus Current Liabilities.

"**Written Consent**" has the meaning set forth in **Section 5.01(a)**.

ARTICLE II

THE MERGER

Section 2.01 The Merger.

On the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, at the Effective Time, (a) Merger Sub will merge with and into the Company, and (b) the separate corporate existence of Merger Sub will cease and the Company will continue its corporate existence under the DGCL as the surviving corporation in the Merger (sometimes referred to herein as the "**Surviving Corporation**").

Section 2.02 Closing.

Subject to the terms and conditions of this Agreement, the closing of the Merger (the "**Closing**") shall take place at 10:00 a.m., Mountain Time, on the date of this Agreement, at the offices of Parr Brown Gee & Loveless, a professional corporation, 101 South 200 East, Suite 700, Salt Lake City, Utah 84111, or at such other time or on such other date or at such other place as the Company and Parent may mutually agree upon in writing (the day on which the Closing takes place being the "**Closing Date**").

Section 2.03 Repaid Indebtedness and Company Transaction Expenses; Closing Deliverables.

(a) **Repaid Indebtedness and Company Transaction Expenses.**

(i) It is contemplated by the parties that, contemporaneously with the Closing, all Indebtedness for borrowed money of the Acquired Companies as of immediately prior to the Closing set forth on the **Repaid Indebtedness Schedule** by the Company (the "**Repaid Indebtedness**"), will be fully repaid and that such repayment will be funded by Parent. The Company has delivered to Parent the Repaid Indebtedness Schedule along with customary payoff letters in respect of all Repaid Indebtedness to be effective upon the Closing, which payoff letters (A) acknowledge the aggregate principal amount and all accrued but unpaid interest constituting the Repaid Indebtedness and (B) provide that, upon receipt of such amounts, (1) all such Indebtedness shall have been repaid and discharged and (2) all Liens held by or on

behalf of such lenders in respect of the properties and assets of the Acquired Companies shall be released and forever discharged.

(ii) It is contemplated by the parties that, contemporaneously with the Closing, all Estimated Transaction Expenses of the Acquired Companies set forth in the Closing Statement will be fully paid and that such payment will be funded by Parent. The Company has delivered to Parent invoices for all such Estimated Transaction Expenses.

(iii) In connection with the Closing and on behalf of the Acquired Companies, on the Closing Date, Parent shall pay in cash, by wire transfer of immediately available funds, the Repaid Indebtedness and the Estimated Transaction Expenses in order to fully discharge the amounts payable thereunder, in each case, in the amounts set forth on the Repaid Indebtedness Schedule (which reflects the amounts in the payoff letters) and the Closing Statement (which reflects the amounts in the invoices) delivered pursuant to this **Section 2.03(a)**, and pursuant to wire instructions provided by the Company to Parent prior to or at the Closing.

(b) **Closing Deliverables of the Company.** On or prior to the Closing Date, the Company shall deliver or cause to be delivered to Parent the following:

(i) the Escrow Agreement, duly executed by the Stockholder Representative;

(ii) the Distribution Agent Agreement, duly executed by the Stockholder Representative;

(iii) a certificate, dated the Closing Date and signed by a duly authorized officer of the Company, certifying that attached thereto are true and complete copies of (A) all resolutions adopted by the Company Board authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, (B) resolutions of the stockholders of the Company approving the Merger and adopting this Agreement, signed by stockholders of the Company representing at least the Requisite Company Vote, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;

(iv) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying that (A) attached thereto are true and complete copies of the Company Charter Documents and (B) the names and signatures of the officers of the Company authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder;

(v) a good standing certificate of the Company from the Secretary of State of the State of Delaware;

(vi) the Closing Statement contemplated in **Section 2.16(a)**;

(vii) the Consideration Spreadsheet contemplated in **Section 2.17**;

(viii) a certificate, in the form required by Treasury Regulation Section 1.897-2(h) and 1.1445-2(c)(3), dated as of the Closing Date, to the effect that no interest in the Company is a U.S. real property interest; and

(ix) Equity Right Termination Agreements duly executed and delivered to the Company terminating any and all Equity Rights that do not, automatically without the payment of any consideration or the taking of any action, terminate or expire by their terms effective as of the Closing ("**Non-Terminating Rights**").

(c) **Closing Deliverables of Parent**. On or prior to the Closing Date, Parent shall deliver or cause or be delivered to the Company (or to such other Person as may be specified herein) the following:

(i) the Escrow Agreement duly executed by Parent;

(ii) the Distribution Agent Agreement duly executed by Parent and the Distribution Agent;

(iii) payment to each Priority Preferred Stockholder and the Distribution Agent of the amounts required to be paid pursuant to **Section 2.11(c)**;

(iv) payment to the Escrow Agent, by wire transfer of immediately available funds, of the Indemnification Escrow Amount and the Integration Cost Escrow Amount;

(v) payment to the Stockholder Representative, by wire transfer of immediately available funds, of the Stockholder Representative Expense Amount;

(vi) payment to third parties, by wire transfer of immediately available funds, of that amount of money due and owing from the Acquired Companies to such third parties as Estimated Transaction Expenses; and

(vii) payment to holders of outstanding Repaid Indebtedness, by wire transfer of immediately available funds, of that amount of money due and owing from the Acquired Companies to such third parties.

Section 2.04 Effective Time.

Subject to the provisions of this Agreement, at the Closing, the Company shall cause a certificate of merger in substantially the form of Exhibit F attached hereto (the "**Certificate of Merger**") to be filed with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL and shall make all other filings or recordings required under the DGCL. The Merger shall become effective at such time as the Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware or at such later date or time as may be agreed by the Company and Parent in writing and specified in the Certificate of Merger in accordance with the DGCL (the effective time of the Merger being hereinafter referred to as the "**Effective Time**").

Section 2.05 Effects of the Merger.

The Merger shall have the effects set forth herein and in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, from and after the Effective Time, all property, rights, privileges, immunities, powers, franchises, licenses and authority of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities, obligations, restrictions and duties of each of the Company and Merger Sub shall become the debts, liabilities, obligations, restrictions and duties of the Surviving Corporation.

Section 2.06 Certificate of Incorporation; By-laws.

At the Effective Time, (a) the certificate of incorporation of Merger Sub as in effect immediately prior to the Effective Time shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with the terms thereof or as provided by applicable Law, and (b) the by-laws of Merger Sub as in effect immediately prior to the Effective Time shall be the by-laws of the Surviving Corporation until thereafter amended in accordance with the terms thereof, the certificate of incorporation of the Surviving Corporation or as provided by applicable Law; *provided*, *however*, in each case, that the name of the corporation set forth therein shall be changed to the name of the Company.

Section 2.07 Directors and Officers.

The directors and officers of Merger Sub, in each case, immediately prior to the Effective Time shall, from and after the Effective Time, be the directors and officers, respectively, of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the certificate of incorporation and by-laws of the Surviving Corporation.

Section 2.08 Effect of the Merger on Capital Stock.

At the Effective Time, as a result of the Merger and without any action on the part of Parent, Merger Sub, the Company or any Stockholder:

(a) **Cancellation of Certain Company Capital Stock.** Shares of Capital Stock that are owned by Parent, Merger Sub or the Company (as treasury stock or otherwise) or any of their respective direct or indirect wholly-owned Subsidiaries shall automatically be cancelled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(b) **Conversion of Capital Stock.** Each share of Capital Stock issued and outstanding immediately prior to the Effective Time (other than (i) shares to be cancelled and retired in accordance with **Section 2.08(a)**, and (ii) Dissenting Shares, if any) shall be converted into the right to receive, upon compliance with the requirements of **Section 2.11(c)**, the Closing Per Share Merger Consideration, if any, associated with such share of Capital Stock in cash, without interest, together with any amounts that may become payable in respect of such share of Capital Stock in the future from the Escrow Funds as provided in this Agreement and the Escrow Agreement or in respect of the Post-Closing Adjustment, at the respective times and subject to the contingencies specified herein and therein, in both cases, if any. For the avoidance of doubt, if the Closing Per Share Merger Consideration for a share of Capital Stock is zero, such share of Capital Stock shall be cancelled as set forth herein.

(c) **Conversion of Merger Sub Capital Stock.** Each share of common stock, par value $0.0001 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one newly issued, fully paid and non-assessable share of common stock of the Surviving Corporation.

Section 2.09 Treatment of Options and Equity Rights.

(a) At the Effective Time, each Option that is outstanding and unexercised immediately prior to the Effective Time, whether or not then vested or exercisable, shall be, by virtue of the Merger and without any additional action on the part of Parent, Merger Sub, the Company, the Optionholder or any other Person, cancelled and such Optionholder shall cease to have any rights with respect thereto, other that the right to receive, with respect to each share of Common Stock converted by each Option under the 2004 Stock Plan of the Company as of immediately prior to the Effective Time, the amount (if any), by which the Closing Per Share Merger Consideration of a share of Common Stock exceeds the exercise price of such Option.

(b) At the Effective Time, each Equity Right, other than Non-Terminating Rights, that is outstanding and unexercised immediately prior to the Effective Time, shall be, by virtue of the Merger and without any additional action on the part of Parent, Merger Sub, the Company, the Equity Right Holder or any other Person, cancelled and such Equity Right Holder shall cease to have any rights with respect thereto.

Section 2.10 Dissenting Shares.

Notwithstanding any provision of this Agreement to the contrary, including Section 2.08, shares of Capital Stock issued and outstanding immediately prior to the Effective Time (other than shares cancelled in accordance with Section 2.08(a)) and held by a holder who has not voted in favor of adoption of this Agreement or consented thereto in writing and who has properly exercised appraisal rights of such shares in accordance with Section 262 of the DGCL (such shares being referred to collectively as the "Dissenting Shares" until such time as such holder fails to perfect or otherwise loses such holder's appraisal rights under the DGCL with respect to such shares) shall not be converted into a right to receive a portion of the Merger Consideration, but instead shall be entitled to only such rights as are granted by Section 262 of the DGCL; provided, however, that if, after the Effective Time, such holder fails to perfect, withdraws or loses such holder's right to appraisal pursuant to Section 262 of the DGCL or if a court of competent jurisdiction shall determine that such holder is not entitled to the relief provided by Section 262 of the DGCL, such shares shall be treated as if they had been converted as of the Effective Time into the right to receive the portion of the Merger Consideration, if any, to which such holder is entitled pursuant to Section 2.08(b), without interest thereon. The Company shall provide Parent prompt written notice of any demand received by the Company for appraisal of shares of Capital Stock, any withdrawal of any such demand and any other demand, notice or instrument delivered to the Company prior to the Effective Time pursuant to the DGCL that relates to such demand, and Parent shall have the opportunity and right to direct all negotiations and proceedings with respect to such demands. Except with the prior written consent of Parent, the Company shall not make any payment with respect to, or settle or offer to settle, any such demand.

Section 2.11 Surrender and Payment.

(a) At the Effective Time, all shares of Capital Stock shall automatically be cancelled and retired and shall cease to exist, and, subject to **Section 2.10**, each holder of a certificate formerly representing any shares of Capital Stock (each, a "**Certificate**") shall cease to have any rights as a holder of Capital Stock.

(b) The Company has provided to each holder of Priority Preferred Stock a letter of transmittal in substantially the form attached as Exhibit G (a "**Letter of Transmittal**") and instructions for use in effecting the surrender of Certificates in exchange for that portion of the Merger Consideration payable in respect of such holder's Priority Preferred Stock pursuant to **Section 2.08(b)**.

(c) On the Closing Date, Parent shall pay or cause to be paid to each holder of Priority Preferred Stock who has delivered to Parent a Letter of Transmittal, duly executed and completed in accordance with its requirements, by wire transfer of immediately available funds, an amount representing the Closing Per Share Merger Consideration associated with the Capital Stock held by such holder as set forth on the Consideration Spreadsheet and as contemplated by **Section 2.03(c)(iii)**. If any holder of Priority Preferred Stock has not delivered to Parent a Letter of Transmittal, duly executed and completed in accordance with its requirements prior to the Closing, Parent shall pay or cause or be paid to the Distribution Agent, by wire transfer of immediately available funds, an aggregate amount representing the Closing Per Share Merger Consideration associated with the Capital Stock held by all such holders, for further distribution to such holders upon receipt by the Distribution Agent of Letters of Transmittal duly executed and completed in accordance with its requirements.

(d) If any portion of the Merger Consideration is to be paid to a Person other than the Person in whose name the surrendered Certificate is registered, it shall be a condition to such payment that (i) such Certificate shall be properly endorsed or shall otherwise be in proper form for transfer, and (ii) the Person requesting such payment shall pay to Parent any transfer or other Tax required as a result of such payment to a Person other than the registered holder of such Certificate or establish to the reasonable satisfaction of Parent that such Tax has been paid or is not payable.

(e) Neither Parent nor the Distribution Agent shall be liable to any holder of Certificates for any amounts paid to a public official pursuant to applicable abandoned property, escheat or similar Laws. Any amounts remaining unclaimed by Priority Preferred Stockholders two years after the date on which

such Priority Preferred Stockholder was entitled receive such amount (or such earlier date, immediately prior to such time when the amounts would otherwise escheat to or become property of any Governmental Entity) shall become, to the extent permitted by applicable Law, the property of Parent free and clear of any claims or interest of any Person previously entitled thereto.

Section 2.12 Escrow Funds; Stockholder Representative Expense Fund.

At the Closing, Parent shall deposit or cause to be deposited:

(a) with the Escrow Agent, the Indemnification Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the "**Indemnification Escrow Fund**"), to be held for the purpose of securing the obligations of the Priority Preferred Stockholders set forth in **Section 2.16(d)** and **Article VII** of this Agreement;

(b) with the Escrow Agent, the Integration Cost Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the "**Integration Cost Escrow Fund**", and together with the Indemnification Escrow Fund, the "**Escrow Funds**"), to be held for the purpose of securing the obligations of the Priority Preferred Stockholders set forth in **Section 2.18(c)**; and

(c) to the Stockholder Representative, the Stockholder Representative Expense Amount (such amount, less any disbursements therefrom, the "**Stockholder Representative Expense Fund**"), to be held for the purpose of reimbursing the Stockholder Representative for, or paying directly, any amounts incurred in connection with the performance of its obligations under this Agreement, the Escrow Agreement or the Distribution Agent Agreement.

(d) with the Distribution Agent, the Closing Merger Consideration to be held and/or paid out pursuant **Section 2.11** of this Agreement and the Distribution Agent Agreement.

(e) For U.S. federal income and other applicable Tax purposes, and pursuant to the terms of the Escrow Agreement, the Escrow Funds shall be treated as the property of the Parent and any income earned in respect of the Escrow Funds shall be taxable to Parent and any Taxes owed in respect of the Escrow Funds shall be paid by Parent, until such time as any Escrow Funds are released to the Priority Preferred Stockholders (along with the amount of any interest or other amounts earned thereon and less any disbursements therefrom, including, without limitation, disbursements that shall be made to Parent for the payment of any Taxes paid or payable by Parent with respect to any income earned in respect of the Escrow Funds, in accordance with the Escrow Agreement).

Section 2.13 No Further Ownership Rights in Capital Stock.

All Merger Consideration, if any, paid or payable upon the surrender of Certificates, in accordance with the terms hereof shall be deemed to have been paid or payable in full satisfaction of all rights pertaining to the shares of Capital Stock formerly represented by such Certificates, and from and after the Effective Time, there shall be no further registration of transfers of shares of Capital Stock on the stock transfer books of the Surviving Corporation. If, after the Effective Time, Certificates are presented to the Surviving Corporation, they shall be cancelled and exchanged for the Merger Consideration, if any, provided for and in accordance with the procedures set forth, in this Article II and elsewhere in this Agreement.

Section 2.14 Withholding Rights.

Each of Parent, the Distribution Agent, the Escrow Agent, Merger Sub and the Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable to any

Person pursuant to this Article II such amounts as are required to be deducted and withheld with respect to the making of such payment under any provision of applicable Tax Law; provided, that, (i) the appropriate party shall give the Stockholder Representative written notice of its intention to withhold and the basis for any withholdings that are required to be made as soon as reasonably practicable prior to the date of the applicable payment, and (ii) the parties will use commercially reasonable efforts to mitigate or eliminate any such required Tax withholdings to the fullest extent possible. To the extent that amounts are so deducted and withheld by Parent, the Distribution Agent, the Escrow Agent, Merger Sub or the Surviving Corporation, as the case may be, and properly paid over to the applicable Governmental Authority such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which Parent, the Distribution Agent, Escrow Agent, Merger Sub or the Surviving Corporation, as the case may be, made such deduction and withholding.

Section 2.15 Lost Certificates.

If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed substantially in the form attached hereto as Exhibit H (a "Lost Certificate Affidavit") and, if required by the Parent or the Distribution Agent, the posting by such Person of a bond, in such reasonable amount as Parent or the Distribution Agent shall direct, as indemnity against any claim that may be made against it with respect to such Certificate, the Distribution Agent, shall issue, in exchange for such lost, stolen or destroyed Certificate, the portion of the Merger Consideration to be paid in respect of the Priority Preferred Stock formerly represented by such Certificate as contemplated under this Article II.

Section 2.16 Working Capital Adjustment.

(a) **Closing Statement.** The Company has prepared and delivered to Parent a statement (the "**Closing Statement**") setting forth its good faith estimate, as of immediately prior to the Closing, of (i) Cash ("**Estimated Cash**"), (ii) Working Capital ("**Estimated Working Capital**"), (iii) Indebtedness ("**Estimated Indebtedness**"), (iv) Transaction Expenses ("**Estimated Transaction Expenses**"), and (v) the resulting Closing Merger Consideration, which statement shall also contain an estimated balance sheet of the Acquired Companies as of immediately prior to the Closing (without giving effect to the transactions contemplated herein). The estimated balance sheet upon which the calculations set forth in the Closing Statement are based shall be prepared in accordance with the Accounting Principles.

(b) **Post-Closing Adjustment.** Within 45 days after the Closing Date, Parent shall prepare and deliver to the Stockholder Representative a statement (the "**Parent Closing Statement**") setting forth its calculation, as of immediately prior to the Closing, of the actual amount of (i) Cash ("**Actual Cash**"), (ii) Working Capital ("**Actual Working Capital**"), (iii) Indebtedness ("**Actual Indebtedness**"), (iv) Transaction Expenses ("**Actual Transaction Expenses**"), and (v) the resulting Adjusted Closing Merger Consideration and Post-Closing Adjustment, which statement shall also contain an actual balance sheet of the Acquired Companies as of immediately prior to the Closing (without giving effect to the transactions contemplated herein). The actual balance sheet upon which the calculations set forth in the Parent Closing Statement are based shall be prepared in accordance with the Accounting Principles.

(c) **Examination and Review.**

(i) Examination. After receipt of the Parent Closing Statement, the Stockholder Representative shall have thirty (30) days (the "**Review Period**") to review the Parent Closing Statement. During the Review Period, the Stockholder Representative shall have access to the books and records of the Surviving Corporation, the personnel of, and work papers prepared by, Parent and/or its accountants to the extent that they relate to the Parent Closing Statement and to such historical financial information (to the extent in Parent's possession) relating to the Parent Closing Statement as the Stockholder Representative may reasonably request for the purpose of reviewing the Parent Closing Statement and to prepare a

Statement of Objections (defined below), *provided*, *that*, such access shall be in a manner that does not interfere with the business operations of Parent or the Surviving Corporation.

(ii) Objection. On or prior to the last day of the Review Period, the Stockholder Representative may object to the Parent Closing Statement by delivering to Parent a written statement setting forth his objections in reasonable detail, indicating each disputed item or amount and the basis for its disagreement therewith (the "**Statement of Objections**"). If the Stockholder Representative fails to deliver the Statement of Objections before the expiration of the Review Period, the Parent Closing Statement and the Post-Closing Adjustment, as the case may be, reflected in the Parent Closing Statement shall be deemed to have been accepted by the Stockholder Representative. If the Stockholder Representative delivers the Statement of Objections before the expiration of the Review Period, Parent and the Stockholder Representative shall negotiate in good faith to resolve such objections within 30 days after the delivery of the Statement of Objections (the "**Resolution Period**"), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Parent Closing Statement with such changes as may be agreed in writing by Parent and the Stockholder Representative, shall be final and binding.

(iii) Resolution of Disputes. If the Stockholder Representative and Parent fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute ("**Disputed Amounts**" and any amounts not so disputed, the "**Undisputed Amounts**") shall be submitted for resolution to the San Jose office of Grant Thornton or, if the San Jose office of Grant Thornton is unable to serve, by an office of Grant Thornton appointed by mutual agreement of the Parent and the Stockholder Representative, or no such other office of Grant Thornton is able to serve, the Parent and the Stockholder Representative shall appoint by mutual agreement the office of an impartial nationally recognized firm of independent certified public accountants (the "**Independent Accountant**") who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Parent Closing Statement. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Parent Closing Statement and the Statement of Objections, respectively.

(iv) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by the Stockholder Representative (on behalf of the Stockholders) from the Stockholder Representative Expense Fund, on the one hand, and by Parent, on the other hand, based upon the percentage that the amount contested but not awarded to the Stockholder Representative or Parent, respectively, bears to the aggregate amount contested by the Stockholder Representative and Parent.

(v) Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within 30 days (or such other time as the parties hereto shall agree in writing) after its engagement, and its resolution of the Disputed Amounts and any adjustments to the Parent Closing Statement and/or the Post-Closing Adjustment shall be consistent with the Accounting Principles and shall be conclusive and binding upon the parties hereto, absent manifest error.

(d) **Payment of Post-Closing Adjustment.**

(i) If the Post-Closing Adjustment is a negative number, the Stockholder Representative and Parent shall, within three (3) Business Days after the final determination of the Post-Closing Adjustment, jointly instruct the Escrow Agent to disburse from the Escrow Fund by wire transfer of immediately available funds to Parent, the positive amount of the Post-Closing Adjustment.

(ii) If the Post-Closing Adjustment is a positive number, Parent shall, within three (3) Business Days after the final determination of the Post-Closing Adjustment, deposit with the Distribution

Agent, for distribution to the Preferred Stockholders in accordance with their Pro Rata Shares, the amount of the Post-Closing Adjustment.

(e) **Adjustments for Tax Purposes.** Any payments made pursuant to **Section 2.16** shall be treated as an adjustment to the Merger Consideration by the parties for Tax purposes, unless otherwise required by Law.

Section 2.17 Consideration Spreadsheet.

(a) The Company has prepared and delivered to Parent a spreadsheet (the "**Consideration Spreadsheet**"), certified by the Chief Financial Officer of the Company (solely in his capacity as such), which sets forth, as of the Closing Date, the following:

(i) the name and last known address of all Stockholders and the number, class and series of Capital Stock held by each Stockholder;

(ii) detailed calculations of the Closing Merger Consideration and Closing Per Share Merger Consideration;

(iii) each Stockholder's Pro Rata Share (as a percentage interest), if any, of (A) the Closing Merger Consideration, (B) any Post-Closing Adjustment, (C) any returned Indemnification Escrow Funds, (D) any returned Integration Cost Escrow Funds and (E) any returned Seller Representative Expense Funds.

(b) The parties agree that Parent, Distribution Agent and Merger Sub shall be entitled to rely on the Consideration Spreadsheet in making payments under **Article II** and Parent, Distribution Agent and Merger Sub shall not be responsible for the calculations or the determinations regarding such calculations in such Consideration Spreadsheet. The parties acknowledge and agree that the Closing Merger Consideration, as adjusted from time to time pursuant to this Agreement and giving effect to amounts released to the Priority Preferred Stockholders from the Escrow Funds are intended to be allocated among the Priority Preferred Stockholders consistent with the Company Charter Documents and the DGCL, and the Stockholder Representative is hereby authorized to update and deliver to Parent, the Distribution Agent, the Escrow Agent and any other applicable Persons the Consideration Spreadsheet from time to time to effectuate the foregoing, as necessary in the Stockholder Representative's good faith judgment to provide for an allocation consistent with the foregoing; *provided*, *that*, Parent, the Distribution Agent and the Surviving Corporation shall be entitled to rely on the updated Consideration Spreadsheet in making payments under **Article II** and Parent, the Distribution Agent and the Surviving Corporation shall not be responsible for the calculations or the determinations regarding such calculations in any updated Consideration Spreadsheet.

Section 2.18 Integration Procedures.

(a) **Integration Costs.** Attached to this Agreement is an Integration Cost Schedule, which sets forth the following estimated restructuring and integration costs (the costs specified in clauses (i) through (iv) below and no other costs, the "**Integration Costs**") that will be incurred by the Surviving Corporation and its Affiliates during the nine (9) month period immediately following the Closing Date (without duplication, the "**Integration Period**"), as more fully described in the Integration Cost Schedule:

(i) the reasonable out-of-pocket expenses incurred in connection with terminating (or continuing until such time as all waiting periods under the WARN Act or other applicable Law have expired, including any requirements related to any work council, labor organization or Governmental Authority) the employment of all employees of the Acquired Companies who are set forth on **Section 2.18(a)(i)** of the Integration Cost Schedule (including the payment of all accrued but unpaid wages and accrued but untaken paid time off, and the payment of severance required by Law or otherwise consistent with the

written policies, agreements or plans of the Acquired Companies) and any amounts paid as severance to the Key Employees pursuant to their employment agreements;

(ii) the reasonable out-of-pocket expenses incurred in connection with terminating or subleasing all Leased Real Property, less any amounts received or saved in connection with subleasing any such Leased Real Property, as contemplated by **Section 2.18(a)(ii)** of the Integration Cost Schedule;

(iii) the reasonable out-of-pocket expenses incurred in connection with winding down or terminating the Company's third party contracts set forth on and as contemplated by **Section 2.18(a)(iii)** of the Integration Cost Schedule; and

(iv) the other reasonable out-of-pocket restructuring and integration costs (not to exceed $1,000,000 in the aggregate) associated with the winding down of the Company's operations as contemplated by **Section 2.18(a)(iv)** of the Integration Cost Schedule.

(b) **Covenants During Integration Period**.

(i) During the Integration Period, Parent shall, or shall cause Surviving Corporation, within ten (10) Business Days of each monthly anniversary of the Closing Date, prepare and deliver to the Stockholder Representative, a statement setting forth in reasonable detail, (i) a detailed determination of the Integration Costs incurred to date and (ii) a good faith estimate of the Integration Costs required to be incurred through the remainder of the Integration Period.

(ii) During the Integration Period, the Chief Executive Officer of Parent shall, within ten (10) Business Days of the end of each fiscal quarter commencing with the quarter ending September 30, 2016, meet with Greg Barrett (or another individual designated by the Stockholder Representative) to review the status of the winding down of the Company and the Integration Costs.

(c) **Determination of Integration Costs; Distribution of the Integration Cost Escrow Fund.** On the last day of the Integration Period, Parent shall, or shall cause Surviving Corporation to, prepare in good faith and deliver to the Stockholder Representative an updated Integration Cost Schedule detailing all Integration Costs incurred by the Surviving Corporation and its Affiliates during the Integration Period. After receipt of the updated Integration Cost Schedule, the Stockholder Representative shall have a thirty (30) day Review Period to review the updated Integration Cost Schedule and deliver a Statement of Objections of the type contemplated by **Section 2.16(c)(ii)**; *provided, that,* the Stockholder Representative may only object with respect to expenses that: (i) it believes, acting in good faith, were not incurred by the Surviving Corporation or its Affiliates or (ii) are not Integration Costs. During such Review Period, the Stockholder Representative shall have access to the books and records of Parent and the Surviving Corporation, the personnel of, and work papers prepared by Parent and/or its accountants to the extent that they relate to the Integration Costs and to such historical financial information (to the extent in Parent's or its Affiliates possession) relating to the Integration Costs as the Stockholder Representative may reasonably request for the purpose of reviewing the updated Integration Cost Schedule, *provided, that*, such access shall be in a manner that does not interfere with the business operations of Parent or the Surviving Corporation. If the Stockholder Representative disputes whether an expense was incurred by the Surviving Corporation or its Affiliates or was an Integration Cost, such dispute shall be resolved in accordance with the provisions of **Section 2.16(c)(iii)**, **(iv)** and **(v)**, as if (i) the disputed amount were the Disputed Amount, (ii) the amount or eligibility of disputed expense were substituted for the definition of Post-Closing Adjustment, and (iii) the definition of Integration Costs were substituted for the definition of Accounting Principles. If the Stockholder Representative fails to deliver a Statement of Objections during the Review Period, then the Stockholder Representative shall be deemed to have consented to Parent's determination of the actual amount of Integration Costs. Following resolution of the actual amount of Integration Costs in accordance with this **Section 2.18(c)**: (x) if the Integration Costs do not exceed the Integration Cost Target, then Parent and the Stockholder Representative shall promptly, but in any event within three (3) Business Days of such determination, jointly instruct the Escrow Agent to disburse (A) 50% of the Integration Cost

Escrow Funds to the Surviving Corporation to be used for payment to the participants in the Management Bonus Plan in accordance with the terms thereof, (B) 50% of the Integration Cost Escrow Funds, less the employer portion of Taxes (including amounts under FICA, Medicare or other Laws) owed by the Surviving Corporation with respect to the amounts payable pursuant to the Management Bonus Plan in accordance with the foregoing clause (A), to the Distribution Agent for further payment to the Priority Preferred Stockholders in accordance with their Pro Rata Shares of such amount, and (C) to the Surviving Corporation, the amount deducted from the foregoing clause (B) for the employer portion of Taxes as therein described; or (y) if the Integration Costs exceed the Integration Cost Target, then Parent and the Stockholder Representative shall promptly, but in any event within three (3) Business Days of such determination, jointly instruct the Escrow Agent to disburse to (A) Parent, solely from and only to the extent of the Integration Cost Escrow Funds, the amount of such excess, and to the extent any Integration Cost Escrow Funds remain following payment of any such excess, (B) (x) 50% of such remaining Integration Cost Escrow Funds to the Surviving Corporation to be used for payment to the participants in the Management Bonus Plan in accordance with the terms thereof, (y) 50% of such remaining Integration Cost Escrow Funds, less the employer portion of Taxes (including amounts under FICA, Medicare or other Laws) owed by the Surviving Corporation with respect to the amounts payable pursuant to the Management Bonus Plan in accordance with the foregoing clause (x), to the Distribution Agent for further payment to the Priority Preferred Stockholders in accordance with their Pro Rata Shares of such amount, and (z) to the Surviving Corporation, the amount deducted from the foregoing clause (y) for the employer portion of Taxes as therein described.

(d) The sole and exclusive remedy of Parent and its Affiliates for reimbursement in respect of any Excess Integration Costs shall be to seek recovery from the Integration Cost Escrow Funds in accordance with this **Section 2.18**; *provided, that*, the foregoing limitation shall not prohibit any Parent Indemnitee from exercising any of its rights under **Article VII**, except to the extent of any indemnifiable Losses actually recovered by Parent or any of its Affiliates from the Integration Cost Escrow Funds**.**

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the Disclosure Schedules, the Company represents and warrants to Parent, as of the Effective Time, as set forth in this **Article III**. Notwithstanding the fact that each disclosure set forth in these Disclosure Schedules is identified by reference to, or grouped under a heading referring to, a specific individual section or subsection of the Agreement, each such disclosure shall be deemed to be a disclosure made against each other section or subsection of the Agreement if, and only if, it is reasonably apparent without further inquiry or investigation and without reference to any imputed or actual knowledge of Parent on the face of such disclosure that such disclosure is applicable to such other section or subsection of the Agreement, irrespective of whether such other section or subsection is explicitly referred to in such disclosure.

Section 3.01 Organization and Qualification of the Acquired Companies.

Each of the Acquired Companies is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 3.01 of the Disclosure Schedules sets forth each jurisdiction in which any Acquired Company is licensed or qualified to do business, and each Acquired Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary, except in each case as would not result in a Material Adverse Effect.

Section 3.02 Authority; Board Approval.

(a) The Company has full corporate power and authority to enter into and perform its obligations under this Agreement and the Ancillary Documents to which it is a party and, subject to, in the case of the consummation of the Merger, adoption of this Agreement by the affirmative vote or consent of the Stockholders holding (i) a majority of the outstanding Common Stock and Preferred Stock voting together as a single class, (ii) a majority of the outstanding Preferred Stock voting as a single class, and (iii) a majority of the outstanding Common Stock voting as a single class (the "**Requisite Company Vote**"), to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Company of this Agreement and any Ancillary Document to which it is a party and the consummation by the Company of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of the Company and no other corporate proceedings on the part of the Company or any Acquired Company are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the Merger and the other transactions contemplated hereby and thereby, subject only, in the case of consummation of the Merger, to the receipt of the Requisite Company Vote. The Requisite Company Vote is the only vote or consent of the holders of any class or series of the Company's capital stock required to approve and adopt this Agreement and the Ancillary Documents, approve the Merger and consummate the Merger and the other transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by the Company, and (assuming due authorization, execution and delivery by each other party hereto) this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms. When each Ancillary Document to which any Acquired Company is or will be a party has been duly executed and delivered by such Acquired Company (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of such Acquired Company, enforceable against it in accordance with its terms.

(b) The Company Board, by resolutions duly adopted by unanimous vote at a meeting of all directors of the Company duly called and held and, as of the date hereof, not subsequently rescinded or modified in any way, has, as of the date hereof (i) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to, and in the best interests of, the Stockholders, (ii) approved and declared advisable the "agreement of merger" (as such term is used in Section 251 of the DGCL) contained in this Agreement and the transactions contemplated by this Agreement, including the Merger, in accordance with the DGCL, (iii) directed that the "agreement of merger" contained in this Agreement be submitted to the Stockholders for adoption, and (iv) resolved to recommend that the Stockholders adopt the "agreement of merger" set forth in this Agreement (collectively, the "**Company Board Recommendation**") and directed that such matter be submitted for consideration of the Stockholders.

Section 3.03 No Conflicts; Consents.

The execution, delivery and performance by the Company of this Agreement and by any Acquired Company of the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, including the Merger, do not and will not: (i) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of the Company ("Company Charter Documents") or any Acquired Company; (ii) subject to, in the case of the Merger, obtaining the Requisite Company Vote, conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to any Acquired Company; (iii) except as set forth in Section 3.03 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract to which any Acquired Company is a party or by which any Acquired Company is bound or to which any of its properties or assets are subject (including any Material Contract) or any Permit affecting the properties, assets or business of any Acquired Company; or (iv) result in the creation or imposition of any Encumbrance on any property or asset of any Acquired Company, except in each case as would not result in a Material Adverse Effect. No consent, approval, Permit, Governmental Order, declaration or filing with, or

notice to, any Governmental Authority is required by or with respect to the Company in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except for the filing of the Certificate of Merger with the Secretary of State of Delaware.

Section 3.04 Capitalization; Consideration Spreadsheet.

(a) The authorized Capital Stock of the Company consists of 450,000,000 shares of Common Stock and 258,103,000 shares of Preferred Stock, of which 32,504,514 shares of Common Stock and 216,092,280 shares of Preferred Stock are issued and outstanding as of the close of business on the date of this Agreement. **Section 3.04(a)** of the Disclosure Schedules describes the authorized and outstanding capitalization of each Subsidiary.

(b) **Section 3.04(b)** of the Disclosure Schedules set forth, as of the close of business on the date hereof, (i) the name of each Person that is the registered owner of any shares of Capital Stock and the class, series and number of shares of Capital Stock owned by such Person and (ii) a list of all holders of outstanding Options, including the number of shares of Capital Stock subject to each such Option, the grant date, exercise price and vesting schedule for such Option, the extent to which such Option is vested and exercisable and the date on which such Option expires. Each Option was granted in compliance with (x) all applicable Laws and (y) all of the terms and conditions of the Stock Option Plan pursuant to which it was issued. Each Option was granted with an exercise price per share equal to or greater than the fair market value per share of the underlying shares on the date of grant and has a grant date identical to the date on which the Company Board or authorized compensation committee thereof actually awarded the Option. Each Option qualifies for the tax and accounting treatment afforded to such Option in the Company's tax returns and the Company's financial statements, respectively, and does not trigger any liability for the Optionholder under Section 409A of the Code. The Company has heretofore provided or made available to Parent (or Parent's Representatives) true and complete copies of the standard form of option agreement and any stock option agreements that materially differ from such standard form.

(c) Except as disclosed on **Section 3.04(c)** of the Disclosure Schedules and except for the Options granted pursuant to the 2004 Stock Plan of the Company, each of which will be canceled as of the Effective Time, (i) no subscription, warrant, option, convertible or exchangeable security, or other Equity Right of any Acquired Company is authorized or outstanding, and (ii) there is no commitment by any Acquired Company to issue shares, subscriptions, warrants, options, convertible or exchangeable securities, or other such rights or to distribute to holders of any of its equity securities any evidence of indebtedness or asset, to repurchase or redeem any securities of any Acquired Company or to grant, extend, accelerate the vesting of, change the price of, or otherwise amend any warrant, option, convertible or exchangeable security or other such right. There are no declared or accrued unpaid dividends with respect to any shares of Capital Stock or any other equity security of any Acquired Company.

(d) Except as disclosed on **Section 3.04(d)** of the Disclosure Schedules, all issued and outstanding shares of the capital stock of the Acquired Companies (including all shares of Capital Stock) are (i) duly authorized, validly issued, fully paid and non-assessable; (ii) not subject to any preemptive right created by statute, the Company Charter Documents or any agreement to which any Acquired Company is a party; and (iii) free of any Encumbrance created by any Acquired Company in respect thereof. All issued and outstanding shares of the capital stock of the Acquired Companies (including all shares of Capital Stock), all Options and all Equity Rights were issued in compliance with all applicable Laws.

(e) Except as disclosed on **Section 3.04(e)** of the Disclosure Schedules, no outstanding share of Capital Stock is subject to vesting or forfeiture rights or repurchase by the Company. There are no outstanding or authorized stock appreciation, dividend equivalent, phantom stock, profit participation or other similar rights with respect to any Acquired Company or any of its securities.

(f) All distributions, dividends, repurchases and redemptions of the capital stock (or other equity interests) of the Acquired Companies were undertaken in compliance with the applicable charter documents then in effect, any agreement to which any Acquired Company then was a party and in compliance with all applicable Laws.

(g) The Consideration Spreadsheet is accurate and complete in all respects, and the distribution of the Merger Consideration to the Stockholders as set forth therein is in full compliance with the Company Charter Documents in all respects.

(h) The Company has taken all steps, including the timely provision of all notices, as required to cause each Option that is outstanding and unexercised immediately prior to the Effective Time, whether or not then vested or exercisable, by virtue of the Merger and without any additional action on the part of Parent, Merger Sub, the Company, the Optionholder or any other Person, to be cancelled in accordance with the terms of the Option.

(i) The Company has taken all steps, including the timely provision of all notices, as required to cause each At the Effective Time, each Equity Right, other than Non-Terminating Rights, that is outstanding and unexercised immediately prior to the Effective Time, by virtue of the Merger and without any additional action on the part of Parent, Merger Sub, the Company, to be cancelled in accordance with the terms of the Equity Right.

Section 3.05 No Subsidiaries.

Except as disclosed on Section 3.05 of the Disclosure Schedules, the Company does not own or control (directly or indirectly) any shares, partnership interest, joint venture interest, equity participation or other security or interest in any other Person.

Section 3.06 Financial Statements.

Complete copies of the consolidated audited financial statements of the Company, consisting of the balance sheet of the Company and its consolidated Subsidiaries as at December 31 in each of the years 2014 and 2013 and the related statements of income and retained earnings, stockholders' equity and cash flow for the years then ended (the "Audited Financial Statements"), the consolidated unaudited financial statements of the Company, consisting of the balance sheet of the Company and its consolidated Subsidiaries as at December 31, 2015 and the related statements of income and retained earnings, stockholders' equity and cash flow for the year then ended and unaudited financial statements of the Company, consisting of the balance sheet of the Company and its consolidated Subsidiaries as at March 31, 2016 and the related statements of income and retained earnings, stockholders' equity and cash flow for the three-month period then ended (the "Interim Financial Statements" and together with the Audited Financial Statements, the "Financial Statements") have been delivered to Parent. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Audited Financial Statements). The Financial Statements are based on the books and records of the Acquired Companies, and fairly present in all material respects the financial condition of the Acquired Companies as of the respective dates they were prepared and the results of the operations of the Acquired Companies for the periods indicated. The balance sheet of the Company and its consolidated Subsidiaries as of December 31, 2015 is referred to herein as the "Balance Sheet" and the date thereof as the "Balance Sheet Date" and the balance sheet of the Company and its consolidated Subsidiaries as of March 31, 2016 is referred to herein as the "Interim Balance Sheet" and the date thereof as the "Interim Balance Sheet Date." The Acquired Companies maintain a standard system of accounting established and administered in accordance with GAAP.

Section 3.07 Undisclosed Liabilities.

Except as disclosed on Section 3.07 of the Disclosure Schedules, the Acquired Companies have no liabilities other than (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount, and (c) contractual and other liabilities of a type not required to be reflected on a balance sheet of the Company and its consolidated Subsidiaries prepared in accordance with GAAP.

Section 3.08 Absence of Certain Changes, Events and Conditions.

Since the Balance Sheet Date, and other than (x) in the ordinary course of business consistent with past practice or (y) the early repayment of Indebtedness, there has not been, with respect to any Acquired Company, any:

(a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) amendment of the charter, by-laws or other organizational documents of the Acquired Company;

(c) split, combination or reclassification of any equity securities of the Acquired Company;

(d) issuance, sale or other disposition of any of any equity securities or grant of any option, warrant or other right to purchase or obtain (including upon conversion, exchange or exercise) any of its equity securities;

(e) declaration or payment of any dividend or distribution on or in respect of any of its capital stock or redemption, purchase or acquisition of its capital stock;

(f) material change in any method of accounting or accounting practice of the Acquired Company, except as required by GAAP or as disclosed in the notes to the Financial Statements;

(g) material change in the Acquired Company's cash management practices or its policies, practices and procedures with respect to collection of accounts receivable, establishment of reserves for uncollectible accounts, accrual of accounts receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;

(h) incurrence, assumption or guarantee of any indebtedness for borrowed money except unsecured current obligations and liabilities incurred in the ordinary course of business consistent with past practice;

(i) transfer, assignment, sale or other disposition of any of the assets shown or reflected in the Balance Sheet or cancellation of any debts or entitlements;

(j) transfer, assignment or grant of any license or sublicense of any material rights under or with respect to any Company Intellectual Property or Company IP Agreements;

(k) damage, destruction or loss (whether or not covered by insurance) to its property;

(l) capital investment in, or any loan to, any other Person;

(m) acceleration, termination, material modification to or cancellation of any Material Contract;

(n) material capital expenditure;

(o) imposition of any Encumbrance upon any of the Acquired Company's properties, capital stock or assets, tangible or intangible;

(p) (i) grant of any bonus, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of its current or former employees, officers, directors, independent contractors or consultants, other than as provided for in any written agreements or required by applicable Law, (ii) change in the material terms of employment for any employee or any termination of any employees, for which the aggregate costs and expenses exceed $75,000, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, independent contractor or consultant;

(q) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant, (ii) Benefit Plan or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;

(r) loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its stockholders or current or former directors, officers and employees, in each case, other than in connection with the incurrence of reimbursable expenses consistent with corporate policy;

(s) entry into a new line of business or abandonment or discontinuance of any existing line of business;

(t) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law, except for the Merger;

(u) purchase, lease or other acquisition of the right to own, use or lease any property or assets for an amount in excess of $100,000, individually (in the case of a lease, per annum) or $100,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of inventory or supplies in the ordinary course of business consistent with past practice;

(v) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;

(w) action by any Acquired Company to make, change or rescind any material Tax election or amend any Tax Return; or

(x) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 3.09 Material Contracts.

(a) **Section 3.09(a)** of the Disclosure Schedules lists each of the following Contracts of the Acquired Companies (such Contracts, together with all Contracts concerning the occupancy, management or operation of any Real Property (including without limitation, brokerage contracts) listed or otherwise disclosed in **Section 3.10** of the Disclosure Schedules and all Company IP Agreements set forth in **Section 3.12(b)** of the Disclosure Schedules, being "**Material Contracts**"):

(i) each Contract of any Acquired Company involving (A) minimum aggregate consideration in excess of $100,000, or (B) under which the Acquired Company paid or received in excess

of $100,000, in each case, during the year ended December 31, 2015 or the portion of 2016 up through the date hereof, in each case, other than a Benefit Plan;

(ii) all Contracts that require any Acquired Company to purchase its total requirements of any product or service from a third party or that contain "take or pay" provisions;

(iii) all Contracts that provide for the indemnification by any Acquired Company of any Person (other than customary indemnification provisions in customer and vendor agreements) or the assumption of any environmental or other liability of any Person;

(iv) all Contracts that relate to the acquisition or disposition by any Acquired Company of any business, stock or real property, and all Contracts that relate to the acquisition or disposition by any Acquired Company of any other assets for more than $25,000 (in each case, whether by merger, sale of stock, sale of assets or otherwise);

(v) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts to which any Acquired Company is a party;

(vi) all employment agreements and Contracts with independent contractors or consultants (other than offer letters that provide for termination at-will and do not include severance or termination obligations and the Company's law firms, accounting firms or investment banking firms) to which any Acquired Company is a party and which are still in effect;

(vii) except for Contracts relating to trade receivables, all Contracts relating to Indebtedness (including, without limitation, guarantees) of any Acquired Company;

(viii) all Contracts with any Governmental Authority (other than any hospital or other healthcare provider) to which any Acquired Company is a party ("**Government Contracts**");

(ix) all Contracts that limit or purport to limit the ability of any Acquired Company to compete in any line of business or with any Person or in any geographic area or during any period of time;

(x) any Contracts to which any Acquired Company is a party that provide for any joint venture, partnership or similar arrangement by any Acquired Company;

(xi) all collective bargaining agreements or Contracts with any Union to which any Acquired Company is a party;

(xii) contracts continuing over a period of more than one year from the date thereof that are not terminable by any Acquired Company upon thirty (30) or fewer days' notice without penalty, other than a Benefit Plan;

(xiii) powers of attorney executed on behalf of any Acquired Company; and

(xiv) any other Contract that is material to any Acquired Company involving aggregate consideration in excess of $100,000 and not previously disclosed pursuant to this **Section 3.09**.

(b) Each Material Contract is valid and binding on the respective Acquired Company in accordance with its terms and is in full force and effect. Neither the respective Acquired Company nor, to the Company's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or, except as otherwise expressly provided for in this Agreement, has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material

Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Parent.

Section 3.10 Title to Assets; Real Property.

(a) No Acquired Company owns any land, building, structure, easement or other right or interest appurtenant thereto (including air, oil, gas, mineral and water rights) ("**Real Property**").

(b) **Section 3.10(b)** of the Disclosure Schedules sets forth a list of all leases of Real Property (including all amendments, guaranties and other agreements with respect thereto) to which any Acquired Company is a party (such property, the "**Leased Real Property**"), the address of each parcel of Leased Real Property, the current annualized rent payment thereunder (including any property tax or other obligations determined by formula, which may be set forth at the amount actual paid in 2015) and the expiration date of the applicable lease. Except as set forth in **Section 3.10(b)** of the Disclosure Schedules, with respect to each of such leases, (A) such lease is legal, valid, binding and enforceable against any Acquired Company, and is in full force and effect; (B) the respective Acquired Company has good and valid title to, or a valid leasehold interest in all Leased Real Property; (C) neither the Acquired Company nor, to the Company's Knowledge, any other party to such lease, is in material breach or default under such lease, and no event has occurred or circumstance exists that, with the delivery of notice, passage of time or both, would constitute such a material breach or default or permit the termination or modification of, or acceleration of rent under, such lease; and (D) all Leased Real Property is free and clear of Liens except for Permitted Encumbrances.

(c) The Company has delivered or made available to Parent true, complete and correct copies of any leases or other Contracts affecting the Leased Real Property. No Acquired Company is a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any Leased Real Property. The use and operation of the Leased Real Property in the conduct of the Acquired Companies' business do not violate in any material respect any Law, covenant, condition, restriction, easement, license, permit or agreement. No material improvements constituting a part of the Leased Real Property encroach on real property owned or leased by a Person other than an Acquired Company. There are no Actions pending nor, to the Company's Knowledge, threatened against or affecting the Leased Real Property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

(d) The Leased Real Property comprises all of the Real Property used in, or otherwise related to, the Acquired Companies' businesses; and no Acquired Company is a party to any agreement or option to purchase any Real Property or interest therein.

Section 3.11 Title to Assets; Condition And Sufficiency of Assets.

The Acquired Companies own or have a valid right to use their property and assets free and clear of all Liens, except for Permitted Encumbrances. With respect to the property and assets they lease, the Acquired Companies are in compliance with such leases and hold a valid leasehold interest. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Acquired Companies are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property currently owned or leased by the Acquired Company, together with all other properties and assets of the Acquired Companies, are sufficient for the continued conduct of the Acquired Companies' business after the Closing in substantially the same manner as conducted prior to the Closing and constitute

all of the rights, property and assets necessary to conduct the business of the Acquired Companies as currently conducted.

Section 3.12 Intellectual Property.

(a) **Section 3.12(a)** of the Disclosure Schedules sets forth, with the application number, application date, registration/issue number, registration/issue date, title or mark, country or other jurisdiction and owner(s), as applicable, a complete list of all Company IP Registrations. In addition, **Section 3.12(a)** of the Disclosure Schedules briefly identifies Company Intellectual Property, including software, that are not registered but that are material to the Acquired Companies business or operations. All required filings and fees related to the Company IP Registrations, which have a due date prior to the Closing, have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Company IP Registrations are otherwise in good standing (except where any of the Acquired Companies has, in its reasonable business judgment and with Parent's prior written consent, decided to cancel, abandon, allow to lapse or not renew such Company IP Registrations and such Company IP Registrations are listed as Intentionally Lapsed Registrations on Section 3.12(a) of the Disclosure Schedules). The Company has provided Parent with physical access to true and complete copies of file histories, documents, certificates, office actions, correspondence and other materials related to all Company IP Registrations.

(b) **Section 3.12(b)** of the Disclosure Schedules lists all Company IP Agreements other than Off-the-Shelf Agreements. The Company has provided Parent with access to true and complete copies of all such Company IP Agreements other than Off-the-Shelf Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Company IP Agreement is valid and binding on the respective Acquired Company in accordance with its terms and is in full force and effect. Neither the respective Acquired Company nor, to the Company's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of breach or default of or any intention to terminate, any Company IP Agreement.

(c) The Acquired Companies are the sole and exclusive legal and beneficial, and with respect to the Company IP Registrations, record, owner of all right, title and interest in and to the Company Intellectual Property, and have the valid right to use all other Intellectual Property used in or necessary for the conduct of the Acquired Companies' current business or operations, in each case, free and clear of Encumbrances other than Permitted Encumbrances. For the avoidance of doubt, the foregoing is not a representation or warranty regarding infringement of third party Intellectual Property and such representation and warranty is set forth exclusively in clause (f) below. Without limiting the generality of the foregoing, an Acquired Company has entered into binding, written agreements, substantially in the forms made available to Parent, with every current and former employee and independent contractor involved in the creation or development of any Intellectual Property for or on behalf of any Acquired Company, whereby such employees and independent contractors (i) assign to the respective Acquired Company any ownership interest and right they may have in the Company Intellectual Property; and (ii) acknowledge the respective Acquired Company's exclusive ownership of all Company Intellectual Property. The Company has provided Parent access to true and complete copies of all such agreements.

(d) The consummation of the transactions contemplated hereunder will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, any Acquired Company's right to own, use or hold for use any Intellectual Property as owned, used or held for use in the conduct of the Acquired Companies' business or operations as currently conducted.

(e) The Acquired Companies' rights in the Company IP Registrations (excluding any applications therefor) are valid, subsisting and enforceable. The Acquired Companies have taken all reasonable steps to maintain, protect and preserve the confidentiality of all trade secrets included in the

Company Intellectual Property, including requiring all Persons having access thereto to execute written non-disclosure agreements.

(f) Except as disclosed on **Section 3.12(f)** of the Disclosure Schedules, the conduct of the Acquired Companies' business as currently and formerly conducted, and the products, processes and services of the Acquired Companies, have not infringed, misappropriated, diluted or otherwise violated, and do not currently infringe, dilute, misappropriate or otherwise violate the Intellectual Property or other rights of any Person. To the Company's Knowledge, no Person has infringed, misappropriated, diluted or otherwise violated or is currently infringing, misappropriating, diluting or otherwise violating, any Company Intellectual Property.

(g) There are no Actions (including any oppositions, interferences or re-examinations) settled, pending, threatened in writing (including in the form of offers to obtain a license), or to the Knowledge of the Company orally threatened: (i) alleging any infringement, misappropriation, dilution or violation of the Intellectual Property of any Person by any Acquired Company; (ii) challenging the validity, enforceability, registrability or ownership of any Company Intellectual Property or an Acquired Company's rights with respect to any Company Intellectual Property; or (iii) by an Acquired Company alleging any infringement, misappropriation, dilution or violation by any Person of the Company Intellectual Property. No Acquired Company is subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or would restrict or impair the use of any Company Intellectual Property.

(h) **Section 3.12(b)** of the Disclosure Schedule sets forth all software that is distributed as "free software," "open source software" or under a similar licensing or distribution model (including the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL), the Sun Industry Standards License (SISL) and the Apache License) ("**Open Source Materials**") used by the Acquired Companies in the conduct of its current business. None of the Open Source Materials creates, or purports to create, obligations for the Parent or any Acquired Companies with respect to grant to any third party, any rights or immunities under any Company Intellectual Property (including by requirement, as a condition of use, modification or distribution of the Open Source Materials that other software incorporated into, derived from or distributed with the Open Source Materials be (1) disclosed or distributed in source code form, (2) be licensed for the purpose of making derivative works, or (3) be redistributable at no charge).

Section 3.13 Inventory. Except as disclosed on **Section 3.13** of the Disclosure Schedules, all inventory of the Acquired Companies, whether or not reflected in the Interim Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All such inventory is owned by the Acquired Companies free and clear of all Encumbrances, and no inventory is held on a consignment basis.

Section 3.14 Accounts Receivable; Accounts Payable.

(a) The accounts receivable reflected on the Interim Balance Sheet, and all other accounts receivable of the Acquired Companies that have arisen from the Interim Balance Sheet Date and prior to the Closing Date, (i) have arisen from bona fide transactions entered into by the Acquired Companies involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (ii) constitute only valid, undisputed claims of the Acquired Companies not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice; and (iii) subject to a reserve for bad debts shown on the Interim Balance Sheet or, with respect to accounts receivable arising after the Interim Balance Sheet Date, on the accounting records of the Acquired Companies, are collectible in full within 90 days after billing. The reserve for bad debts shown on the Interim Balance Sheet or, with respect to accounts receivable arising

after the Interim Balance Sheet Date, on the accounting records of the Acquired Companies have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

(b) Since the Balance Sheet Date, the Acquired Companies have satisfied, paid and discharged all of their accounts payable and other current liabilities in a timely manner and in accordance with their respective terms of payment, except (i) for current accounts payable which are not yet delinquent and are properly accounted for in the Financial Statements in accordance with GAAP, consistently applied and (ii) accounts payable that are the subject of any bona fide dispute. Any and all such bona fide disputes that are currently unresolved are described on **Section 3.14(b)** of the Disclosure Schedules.

Section 3.15 Customers and Suppliers.

(a) **Section 3.15(a)** of the Disclosure Schedules sets forth (i) each customer that was one of the twenty (20) largest sources of revenue to the Acquired Companies, based on amounts received, for each of the two (2) most recent fiscal years (collectively, the "**Material Customers**"); and (ii) the amount of consideration paid by each Material Customer during such period. No Acquired Company has received any notice, and has no reason to believe, that any of its Material Customers has ceased, or intends to cease after the Closing, to use its goods or services or to otherwise terminate or materially reduce its relationship with an Acquired Company.

(b) **Section 3.15(b)** of the Disclosure Schedules sets forth (i) each supplier that was one of the twenty (20) largest suppliers of goods or services to the Acquired Companies, based on amounts paid, for each of the two (2) most recent fiscal years (collectively, the "**Material Suppliers**"); and (ii) the amount of purchases from each Material Supplier during such period. No Acquired Company has received any notice, and has no reason to believe, that any of its Material Suppliers has ceased, or intends to cease, to supply goods or services to an Acquired Company or to otherwise terminate or materially reduce its relationship with an Acquired Company.

Section 3.16 Insurance.

Section 3.16 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by an Acquired Company and relating to the assets, business, operations, employees, officers and directors of the Acquired Companies (collectively, the "**Insurance Policies**") and true and complete copies of such Insurance Policies have been made available to Parent. Such Insurance Policies are in full force and effect and shall remain in full force and effect immediately following the consummation of the transactions contemplated by this Agreement. No Acquired Company has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. The Insurance Policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of any Acquired Company. All such Insurance Policies (a) are valid and binding in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. There are no claims related to the business of the Acquired Companies pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. No Acquired Company is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Acquired Companies and are sufficient for compliance with all applicable Laws and Contracts to which any Acquired Company is a party or by which it is bound.

Section 3.17 Legal Proceedings; Governmental Orders.

(a) Except as disclosed on **Section 3.17(a)** of the Disclosure Schedules, there are no Actions pending or, to the Company's Knowledge, threatened (i) against or by any Acquired Company affecting any of its properties or assets; or (ii) against or by any Acquired Company that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the Company's Knowledge, no circumstances currently exist that would reasonably give rise to, or serve as a basis for, any such Action.

(b) Except as disclosed on **Section 3.17(b)** of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting any Acquired Company or any of its properties or assets. The Acquired Companies are in compliance with the terms of each Governmental Order applicable to any Acquired Company. To the Company's Knowledge, no event has occurred or circumstances exist that are likely to constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

Section 3.18 Compliance With Laws; Permits.

(a) Except as set forth in **Section 3.18(a)** of the Disclosure Schedules, each of the Acquired Companies has since September 30, 2011, in all material respects, complied, and is now complying, with all Laws applicable to it or its business, properties or assets. To the Company's Knowledge, except as set forth in **Section 3.18(a)** of the Disclosure Schedules, each of the Acquired Companies has at all times prior to September 30, 2011, in all material respects, complied with all Laws applicable to it or its business, properties or assets.

(b) All Permits required for the Acquired Companies to conduct their business in compliance with Law have been obtained by it and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. **Section 3.18(b)** of the Disclosure Schedules lists all current Permits issued to any Acquired Company, including the names of the Permits and their respective dates of issuance and expiration. To the Company's Knowledge, no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or material limitation of any Permit set forth in **Section 3.18(b)** of the Disclosure Schedules.

Section 3.19 Environmental Matters.

(a) Except as set forth on **Section 3.19** of the Disclosure Schedules, the Acquired Companies are currently, and for the past seven (7) years have been, in material compliance with all Environmental Laws and have not received from any Person any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to any Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) The Acquired Companies have obtained and are in material compliance with all Environmental Permits (each of which is disclosed in **Section 3.19(b)** of the Disclosure Schedules) necessary for the ownership, lease, operation or use of the business or assets of any Acquired Company and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by the Company through the Closing Date in accordance with Environmental Law, and no Acquired Company is aware of any condition, event or circumstance that would be reasonably expected to prevent or impede, after the Closing Date, the ownership, lease, operation or use of the business or assets of the Acquired Companies as currently carried out.

(c) No real property currently or formerly owned, operated or leased by any Acquired Company is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) To the Company's Knowledge, there has been no material Release of Hazardous Materials in contravention of Environmental Law with respect to the business or assets of any Acquired

Company or any real property currently or formerly owned, operated or leased by any Acquired Company, and no Acquired Company has received an Environmental Notice that any real property currently or formerly owned, operated or leased in connection with the business of any Acquired Company (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been contaminated with any Hazardous Material which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, any Acquired Company.

(e) **Section 3.19(e)** of the Disclosure Schedules contains a complete and accurate list of all active or abandoned aboveground or underground storage tanks owned or operated by any Acquired Company during the last seven (7) years.

(f) The Acquired Companies have not sent any Hazardous Materials off-site for disposal or otherwise arranged, by contract or otherwise, for treatment, storage, or disposal of Hazardous Materials at a location other than that owned by or operated by the Acquired Companies.

(g) No Acquired Company has retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

(h) The Company has provided or otherwise made available to Parent and has listed in **Section 3.19(h)** of the Disclosure Schedules: (i) any and all environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models and other similar documents with respect to the business or assets of any Acquired Company or any currently or formerly owned, operated or leased real property which are in the possession or control of any Acquired Company related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice or the Release of Hazardous Materials; and (ii) any and all material documents concerning planned or anticipated capital expenditures required to reduce, offset, limit or otherwise control pollution and/or emissions, manage waste or otherwise ensure compliance with current or future Environmental Laws (including, without limitation, costs of remediation, pollution control equipment and operational changes).

(i) The Acquired Companies own and control all Environmental Attributes (a complete and accurate list of which is set forth in **Section 3.19(i)** of the Disclosure Schedules) and no Acquired Company has entered into any contract or pledge to transfer, lease, license, guarantee, sell, mortgage, pledge or otherwise dispose of or encumber any Environmental Attributes as of the date hereof. No Acquired Company is aware of any condition, event or circumstance that would be reasonably expected to prevent, impede or materially increase the costs associated with the transfer (if required) to Parent of any Environmental Attributes after the Closing Date.

(j) This **Section 3.19** contains the sole representations and warranties of the Company with respect to the subject matter set forth therein.

Section 3.20 Employee Benefit Matters.

(a) **Section 3.20(a)** of the Disclosure Schedules contains a true and complete list of each pension, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off, group health, welfare, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by any Acquired Company for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of any of the Acquired Companies or any spouse or dependent of such individual, and under which any Acquired Company has or may have any liability, contingent or otherwise (as listed on **Section 3.20(a)** of

the Disclosure Schedules, not including, for the avoidance of doubt, contributions, payments and benefits under mandatory Law, each, a "**Benefit Plan**"). The Company has separately identified in **Section 3.20(a)** of the Disclosure Schedules each Benefit Plan that is maintained, sponsored, contributed to, or required to be contributed to by any of the Acquired Companies primarily for the benefit of employees outside of the United States (not including, for the avoidance of doubt, contributions, payments and benefits under mandatory Law, a "**Non-U.S. Benefit Plan**").

(b) With respect to each material Benefit Plan, the Company has made available to Parent accurate, current and complete copies of each of the following, to the extend applicable: (i) where the Benefit Plan has been reduced to writing, the plan document together with all material amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and material contracts, material administration agreements and similar material agreements, and investment management or investment advisory agreements, now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise; (iv) copies of the current summary plan descriptions, subsequent summaries of material modifications, employee handbooks and any other material written communications relating to the Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service relating to the plan; (vi) in the case of any Benefit Plan for which a Form 5500 is required to be filed, a copy of the two most recently filed Forms 5500, with schedules and financial statements attached; (vii) any material actuarial valuations and reports related to any Benefit Plans with respect to the two most recently completed plan years; (vii) the most recent nondiscrimination tests performed under the Code; and (viii) copies of all material notices, material letters or other material correspondence from the Internal Revenue Service, Department of Labor, Pension Benefit Guaranty Corporation or other Governmental Authority relating to the Benefit Plan.

(c) Each Benefit Plan and any related trust has been established, administered and maintained in all material respects (i) in accordance with its terms and (ii) in compliance with all applicable Laws (including ERISA and the Code). Each Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code (a "**Qualified Benefit Plan**") is so qualified and has received a favorable and current determination letter from the Internal Revenue Service, or with respect to a prototype or volume submitter plan, can rely on an opinion letter or advisory letter from the Internal Revenue Service to the prototype or volume submitter plan sponsor, to the effect that such Qualified Benefit Plan is so qualified in form and that the plan and the trust related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that could reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan. Nothing has occurred with respect to any Benefit Plan that has subjected or could reasonably be expected to subject any Acquired Company or, with respect to any period on or after the Closing Date, Parent or any of its Affiliates, to a penalty under Section 502 of ERISA or to tax or penalty under Section 4975 of the Code. Except as set forth in **Section 3.20(c)** of the Disclosure Schedules, all material benefits, contributions and premiums payable by the Acquired Companies under or with respect to each Benefit Plan have been timely paid in accordance with the terms of such Benefit Plan and all applicable Laws, and all material benefits accrued but not yet payable under any unfunded Benefit Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with, GAAP. All Non-U.S. Benefit Plans that are intended to be funded and/or book-reserved are funded and/or book-reserved, as appropriate, based upon reasonable accounting and actuarial assumptions.

(d) Except as set forth in **Section 3.20(h)** of the Disclosure Schedules, no Acquired Company or any of its ERISA Affiliates has incurred or reasonably expects to incur, either directly or indirectly, any material unpaid liability under ERISA or related provisions of the Code or applicable local Law relating to employee benefit plans, in each case, as a result of non-compliance therewith;

(e) No Acquired Company or any of its ERISA Affiliates has, within the past six (6) years, maintained, sponsored, contributed to or incurred any liability or potential liability under any (i)

"multiemployer plan" as defined in Section 3(37) of ERISA (ii) "multiple employer plan" within the meaning of Section 413(c) of the Code or a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA); or (iii) other pension plan subject to the minimum funding standards of Section 412 of the Code or Title IV of ERISA.

(f) Except as set forth in **Section 3.20(h)** of the Disclosure Schedules, each Benefit Plan can be amended, terminated or otherwise discontinued after the Closing in accordance with its terms, without any material liability to Parent, any Acquired Company or any of their Affiliates other than ordinary administrative expenses typically incurred in a termination event. Except as otherwise provided for in this Agreement, no Acquired Company has any commitment or obligation and has not made any representations to any employee, officer, director, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement, in connection with the consummation of the transactions contemplated by this Agreement or otherwise.

(g) Other than as required under Section 601 et. seq. of ERISA or other analogous Law and except as set forth in **Section 3.20(h)** of the Disclosure Schedules, no Benefit Plan provides post-termination or retiree health or other welfare benefits to any individual for any reason, and none of the Acquired Companies has any liability to provide post-termination or retiree health or other welfare benefits to any individual or ever represented, promised or contracted to any individual that such individual would be provided with post-termination or retiree health or other welfare benefits.

(h) Except as set forth in **Section 3.20(h)** of the Disclosure Schedules, there is no pending or, to the Company's Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan has within the three years prior to the date hereof been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under, or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority.

(i) There has been no amendment to, announcement by any of the Acquired Companies relating to, or change in employee participation or coverage under, any Benefit Plan that would increase the annual expense of maintaining such plan above the level of the expense incurred for the most recently completed fiscal year with respect to any director, officer, employee, independent contractor or consultant, as applicable. Except as otherwise provided for in this Agreement, none of the Acquired Companies has any commitment or obligation or has made any representations to any director, officer, employee, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan.

(j) Each Benefit Plan that is subject to Section 409A of the Code has been administered in material compliance with (i) its terms and (ii) the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings and proposed and final regulations) thereunder. None of the Acquired Companies has any obligation to gross up, indemnify or otherwise reimburse any individual for any Taxes, interest or penalties incurred pursuant to Section 409A of the Code or for any other Taxes.

(k) Each individual who is classified by an Acquired Company as an independent contractor has been properly classified for purposes of participation and benefit accrual under each Benefit Plan.

(l) Except (i) as set forth in **Section 3.20(k)** of the Disclosure Schedules, (ii) required by applicable Law or (iii) as otherwise provided for in this Agreement, neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, officer, employee, independent contractor or consultant of any of the Acquired Companies to severance pay or any other material payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation due to any such individual; (iii) limit or restrict the right of any of the Acquired Companies to merge, amend or

terminate any Benefit Plan; (iv) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; (v) result in "excess parachute payments" within the meaning of Section 280G(b) of the Code; or (vi) require a "gross-up" or other payment to any "disqualified individual" within the meaning of Section 280G(c) of the Code.

(m) The Company Board has adopted resolutions and appropriate amendments to the Company's 401(k) plan, in form reasonably acceptable to Parent, terminating the Company's 401(k) plan immediately prior to Closing, with the 401(k) plan's assets to be distributed and its affairs wound-up by the Surviving Corporation following the Closing.

(n) This **Section 3.20** and **Section 3.04** contain the sole representations and warranties of the Company with respect to the subject matter set forth therein.

Section 3.21 Employment Matters.

(a) **Section 3.21(a)** of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants (each not including, for the avoidance of doubt, the Company's law firms, accounting firms or investment banking firms) of any Acquired Company as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base compensation rate; (v) current target annual commission, bonus or other incentive-based compensation; *provided*, *that*, to the extent applicable privacy or data protection Laws would prohibit the disclosure of certain personally identifiable information without the individual's consent, **Section 3.21(a)** shall provide such information in aggregated or de-identified form in compliance with applicable Laws. Except as set forth in **Section 3.21(a)** of the Disclosure Schedules, as of the date hereof, each of the Acquired Companies has paid in full all compensation, including wages, commissions and bonuses, due and payable as of the date hereof to its employees (other than amounts accrued in full on the balance sheet contained in the Closing Statement).

(b) Except as set forth on **Section 3.21(b)** of the Disclosure Schedules, (i) no Acquired Company is, or has been for the past three years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, "**Union**"), (ii) there is not, and has not been for the past three years, any Union representing or, to the Company's Knowledge purporting to represent, any employee of any Acquired Company, and, to the Company's Knowledge, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining, (iii) there has not been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting any Acquired Company or any of its employees and (iv) no Acquired Company has any duty to bargain with any Union.

(c) The Acquired Companies are and since September 30, 2011 have been in material compliance with all applicable Laws pertaining to employment and employment practices, including, without limitation, all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, federal or state OSHA obligations, whistleblower protection, workers' compensation, leaves of absence and unemployment insurance. All individuals characterized and treated by any Acquired Company as independent contractors or consultants are properly classified and treated as independent contractors under all applicable Laws. The Company has analyzed and has properly classified all employees of the Acquired Companies as either exempt or non-exempt under the Fair Labor Standards Act and any applicable state and local laws and otherwise has complied with all requirements relating to the calculation of hours worked and the payment of overtime. Except as set forth in **Section 3.21(b)** of the Disclosure Schedules there are no Actions against any Acquired Company pending, or to the Company's Knowledge, threatened to be

brought or filed, by or with any Governmental Authority or arbitrator by or on behalf of any current or former applicant, employee, consultant, volunteer, intern, or independent contractor of any Acquired Company relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay, wages and hours or any other employment-related matter arising under applicable Laws.

(d) The Acquired Companies have complied with the WARN Act since September 30, 2011.

(e) With respect to each Government Contract, the Acquired Companies are and since September 30, 2011 have been in material compliance, to the extent applicable, with Executive Order No. 11246 of 1965 ("**E.O. 11246**"), Section 503 of the Rehabilitation Act of 1973 ("**Section 503**") and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("**VEVRAA**"), including all implementing regulations. The Acquired Companies maintain and comply with affirmative action plans in compliance with E.O. 11246, Section 503 and VEVRAA, including all implementing regulations. To the Company's Knowledge, no Acquired Company is, and no Acquired Company has been since September 30, 2011, the subject of any audit, investigation or enforcement action by any Governmental Authority in connection with any Government Contract or related compliance with E.O. 11246, Section 503 and VEVRAA. No Acquired Company has been debarred, suspended or otherwise made ineligible from doing business with the United States government or any government contractor since September 30, 2011.

(f) **Section 3.21(f)** of the Disclosure Schedules contains a list of all individuals who will receive any payments under the Employee Bonus Plan or the Management Bonus Plan, including the estimated amount of such payment as of the Closing Date.

Section 3.22 Taxes.

Except as set forth in Section 3.22 of the Disclosure Schedules:

(a) All federal, state, or other income Tax Returns, all federal employment Tax Returns, all sales or value added Tax Returns and all other material Tax Returns required to be filed on or before the Closing Date by each of the Acquired Companies have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all material respects. All Taxes due and owing by each of the Acquired Companies (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) Each of the Acquired Companies has withheld and paid each Tax required to have been withheld and paid by it in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder, lender or other party, and each Acquired Company is in material compliance with all information reporting and backup withholding provisions of applicable Law.

(c) No written claim has been made by any taxing authority in any jurisdiction where any of the Acquired Companies does not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.

(d) No extensions or waivers of statutes of limitations are currently in force or have been requested with respect to any Taxes of any of the Acquired Companies.

(e) The amount of any unpaid Taxes of the Acquired Companies for all periods ending on or before the Interim Balance Sheet Date does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes established to reflect timing differences between book and Tax income) reflected on the Interim Financial Statements. The amount of any unpaid Taxes of the Acquired Companies for all periods following the Interim Balance Sheet Date shall not, in the aggregate, exceed the amount of required accruals for Taxes (excluding reserves for deferred Taxes established to reflect timing differences between book and Tax income) as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Acquired Companies.

(f) **Section 3.22(f)** of the Disclosure Schedules sets forth:

(i) the taxable years of the Acquired Companies for which the applicable statutes of limitations relating to the assessment and collection of federal, state and other income Taxes have not yet expired;

(ii) those taxable years for which any examinations by any taxing authorities have been completed; and

(iii) those taxable years for which any examinations by taxing authorities are presently being conducted.

(g) Except as disclosed on **Section 3.22(g)** of the Disclosure Schedules, all deficiencies asserted, or assessments made, against the any of the Acquired Companies as a result of any examinations by any taxing authority have been fully settled, resolved, or otherwise paid.

(h) No Acquired Company is currently a party to any Action by any taxing authority. No taxing authority has stated in writing that it intends to initiate a future Action against any Acquired Company in respect of Taxes.

(i) The Company has delivered to Parent copies of all federal, state, local and foreign income, franchise and similar Tax Returns of, and examination reports and statements of deficiencies assessed against, or agreed to by, each of the Acquired Companies for all Tax periods ending after December 31, 2010.

(j) There are no Encumbrances for Taxes (other than Permitted Encumbrances) upon the assets of any of the Acquired Companies.

(k) No Acquired Company is a party to, or bound by, any Tax Sharing Agreement.

(l) Except as disclosed on **Section 3.22(l)** of the Disclosure Schedules, no private letter rulings, technical advice memoranda or similar agreement or rulings have been requested, entered into or issued by any taxing authority with respect to any of the Acquired Companies.

(m) No Acquired Company has been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes, other than any Tax group of which the Company either was or is the common parent. No Acquired Company has Liability for Taxes of any Person under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign Law), or as a transferee or successor, or by reason of any contract, including a Tax Sharing Agreement or similar agreement.

(n) No Acquired Company will be required to include any item of income in, or exclude any item or deduction from, taxable income for taxable period or portion thereof ending after the Closing Date as a result of:

(i) any change in a method of accounting under Section 481 of the Code (or any comparable provision of state, local or foreign Tax Laws), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date;

(ii) an installment sale or open transaction occurring on or prior to the Closing Date;

(iii) a prepaid amount received on or before the Closing Date;

(iv) any closing agreement under Section 7121 of the Code, or similar provision of state, local or foreign Law; or

(v) any election under Section 108(i) of the Code.

(o) No Acquired Company is, nor has been, a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(A) of the Code.

(p) No Acquired Company has been a "distributing corporation" in connection with a distribution described in Section 355 of the Code.

(q) No Acquired Company is, or has been, a party to, or a promoter of, a "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

(r) No Subsidiary is or has been a "passive foreign investment company" within the meaning of Code Section 1297.

(s) **Section 3.22(s)** of the Disclosure Schedules sets forth for each Acquired Company all jurisdictions outside the United States in which the Acquired Company is subject to Tax, is engaged in business or has a permanent establishment. No Acquired Company has entered into a gain recognition agreement pursuant to Treasury Regulations Section 1.367(a)-8 or transferred an intangible asset the transfer of which would be subject to the rules of Section 367(d) of the Code.

(t) Section 3.04(b), Section 3.06, Section 3.20, Section 3.21(e) and this Section 3.22 contain the sole representations and warranties of the Company with respect to the subject matter set forth therein, and no representations or warranties are being made as to the current amount or potential future availability of any net operating losses or any other tax attributes of any kind.

Section 3.23 Product Regulatory Review.

With respect to each of the products of the Acquired Companies subject to oversight by the United States Food and Drug Administration ("FDA") or corresponding regulatory authorities in other jurisdictions, including those products that are or have been under research and/or development by the Acquired Companies:

(a) Except as disclosed on **Section 3.23(a)** of the Disclosure Schedules, to the Company's Knowledge, all products are being and have been researched, developed, manufactured, tested, distributed and/or marketed in compliance in all material respects with all applicable requirements under the Federal Food, Drug and Cosmetic Act and similar Laws and regulations applicable to such products, including for jurisdictions in which the Acquired Companies are conducting or preparing to conduct business related to such products, those laws and regulations enacted by any other federal, state or foreign Governmental Authority relating to investigational use, premarket approval, good manufacturing practices, labeling, advertising, promotion, record keeping, filing of reports and security.

(b) Except as disclosed on **Section 3.23(b)** of the Disclosure Schedules, no Acquired Company has received any notice or other communication from the FDA or any other federal, state or foreign Governmental Authority where the Acquired Companies are conducting business related to such products (i) contesting the premarket approval of, the uses of or the labeling and promotion of any such product or (ii) otherwise alleging any violation by any Acquired Company of any Law, regulation or other legal provision applicable to any such product which would significantly impact the marketing of such products.

(c) To the Company's Knowledge, no Acquired Company has made an untrue statement of a material fact or fraudulent statement to the FDA or other federal, state or foreign Governmental Authority

performing similar functions or failed to disclose a material fact required to be disclosed to the FDA or such other federal, state or foreign Governmental Authority.

(d) Except as set forth in **Section 3.23(d)** of the Disclosure Schedules, to the Company's Knowledge, the Acquired Companies have all approvals, clearances, authorizations, licenses or registrations required by the FDA or other Governmental Authority to permit the activities (including pre-clinical testing) undertaken by the Company (the "**Activities to Date**") in any jurisdiction where any Acquired Company currently conducts or in the past seven (7) years has conducted such activities. To the Company's Knowledge, the Acquired Companies are in compliance with all applicable Laws, rules and regulations pertaining to the Activities to Date.

(e) To the Company's Knowledge, the studies, non-clinical laboratory studies, tests, preclinical trials, and clinical trials conducted by or on behalf of, or (if applicable) sponsored by, any Acquired Company respects were and, to the extent still pending, are being conducted in accordance with experimental protocols, procedures and controls pursuant to, where applicable, standard medical and accepted professional scientific research procedures and standards and the requirements of the FDA and all applicable Governmental Authorities. No Acquired Company has received any notice or correspondence from the FDA or any other Governmental Authority exercising comparable authority requiring the termination, suspension or material modification of any such study, test or trial. The Company has no Knowledge of any other validated study or test the results of which call into question the safety and efficacy results of the above referenced tests. The Acquired Companies have operated and currently are in compliance with all applicable rules and regulations of the FDA (and all other applicable Governmental Authorities with oversight over similar activities), and no Acquired Company has received any notice or other correspondence from the FDA or any other Governmental Authority requiring the termination, suspension or modification of any of the above referenced feasibility, preclinical or clinical studies or tests.

Section 3.24 FCPA Compliance; No Unlawful Payments; Payment Transparency.

Except as disclosed on Section 3.24 of the Disclosure Schedules, since September 30, 2011, no Acquired Company nor, to the Knowledge of the Company, any manager, officer, agent, employee or affiliate or any other Person acting on behalf of any Acquired Company has (i) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977 (the "FCPA") or the U.S. Anti-Kickback Statute (42 USC § 1320a-7b(b)) or any other similar Law; (ii) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any Person, private or public, regardless of what form, whether in money, property, or services; or (iii) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity. The Acquired Companies are in material compliance with the applicable "sunshine provisions" of the Patient Protection and Affordable Health Care Act, and with applicable, territorial equivalent payment transparency Laws issued, enacted or promulgated by any Governmental Authority.

Section 3.25 Compliance with Economic Sanctions Laws.

(a) Each Acquired Company is and, for the past three (3) years has been, in material compliance with all Laws (i) administered by the Office of Foreign Assets Control ("**OFAC**"), (ii) administered by any other Governmental Authority imposing economic sanctions and trade embargoes against designated countries and Persons, or (iii) otherwise relating to import and export control applicable to the activities of each Acquired Company (collectively, "**Economic Sanctions Laws**").

(b) Neither any Acquired Company nor, to the Company's Knowledge, any director, officer or equivalent of Acquired Company (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Economic Sanction Laws (such lists are collectively referred to as the "Lists"), (ii) is a Person that has been determined by applicable Governmental Authority to be subject to the prohibitions contained in OFAC or

any other Economic Sanctions Laws, or (iii) is owned or controlled by, nor acts for or on behalf of, any Person on the Lists or any other Person that has been determined by applicable Governmental Authority to be subject to the prohibitions contained in OFAC or any other Economic Sanctions Laws.

Section 3.26 Compliance with Privacy Laws.

(a) The collection, use and retention of the Personal Information by the Acquired Companies, and the transfer of the Personal Information by the Acquired Companies to Parent as a result of the Merger comply with all Privacy Laws and are consistent with each Acquired Company's own Privacy Statements. In connection with its collection, storage, transfer (including, without limitation, any transfer across national borders) and/or use of any Personal Information, each Acquired Company is and has been in compliance with all applicable Privacy Laws and the requirements of any contract or codes of conduct to which the Acquired Company is subject or a party. Each Acquired Company has used commercially reasonable physical, technical, organizational and administrative security measures and policies in place to protect all Personal Information collected by it or on its behalf from and against unauthorized access, use and/or disclosure. Each Acquired Company is and has been in compliance in all material respects with all Laws relating to data loss, theft and breach of security notification obligations.

(b) There are no Actions pending, ongoing, or to the Company's Knowledge, threatened with respect to any Acquired Company's collection, use, disclosure or retention of the Personal Information.

(c) Except as disclosed on **Section 3.26(c)** of the Disclosure Schedules, no decision, judgment or order, whether statutory or otherwise, is pending or has been made, and no notice has been given pursuant to any Privacy Laws, requiring any Acquired Company to take (or refrain from taking) any action with respect to the Personal Information.

Section 3.27 Books and Records.

The minute books and stock record books of each Acquired Company, all of which have been made available to Parent, are complete and correct in all material respects. The minute books of each Acquired Company contain accurate and complete records of all meetings, and actions taken by written consent of, the equity holders, Board of Directors or equivalent body, committees of such Board of Directors or equivalent body, and no meeting, or action taken by written consent, of any such equityholders, Board of Directors, or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of the Surviving Corporation.

Section 3.28 Related Party Transactions.

No executive officer or director of any Acquired Company or any person owning 5% or of the Capital Stock (or any of such person's immediate family members or Affiliates) is a party to any Contract with or binding upon any Acquired Company or any of its assets, rights or properties or has any interest in any property owned by any Acquired Company or has engaged in any transaction with any of the foregoing within the last twelve (12) months, other than offers letters, employment arrangements and other customary compensation arrangements, which are, to the extent required by Section 3.09, disclosed in Section 3.09 of the Disclosure Schedule.

Section 3.29 Brokers.

Except for Piper Jaffray & Co. and Oxford Finance LLC, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of any Acquired Company.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub represent and warrant to the Company, as of the Effective Time, as follows:

Section 4.01 Organization and Authority of Parent and Merger Sub.

Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation. Each of Parent and Merger Sub has full corporate power and authority to enter into and perform its obligations under this Agreement and the Ancillary Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Parent and Merger Sub of this Agreement and any Ancillary Document to which they are a party and the consummation by Parent and Merger Sub of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Parent and Merger Sub and no other corporate proceedings on the part of Parent and Merger Sub are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the Merger and the other transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Parent and Merger Sub, and (assuming due authorization, execution and delivery by each other party hereto) this Agreement constitutes a legal, valid and binding obligation of Parent and Merger Sub enforceable against Parent and Merger Sub in accordance with its terms. When each Ancillary Document to which Parent or Merger Sub is or will be a party has been duly executed and delivered by Parent or Merger Sub (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Parent or Merger Sub enforceable against it in accordance with its terms.

Section 4.02 No Conflicts; Consents.

The execution, delivery and performance by Parent and Merger Sub of this Agreement and the Ancillary Documents to which they are a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Parent or Merger Sub; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Parent or Merger Sub; or (c) require the consent, notice or other action by any Person under any Contract to which Parent or Merger Sub is a party. Parent, as the sole stockholder of Merger Sub, has approved and adopted this Agreement, and no other vote of the holders of any class or series of capital stock of Parent or Merger Sub is required to adopt this Agreement and approve the transactions contemplated hereby. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Parent or Merger Sub in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except for the filing of the Certificate of Merger with the Secretary of State of Delaware.

Section 4.03 No Prior Merger Sub Operations.

Merger Sub was formed solely for the purpose of effecting the Merger and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated hereby. Prior to the Effective Time, Merger Sub will not have engaged in any other business activities or incurred any liabilities or obligations except as contemplated by this Agreement. All of the issued and outstanding capital stock of Merger Sub is, and as of the Effective Time will be, owned by Parent.

Section 4.04 Brokers.

Except for Canaccord Genuity, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Parent or Merger Sub.

Section 4.05 Legal Proceedings.

There are no Actions pending or, to Parent's or Merger Sub's knowledge, threatened against or by Parent, Merger Sub or any of their respective Affiliates, the adverse outcome or effect of which would, individually or in the aggregate, would prevent, enjoin or otherwise delay, or that challenges or seeks to prevent, enjoin or otherwise delay, the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

ARTICLE V

COVENANTS

Section 5.01 Stockholders Consent.

(a) On the Closing Date, the Company shall obtain the Requisite Company Vote pursuant to written consents of the Stockholders in substantially the form attached hereto as Exhibit I (the "**Written Consent**"). The materials submitted to the Stockholders in connection with the Written Consent shall include the Company Board Recommendation and all other materials required by the DGCL. Promptly following receipt of the Written Consent, on the Closing Date, the Company shall deliver a copy of such Written Consent to Parent.

(b) The Company has prepared and delivered to Parent a notice (the "**Stockholder Notice**") to be sent to every Stockholder that did not execute the Written Consent. The Stockholder Notice (i) includes a statement to the effect that the Company Board unanimously determined that the Merger is advisable in accordance with Section 251(b) of the DGCL and in the best interests of the Stockholders and unanimously approved and adopted this Agreement, the Merger and the other transactions contemplated hereby, (ii) provides the Stockholders to whom it will be sent with notice of the actions taken in the Written Consent, including the approval and adoption of this Agreement, the Merger and the other transactions contemplated hereby in accordance with Section 228(e) of the DGCL and the bylaws of the Company and (iii) notifies such Stockholders of their dissent and appraisal rights pursuant to Section 262 of the DGCL, to the extent not previously waived. The Stockholder Notice includes therewith a copy of Section 262 of Delaware Law and all such other information as Parent reasonably requested, and is sufficient in form and substance to start the twenty (20) day period during which a Stockholder must demand appraisal of such Stockholder's Capital Stock as contemplated by Section 262(d)(2) of the DGCL.

(c) Promptly following the Closing Date, Parent or the Surviving Corporation shall deliver, or cause to be delivered, the Stockholder Notice to each Stockholder that did not execute the Written Consent at the addresses of each such Stockholder set forth in the Consideration Spreadsheet.

Section 5.02 Public Announcements.

For a period of twenty (20) days following the Closing, Parent shall give the Stockholder Representative a reasonable opportunity to review and comment prior to making any press release or public announcement relating to the existence or the subject matter of this Agreement. Except as otherwise required by Law, the Priority Preferred Stockholders shall not issue any press release or make any public announcement relating to the existence or the subject matter of this Agreement, and shall keep the existence of this Agreement and its terms confidential, until after July 6, 2016; *provided*, *that*, any such press releases or public announcements made after such date shall include only factually accurate information.

Section 5.03 Director and Officer Liability and Indemnification.

(a) Parent and Merger Sub agree that all rights to indemnification, advancement of expenses and exculpation by each Acquired Company now existing in favor of each Person who is now, or has been at any time prior to the date hereof or who becomes prior to the Effective Time an officer, managing member, manager, director or equivalent Person of any Acquired Company (each, a "**D&O Indemnified Party**") as provided in the Organizational Documents, in each case as in effect on the date of this Agreement, or pursuant to any other Contracts in effect on the date hereof and disclosed in **Section 3.09** of the Disclosure Schedules, shall be assumed by the Surviving Corporation in the Merger, without further action, at the Effective Time and shall survive the Merger and shall remain in full force and effect in accordance with their terms, and, in the event that any proceeding is pending or asserted or any claim made during such period, until the final disposition of such proceeding or claim.

(b) For a period of six (6) years after the Closing, Parent shall not, and shall not permit the Surviving Corporation or any of its Subsidiaries to, amend, repeal or modify any provision in their respective certificate of incorporation, by-laws or other organizational documents (collectively, the "**Organizational Documents**") relating to the indemnification, exculpation or advancement of expenses of any D&O Indemnified Parties (unless required by applicable Law), it being the intent of the parties that the officers, managing members, managers, directors and equivalent Persons of the Company and its Subsidiaries and any other person who is entitled to indemnification under the Organizational Documents of the Company and its Subsidiaries as of the date of this Agreement, as applicable, that are no less favorable in the aggregate than the relevant provisions in place in such Organizational Documents as applicable immediately prior to the Closing, and shall continue to be entitled to such exculpation and indemnification to the full extent of applicable Law.

(c) Effective as of the Closing, the Acquired Companies have obtained "tail" insurance policies with a claims period of at least six (6) years from the Effective Time with at least the same coverage and amount and containing terms and conditions that are not less advantageous to the D&O Indemnified Parties as the Acquired Companies' existing policies with respect to claims arising out of or relating to events which occurred before or at the Effective Time (including in connection with the transactions contemplated by this Agreement) (the "**D&O Tail Policy**"). The Company shall bear the cost of the D&O Tail Policy, and such costs, to the extent not paid prior to the Closing, shall be included in the determination of Transaction Expenses. During the term of the D&O Tail Policy, Parent shall not (and shall cause the Surviving Corporation not to) take any action following the Closing to cause the D&O Tail Policy to be cancelled or any provision therein to be amended or waived; *provided, that* neither Parent, the Surviving Corporation nor any Affiliate thereof shall be obligated to pay any premiums or other amounts in respect of such D&O Tail Policy.

(d) In the event that Parent, the Surviving Corporation, or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each case, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, honor the indemnification and other obligations set forth in this **Section 5.03**.

Section 5.04 Documents and Information. Parent and the Surviving Corporation shall, until the seventh (7^{th}) anniversary of the Closing Date, retain all books, records and other documents pertaining to the business of the Acquired Companies in existence on the Closing Date and make the same available for inspection and copying by the Stockholder Representative (at the Stockholder Representative's own expense) solely for bona fide reporting and compliance purposes during normal business hours of Parent and the Surviving Corporation, upon reasonable request and reasonable notice.

ARTICLE VI

TAX MATTERS

Section 6.01 Tax Covenants.

(a) Without the prior written consent of Parent, prior to the Closing, the Acquired Companies shall not make, change or rescind any Tax election, or amend any Tax Return, or otherwise take any action, that would have the effect of materially increasing the Tax liability of Parent or the Acquired Companies in respect of any Post-Closing Tax Period other than elections made and actions taken that are consistent with the past Tax accounting and reporting practices of the Acquired Companies.

(b) All transfer, documentary, sales, use, or stamp taxes, and any other similar Taxes imposed in connection with the transfer of shares of Capital Stock pursuant to this Agreement and the Ancillary Documents shall be borne and paid by the applicable Stockholder to which such Taxes relate when due. The Person(s) required to do so by applicable Law shall timely file any Tax Return or other document with respect to such Taxes, as necessary or appropriate (and Parent shall cooperate with respect thereto as necessary).

(c) Parent shall not without the prior written consent of the Stockholder Representative (i) cause or permit any Acquired Company to take any action outside the ordinary course of business on the Closing Date if such action increases the Taxes for which Stockholders are responsible under this **Article VI** or (ii) make any election under Code Sections 336(e) or 338, or under any similar provisions of state or local or other applicable Tax Laws, with respect to the transaction contemplated by this Agreement.

Section 6.02 Tax Returns.

(a) Parent shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns required to be filed by any of the Acquired Companies after the Closing Date with respect to a Pre-Closing Tax Period and for any Straddle Period. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and, if such Tax Return may give rise to a reimbursement or indemnification obligation on the part of the Priority Preferred Stockholders under **Section 7.02**, such Tax Return shall be submitted by Parent to the Stockholder Representative (together with schedules, statements and, to the extent requested by the Stockholder Representative, supporting documentation) at least sixty (60) days prior to the due date (including extensions) of such Tax Return. If the Stockholder Representative objects to any item on any such Tax Return that relates to a Pre-Closing Tax Period, it shall, within thirty (30) days after delivery of such Tax Return, notify Parent in writing that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If the Stockholder Representative fails to object to such position within such thirty (30) day period, the Stockholder Representative shall be deemed to have agreed in writing to the position. If a notice of objection shall be duly delivered, Parent and the Stockholder Representative shall negotiate in good faith and use their reasonable efforts to resolve such items. If Parent and the Stockholder Representative are unable to reach such agreement within ten (10) days after receipt by Parent of such notice, the disputed items shall be resolved by the Independent Accountant and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within twenty (20) days of having the item referred to it pursuant to such procedures as it may require. The costs, fees and expenses of the Independent Accountant shall be borne by Parent and the Stockholder Representative (on behalf of the Priority Preferred Stockholders) in proportion to the relative level of conformity with the positions ultimately adopted by the Independent Accountant (such that if a party's original proposed positions are the same as the positions ultimately adopted by the Independent Accountant, then such party shall bear no portion of the relevant costs, fees, and expenses). The preparation and filing of any Tax Return of any of the Acquired Companies that does not relate to a Pre-Closing Tax Period or Straddle Period shall be exclusively within the control of Parent. Parent shall not amend any Tax Return with respect to a Pre-Closing Tax Period or Straddle Period, or otherwise take any

position on any Tax Return (other than a position ultimately adopted by the Independent Accountant in accordance with this **Section 6.02(a)**) that may be reasonably expected to result in an indemnification obligation of the Priority Preferred Stockholders in respect of Indemnifiable Taxes under **Section 7.02**, without the prior written consent of the Stockholder Representative.

Section 6.03 Straddle Period.

In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a "Straddle Period"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

(a) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the purchase, acquisition, sale, transfer or assignment of property, or (iii) required to be withheld or otherwise relating to payroll, deemed equal to, in each case, the amount which would be payable if the taxable year ended at the close of the Closing Date; and

(b) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the period ending through and including the Closing Date and the denominator of which is the number of days in the entire period.

Section 6.04 Contests.

Parent agrees to give written notice to the Stockholder Representative of the receipt after Closing of any written notice by any of the Acquired Companies, Parent or any of Parent's Affiliates which involves the assertion of any claim, or the commencement of any Action, in respect of which an indemnity may be sought by Parent pursuant to Article VII (a "Tax Claim"). The Stockholder Representative shall have the ability to elect to control the contest or resolution of any Tax Claim for which the Priority Preferred Stockholders may be liable for indemnification under Section 7.02; provided, however, that the Stockholder Representative shall obtain the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed) before entering into any settlement of a claim or ceasing to defend such claim; and, provided, further, that Parent shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Parent.

Section 6.05 Cooperation and Exchange of Information.

The Stockholder Representative, the Company and Parent shall provide each other with such cooperation and information as either of them reasonably may request of the others in filing any Tax Return pursuant to this **Section 6.05** or in connection with any audit or other proceeding in respect of Taxes of the Acquired Companies. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Each of the Stockholder Representative, the Company and Parent shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Acquired Companies for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by any of the other parties in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Acquired Companies for any taxable period beginning before the Closing Date, the Stockholder Representative, the Company or Parent (as the case may be) shall provide the other parties with reasonable written notice and offer the other parties the opportunity to take custody of such materials.

Section 6.06 Tax Treatment of Indemnification Payments.

Any indemnification payments pursuant to **Article VII** shall be treated as an adjustment to the Merger Consideration by the parties for Tax purposes, unless otherwise required by Law.

ARTICLE VII

INDEMNIFICATION

Section 7.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the Closing Date and shall expire at such time; *provided*, *however*, that (a) the Fundamental Representations and the representations and warranties contained in **Section 3.19 (Environmental Matters)** and **Section 3.20 (Employee Benefit Matter)** shall survive the Closing until thirty (30) days after expiration of the applicable statute of limitations and shall expire at such time and (b) the representations and warranties contained in **Section 3.22 (Taxes)** shall survive the Closing until thirty (30) days after the date on which no Tax Return for any Pre-Closing Tax Period may be audited under applicable United States federal law, but not later than the seven (7) year anniversary of the Closing Date, and shall expire at such time. All covenants and agreements of the parties contained herein shall survive the Closing until fully performed and shall expire when fully performed. Notwithstanding the foregoing, any claims asserted in good faith and in compliance with the requirements of this Agreement prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation, warranty, covenant or agreement and such claims shall survive until finally resolved. It is the express intent of the parties that, if an applicable survival period as contemplated by this **Section 7.01** is shorter than the statute of limitations that would otherwise have been applicable, then, by contract, the applicable statute of limitations shall be reduced to the shortened survival period contemplated hereby.

Section 7.02 Indemnification of Parent Indemnitees. Subject to the other terms and conditions of this **Article VII**, each of Parent and its Affiliates (including the Surviving Corporation) and their respective Representatives (collectively, the "**Parent Indemnitees**"), shall be indemnified, reimbursed and held harmless by the Priority Preferred Stockholders and pursuant to the R&W Insurance Policy for any and all Losses incurred or sustained by, or imposed upon any of them based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of the Company contained in this Agreement or in any certificate or instrument delivered by or on behalf of the Company pursuant to this Agreement;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Company (prior to the Effective Time) or by the Priority Preferred Stockholders or the Stockholder Representative pursuant to this Agreement;

(c) any claim made by any Stockholder, any Optionholder, any Equity Rights Holder or any other alleged holder of any Capital Stock or rights to acquire Capital Stock relating to such Person's rights with respect to the Merger Consideration or the calculations and determinations set forth on the Consideration Spreadsheet;

(d) any amounts (including costs and attorneys' fees) paid to the holders of Dissenting Shares, including any interest required to be paid thereon, that are in excess of what such holders would have received hereunder had such holders not been holders of Dissenting Shares and all costs, expenses and other Losses associated with any Actions or related correspondence, discussion, investigations or other matters associated therewith;

(e) any Transaction Expenses or Indebtedness of any Acquired Company outstanding as of the Closing to the extent not paid or satisfied by any Acquired Company prior to the Closing, or if paid by

Parent or Merger Sub at or prior to the Closing, to the extent not deducted in the determination of Closing Merger Consideration or Adjusted Merger Consideration;

(f) any Indemnifiable Taxes; or

(g) any fraud in the inducement by the Company prior to the Closing in connection with the negotiation of the transactions contemplated by this Agreement.

Section 7.03 Indemnification of Stockholder Indemnitees. Subject to the other terms and conditions of this **Article VII**, each Priority Preferred Stockholder and its Affiliates and each of their respective Representatives (collectively, the "**Stockholder Indemnitees**") shall be indemnified, reimbursed and held harmless by Parent for any and all Losses incurred or sustained by, or imposed upon any of them based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Parent and Merger Sub contained in this Agreement or in any certificate or instrument delivered by or on behalf of Parent, Merger Sub or (following the Effective Time) the Surviving Corporation pursuant to this Agreement; or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Company or the Surviving Corporation (in each case, after the Effective Time), Parent or Merger Sub pursuant to this Agreement.

Section 7.04 Certain Limitations. The indemnification provided for in **Section 7.02** and **Section 7.03** shall be subject to the following limitations:

(a) The Parent Indemnitees shall not be entitled to recover any Losses pursuant to **Section 7.02(a)** (except in the case of Losses resulting from (i) breaches of the Fundamental Representations or (ii) fraud or intentional misrepresentation by the Company) until the aggregate amount of Losses that are indemnifiable pursuant to **Section 7.02(a)** exceed $975,000 (the "**Deductible**"), in which case the Parent Indemnitees shall only be entitled to recover Losses in excess of the Deductible;

(b) The Stockholder Indemnitees shall not be entitled to recover any Losses pursuant to **Section 7.03(a)** (except in the case of Losses resulting from (i) breaches of the Fundamental Representations, (ii) fraud or intentional misrepresentation by Parent or Merger Sub or (iii) fraud or intentional misrepresentation by Surviving Corporation, but only with respect to actions taken by Surviving Corporation after the Effective Time) until the aggregate amount of Losses that are indemnifiable pursuant to **Section 7.03(a)** exceed the Deductible, in which case the Stockholder Indemnitees shall only be entitled to recover Losses in excess of the Deductible.

(c) The Parent Indemnitees shall not be entitled to recover Losses pursuant to **Section 7.02(a)** (except in the case of Losses resulting from (i) breaches of the Fundamental Representations or (ii) fraud or intentional misrepresentation by the Company) which in the aggregate exceed the Indemnification Escrow Amount (the "**Cap**"); *provided, however*, that the aggregate amount of Losses which the Parent Indemnitees may be entitled to recover (x) pursuant to **Section 7.02(a)** resulting from breaches of the Fundamental Representations, (y) pursuant to **Section 7.02(a)** resulting from fraud or intentional misrepresentation by the Company, or (z) pursuant to **Section 7.02(b)**, **(c)**, **(d), (e)** or **(f)** shall not exceed the Enterprise Value.

(d) No Priority Preferred Stockholder shall be liable hereunder for any Losses which in the aggregate exceed such Priority Preferred Stockholder's Indemnification Obligation Pro Rata Share of the Merger Consideration.

(e) For purposes of this **Article VII**, any inaccuracy in or breach of any representation or warranty (other than those set forth in **Section 3.06** or **Section 3.08**) shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in such representation or warranty.

Section 7.05 Indemnification Procedures. The party making a claim under this **Article VII** is referred to as the "**Indemnified Party**", and the party against whom such claims are asserted under this **Article VII** is referred to as the "**Indemnifying Party**". For purposes of this **Article VII**, (i) if Parent (or any other Parent Indemnitee) comprises the Indemnified Party, then the Indemnifying Party is the Priority Preferred Stockholders, and any references to Indemnifying Party (except provisions relating to an obligation to make, or right to receive, payments) shall be deemed to refer to the Stockholder Representative acting on behalf of the Priority Preferred Stockholders, and (ii) if Parent comprises the Indemnifying Party, then the Indemnified Party is the Priority Preferred Stockholders, and any references to the Indemnified Party shall be deemed to refer to Stockholder Representative acting on behalf of the Priority Preferred Stockholders. Any payment due to the Priority Preferred Stockholders as the Indemnified Party shall be paid by Parent to the Distribution Agent for further distributions to the Priority Preferred Stockholder(s) in accordance with this Agreement and the Distribution Agent Agreement.

(a) **Third Party Claims.** If any Indemnified Party receives notice (whether or not in writing) of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a "**Third Party Claim**") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 calendar days after the Indemnified Party's receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party is materially prejudiced by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party within 30 days of its receipt of written notice of such Third Party Claim from the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided*, *that*, if the Indemnifying Party is the Priority Preferred Stockholders, such Indemnifying Party shall not have the right to assume the defense of any Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of any Acquired Company, or (y) seeks an injunction or other equitable relief against the Indemnified Parties. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to **Section 7.05(b)**, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided*, *that* if in the reasonable opinion of outside counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a material conflict of interest between the Indemnifying Party and the Indemnified Party, the Indemnifying Party shall be liable for the reasonable fees and expenses of one counsel to the Indemnified Party. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to notify the Indemnified Party in writing of its election to defend as provided in this **Section 7.05(a)**, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to **Section 7.05(b)**, pay, compromise and defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. The Stockholder Representative and Parent shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making

available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) **Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this **Section 7.05(b)**. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party under this Agreement as to such Third Party Claim shall not exceed fees and costs incurred through such date and the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in (or upon terms substantially similar to) such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense thereof, it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 days after the Indemnified Party becomes aware of facts or circumstances reasonably likely to give rise to such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party is materially prejudiced by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such written notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to any Acquired Company's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30 day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 7.06 Tax Claims. Notwithstanding any other provision of this Agreement, the control of any Third Party Claim in respect of Taxes of any Acquired Company shall be governed exclusively by **Section 6.04** hereof.

Section 7.07 Payments; R&W Insurance Policy; Indemnification Escrow Fund.

(a) Once a Loss is agreed to by the Indemnifying Party, finally determined to be payable pursuant to this **Article VII** or is required to be paid pursuant to any Governmental Order, (i) if Parent is the Indemnifying Party, Parent shall make payment of the full amount of indemnifiable Losses to the Indemnified Party within five (5) Business Days of such determination by wire transfer of immediately available funds to the Indemnified Party, or (ii) if the Priority Preferred Stockholders are the Indemnifying

Party, then, subject to **Section 7.07(b)** and **Section 7.07(c)**, within five (5) Business Days of such agreement, final determination or Governmental Order, the Stockholder Representative and Parent shall jointly instruct the Escrow Agent to pay promptly the full amount of indemnifiable Losses to the Indemnified Party, up to the amount then remaining in the Indemnification Escrow Fund, by wire transfer of immediately available funds to the Indemnified Party.

(b) Any Losses payable to a Parent Indemnitee pursuant to **Section 7.02(a)** (except in the case of Losses resulting from fraud or intentional misrepresentation by the Company) or **Section 7.02(f)** shall be satisfied: (i) first, from the Indemnification Escrow Fund, but only up to the R&W Insurance Policy Retention Amount, (ii) second, to the extent coverage is available under the R&W Insurance Policy, pursuant to the R&W Insurance Policy, up to the R&W Insurance Policy Coverage Limit, and (iii) finally, from the Indemnification Escrow Fund.

(c) Any Losses payable to a Parent Indemnitee pursuant to **Section 7.02(a)** (but only in the case of Losses resulting from fraud or intentional misrepresentation by the Company), or pursuant to **Section 7.02(b)**, **(c)**, **(d)**, **(e)** or **(g)**, shall be satisfied: (i) first, from the amount then remaining in the Indemnification Escrow Fund, and (ii) finally, by the Priority Preferred Stockholders, severally but not jointly, in accordance with their respective Indemnification Obligation Pro Rata Share of the amount by which such Losses exceed the amount recovered pursuant to the foregoing clause (i).

(d) On the eighteen (18) month anniversary of the Closing Date, Parent and the Stockholder Representative shall jointly instruct the Escrow Agent to pay any amounts remaining in the Indemnification Escrow Fund (less any amounts reserved in respect of pending claims for indemnification that were asserted prior to such date in accordance with this **Article VII**) to the Distribution Agent, for further distribution to the Priority Preferred Stockholders in accordance with their respective Pro Rata Shares of any such amount.

Section 7.08 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Merger Consideration for Tax purposes, unless otherwise required by Law.

Section 7.09 Effect of Investigation; Mitigation. The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives). Notwithstanding the foregoing, and to the extent required by applicable law, each of the parties shall take commercially reasonable steps to mitigate any of its Losses. Except pursuant to a settlement agreed to by the Indemnifying Party, the Indemnified Party will not waive or release any contractual right to recover from any third party any Loss subject to indemnification hereunder without the prior written consent of the Indemnifying Party. Any Losses recoverable pursuant to this **Article VII** shall be reduced by any proceeds to which the Indemnified Party actually recovers from any insurer or other third party in respect of such Losses (including pursuant to the R&W Insurance Policy).

Section 7.10 Exclusive Remedies. The parties (other than the Stockholder Representative with respect to **Section 8.01(c)**) acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud or intentional misrepresentation in connection with the transactions contemplated by this Agreement) for any Losses resulting from any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this **Article VII**. Nothing in this **Section 7.10** shall limit any party's right to seek and obtain any equitable relief to which such party shall be entitled or to seek any remedy on account of any fraud or intentional misrepresentation.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Stockholder Representative

(a) By executing this Agreement, and by the consummation of the Merger and receiving the benefits thereof, including the right to receive a portion of the consideration payable in connection with the Merger, each Priority Preferred Stockholder shall have irrevocably authorized and appointed the Stockholder Representative as such Person's representative, agent and attorney-in-fact to act on behalf of such Person with respect to this Agreement, the Escrow Agreement and the Distribution Agent Agreement, and to take any and all actions and make any decisions required or permitted to be taken by the Stockholder Representative pursuant to this Agreement, the Escrow Agreement or the Distribution Agent Agreement, including without limitation the exercise of the power to:

(i) give and receive notices and communications on behalf of such Person;

(ii) authorize delivery to Parent of cash from the Integration Cost Escrow Fund in satisfaction of any amounts owed to Parent pursuant to **Section 2.18** or from the Indemnification Escrow Fund in satisfaction of any amounts owed to Parent pursuant to **Section 2.16** or in respect of claims for indemnification made by Parent pursuant to **Article VII**;

(iii) agree to, negotiate, enter into settlements and compromises of, and comply with orders or otherwise handle any other matters described in **Section 2.16**, **Section 2.18** or **Article VII**;

(iv) litigate, arbitrate, resolve, settle or compromise any claim for indemnification pursuant to **Article VII**;

(v) execute and deliver all documents necessary or desirable to carry out the intent of this Agreement, the Escrow Agreement and the Distribution Agent Agreement;

(vi) make all elections or decisions contemplated by this Agreement, the Escrow Agreement and the Distribution Agent Agreement;

(vii) engage, employ or appoint any agents or representatives (including attorneys, accountants and consultants) to assist the Stockholder Representative in complying with its duties and obligations; and

(viii) take all actions necessary or appropriate in the good faith judgment of the Stockholder Representative for the accomplishment of the foregoing.

Parent shall be entitled to deal exclusively with the Stockholder Representative on all matters relating to this Agreement (including **Article VII**) and shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of any Priority Preferred Stockholder by the Stockholder Representative, and on any other action taken or purported to be taken on behalf of any Priority Preferred Stockholder by the Stockholder Representative, as being fully binding upon such Person. Notices or communications to or from the Stockholder Representative shall constitute notice to or from each of the Priority Preferred Stockholders. Any decision or action by the Stockholder Representative hereunder, including any agreement between the Stockholder Representative and Parent relating to the defense, payment or settlement of any claims for indemnification hereunder, shall constitute a decision or action of all Priority Preferred Stockholders and shall be final, binding and conclusive upon each such Person. No Priority Preferred Stockholder shall have the right to object to, dissent from, protest or otherwise contest the same. The provisions of this **Section 8.01**, including the power of attorney granted hereby, are independent and severable, are irrevocable and coupled with an

interest and shall not be terminated by any act of any one or Priority Preferred Stockholders, or by operation of Law.

(k) The Stockholder Representative may resign at any time, and may be removed for any reason or no reason by the vote or written consent of a majority in interest of the Priority Preferred Stockholders according to each Priority Preferred Stockholder's Pro Rata Share of the Closing Merger Consideration (the "**Majority Holders**"); *provided, however*, in no event shall the Stockholder Representative be removed without the Majority Holders having first appointed a new Stockholder Representative who shall assume such duties immediately upon the removal of the Stockholder Representative. In the event of the death, incapacity, resignation or removal of the Stockholder Representative, a new Stockholder Representative shall be appointed by the vote or written consent of the Majority Holders. Notice of such vote or a copy of the written consent appointing such new Stockholder Representative shall be sent to Parent, such appointment to be effective upon the later of the date indicated in such consent or the date such notice is received by Parent; *provided*, that until such notice is received, Parent and the Surviving Corporation shall be entitled to rely on the decisions and actions of the prior Stockholder Representative as described in **Section 8.01(a)** above.

(l) The Stockholder Representative shall not be liable to the Priority Preferred Stockholders for actions taken or omitted in connection with this Agreement, the Escrow Agreement or the Distribution Agent Agreement, except to the extent such actions shall have been determined by a court of competent jurisdiction to have constituted gross negligence or involved fraud, willful misconduct or bad faith (it being understood that any act done or omitted pursuant to the advice of counsel, accountants and other professionals and experts retained by the Stockholder Representative shall be conclusive evidence of good faith). The Priority Preferred Stockholders shall indemnify, defend and hold harmless the Stockholder Representative from and against any and all losses, liabilities, claims, actions, damages, penalties, fines, forfeitures, actions, fees, costs and expenses ("**Representative Losses**"), including reasonable attorneys' fees and disbursements, arising out of or in connection with the Stockholder Representative's execution and performance of this Agreement, the Escrow Agreement and the Distribution Agent Agreement, in each case as such Representative Loss is suffered or incurred; *provided*, that in the event it is finally adjudicated that a Representative Loss was primarily caused by the gross negligence, fraud, willful misconduct or bad faith of the Stockholder Representative, the Stockholder Representative shall reimburse the Priority Preferred Stockholders the amount of such indemnified Representative Loss attributable to such gross negligence, fraud, willful misconduct or bad faith. If not paid directly to the Stockholder Representative by the Priority Preferred Stockholders, any such Representative Losses may be recovered by the Stockholder Representative from (i) the funds in the Stockholder Representative Expense Fund, (ii) the amounts in the Indemnification Escrow Fund or the Integration Cost Escrow Fund, in each case, at such time, if at all, as remaining amounts would otherwise be distributable to the Priority Preferred Stockholders therefrom in accordance with the terms hereof; *provided*, *that*, while this **Section 8.01(c)** allows the Stockholder Representative to be paid from the Stockholder Representative Expense Fund, the Indemnity Escrow Fund and the Integration Cost Escrow Fund, this does not relieve the Priority Preferred Stockholders from their obligation to promptly pay such Representative Losses as they are suffered or incurred, nor does it prevent the Stockholder Representative from seeking any remedies available to it at law or otherwise. In no event will the Stockholder Representative be required to advance its own funds on behalf of the Shareholders or otherwise. Any restrictions or limitations on indemnity contained elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Stockholder Representative in this paragraph. The foregoing indemnities will survive the resignation or removal of the Stockholder Representative or the termination of this Agreement. The Priority Preferred Stockholders will not receive any interest or earnings on the Stockholder Representative Expense Fund and irrevocably transfer and assign to the Stockholder Representative any ownership right that they may otherwise have had in any such interest or earnings. The Stockholder Representative will not be liable for any loss of principal of the Stockholder Representative Expense Fund other than as a result of its gross negligence or willful misconduct. The Stockholder Representative will hold these funds separate from its corporate funds, will not use these funds for its operating expenses or any other corporate purposes and will not voluntarily make these funds available to its creditors in the event of bankruptcy. For tax purposes, the Stockholder Representative Expense Fund

will be treated as having been received and voluntarily set aside by the Priority Preferred Stockholders at the time of Closing. The Stockholder Representative Expense Fund shall be retained by the Stockholder Representative until the eighteen (18) month anniversary of the Closing Date at which time the Stockholder Representative shall pay any amounts remaining in the Stockholder Representative Expense Fund to the Distribution Agent for further payment to the Priority Preferred Stockholders in accordance with their Pro Rata Shares of any such amount; *provided*, that the Stockholder Representative may, in its sole and reasonable discretion, retain all or any portion of the Stockholder Representative Expense Fund for such longer period as is reasonable necessary to satisfy its obligations hereunder (and shall thereafter pay any amounts remaining in the Stockholder Representative Expense Fund to the Distribution Agent for further payment to the Priority Preferred Stockholders in accordance with their Pro Rata Shares of any such amount).

Section 8.02 Expenses.

Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expense.

Section 8.03 Notices.

All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 8.03**):

If to the Company:	DFine, Inc. 3047 Orchard Parkway San Jose, California 95134 Fax: 408-689-9644 Attn: Greg Barrett
with a copy (which shall not constitute notice) to:	Morrison & Foerster LLP 755 Page Mill Road Palo Alto, California 94304 Fax: 650-251-3781 Attn: Timothy J. Harris
If to Parent, Merger Sub or the Surviving Corporation:	Merit Medical Systems, Inc. 1600 West Merit Parkway South Jordan, Utah 84095 Fax: 801-253-1600 Attn: Fred P. Lampropoulos, Chairman and CEO Attn: Brian G. Lloyd, Chief Legal Officer
with a copy (which shall not constitute notice) to:	Parr Brown Gee & Loveless, PC 101 S. 200 E. Salt Lake City, Utah 84111 Fax: 801-532-7750 Attn: Bryan T. Allen
If to the Stockholder Representative:	Shareholder Representative Services LLC 1614 15th Street, Suite 200 Denver, Colorado 80202 Email: deals@srsacquiom.com Fax: 303-623-0294 Attn: Managing Director
with a copy (which shall not constitute notice) to:	Morrison & Foerster LLP 755 Page Mill Road Palo Alto, California 94304 Fax: 650-251-3781 Attn: Timothy J. Harris

Section 8.04 Interpretation.

For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 8.05 Headings.

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8.06 Severability.

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 8.07 Entire Agreement.

This Agreement, the Ancillary Documents and the Exclusivity Fee Cancellation Agreement constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents (but not, for the avoidance of doubt, the Exclusivity Fee Cancellation Agreement), the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 8.08 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign its rights or obligations hereunder without the prior written consent of Parent on the one hand and the Stockholder Representative on the other; provided, that, this Agreement may be assigned by Parent to any of its Affiliates or to any Person acquiring a material portion of the assets, business or securities of Parent, whether by merger, consolidation, sale of assets or securities or otherwise.

Section 8.09 No Third-party Beneficiaries.

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, except as provided in Section 5.03 and Article VII.

Section 8.10 Amendment and Modification; Waiver.

This Agreement may only be amended, modified or supplemented by an agreement in writing signed by Parent and the Stockholder Representative; provided, however, there shall be no amendment or waiver that, pursuant to applicable Law, requires further approval of the Stockholders (or any subset thereof), without the receipt of such further approvals. Any failure of Parent or the Surviving Corporation, on the one hand, or the Priority Preferred Stockholders or the Stockholder Representative, on the other hand, to comply with any obligation, covenant, agreement or condition herein may be waived by Parent (with respect to any failure by the Priority Preferred Stockholders or the Stockholder Representative) or by the Stockholder Representative (with respect to any failure by Parent or the Surviving Corporation), respectively, only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 8.11 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) Except for provisions necessarily governed by the DGCL, this Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY SHALL BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF NEW YORK OR THE COURTS OF THE STATE OF NEW YORK, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE ANCILLARY DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **Section 8.11(c)**.

Section 8.12 Specific Performance.

The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof to prevent any breaches or threatened breaches of this Agreement, in addition to any other remedy to which they are entitled at law or in equity. The parties hereto agree not to assert that a remedy of specific performance or other equitable relief is unenforceable, invalid, contrary to law or inequitable for any reason, and not to assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law. The parties hereto acknowledge and agree that any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 8.12 shall not be required to provide any bond or other security in connection with any such order or injunction. Notwithstanding anything herein to the contrary, in no event shall this **Section 8.12** be used, alone or together with any other provision of this Agreement, to require any party to remedy any breach of any representation or warranty of such party contained herein.

Section 8.13 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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

DFine, Inc.

By: /s/ Greg Barrett

Name: Greg Barrett
Title: Chief Executive Officer

Merit Medical Systems, Inc.

By: /s/ Fred P. Lampropoulos

Name: Fred P. Lampropoulos
Title: Chief Executive Officer

MMS Transaction Co.

By: /s/ Fred P. Lampropoulos

Name: Fred P. Lampropoulos
Title: Chief Executive Officer

Shareholder Representative Services LLC, solely in its capacity as the Stockholder Representative

By_____
Name:
Title:

The undersigned is executing and delivering this counterpart signature page to the **Agreement and Plan of Merger,** dated as of July 6, 2016, by and among Merit Medical Systems, Inc., MMS Transaction Co., DFine, Inc. the Priority Preferred Stockholders and Shareholder Representative Services LLC (the "**Merger Agreement**").

By executing and delivering this counterpart signature page, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the terms and provisions of **Article VII** and **Article VIII** of the Merger Agreement.

Accordingly, the undersigned has executed and delivered this counterpart signature page to the Merger Agreement as of the 5th day of July 2016.

Name:_____

Signature:_____

Certain portions of this exhibit have been omitted pursuant to Rule 24b-2 and are subject to a confidential treatment request. Copies of this exhibit containing the omitted information have been filed separately with the Securities and Exchange Commission. The omitted portions of this document are marked with a *.**

INTEGRATION COST SCHEDULE

Section 2.18(a)(i) – Termination of Employment:

"the reasonable out-of-pocket expenses incurred in connection with terminating (or continuing until such time as all waiting periods under the WARN Act or other applicable Law have expired, including any requirements related to any work council, labor organization or Governmental Authority) the employment of all employees of the Acquired Companies who are set forth on **Section 2.18(a)(i)** of the Integration Cost Schedule (including the payment of all accrued but unpaid wages and accrued but untaken paid time off, and the payment of severance required by Law or otherwise consistent with the written policies, agreements or plans of the Acquired Companies) and any amounts paid as severance to the Key Employees pursuant to their employment agreements"

***

Section 2.18(a)(ii) – Leased Real Property[1]:

"the reasonable out-of-pocket expenses incurred in connection with terminating or subleasing all Leased Real Property, less any amounts received or saved in connection with subleasing any such Leased Real Property, as contemplated by **Section 2.18(a)(ii)** of the Integration Cost Schedule"

***

Section 2.18(a)(iii) – Termination of Third Party Contracts:

"the reasonable out-of-pocket expenses incurred in connection with winding down or terminating the Company's third party contracts set forth on and as contemplated by **Section 2.18(a)(iii)** of the Integration Cost Schedule"

_____

[1] Leased Real Property Estimated Costs include amounts related to, exclusively, Rent Payments, Estimated CAM, Property Tax, and Property & Casualty Insurance.

***

Section 2.18(a)(iv) – Winding Down:

"the other reasonable out-of-pocket restructuring and integration costs (not to exceed $1,000,000 in the aggregate) associated with the winding down of the Company's operations as contemplated by **Section 2.18(a)(iv)** of the Integration Cost Schedule"

***

Section 2.18(a)(iv) – Winding Down:

"the other reasonable out-of-pocket restructuring and integration costs (not to exceed $1,000,000 in the aggregate) associated with the winding down of the Company's operations as contemplated by **Section 2.18(a)(iv)** of the Integration Cost Schedule"

***

TOTAL INTEGRATION COSTS

***

Exhibit A - Employee Bonus Plan

DFINE, Inc.

2016 CHANGE OF CONTROL Incentive Plan

1. Purposes.

(a) The purpose of this Plan is to provide a means by which certain Service Providers of DFine, Inc. (the "**Company**") may (i) be rewarded for the successful completion of a Change of Control transaction and (ii) be given an opportunity to participate in the proceeds of such a Change of Control transaction.

(b) The Company, by means of the Plan, seeks to retain the services of certain Service Providers of the Company and to provide incentives for such persons to exert maximum efforts for the success of the Company.

(c) The Board has determined that the adoption of the Plan is in the best interest of the Company and its stockholders.

2. Definitions.

(a) "**Bonus Pool**" means the fixed amount of one million one hundred thousand dollars ($1,100,000) of the proceeds payable by an acquirer in a Change of Control.

(b) "**Administrator**" means the Company's Board of Directors.

(c) "**Board**" means the Company's Board of Directors.

(d) "**Bonus Amount**" has the meaning ascribed to it in Section 5 of the Plan.

(e) "**Change of Control**" means

(i) a Liquidation Event as defined in the Company's Amended and Restated Certificate of Incorporation in effect on the date hereof, as may be amended from time to time;

(ii) notwithstanding the foregoing,

(1) a transaction that does not constitute a change in control event under Treasury Regulation Section 1.409A-3(i)(5)(v) or Treasury Regulation Section 1.409A-3(i)(5)(vii) shall not be considered a Change of Control for purposes of this Plan and

(2) a transaction shall not constitute a Change of Control if: (i) its sole purpose is to change the state of the Company's incorporation; or (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(f) "**Closing**" means the consummation of a transaction constituting a Change of Control.

(g) "**Closing Date**" means the date of the Closing.

(h) "**Code**" means the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code herein shall be a reference to any successor or amended section of the Code.

(i) "**Company**" means DFine, Inc., a Delaware corporation and any successor of such corporation.

(j) "**Firm**" has the meaning ascribed to it in Section 6 of the Plan.

(k) "**Participant**" means any Service Provider who is designated by the Administrator from time to time as a Participant pursuant to a Participation Agreement provided to them by the Administrator. An individual shall cease being a Participant at such time as such individual ceases to be a Service Provider.

(l) "**Parent**" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code, of the Company.

(m) "**Participation Agreement**" means an agreement entered into between the Company and a Participant indicating the individual's designation as a Participant and specifying such individual's Bonus Amount. The form of Participation Agreement is attached as Exhibit A. The Board may alter the form or content of the Participation Agreement at any time; provided, however, that no executed Participation Agreement may be modified in a manner adverse to the Participant without the Participant's consent.

(n) "**Payment**" has the meaning ascribed to it in Section 6 of the Plan.

(o) "**Plan**" means this DFine, Inc. 2016 Change of Control Incentive Plan.

(p) "**Section 409A**" has the meaning ascribed to it in Section 10 of the Plan.

(q) "**Service Provider**" means an individual that, at any specified time, is then currently providing services to the Company (or any Parent or Subsidiary) in any capacity as an employee, consultant (pursuant to a written consulting agreement then in effect), independent contractor (pursuant to a written independent contractor agreement then in effect) or member of the Board or any combination of the foregoing. An individual shall cease being a Service Provider at such time as such individual no longer provides services to the Company (or any Parent or Subsidiary) in any capacity as an employee, consultant (pursuant to a written consulting agreement then in effect),

independent contractor (pursuant to a written independent contractor agreement then in effect) or member of the Board.

(r) "**Subsidiary**" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code, of the Company.

3. Administration.

(a) This Plan shall be administered by the Administrator, whose actions shall be final and binding on all persons, including Service Providers. The Administrator shall have the sole discretionary authority to construe and interpret the terms of the Plan. The Administrator's determination with regard to any provision of the Plan shall be conclusive and binding on all Participants.

(b) The Administrator, in good faith and at its sole discretion, shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time which Service Providers shall be designated as Participants entitled to participate in the Plan and the terms under which they will be entitled to participate (subject to the terms of the Plan).

(ii) To determine, consistent with Section 2(e), whether or not a transaction or related series of transactions constitutes a Change of Control.

(iii) To determine eligibility for benefits and to determine bonus amounts available under the Plan.

(iv) To establish, change and adjust, in its sole discretion but subject to the last sentence of Section 2(m), the Bonus Amount for each Participant.

Notwithstanding the foregoing, the Administrator shall not have the authority to, and may not execute and deliver any Participation Agreement(s) that would cause, or take any action that would otherwise result in, the aggregate Bonus Amounts of all Participants to exceed the Bonus Pool at any time.

(c) The Administrator may delegate some or all of its powers and responsibilities under the Plan, with the Board's consent, to one or more officers of the Company, in which case references herein to the "Administrator" shall also be deemed to refer to such delegated person(s).

(d) No member of the Board or any person acting in the capacity of Administrator will be liable for any action or determination made by the Administrator with respect to the Plan or any distribution paid under the Plan. All expenses and liabilities that the Administrator incurs in connection with the administration of this Plan shall be borne by the Company or its successor. No members of the Board or person acting in the capacity of Administrator shall be personally liable for any action, determination or interpretation made in good faith with respect to this Plan or any distribution paid hereunder, and all members of the Board and each person acting in the capacity of Administrator shall be fully indemnified and held harmless by the Company or its successor in respect of any such action, determination or interpretation.

4. Eligibility.

Service Providers will only become "Participants" in the Plan by executing a Participation Agreement provided to them by the Administrator. Other than any Service Provider who ceases to be a Service Provider pursuant to a written agreement or instrument (including but not limited to a letter or resignation, a notice of termination or a severance agreement) terminating such individual's service to the Company subject to, conditioned upon and effective at or immediately prior to the Closing (such individual, a "**Transition Service Provider**"), a Service Provider will cease to be a Participant at such time as he or she ceases to be a Service Provider for any reason at any time prior to the Closing. Any Transition Service Provider shall be deemed to be a Service Provider and Participant at the Closing for purposes of this Plan. Only Participants who are Service Providers at the Closing may receive payments pursuant to the Plan.

5. Allocation of Bonus Pool.

(a) The allocation of the Bonus Pool to individuals designated as Participants shall be set forth in writing from time to time as determined by the Administrator and specified in the applicable Participant's Participation Agreement. Each Participant's payment under the Plan (his or her "**Bonus Amount**") will be the amount set forth in such Participant's Participation Agreement, as such amount may be modified pursuant to the terms of the Plan. The aggregate of the Bonus Amounts set forth in the Participation Agreements with all Participants may not exceed the Bonus Pool at any time.

(b) If a former Participant ceases to be a Participant at any time prior to the Closing, such former Participant's Bonus Amount shall be forfeited and be available for reallocation and distribution under this Plan at or prior to the Closing as determined by the Administrator or pursuant to Section 5(c).

(c) In the event that the sum of the Bonus Amounts of all Participants at the Closing is less than the amount of the Bonus Pool, then the amount by which the Bonus Pool exceeds such sum (the "**Unallocated Portion**")

shall be allocated among all Participants at the Closing by way of ratably increasing the Bonus Amount of each such Participant in proportion to such Participants' Bonus Amount immediately prior to such allocation of the Unallocated Portion, so that after such allocation of the Unallocated Portion, the sum of the Bonus Amounts of all Participants at the Closing is equal to the Bonus Pool.

6. Distributions.

(a) If the conditions for distribution set forth in the Plan and a Participant's Participation Agreement are satisfied, then on or after the Closing Date, each Participant shall be entitled to receive from the Company his or her Bonus Amount in one distribution at Closing.

(b) The Bonus Amounts shall be distributed to Participants as soon as practicable after the Closing Date.

(c) Notwithstanding anything to the contrary in the Plan, in the event that the benefits provided for in this Plan, when taken together with any other benefits otherwise payable to a Participant (such benefits, collectively, the "**Payments**") (1) constitute "parachute payments" within the meaning of Section 280G of the Code and (2) but for this Section 6(c), would be subject to the excise tax imposed by Section 4999 of the Code, then the Participant's Payments will be reduced and delivered as to such lesser extent which would result in no portion of the Payments being subject to excise tax under Section 4999 of the Code (the "**Excise Tax**"). Unless the Company and the Participant otherwise agree in writing, any determination required under this Section will be made in writing by a nationally or regionally recognized certified public accounting firm selected by the Company or such other person or entity to which the Company and the Participant mutually agree (the "**Firm**"), whose determination will be conclusive and binding upon the Participant and the Company for all purposes. If a reduction in payments or benefits constituting "parachute payments" is necessary so that no portion of the Payments is subject to the Excise Tax, the reduction shall occur in the following order: (1) reduction of cash payments under this Plan; (2) reduction of cash payments constituting severance payable upon termination of employment; (3) reduction of cash payments pursuant to other benefits paid or provided to the Participant in connection with or as a result of a Change of Control; and (4) acceleration of equity awards. In the event that acceleration of vesting of equity awards is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant for the Participant's equity awards. If two or more equity awards are granted on the same date, each award will be reduced on a pro-rata basis. In no event shall the Participant have any discretion with respect to the ordering of reductions in payments or benefits. In the event of any reduction in the payment of any Bonus Amount to a Participant under the Plan as a result of this Section 6(c), the amount of such reduction shall be reallocated among all other Participants at the time of such reduction by way of ratably increasing the Bonus Amounts of each such other Participant in proportion to such other Participants' Bonus Amounts, subject to the limitations of this Section 6(c); in the event that any portion of any Bonus Amount remains unallocated after the application of this sentence to each reduction in Bonus Amounts pursuant to this Section 6(c), such unallocated portion shall not be payable under this Plan and the Bonus Pool shall be reduced by such unallocated portion.

For purposes of making the calculations required by this Section, the Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Participant will furnish to the Firm such information and documents as the Firm may reasonably request in order to make a determination under this Section. The Company will bear all costs the Firm may reasonably incur in connection with any calculations contemplated by this Section. Any good faith determinations of the Firm made hereunder shall be final, binding and conclusive upon the Company and the Participant.

Notwithstanding the foregoing, to the extent the Company submits any portion of the Payments payable to such Participant to the Company's stockholders for approval in accordance with Treasury Reg. Section 1.280G-1 Q&A 7, the foregoing provisions shall not apply following such submission and the portion of the Payments will be treated in accordance with the results of such vote, except that any reduction in, or waiver of, any portion of the Payments required by the results of such vote will be applied without any application of discretion by the Participant and in the order prescribed by this Section 6(c).

7. Amendment or Termination of the Plan.

(a) The Board may, at any time prior to the Closing, amend the Plan; provided, however, that in no event may any amendment unilaterally impair the rights of Participants (including, without limitation, reducing the Bonus Amount of any Participant) without such Participant's written consent except as may be required by applicable law or as necessary to correct an administrative error. This Plan shall be assumed by any successor to or acquirer of the Company to the extent that benefits remain payable under this Plan.

(b) The Plan shall automatically terminate upon the completion of all payments under the terms of the Plan. The Plan (including any obligation by the Company to make payments under all then-outstanding Participation Agreements) shall automatically terminate upon earlier to occur of any of the following events if such event occurs prior to the Closing: (i) the closing date of a recapitalization of the Company that results in the elimination of the existing liquidation preferences with respect to all the outstanding shares of the Company's preferred stock, (ii) the closing date of the Company's initial public offering of its common stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended; or (iii) December 31, 2016.

8. No Equity Interest.

Neither the Plan nor any distribution hereunder creates or conveys any equity or ownership interest in the Company or any rights commonly associated with such interests, including, without limitation, the right to vote on any matters put before the stockholders of the Company.

9. No Guarantee of Future Service.

Neither the designation of a Service Provider as a Participant nor the execution of a Participation Agreement shall provide any guarantee or promise of continued service of the Participant with the Company (or any Parent or Subsidiary), and the Company (or any Parent or Subsidiary employing a Participant) retains the right to terminate the employment or service of any Service Provider at any time, with or without cause, for any reason or no reason, except as may be restricted by law or contract.

10. Tax Withholding.

The Company shall withhold or cause to be withheld from any distributions under the Plan any amount required to satisfy the Company's income, employment and other tax withholding obligations under federal, state and other applicable law. By executing a Participation Agreement, Participant acknowledges that the Company cannot and has not guaranteed that the Internal Revenue Service will determine that the Plan benefits are not deferred compensation within the meaning of Section 409A of the Code and the regulations and guidance thereunder ("**Section 409A**"). Each Service Provider agrees that if the Internal Revenue Service determines that the Plan benefits are deferred compensation, Participant shall be solely responsible for Participant's costs related to such a determination, if any.

11. Funding.

The Plan shall be funded out of the Company's general assets. No provision of the Plan shall require the Company, for the purpose of satisfying any obligations under the Plan, to purchase assets or place any assets in a trust or other entity to which contributions are made or otherwise to segregate any assets, nor shall the Company maintain separate bank accounts, books, records or other evidence of the existence of a segregated or separately maintained or administered fund for such purposes. Participants shall have no rights under the Plan other than as unsecured general creditors of the Company.

12. Bonus Plan.

The Plan is intended to be a "bonus program" as defined under U.S. Department of Labor Regulation 2510.3-2(c) and shall be construed and administered in accordance with such intention.

13. Nonassignability.

The Company may not assign, sell, transfer, delegate or otherwise dispose of any rights or obligations under any Participation Agreement unless the Board reasonably believes that the assignee or transferee has sufficient resources to satisfy the obligations under such Participation Agreement. No Participant may assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any rights or obligations under any Participation Agreement without the Administrator's prior written consent other than by will, by the laws of descent and distribution or pursuant to a domestic relations order.

14. Code Section 409A.

The Company and each Participant will work together in good faith to consider either (i) amendments to the Plan; or (ii) revisions to the Plan with respect to the payment of any bonus amounts, which are necessary or appropriate to avoid imposition of any additional tax or income recognition prior to the actual payment to the Participant under Section 409A. It is intended that this Plan is exempt from or comply with Section 409A to the extent applicable.

15. Choice of Law.

All questions concerning the construction, validation and interpretation of the Plan will be governed by the law of the State of California without regard to its conflict of laws provisions.

16. Headings.

The headings in the Plan are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

17. Successors and Assigns.

Subject to Section 13, the Plan shall be binding upon and shall inure to the benefit of the Company and its successors and assigns, and upon a Change of Control the Company shall use commercially reasonable efforts to cause the acquirer to assume the Company's obligations and liabilities hereunder. Subject to Section 13, each Participation Agreement shall be binding upon and shall inure to the benefit of the Participant and his or her heirs, executors, administrators or permitted successors or assigns.

18. Notices.

Any notice required or permitted hereunder or any Participation Agreement shall be in writing, shall reference the Plan and/or such Participation Agreement and shall be deemed to be properly given: (i) when delivered personally; (ii) when sent by facsimile; (iii) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) the next business day after deposit with an overnight private industry express courier or transmission via electronic mail to the electronic mail address of the Participant set forth in the Participation Agreement. All notices shall be sent to the address set forth below or to such other address as may be designated by the Company or a Participant, respectively, by giving written notice to the Participant or Company, respectively, pursuant to this Section.

If to the Company:

DFine, Inc.
3047 Orchard Parkway
San Jose, CA 95134
Attn: Chief Executive Officer

If to a Participant:

to the address specified on the signature page of the Participation Agreement

[Signature Page Follows]

This DFine, Inc. 2016 Change of Control Incentive Plan is executed by a duly authorized officer of the Company after adoption of the Plan by the Board, effective as of July 5, 2016.

DFine, Inc.

By: _____ Name: _____
Title: _____

EXHIBIT A

DFINE, Inc.

2016 CHANGE OF CONTROL Incentive Plan

PARTICIPATION AGREEMENT

To: _____

DFine, Inc. (the "**Company**") has designated you as a "Participant" who is eligible to participate in the DFine, Inc. 2016 Change of Control Incentive Plan (the "**Plan**"). By signing and returning this Participation Agreement, you will become a "Participant" in the Plan. Your participation in the Plan is contingent upon your continued employment with or service as service provider to the Company up to the date of a "Change of Control" (as defined in the Plan) and your agreement to the terms of the Plan and this Participation Agreement. The terms of the Plan are incorporated by reference and, in the case of any conflict between this Participation Agreement and the terms of the Plan, the terms of the Plan will govern. Defined terms capitalized but not defined in this Participation Agreement have the meanings assigned to them in the Plan.

For purposes of the Plan, your "Bonus Amount" is $_____.

As noted in the Plan, Bonus Amounts may only be earned if there is a Closing of a Change of Control transaction. Whether you earn the right to receive your potential Bonus Amount is governed by the Plan. You hereby acknowledge that the Company is an "at will" employer. That means that you and the Company have the right to terminate your employment or consulting relationship at any time, with or without advance notice, and with or without cause. Nothing in this Participation Agreement changes the "at will" nature of your employment or consultancy.

In consideration of your designation as a Participant and as a material inducement to the Company entering into this Participation Agreement and providing you with the opportunity to receive the Bonus Amount, which you acknowledge exceeds any amounts to which you otherwise may be entitled under the Company's policies and practices or applicable law, you and your representatives completely release from, and agree to not file, cause to be filed or pursue against, the Company, its affiliated, related, parent or subsidiary companies, and its present and former directors, officers, stockholders and employees (the "**Released Parties**") all claims, complaints, grievances or charges of any kind, known and unknown, which you may now have or have ever had against any of them, or arising out of your relationship with any of them, including all claims for compensation and bonuses, attorneys' fees, and all claims arising from your employment with the Company or the termination of your employment, whether based on contract, tort, statute, local ordinance, regulation or any comparable law in any jurisdiction ("**Released Claims**"). By way of example and not limitation, Released Claims shall include any claims arising under Title VII of the Civil

Rights Act of 1964, the federal Worker Adjustment Retraining Notification Act ("**WARN Act**") under 29 U.S.C. § 2102 *et seq.*, the California WARN Act, California Labor Code § 1400 *et seq*., the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the California Fair Employment and Housing Act (or any comparable law in any jurisdiction). You represent that you have not filed or initiated or caused to be filed or initiated any lawsuits, claims, complaints, administrative grievances or charges against any Released Party in any court or with any government agency. You expressly covenant and warrant that you have not assigned or transferred to any person or entity any portion of any claims that are waived, released and/or discharged herein.

You also agree that because this release specifically covers known and unknown claims, you waive your rights under Section 1542 of the California Civil Code or any other comparable statute of any jurisdiction, which states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT TO THE DEBTOR.

Notwithstanding the foregoing, you and the Company acknowledge and agree that you are not waiving or being required to waive any right that cannot be waived as a matter of law, including the right to file a charge with or participate in an investigation by a governmental administrative agency; provided, however, that you hereby disclaim and waive any right to share or participate in any monetary award resulting from the prosecution of such charge or investigation. You further agree that, to the extent permissible by law, you will provide the Company at least five (5) days prior written notice of any such charge or investigation.

You and the Company agree that this Participation Agreement is not an admission of guilt or liability on the part of you or the Company under any federal, state or local law, whether statutory or common law. Liability for any and all claims is expressly denied by you and the Company.

You agree that you will keep information about the Plan confidential both within and outside of the Company except to the extent necessary to enforce your rights hereunder or as otherwise required under applicable law. This information includes, but is not limited to, your participation levels and benefits and confidential information about employees, the Company's operations, strategies and management, information related to the Plan and non-public information related to the Change of Control transaction ("**Confidential Information**"). You understand and agree that you will not reveal any Confidential Information without the express written consent of the Company except to the extent necessary to enforce your rights hereunder or as otherwise required under applicable law, provided, however, that you may disclose Confidential Information to your personal lawyer or tax and financial advisors for the purposes of personal legal, tax, financial and estate planning advice. The Company has the right to cancel any Bonus Amounts otherwise payable to you under the Plan following any unauthorized disclosure of any Confidential Information by you.

You understand and agree that discussing, revealing or in any way communicating the Confidential Information to a non-authorized person or entity is grounds for immediate termination of employment or other service relationship.

You acknowledge and agree that payments under the Plan shall be subject to all applicable federal, state and local withholding taxes that the Company reasonably determines should be withheld with respect to such payments.

By their signatures below, you and the Company agree that the Plan and any Bonus Amounts are governed by this Participation Agreement and by the provisions (specifically including, but not limited to, the conditions precedent to receiving a distribution under the Plan and the amendment provisions) of the Plan, a copy of which is attached to and made a part of this document. You acknowledge receipt of a copy of the Plan, represent that you have read and are familiar with its provisions and acknowledge that decisions and determinations by the Administrator under the Plan shall be final and binding on you.

COMPANY:

DFine, Inc.

By: _____
Name: _____
Title: _____

Accepted and Agreed:

PARTICIPANT:

_____
(Signature of Participant)

Name: _____
Address: _____
_____
_____
E-Mail: _____

ATTACHMENT: DFine, Inc. 2016 Change of Control Incentive Plan

Exhibit B - Form of Equity Rights Termination Agreement

AGREED FORM

WARRANT TERMINATION AGREEMENT

This Warrant Termination Agreement ("***Agreement***") is dated as of , 2016, and entered into by and between DFine, Inc., a Delaware corporation (the "***Company***") and [Warrantholder] ("***Holder***").

BACKGROUND

A. The Holder is the holder of that certain Warrant dated , with an expiration date of (the "***Warrant Expiration Date***"), to purchase shares of Series [*] Preferred Stock of the Company ("***Series [*] Preferred Stock***") (the "***Warrant***").

B. The Company will be entering into an Agreement and Plan of Merger with a certain acquirer ("***Parent***") and certain other parties thereto (the "***Merger Agreement***"), pursuant to which a wholly-owned subsidiary of Parent will merge with and into the Company with the Company continuing as the surviving corporation in the merger and as a wholly-owned subsidiary of Parent (the "***Merger***"). Parent has refused to assume any outstanding warrants, including the Warrants, in connection with the Merger.

C. The exercise price of the Warrants is $ per share of Series [*] Preferred Stock. The estimated consideration payable per share of Series [*] Preferred Stock in connection with the Merger is
$ per share.

D. The Company desires to have Holder acknowledge and agree that Holder waives its right to any further notice of the Merger pursuant to Section of the Warrants and to terminate the Warrants effective and contingent upon the consummation of the Merger.

AGREEMENT

NOW, THEREFORE in consideration of the above recitals and the mutual covenants and conditions set forth herein, the Company and the Holder hereby agree and consent as follows:

1. Waiver of Notice and Materials. The Holder hereby waives any notice requirements which it may have pursuant to Section of the Warrants solely with respect to the Merger and the transactions contemplated by the Merger Agreement.

2. Termination of Warrants.

a. Holder agrees that, in the case of the Warrant, if the Merger is consummated and the effective time of the Merger occurs before the Warrant Expiration Date, then effective and contingent upon the consummation of the Merger, the Warrant shall be cancelled, terminated and of no further force and effect as of immediately prior to the effective time of the Merger. In the event that the Merger Agreement is not entered into by the Company or the terms of the Merger Agreement are modified or amended such that the estimated consideration per share that holders of Series [*] Preferred Stock will be entitled to receive in connection with the Merger is increased to be greater than $ per share of Series [*] Preferred Stock, this Agreement shall automatically terminate and be of no further force or effect and the Warrant shall remain in full force and effect pursuant to the terms thereof until the Warrant Expiration Date.

3. Miscellaneous.

a. This Agreement sets forth the entire understanding of the parties relating to the termination of the Warrants in connection with the Merger and supersedes all prior agreements, communications and understandings among or between the parties relating to such subject matter.

b. This Agreement may be waived or amended only in a written instrument signed by the Company and the Holder and shall be construed in accordance with, and governed in all respects by the laws of the State

of Delaware, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction.

c. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement, and such counterparts may be delivered by the parties electronically. Facsimile signatures shall be as effective as originals.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties hereto have executed this Warrant Termination Agreement as of the date first set forth above.

COMPANY: DFINE, INC.

By: _____
(Signature)

Name: _____
Rick Short

Title: Chief Executive Officer

[WARRANTHOLDER]

By: _____
(Signature)

Name: _____
(Print Name of Signatory)

Title: _____

Exhibit C - Escrow Agreement

ESCROW AGREEMENT

This Escrow Agreement, dated July 6, 2016 (this "Escrow Agreement"), is entered into by and among Merit Medical Systems, Inc., a Utah corporation ("Parent"), Shareholder Representative Services LLC, a Colorado limited liability company solely in its capacity as the representative of the Priority Preferred Stockholders ("Stockholder Representative", and together with Parent, the "Parties," and each individually, a "Party"), and Wells Fargo Bank, National Association, a national banking association organized under the laws of the United States, as escrow agent (the "Escrow Agent").

RECITALS

A. Parent, MMS Transaction Co., a Delaware corporation and a wholly-owned subsidiary of Parent ("**Merger Sub**"), DFine, Inc., a Delaware corporation (the "**Company**"), the Priority Preferred Stockholders and the Stockholder Representative have entered into an Agreement and Plan of Merger, dated as of even date herewith (the "Merger Agreement"), pursuant to which Merger Sub has agreed to merge with and into the Company, with the Company continuing as the Surviving Corporation. Capitalized terms used but not defined herein have the meanings set forth in the Merger Agreement.

B. Parent agrees to place in escrow certain funds and the Escrow Agent agrees to hold and distribute such funds in accordance with the terms of this Escrow Agreement.

C. The Parties acknowledge that the Escrow Agent is not a party to, is not bound by, and has no duties or obligations under, the Merger Agreement, that all references in this Escrow Agreement to the Merger Agreement are for convenience or for the purpose of establishing defined terms, and that the Escrow Agent shall have no implied duties beyond the express duties set forth in this Escrow Agreement.

D. Pursuant to the Merger Agreement, each of the Priority Preferred Stockholders appointed the Stockholder Representative as agent and attorney-in-fact for each such Priority Preferred Stockholder, with full power and authority to represent each Priority Preferred Stockholder with respect to all matters arising under this Escrow Agreement.

In consideration of the promises and agreements of the Parties and the Escrow Agent and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties and the Escrow Agent agree as follows:

ARTICLE 1
ESCROW DEPOSIT

Section 1.1. Deposit and Receipt of Escrow Property. At the Closing, Parent shall deliver to the Escrow Agent (i) $9,750,000 representing the Indemnification Escrow Amount, and (ii) $5,000,000 representing the Integration Cost Escrow Amount (the Indemnification Escrow Amount and the Integration Cost Escrow Amount, collectively, the "Escrow Property"). The Escrow Agent agrees to hold the Indemnification Escrow Amount and the Integration Cost Escrow Amount (together with any additional Escrow Property earned thereon) in separate accounts. The Escrow Property in the account into which the Indemnification Escrow Amount is deposited shall hereafter be referred to as the "Indemnification Escrow Fund" and the Escrow Property in the account into which the Integration Cost Escrow Amount is deposited shall hereafter be referred to as the "Integration Cost Escrow Fund". This Escrow Agreement shall not change or modify in any way the events or circumstances which give rise to the obligation to make any payments under the Merger Agreement, the conditions thereto or limitations thereon, but shall solely provide Parent Indemnitees security therefor.

Section 1.2. Investments.

(a) The Escrow Agent is authorized and directed to deposit, transfer, hold and invest the Escrow Property and any investment income thereon as set forth in Exhibit A hereto or as set forth in any subsequent written instruction signed by the Stockholder Representative. Any investment earnings and income on the Escrow Property shall become part of the Escrow Property, and shall be disbursed in accordance with Section 1.3, Section 1.5(a) or Section 1.6 of this Escrow Agreement.

(b) The Escrow Agent is hereby authorized and directed to sell or redeem any such investments as it deems necessary to make any payments or distributions required under this Escrow Agreement. The Escrow Agent shall have no responsibility or liability for any loss which may result from any investment or sale of investment made pursuant to this Escrow Agreement. The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Escrow Agreement, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or any such affiliate is acting as agent of the Escrow Agent or for any third person or dealing as principal for its own account. The Parties acknowledge that the Escrow Agent is not providing investment supervision, recommendations, or advice.

(c) The Parties agree that confirmations of permitted investments are not required to be issue by the Escrow Agent for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month. The Parties may obtain confirmations at no additional cost upon its written request.

Section 1.3. Disbursements. The Escrow Agent shall disburse the Escrow Property as follows:

(a) Payment of Post-Closing Adjustment. Pursuant to Section 2.16(d)(i) of the Merger Agreement, if the Post-Closing Adjustment is a negative number, the Stockholder Representative and Parent shall, within three (3) Business Days after the final determination of the Post-Closing Adjustment, provide Joint Direction (as defined in Section 1.3(d)) to the Escrow Agent to disburse to Parent from the Indemnification Escrow Fund, by wire transfer of immediately available funds, an amount equal to the absolute value of the Post-Closing Adjustment. Within two (2) Business Days following the Escrow Agent's receipt of such Joint Direction, the Escrow Agent shall deliver to Parent from the Indemnification Escrow Amount the positive amount of the Post-Closing Adjustment as set forth in such Joint Direction and pursuant to wire instructions delivered by Parent to the Escrow Agent.

(b) Indemnification Escrow Claims.

(i) If, at any time, and from time to time, on or before 5:00 p.m. MT on January 1, 2018, (the "Indemnification Release Date"), Parent determines that Parent or any Parent Indemnitee it is entitled to indemnification under Article VII of the Merger Agreement (an "Indemnification Claim"), Parent shall deliver a written notice (an "Indemnification Claim Notice") to the Stockholder Representative, with a copy to the Escrow Agent, which sets forth a description of such Indemnification Claim and the estimated amount (which may be updated from time to time), if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party (the "Indemnification Claim Amount").

(ii) If the Stockholder Representative gives written notice to Parent and the Escrow Agent disputing an Indemnification Escrow Claim (an "Objection Notice") within thirty (30) days of its receipt of the applicable Indemnification Claim Notice by Parent (the "Objection Period"), such Indemnification Claim will be paid as provided in Section 1.3(b)(iii) below. If no Objection Notice is delivered to the Escrow Agent and Parent prior to the end of the Objection Period, or if the Stockholder Representative acknowledges the validity of the Indemnification Claim by written notice to Parent and the Escrow Agent during the Objection Period, within two (2) Business Days following the earlier of (A) the end of the Objection Period or (B) the Escrow Agent's receipt of written notice by the Stockholder Representative acknowledging the validity of the Indemnification Claim Amount,

the Escrow Agent shall disburse to Parent from the Indemnification Escrow Amount the lesser of (x) the remaining Indemnification Escrow Amount or (y) the Indemnification Claim Amount.

(iii) If the Escrow Agent receives an Objection Notice during the Objection Period, the Escrow Agent shall, within two (2) Business Days of its receipt, distribute to Parent from the Indemnification Escrow Fund any amount that is not in dispute, and shall continue to hold and shall not distribute the remaining Indemnification Escrow Fund until receipt of (A) a Joint Direction directing the disposition or all of any portion of the amounts formerly disputed in the Objection Notice or (B) a copy of a final, non-appealable order of a court of competent jurisdiction together with a letter from counsel from the presenting party that the time to file an appeal has expired. The Escrow Agent shall be entitled to rely upon any such order and letter that it received from Parent or the Stockholder Representative.

(iv) Pending Claims. On the Indemnification Escrow Release Date, the Escrow Agent shall distribute all of the remaining funds in the Indemnification Escrow Amount, less the remaining Indemnification Claim Amount of all Indemnification Claims then pending and unpaid ("Pending Claims") as of the Indemnification Escrow Release Date. From time to time following the Indemnification Escrow Release Date, as Pending Claims are resolved in accordance with the Merger Agreement and this Escrow Agreement, the Escrow Agent shall either pay the Indemnification Claim in the manner described in Section 1.3(b)(iii) or distribute such amount to Citibank, N.A., as disbursing agent (or any successor thereto, the "Disbursing Agent") for further distribution to the Priority Preferred Stockholders in accordance with the Disbursing Agent Agreement.

(c) Distribution of Integration Cost Escrow Fund. Following resolution of the actual amount of Integration Costs in accordance with Section 2.18(c) of the Merger Agreement:

(i) If the Integration Costs do not exceed the Integration Cost Target, then Parent and the Stockholder Representative shall promptly, but in any event within three (3) Business Days of such determination, provide Joint Direction to the Escrow Agent to distribute (A) 50% of the Integration Cost Escrow Fund to the Surviving Corporation for payment to the participants in the Management Bonus Plan in accordance with the terms thereof, (B) to the Surviving Corporation the employer portion of Taxes (including amounts under FICA, Medicare or other Laws) owed with respect to the amounts payable pursuant to the preceding clause (A), and (C) the remaining Integration Cost Escrow Funds to the Disbursing Agent, for further distribution to the Priority Preferred Stockholders; or

(ii) If the Integration Costs exceed the Integration Cost Target, then Parent and the Stockholder Representative shall promptly, but in any event within three (3) Business Days of such determination, provide Joint Direction to the Escrow Agent to disburse (A) to Parent, solely from and only to the extent of the Integration Cost Escrow Fund, the amount of such excess, and (B) to the extent any amounts remain in the Integration Cost Escrow Fund, (1) 50% of the remaining Integration Cost Escrow Fund to Surviving Corporation for payment to the participants in the Management Bonus Plan in accordance with the terms thereof, (2) to Surviving Corporation, the employer portion of Taxes (including amounts under FICA, Medicare or other Laws) owed with respect to the amounts payable pursuant to the preceding clause (1), and (3) the remaining Integration Cost Escrow Fund to the Disbursing Agent, for further distribution to the Priority Preferred Stockholders.

Within two (2) business days following, but not including, the date that Escrow Agent receives an Integration Escrow Notice from Stockholder Representative and Parent, Escrow Agent shall disburse the Integration Escrow Amounts as provided in the Integration Escrow Notice.

(d) Joint Direction. Notwithstanding any other provision of this Agreement, the Escrow Agent shall promptly deliver all or any part of the Escrow Property in accordance with the terms of a Joint Direction. For the purpose of this Escrow Agreement, a "Joint Direction" means written instructions executed by Parent

and the Stockholder Representative directing the Escrow Agent to disburse all or a portion of the Escrow Property or to take or refrain from taking an action under this Escrow Agreement.

(e) Disbursing Agent. All distributions of Escrow Property made to the Disbursing Agent shall be made in accordance with the following wire instructions (or in accordance with any other wire instructions provided by the Stockholder Representative to the Escrow Agent from time to time), for further distribution to the Priority Preferred Stockholders in accordance with the terms of the Merger Agreement:

Bank	Account Name	Account Number	ABA/SWIFT
Citibank, N.A.	PBG Concentration Account	37432464	021000089/CITIUS33

Section 1.4. Security Procedure For Funds Transfers. The Escrow Agent shall confirm each funds transfer instruction received in the name of a Party by means of the security procedure selected by such Party and communicated to the Escrow Agent through a signed certificate in the form of Exhibit B-1 or Exhibit B-2 attached hereto, which upon receipt by the Escrow Agent shall become a part of this Escrow Agreement. Once delivered to the Escrow Agent, Exhibit B-1 or Exhibit B-2 may be revised or rescinded only by a writing signed by an authorized representative of the Party. Such revisions or rescissions shall be effective only after actual receipt and following such period of time as may be necessary to afford the Escrow Agent a reasonable opportunity to act on it. If a revised Exhibit B-1 or B-2 or a rescission of an existing Exhibit B-1 or B-2 is delivered to the Escrow Agent by an entity that is a successor-in-interest to such Party, such document shall be accompanied by additional documentation satisfactory to the Escrow Agent showing that such entity has succeeded to the rights and responsibilities of the Party under this Escrow Agreement.

The Parties understand that the Escrow Agent's inability to receive or confirm funds transfer instructions pursuant to the security procedure selected by such Party may result in a delay in accomplishing such funds transfer, and agree that the Escrow Agent shall not be liable for any loss caused by any such delay.

Section 1.5. Income Tax Allocation and Reporting.

(a) The Parties agree that, for tax reporting purposes, all interest and other income from investment of the Escrow Property shall, as of the end of each calendar year and to the extent required by the Internal Revenue Service, be reported as having been earned by Parent, whether or not such income was disbursed during such calendar year. Notwithstanding anything in this Escrow Agreement to the contrary, in connection with any distribution of Escrow Property pursuant to Section 1.3, the Escrow Agent shall calculate the amount of interest and other taxable income from investment of the Escrow Property being distributed as of such date and distribute 35% of such amount to Parent prior to making any further distribution of Escrow Property.

(b) For certain payments made pursuant to this Escrow Agreement, the Escrow Agent may be required to make a "reportable payment" or "withholdable payment" and in such cases the Escrow Agent shall have the duty to act as a payor or withholding agent, respectively, that is responsible for any tax withholding and reporting required under Chapters 3, 4, and 61 of the United States Internal Revenue Code of 1986, as amended (the "Code"). The Escrow Agent shall have the sole right to make the determination as to which payments are "reportable payments" or "withholdable payments." All parties to this Escrow Agreement shall provide an executed IRS Form W-9 or appropriate IRS Form W-8 (or, in each case, any successor form) to the Escrow Agent prior to the date hereof, and shall promptly update any such form to the extent such form becomes obsolete or inaccurate in any respect. The Escrow Agent shall have the right to request from any party to this Escrow Agreement, or any other person or entity entitled to payment hereunder, any additional forms, documentation or other information as may be reasonably necessary for the Escrow Agent to satisfy its reporting and withholding obligations under the Code. To the extent any such forms to be delivered under this Section 1.5(b) are not provided prior to the date hereof or by the time the related payment is required to be made or are determined by the Escrow Agent to be incomplete and/or inaccurate in any respect, the Escrow

Agent shall be entitled to withhold (without liability) a portion of any interest or other income earned on the investment of the Escrow Property or on any such payments hereunder to the extent withholding is required under Chapters 3, 4, or 61 of the Code, and shall have no obligation to gross up any such payment.

(c) To the extent that the Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the investment of the Escrow Property, the Escrow Agent shall satisfy such liability to the extent possible from the Escrow Property. Parent and the Stockholder Representative (solely on behalf of the Priority Preferred Stockholders and in its capacity as the Stockholder Representative, not in its individual capacity), jointly and severally, shall indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the Escrow Property and the investment thereof unless such tax, late payment, interest, penalty or other expense was directly caused by the gross negligence or willful misconduct of the Escrow Agent. The indemnification provided by this Section 1.5(c) is in addition to the indemnification provided in Section 3.1 and shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

(d) The Parties hereto acknowledge that, in order to help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person or corporation who opens an account and /or enters into a business relationship. The Parties hereby agree that they shall provide the Escrow Agent with such information as the Escrow Agent may request including, but not limited to, each Party's name, physical address, tax identification number and other information that will assist the Escrow Agent in identifying and verifying each Party's identity such as organizational documents, certificates of good standing, licenses to do business, or other pertinent identifying information.

Section 1.6. Termination. This Escrow Agreement shall terminate on the later of (i) January 30, 2018, or (ii) upon the disbursement of all of the Escrow Property in accordance with the terms of Section 1.3, including any interest and investment earnings thereon, except that the provisions of Sections 1.5(c), 3.1 and 3.2 hereof shall survive termination and the Escrow Agent is authorized and directed to disburse the Escrow Property in accordance with Section 1.3 of this Escrow Agreement.

ARTICLE 2
DUTIES OF THE ESCROW AGENT

Section 2.1. Scope of Responsibility. Notwithstanding any provision to the contrary, the Escrow Agent is obligated only to perform the duties specifically set forth in this Escrow Agreement, which shall be deemed purely ministerial in nature. Under no circumstance will the Escrow Agent be deemed to be a fiduciary to any Party or any other person under this Escrow Agreement. The Escrow Agent will not be responsible or liable for the failure of any Party to perform in accordance with this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Escrow Agreement, whether or not an original or a copy of such agreement has been provided to the Escrow Agent; and the Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any provision of any such agreement, instrument, or document. References in this Escrow Agreement to any other agreement, instrument, or document are for the convenience of the Parties, and the Escrow Agent has no duties or obligations with respect thereto. The Escrow Agent will not be responsible to determine or to make inquiry into any term, capitalized, or otherwise, not defined herein. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Escrow Agreement or any other agreement.

Section 2.2. Attorneys and Agents. The Escrow Agent shall be entitled to rely on and shall not be liable for any action taken or omitted to be taken by the Escrow Agent in accordance with the advice of counsel or other professionals retained or consulted by the Escrow Agent. The Escrow Agent shall be reimbursed as set forth in Section 3.1 for any and all compensation (fees, expenses and other costs) paid and/or reimbursed to

such counsel and/or professionals. The Escrow Agent may perform any and all of its duties through its agents, representatives, attorneys, custodians, and/or nominees. The Escrow Agent shall not be responsible for the negligence or misconduct of agents or attorneys appointed by it with reasonable care.

Section 2.3. Reliance. The Escrow Agent shall not be liable for any action taken or not taken by it in accordance with the direction or consent of the Parties or their respective agents, representatives, successors, or assigns. The Escrow Agent shall not be liable for acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person's or persons' authority. Concurrent with the execution of this Escrow Agreement, the Parties shall deliver to the Escrow Agent Exhibit B-1 and Exhibit B-2, which contain authorized signer designations in Part I thereof. The Parties represent and warrant that each person signing this Escrow Agreement are duly authorized and has legal capacity to execute and deliver this Escrow Agreement, along with each exhibit, agreement, document, and instrument to be executed and delivered by the Parties to this Escrow Agreement.

Section 2.4. Right Not Duty Undertaken. The permissive rights of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties.

Section 2.5. No Financial Obligation. No provision of this Escrow Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement.

ARTICLE 3
PROVISIONS CONCERNING THE ESCROW AGENT

Section 3.1. Indemnification. Parent and the Stockholder Representative (solely on behalf of the Priority Preferred Stockholders and in its capacity as the Stockholder Representative, not in its individual capacity), jointly and severally, shall indemnify, defend and hold harmless the Escrow Agent from and against any and all loss, liability, cost, damage and expense, including, without limitation, attorneys' fees and expenses or other professional fees and expenses which the Escrow Agent may suffer or incur by reason of any action, claim or proceeding brought against the Escrow Agent, arising out of or relating in any way to this Escrow Agreement or any transaction to which this Escrow Agreement relates, unless such loss, liability, cost, damage or expense shall have been finally adjudicated to have been directly caused by the willful misconduct or gross negligence of the Escrow Agent. The provisions of this Section 3.1 shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

Section 3.2. Limitation of Liability. the escrow agent SHALL NOT be liable, directly or indirectly, for any (i) damages, Losses or expenses arising out of the services provided hereunder, other than damages, losses or expenses which have been finally adjudicated to have DIRECTLY resulted from the escrow agent's gross negligence or willful misconduct, or (ii) special, Indirect, PUNITIVE, or consequential damages or LOSSES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), even if the escrow agent has been advised of the possibility of such LOSSES OR damages AND REGARDLESS OF THE FORM OF ACTION.

Section 3.3. Resignation or Removal. The Escrow Agent may resign by furnishing written notice of its resignation to the Parties, and the Parties may remove the Escrow Agent by furnishing to the Escrow Agent a joint written notice of its removal along with payment of all fees and expenses to which the Escrow Agent is entitled through the date of removal. Such resignation or removal, as the case may be, shall be effective thirty (30) calendar days after the delivery of such notice or upon the earlier appointment of a successor, and the Escrow Agent's sole responsibility thereafter shall be to safely keep the Escrow Property and to deliver the same to a successor escrow agent as shall be appointed by the Parties, as evidenced by a joint written notice filed with the Escrow Agent or in accordance with a court order. If the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) calendar days following the delivery of such notice of

resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Parties.

Section 3.4. Compensation. The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached hereto as Exhibit C, which compensation shall be paid from the Indemnification Escrow Fund, until such time as the Indemnification Escrow Fund has been distributed, after which the fee shall be paid by Parent. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any service not contemplated in this Escrow Agreement, or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement or the subject matter hereof, then the Escrow Agent shall be compensated for such extraordinary services and reimbursed for all costs and expenses, including reasonable attorneys' fees and expenses, occasioned by any such delay, controversy, litigation or event. If any amount due to the Escrow Agent hereunder is not paid within thirty (30) calendar days of the date due, the Escrow Agent in its sole discretion may charge interest on such amount up to the highest rate permitted by applicable law. The Escrow Agent shall have, and is hereby granted, a prior lien upon the Escrow Property with respect to its unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights, superior to the interests of any other persons or entities and is hereby granted the right to set off and deduct any unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights from the Escrow Property.

Section 3.5. Disagreements. If any conflict, disagreement or dispute arises between, among, or involving any of the parties hereto concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Escrow Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent may, at its option, retain the Escrow Property until the Escrow Agent (i) receives a final non-appealable order of a court of competent jurisdiction or a final non-appealable arbitration decision directing delivery of the Escrow Property, (ii) receives a written agreement executed by each of the parties involved in such disagreement or dispute directing delivery of the Escrow Property, in which event the Escrow Agent shall be authorized to disburse the Escrow Property in accordance with such final court order, arbitration decision, or agreement, or (iii) files an interpleader action in any court of competent jurisdiction, and upon the filing thereof, the Escrow Agent shall be relieved of all liability as to the Escrow Property and shall be entitled to recover attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action. Any such court order or arbitration decision shall be accompanied by a written instrument of the presenting Party certifying that such court order or arbitration decision is final, non-appealable and from a court of competent jurisdiction or from a competent arbitration panel, upon which instrument the Escrow Agent shall be entitled to conclusively rely without further investigation. The Escrow Agent shall be entitled to act on any such agreement, court order, or arbitration decision without further question, inquiry, or consent.

Section 3.6. Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

Section 3.7. Attachment of Escrow Property; Compliance with Legal Orders. In the event that any Escrow Property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrow Property, the Escrow Agent is hereby expressly authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without

jurisdiction. In the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties or to any other person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated. The Escrow Agent shall further have no obligation to pursue any action that is not in accordance with applicable law.

Section 3.8 Force Majeure. The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligation under this Escrow Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

ARTICLE 4
MISCELLANEOUS

Section 4.1. Binding Agreement; Successors and Assigns. The Parties and Escrow Agent represent and warrant that the execution and delivery of this Escrow Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Escrow Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms. This Escrow Agreement shall be binding on and inure to the benefit of the Parties and the Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of the interest of any of the Parties shall be binding unless and until written notice of such assignment shall be delivered to the other Party and the Escrow Agent and shall require the prior written consent of the other Party and the Escrow Agent (such consent not to be unreasonably withheld).

Section 4.2. Escheat. The Parties are aware that under applicable state law, property which is presumed abandoned may under certain circumstances escheat to the applicable state. The Escrow Agent shall have no liability to the Parties, their respective heirs, legal representatives, successors and assigns, or any other party, should any or all of the Escrow Property escheat by operation of law.

Section 4.3. Notices. All notices, requests, demands, and other communications required under this Escrow Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (i) personally, (ii) by facsimile transmission with written confirmation of receipt, (iii) on the day of transmission if sent by electronic mail ("e-mail", as long as such e-mail is accompanied by a PDF signature or similar version of the relevant document bearing an authorized signature, which such signature shall, in the case of each of the parties, be a signature set forth in Exhibit B-1 or B-2, as applicable) to the e-mail address given below, and written confirmation of receipt is obtained promptly after completion of transmission, (iv) by overnight delivery with a reputable national overnight delivery service, or (v) by mail or by certified mail, return receipt requested, and postage prepaid. If any notice is mailed, it shall be deemed given five (5) Business Days after the date such notice is deposited in the United States mail. For the purpose of this Escrow Agreement, "Business Day" shall mean any day other than a Saturday, a Sunday, a federal or state holiday, and any other day on which the Escrow Agent is closed. If notice is given to a party, it shall be given at the address for such party set forth below. It shall be the responsibility of the Parties to notify the Escrow Agent and the other Party in writing of any name or address changes. In the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by the Escrow Agent.

If to Parent:	Merit Medical Systems, Inc. 1600 West Merit Parkway South Jordan, Utah 84095 Fax: 801-253-1600 Email: Brian.Lloyd@merit.com Attn: Brian G. Lloyd, Chief Legal Officer
with a copy (which shall not constitute notice) to:	Parr Brown Gee & Loveless, PC 101 S. 200 E. Salt Lake City, Utah 84111 Fax: 801-532-7750 Email: ballen@parrbrown.com Attn: Bryan T. Allen
If to the Stockholder Representative:	Shareholder Representative Services LLC 1614 15th Street, Suite 200 Denver, Colorado 80202 Email: deals@srsacquiom.com Fax: 303-623-0294 Attn: Managing Director
with a copy (which shall not constitute notice) to:	Morrison & Foerster LLP 755 Page Mill Road Palo Alto, California 94304 Fax: 650-251-3781 Email: THarris@mofo.com Attn: Timothy J. Harris
If to the Escrow Agent:	Wells Fargo Bank, National Association MAC C7300-107 1700 Lincoln St, 10th Floor Denver, CO 80203-4500 Phone: 303-863-6425 Fax: 303-863-5645 Cell: 720-431-6178 E-mail: michael.w.mcguire@wellsfargo.com Attention: Mike McGuire, Corporate, Municipal and Escrow Solutions

Section 4.4. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Section 4.5. Entire Agreement. This Escrow Agreement and the exhibits hereto set forth the entire agreement and understanding of the parties related to the Escrow Property.

Section 4.6. Amendment. This Escrow Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by the Parties and the Escrow Agent.

Section 4.7. Waivers. The failure of any party to this Escrow Agreement at any time or times to require performance of any provision under this Escrow Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to this Escrow Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in this Escrow Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Escrow Agreement.

Section 4.8. Headings. Section headings of this Escrow Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Escrow Agreement.

Section 4.9. Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. The exchange of copies of this Escrow Agreement and of signature pages by facsimile or by electronic image scan transmission in .pdf format shall constitute effective execution and delivery of this Escrow Agreement as to the Parties and the Escrow Agent and may be used in lieu of the original Escrow Agreement for all purposes.

Section 4.10. Trial by Jury. Each of the parties hereto hereby irrevocably waives all right to trial by jury to the extent permitted by law in any litigation, action, proceeding in any court arising out of, relating to or in connection with this Escrow Agreement.

Section 4.11. Publication; Disclosure. By executing this Escrow Agreement, the Parties and the Escrow Agent acknowledge that this Escrow Agreement (including related attachments) contains certain information that is sensitive and confidential in nature and agree that such information needs to be protected from improper disclosure, including the publication or dissemination of this Escrow Agreement and related information to individuals or entities not a party to this Escrow Agreement. The Parties further agree to take reasonable measures to mitigate any risks associated with the publication or disclosure of this Escrow Agreement and information contained therein, including, without limitation, the redaction of the manual signatures of the signatories to this Escrow Agreement, or, in the alternative, publishing a conformed copy of this Escrow Agreement. If a Party must disclose or publish this Escrow Agreement or information contained therein pursuant to any regulatory, statutory, or governmental requirement, as well as any judicial, or administrative order, subpoena or discovery request, it shall notify in writing the other Party and the Escrow Agent at the time of execution of this Escrow Agreement of the legal requirement to do so. If any Party becomes aware of any threatened or actual unauthorized disclosure, publication or use of this Escrow Agreement by it, that Party shall promptly notify in writing the other Party and the Escrow Agent and shall be liable for any such unauthorized release or disclosure. Notwithstanding the foregoing, nothing herein shall restrict the Stockholder Representative's communications with its advisors and representatives and with the Priority Preferred Stockholders in connection with the performance of the Stockholder Representative's duties.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the date first written above.

MERIT MEDICAL SYSTEMS,

By_____
Name: Fred P. Lampropoulos
Title: Chief Executive Officer

Shareholder Representative Services, LLC
solely in its capacity as the Stockholder Representative

By_____
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Escrow Agent

By: _____
Name: _____
Title: _____

EXHIBIT A

Agency and Custody Account Direction
For Cash Balances
Wells Fargo Money Market Deposit Accounts

Direction to use the following Wells Fargo Money Market Deposit Accounts for Cash Balances for the escrow account or accounts (the "Account") established under the Escrow Agreement to which this Exhibit A is attached.

You are hereby directed to deposit, as indicated below, or as I shall direct further in writing from time to time, all cash in the Account in the following money market deposit account of Wells Fargo Bank, National Association:

Wells Fargo Money Market Deposit Account (MMDA)

I understand that amounts on deposit in the MMDA are insured, subject to the applicable rules and regulations of the Federal Deposit Insurance Corporation (FDIC), in the basic FDIC insurance amount of $250,000 per depositor, per insured bank. This includes principal and accrued interest up to a total of $250,000.

I acknowledge that I have full power to direct investments of the Account.

I understand that I may change this direction at any time and that it shall continue in effect until revoked or modified by me by written notice to you.

EXHIBIT B-1

["_____"] certifies that the names, titles, telephone numbers, e-mail addresses and specimen signatures set forth in Parts I and II of this Exhibit B-1 identify the persons authorized to provide direction and initiate or confirm transactions, including funds transfer instructions, on behalf of ["_____"], and that the option checked in Part III of this Exhibit B-1 is the security procedure selected by ["_____"] for use in verifying that a funds transfer instruction received by the Escrow Agent is that of ["_____"].

["_____"] has reviewed each of the security procedures and has determined that the option checked in Part III of this Exhibit B-1 best meets its requirements; given the size, type and frequency of the instructions it will issue to the Escrow Agent. By selecting the security procedure specified in Part III of this Exhibit B-1, ["_____"] acknowledges that it has elected to not use the other security procedures described and agrees to be bound by any funds transfer instruction, whether or not authorized, issued in its name and accepted by the Escrow Agent in compliance with the particular security procedure chosen by ["_____"].

NOTICE: The security procedure selected by ["_____"] will not be used to detect errors in the funds transfer instructions given by ["_____"]. If a funds transfer instruction describes the beneficiary of the payment inconsistently by name and account number, payment may be made on the basis of the account number even if it identifies a person different from the named beneficiary. If a funds transfer instruction describes a participating financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification of the financial institution. Therefore, it is important that ["_____"] take such steps as it deems prudent to ensure that there are no such inconsistencies in the funds transfer instructions it sends to the Escrow Agent.

Part I

Name, Title, Telephone Number, Electronic Mail ("e-mail") Address and Specimen Signature for person(s) designated to provide direction, including but not limited to funds transfer instructions, and to otherwise act on behalf of ["_____"]

Name	Title	Telephone Number	E-mail Address	Specimen Signature

Part II

Name, Title, Telephone Number and E-mail Address for person(s) designated to confirm funds transfer instructions

Name	Title	Telephone Number	E-mail Address

Part III

Means for delivery of instructions and/or confirmations

Exhibit C-14

The security procedure to be used with respect to funds transfer instructions is checked below:

☐*Option 1. Confirmation by telephone call-back*. The Escrow Agent shall confirm funds transfer instructions by telephone call-back to a person at the telephone number designated on Part II above. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit B-1.

☐CHECK box, if applicable:

If the Escrow Agent is unable to obtain confirmation by telephone call-back, the Escrow Agent may, at its discretion, confirm by e-mail, as described in Option 2.

☐*Option 2. Confirmation by e-mail*. The Escrow Agent shall confirm funds transfer instructions by e-mail to a person at the e-mail address specified for such person in Part II of this Exhibit B-1. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit B-1. [“_____”] understands the risks associated with communicating sensitive matters, including time sensitive matters, by e-mail. [“_____”] further acknowledges that instructions and data sent by e-mail may be less confidential or secure than instructions or data transmitted by other methods. The Escrow Agent shall not be liable for any loss of the confidentiality of instructions and data prior to receipt by the Escrow Agent.

☐CHECK box, if applicable:

If the Escrow Agent is unable to obtain confirmation by e-mail, the Escrow Agent may, at its discretion, confirm by telephone call-back, as described in Option 1.

☐**Option 3. Delivery of funds transfer instructions by password protected file transfer system only - no confirmation*. The Escrow Agent offers the option to deliver funds transfer instructions through a password protected file transfer system. If [“_____”] wishes to use the password protected file transfer system, further instructions will be provided by the Escrow Agent. If [“_____”] chooses this Option 3, it agrees that no further confirmation of funds transfer instructions will be performed by the Escrow Agent.

☐**Option 4. Delivery of funds transfer instructions by password protected file transfer system with confirmation*. Same as Option 3 above, but the Escrow Agent shall confirm funds transfer instructions by telephone call-back or e-mail (must check at least one, may check both) to a person at the telephone number or e-mail address designated on Part II above. By checking a box in the prior sentence, the party shall be deemed to have agreed to the terms of such confirmation option as more fully described in Option 1 and Option 2 above.

**The password protected file system has a password that expires every 60 days. If you anticipate having infrequent activity on this account, please consult with your Escrow Agent before selecting this option.*

Dated this ____ day of _____, 20__.

By _____
Name:
Title:

EXHIBIT B-2

The Stockholder Representative certifies that the names, titles, telephone numbers, e-mail addresses and specimen signatures set forth in Parts I and II of this Exhibit B-2 identify the persons authorized to provide direction and initiate or confirm transactions, including funds transfer instructions, on behalf of the Stockholder Representative, and that the option checked in Part III of this Exhibit B-2 is the security procedure selected by the Stockholder Representative for use in verifying that a funds transfer instruction received by the Escrow Agent is that of the Stockholder Representative.

The Stockholder Representative has reviewed each of the security procedures and has determined that the option checked in Part III of this Exhibit B-2 best meets its requirements; given the size, type and frequency of the instructions it will issue to the Escrow Agent. By selecting the security procedure specified in Part III of this Exhibit B-2, the Stockholder Representative acknowledges that it has elected to not use the other security procedures described and agrees to be bound by any funds transfer instruction, whether or not authorized, issued in its name and accepted by the Escrow Agent in compliance with the particular security procedure chosen by the Stockholder Representative.

NOTICE: The security procedure selected by the Stockholder Representative will not be used to detect errors in the funds transfer instructions given by the Stockholder Representative. If a funds transfer instruction describes the beneficiary of the payment inconsistently by name and account number, payment may be made on the basis of the account number even if it identifies a person different from the named beneficiary. If a funds transfer instruction describes a participating financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification of the financial institution. Therefore, it is important that the Stockholder Representative take such steps as it deems prudent to ensure that there are no such inconsistencies in the funds transfer instructions it sends to the Escrow Agent.

Part I

Name, Title, Telephone Number, Electronic Mail ("e-mail") Address and Specimen Signature for person(s) designated to provide direction, including but not limited to funds transfer instructions, and to otherwise act on behalf of the Stockholder Representative

Name	Title	Telephone Number	E-mail Address	Specimen Signature

Part II

Name, Title, Telephone Number and E-mail Address for person(s) designated to confirm funds transfer instructions

Name	Title	Telephone Number	E-mail Address

Part III

Means for delivery of instructions and/or confirmations

The security procedure to be used with respect to funds transfer instructions is checked below:

☐*Option 1. Confirmation by telephone call-back*. The Escrow Agent shall confirm funds transfer instructions by telephone call-back to a person at the telephone number designated on Part II above. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit B-2.

☐CHECK box, if applicable:

If the Escrow Agent is unable to obtain confirmation by telephone call-back, the Escrow Agent may, at its discretion, confirm by e-mail, as described in Option 2.

☐*Option 2. Confirmation by e-mail*. The Escrow Agent shall confirm funds transfer instructions by e-mail to a person at the e-mail address specified for such person in Part II of this Exhibit B-2. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit B-2. The Stockholder Representative understands the risks associated with communicating sensitive matters, including time sensitive matters, by e-mail. The Stockholder Representative further acknowledges that instructions and data sent by e-mail may be less confidential or secure than instructions or data transmitted by other methods. The Escrow Agent shall not be liable for any loss of the confidentiality of instructions and data prior to receipt by the Escrow Agent.

☐CHECK box, if applicable:

If the Escrow Agent is unable to obtain confirmation by e-mail, the Escrow Agent may, at its discretion, confirm by telephone call-back, as described in Option 1.

☐**Option 3. Delivery of funds transfer instructions by password protected file transfer system only - no confirmation*. The Escrow Agent offers the option to deliver funds transfer instructions through a password protected file transfer system. If the Stockholder Representative wishes to use the password protected file transfer system, further instructions will be provided by the Escrow Agent. If the Stockholder Representative chooses this Option 3, it agrees that no further confirmation of funds transfer instructions will be performed by the Escrow Agent.

☐**Option 4. Delivery of funds transfer instructions by password protected file transfer system with confirmation*. Same as Option 3 above, but the Escrow Agent shall confirm funds transfer instructions by telephone call-back or e-mail (must check at least one, may check both) to a person at the telephone number or e-mail address designated on Part II above. By checking a box in the prior sentence, the party shall be deemed to have agreed to the terms of such confirmation option as more fully described in Option 1 and Option 2 above.

**The password protected file system has a password that expires every 60 days. If you anticipate having infrequent activity on this account, please consult with your Escrow Agent before selecting this option.*

Dated this ____ day of _____, 20__.

Shareholder Representative Services LLC,
solely in its capacity as the Stockholder Representative

By _____
Name:
Title:

EXHIBIT C

FEES OF ESCROW AGENT

Exhibit D - Management Bonus Plan

DFINE, Inc.

2016 MANAGEMENT BONUS Plan

1. Purposes.

(a) The purpose of this Plan is to provide a means by which certain Service Providers of DFine, Inc. (the "**Company**") may (i) be rewarded for the successful completion of a Change of Control transaction and (ii) be given an opportunity to participate in the proceeds of such a Change of Control transaction.

(b) The Company, by means of the Plan, seeks to retain the services of certain Service Providers of the Company and to provide incentives for such persons to exert maximum efforts for the success of the Company.

(c) The Board has determined that the adoption of the Plan is in the best interest of the Company and its stockholders.

2. Definitions.

(a) "**Administrator**" means the Company's Board of Directors.

(b) "**Board**" means the Company's Board of Directors.

(c) "**Bonus Amount**" has the meaning ascribed to it in Section 5 of the Plan.

(d) "**Bonus Percentage**" means the percentage specified for a particular Participant as his or her allocation of the Bonus Pool, which shall be set forth in the Participant's Participation Agreement.

(e) "**Bonus Pool**" means the sum of the amounts disbursed from the Integration Cost Escrow Fund (as defined in the Merger Agreement) to the Surviving Corporation (as defined in the Merger Agreement) for further payment to participants in the Plan, as provided in Section 2.18 of the Merger Agreement. For the avoidance of doubt, the Bonus Pool shall not include the amounts disbursed from the Integration Cost Escrow Fund to the Paying Agent (as defined in the Merger Agreement) for further payment to the Priority Preferred Stockholders (as defined in the Merger Agreement).

(f) "**Change of Control**" means

(i) a Liquidation Event as defined in the Company's Amended and Restated Certificate of Incorporation in effect on the date hereof, as may be amended from time to time;

(ii) notwithstanding the foregoing,

(1) a transaction that does not constitute a change in control event under Treasury Regulation Section 1.409A-3(i)(5)(v) or Treasury Regulation Section 1.409A-3(i)(5)(vii) shall not be considered a Change of Control for purposes of this Plan and

(2) a transaction shall not constitute a Change of Control if: (i) its sole purpose is to change the state of the Company's incorporation; or (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(g) "**Closing**" means the consummation of a transaction constituting a Change of Control.

(h) "**Closing Date**" means the date of the Closing.

(i) "**Code**" means the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code herein shall be a reference to any successor or amended section of the Code.

(j) "**Company**" means DFine, Inc., a Delaware corporation and any successor of such corporation.

(k) "**Firm**" has the meaning ascribed to it in Section 6 of the Plan.

(l) "**Merger Agreement**" means that certain Agreement and Plan of Merger by and among Merit Medical Systems, Inc., MMS Transaction Co., the Company and Shareholder Representative Services LLC solely in its capacity as the Stockholder Representative, dated on or about July 6, 2016.

(m) "**Participant**" means any Service Provider who is designated by the Administrator from time to time as a Participant pursuant to a Participation Agreement provided to them by the Administrator. An individual shall cease being a Participant at such time as such individual ceases to be a Service Provider.

(n) "**Parent**" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code, of the Company.

(o) "**Participation Agreement**" means an agreement entered into between the Company and a Participant indicating the individual's designation as a Participant and specifying such individual's Bonus Percentage. The form of Participation Agreement is attached as Exhibit A. The Board may alter the form or content of the Participation Agreement at any time; provided, however, that no executed Participation Agreement may be modified in a manner adverse to the Participant without the Participant's consent.

(p) "**Payment**" has the meaning ascribed to it in Section 6 of the Plan.

(q) "**Plan**" means this DFine, Inc. 2016 Management Bonus Plan.

(r) "**Section 409A**" has the meaning ascribed to it in Section 10 of the Plan.

(s) "**Service Provider**" means an individual that, at any specified time, is then currently providing services to the Company (or any Parent or Subsidiary) in any capacity as an employee, consultant (pursuant to a written consulting agreement then in effect), independent contractor (pursuant to a written independent contractor agreement then in effect) or member of the Board or any combination of the foregoing. An individual shall cease being a Service Provider at such time as such individual no longer provides services to the Company (or any Parent or Subsidiary) in any capacity as an employee, consultant (pursuant to a written consulting agreement then in effect), independent contractor (pursuant to a written independent contractor agreement then in effect) or member of the Board.

(t) "**Subsidiary**" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code, of the Company.

3. Administration.

(a) This Plan shall be administered by the Administrator, whose actions shall be final and binding on all persons, including Service Providers. The Administrator shall have the sole discretionary authority to construe and interpret the terms of the Plan. The Administrator's determination with regard to any provision of the Plan shall be conclusive and binding on all Participants.

(b) The Administrator, in good faith and at its sole discretion, shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time which Service Providers shall be designated as Participants entitled to participate in the Plan and the terms under which they will be entitled to participate (subject to the terms of the Plan).

(ii) To determine, consistent with Section 2(e), whether or not a transaction or related series of transactions constitutes a Change of Control.

(iii) To determine eligibility for benefits and to determine bonus amounts available under the Plan.

(iv) To establish, change and adjust, in its sole discretion but subject to the last sentence of Section 2(o), the Bonus Percentage for each Participant.

Notwithstanding the foregoing, the Administrator shall not have the authority to, and may not execute and deliver any Participation Agreement(s) that would cause, or take any action that would otherwise result in, the aggregate Bonus Percentages of all Participants to exceed 100% at any time.

(c) The Administrator may delegate some or all of its powers and responsibilities under the Plan, with the Board's consent, to one or more officers of the Company, in which case references herein to the "Administrator" shall also be deemed to refer to such delegated person(s).

(d) No member of the Board or any person acting in the capacity of Administrator will be liable for any action or determination made by the Administrator with respect to the Plan or any distribution paid under the Plan. All expenses and liabilities that the Administrator incurs in connection with the administration of this Plan shall be borne by the Company or its successor. No members of the Board or person acting in the capacity of Administrator shall be personally liable for any action, determination or interpretation made in good faith with respect to this Plan or any distribution paid hereunder, and all members of the Board and each person acting in the capacity of Administrator shall be fully indemnified and held harmless by the Company or its successor in respect of any such action, determination or interpretation.

4. Eligibility.

Service Providers will only become "Participants" in the Plan by executing a Participation Agreement provided to them by the Administrator. Other than any Service Provider who ceases to be a Service Provider pursuant to a written agreement or instrument (including but not limited to a letter or resignation, a notice of termination or a severance agreement) terminating such individual's service to the Company subject to, conditioned upon and effective at or immediately prior to the Closing (such individual, a "**Transition Service Provider**"), a Service Provider will cease to be a Participant at such time as he or she ceases to be a Service Provider for any reason at any time prior to the Closing. Any Transition Service Provider shall be deemed to be a Service Provider and Participant at the Closing for purposes of this Plan. Only Participants who are Service Providers at the Closing may receive payments pursuant to the Plan.

5. Allocation of Bonus Pool.

(a) The allocation of the Bonus Pool to individuals designated as Participants shall be set forth in writing from time to time as determined by the Administrator and specified in the applicable Participant's Participation Agreement. Each Participant's payment under the Plan (his or her "**Bonus Amount**") will be equal to (x) his or her Bonus Percentage (as may be adjusted pursuant to the Plan), multiplied by (y) the amount of the Bonus Pool. The aggregate of the Bonus Percentages set forth in the Participation Agreements with all Participants may not exceed 100% at any time.

(b) If a former Participant ceases to be a Participant at any time prior to the Closing, such former Participant's Bonus Percentage shall be forfeited and be available for reallocation and distribution under this Plan at or prior to the Closing as determined by the Administrator or pursuant to Section 5(c).

(c) In the event that the sum of the Bonus Percentages of all Participants at the Closing is less than 100%, then the amount by which 100% exceeds such sum (the "**Unallocated Portion**") shall be allocated among all Participants at the Closing by way of ratably increasing the Bonus Percentage of each such Participant in proportion to such Participants' Bonus Percentage immediately prior to such allocation of the Unallocated Portion, so that after such allocation of the Unallocated Portion, the sum of the Bonus Percentages of all Participants at the Closing is equal to 100%.

6. Distributions.

(a) If the conditions for distribution set forth in the Plan and a Participant's Participation Agreement are satisfied, then on or after the Closing Date, each Participant shall be entitled to receive from the Company his or her Bonus Amount in in one or more distributions.

(b) The Bonus Amounts shall be distributed to Participants as soon as practicable after disbursement of the Bonus Pool from the Integration Cost Escrow Fund, but in no event later than the time that amounts disbursed from the Integration Cost Escrow Fund to the Paying Agent for further payment to the Priority Preferred Stockholders are paid to the Priority Preferred Stockholders.

(c) Notwithstanding anything to the contrary in the Plan, in the event that the benefits provided for in this Plan, when taken together with any other benefits otherwise payable to a Participant (such benefits, collectively, the "**Payments**") (1) constitute "parachute payments" within the meaning of Section 280G of the Code and (2) but for this Section 6(c), would be subject to the excise tax imposed by Section 4999 of the Code, then the Participant's Payments will be reduced and delivered as to such lesser extent which would result in no portion of the Payments being subject to excise tax under Section 4999 of the Code (the "**Excise Tax**"). Unless the Company and the Participant otherwise agree in writing, any

determination required under this Section will be made in writing by a nationally or regionally recognized certified public accounting firm selected by the Company or such other person or entity to which the Company and the Participant mutually agree (the "**Firm**"), whose determination will be conclusive and binding upon the Participant and the Company for all purposes. If a reduction in payments or benefits constituting "parachute payments" is necessary so that no portion of the Payments is subject to the Excise Tax, the reduction shall occur in the following order: (1) reduction of cash payments under this Plan; (2) reduction of cash payments constituting severance payable upon termination of employment; (3) reduction of cash payments pursuant to other benefits paid or provided to the Participant in connection with or as a result of a Change of Control; and (4) acceleration of equity awards. In the event that acceleration of vesting of equity awards is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant for the Participant's equity awards. If two or more equity awards are granted on the same date, each award will be reduced on a pro-rata basis. In no event shall the Participant have any discretion with respect to the ordering of reductions in payments or benefits. In the event of any reduction in the payment of any Bonus Amount to a Participant under the Plan as a result of this Section 6(c), the amount of such reduction shall be reallocated among all other Participants at the time of such reduction by way of ratably increasing the Bonus Amounts of each such other Participant in proportion to such other Participants' Bonus Percentages, subject to the limitations of this Section 6(c); in the event that any portion of any Bonus Amount remains unallocated after the application of this sentence to each reduction in Bonus Amounts pursuant to this Section 6(c), such unallocated portion shall not be payable under this Plan and instead be disbursed from the Integration Cost Escrow Fund to the Paying Agent for further payment to the Priority Preferred Stockholders.

For purposes of making the calculations required by this Section, the Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Participant will furnish to the Firm such information and documents as the Firm may reasonably request in order to make a determination under this Section. The Company will bear all costs the Firm may reasonably incur in connection with any calculations contemplated by this Section. Any good faith determinations of the Firm made hereunder shall be final, binding and conclusive upon the Company and the Participant.

Notwithstanding the foregoing, to the extent the Company submits any portion of the Payments payable to such Participant to the Company's stockholders for approval in accordance with Treasury Reg. Section 1.280G-1 Q&A 7, the foregoing provisions shall not apply following such submission and the portion of the Payments will be treated in accordance with the results of such vote, except that any reduction in, or waiver of, any portion of the Payments required by the results of such vote will be applied without any application of discretion by the Participant and in the order prescribed by this Section 6(c).

7. Amendment or Termination of the Plan.

(a) The Board may, at any time prior to the Closing, amend the Plan; provided, however, that in no event may any amendment unilaterally impair the rights of Participants (including, without limitation, reducing the Bonus Percentage of any Participant) without such Participant's written consent except as may be required by applicable law or as necessary to correct an administrative error. This Plan shall be assumed by any successor to or acquirer of the Company to the extent that benefits remain payable under this Plan.

(b) The Plan shall automatically terminate upon the completion of all payments under the terms of the Plan. The Plan (including any obligation by the Company to make payments under all then-outstanding Participation Agreements) shall automatically terminate upon earlier to occur of any of the following events if such event occurs prior to the Closing: (i) the closing date of a recapitalization of the Company that results in the elimination of the existing liquidation preferences with respect to all the outstanding shares of the Company's preferred stock, (ii) the closing date of the Company's initial public offering of its common stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended; or (iii) December 31, 2016.

8. No Equity Interest.

Neither the Plan nor any distribution hereunder creates or conveys any equity or ownership interest in the Company or any rights commonly associated with such interests, including, without limitation, the right to vote on any matters put before the stockholders of the Company.

9. No Guarantee of Future Service.

Neither the designation of a Service Provider as a Participant nor the execution of a Participation Agreement shall provide any guarantee or promise of continued service of the Participant with the Company (or any Parent or Subsidiary), and the Company (or any Parent or Subsidiary employing a Participant) retains the right to terminate the employment or service of any Service Provider at any time, with or without cause, for any reason or no reason, except as may be restricted by law or contract.

10. Tax Withholding.

The Company shall withhold or cause to be withheld from any distributions under the Plan any amount required to satisfy the Company's income, employment and other tax withholding obligations under federal, state and other applicable law. By executing a Participation Agreement, Participant acknowledges that the Company cannot and has not guaranteed that the Internal Revenue Service will determine that the Plan benefits are not deferred compensation within the meaning of Section 409A of the Code and the regulations and guidance thereunder ("**Section 409A**"). Each Service Provider agrees that if the Internal Revenue Service determines that the Plan benefits are deferred compensation, Participant shall be solely responsible for Participant's costs related to such a determination, if any.

11. Funding.

The Plan shall be funded out of the Company's general assets. No provision of the Plan shall require the Company, for the purpose of satisfying any obligations under the Plan, to purchase assets or place any assets in a trust or other entity to which contributions are made or otherwise to segregate any assets, nor shall the Company maintain separate bank accounts, books, records or other evidence of the existence of a segregated or separately maintained or administered fund for such purposes. Participants shall have no rights under the Plan other than as unsecured general creditors of the Company.

12. Bonus Plan.

The Plan is intended to be a "bonus program" as defined under U.S. Department of Labor Regulation 2510.3-2(c) and shall be construed and administered in accordance with such intention.

13. Nonassignability.

The Company may not assign, sell, transfer, delegate or otherwise dispose of any rights or obligations under any Participation Agreement unless the Board reasonably believes that the assignee or transferee has sufficient resources to satisfy the obligations under such Participation Agreement. No Participant may assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any rights or obligations under any Participation Agreement without the Administrator's prior written consent other than by will, by the laws of descent and distribution or pursuant to a domestic relations order.

14. Code Section 409A.

The Company and each Participant will work together in good faith to consider either (i) amendments to the Plan; or (ii) revisions to the Plan with respect to the payment of any bonus amounts, which are necessary or appropriate to avoid imposition of any additional tax or income recognition prior to the actual payment to the Participant under Section 409A. It is intended that this Plan is exempt from or comply with Section 409A to the extent applicable.

15. Choice of Law.

All questions concerning the construction, validation and interpretation of the Plan will be governed by the law of the State of California without regard to its conflict of laws provisions.

16. Headings.

The headings in the Plan are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

17. Successors and Assigns.

Subject to Section 13, the Plan shall be binding upon and shall inure to the benefit of the Company and its successors and assigns, and upon a Change of Control the Company shall use commercially reasonable efforts to cause the acquirer to assume the Company's obligations and liabilities hereunder. Subject to Section 13, each Participation Agreement shall be binding upon and shall inure to the benefit of the Participant and his or her heirs, executors, administrators or permitted successors or assigns.

18. Notices.

Any notice required or permitted hereunder or any Participation Agreement shall be in writing, shall reference the Plan and/or such Participation Agreement and shall be deemed to be properly given: (i)

when delivered personally; (ii) when sent by facsimile; (iii) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) the next business day after deposit with an overnight private industry express courier or transmission via electronic mail to the electronic mail address of the Participant set forth in the Participation Agreement. All notices shall be sent to the address set forth below or to such other address as may be designated by the Company or a Participant, respectively, by giving written notice to the Participant or Company, respectively, pursuant to this Section.

If to the Company:

DFine, Inc.
3047 Orchard Parkway
San Jose, CA 95134
Attn: Chief Executive Officer

If to a Participant:

to the address specified on the signature page of the Participation Agreement

[Signature Page Follows]

This DFine, Inc. 2016 Management Bonus Plan is executed by a duly authorized officer of the Company after adoption of the Plan by the Board, effective as of July 5, 2016.

DFine, Inc.

By:_____
Name:_____

Title:_____

EXHIBIT A

DFINE, Inc.

2016 MANAGEMENT BONUS Plan

PARTICIPATION AGREEMENT

To: _____

DFine, Inc. (the "**Company**") has designated you as a "Participant" who is eligible to participate in the DFine, Inc. 2016 Management Bonus Plan (the "**Plan**"). By signing and returning this Participation Agreement, you will become a "Participant" in the Plan. Your participation in the Plan is contingent upon your continued employment with or service as service provider to the Company up to the date of a "Change of Control" (as defined in the Plan) and your agreement to the terms of the Plan and this Participation Agreement. The terms of the Plan are incorporated by reference and, in the case of any conflict between this Participation Agreement and the terms of the Plan, the terms of the Plan will govern. Defined terms capitalized but not defined in this Participation Agreement have the meanings assigned to them in the Plan.

For purposes of the Plan, your "Bonus Percentage" (the percentage of the Bonus Pool that has been allocated to you) is _____ percent (_____%).

As noted in the Plan, Bonus Amounts may only be earned if there is a Closing of a Change of Control transaction and only if there is a disbursement from the Integration Cost Escrow Fund to the Surviving Corporation for further payment to participants in the Plan, as provided in Section 2.18 of the Merger Agreement. Whether you earn the right to receive your potential Bonus Amount is governed by the Plan and the Merger Agreement. You hereby acknowledge that the Company is an "at will" employer. That means that you and the Company have the right to terminate your employment or consulting relationship at any time, with or without advance notice, and with or without cause. Nothing in this Participation Agreement changes the "at will" nature of your employment or consultancy.

In consideration of your designation as a Participant and as a material inducement to the Company entering into this Participation Agreement and providing you with the opportunity to receive the Bonus Amount, which you acknowledge exceeds any amounts to which you otherwise may be entitled under the Company's policies and practices or applicable law, you and your representatives completely release from, and agree to not file, cause to be filed or pursue against, the Company, its affiliated, related, parent or subsidiary companies, and its present and former directors, officers, stockholders and employees (the "**Released Parties**") all claims, complaints, grievances or charges of any kind, known and unknown, which you may now have or have ever had against any of them, or arising out of your relationship with any of them, including all claims for compensation and bonuses, attorneys' fees, and all claims arising from your employment with the Company or the termination of your employment, whether based on contract, tort, statute, local ordinance, regulation or any comparable law in any jurisdiction ("**Released Claims**"). By way of example and not limitation, Released Claims shall include any claims arising under Title VII of the Civil Rights Act of 1964, the federal Worker Adjustment Retraining Notification Act ("**WARN Act**") under 29 U.S.C. § 2102 *et seq.*, the California WARN Act, California Labor Code § 1400 *et seq*., the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the California Fair Employment and Housing Act (or any comparable law in any jurisdiction). You represent that you have not filed or initiated or caused to be filed or initiated any lawsuits, claims, complaints, administrative grievances or charges against any Released Party in any court or with any government agency. You expressly covenant and warrant that you have not assigned or transferred to any person or entity any portion of any claims that are waived, released and/or discharged herein.

You also agree that because this release specifically covers known and unknown claims, you waive your rights under Section 1542 of the California Civil Code or any other comparable statute of any jurisdiction, which states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT TO THE DEBTOR.

Notwithstanding the foregoing, you and the Company acknowledge and agree that you are not waiving or being required to waive any right that cannot be waived as a matter of law, including the right to file a charge with or participate in an investigation by a governmental administrative agency; provided, however, that you hereby disclaim and waive any right to share or participate in any monetary award resulting from the prosecution of such charge or investigation. You further agree that, to the extent permissible by law, you will provide the Company at least five (5) days prior written notice of any such charge or investigation.

You and the Company agree that this Participation Agreement is not an admission of guilt or liability on the part of you or the Company under any federal, state or local law, whether statutory or common law. Liability for any and all claims is expressly denied by you and the Company.

You agree that you will keep information about the Plan confidential both within and outside of the Company except to the extent necessary to enforce your rights hereunder or as otherwise required under applicable law. This information includes, but is not limited to, your participation levels and benefits and confidential information about employees, the Company's operations, strategies and management, information related to the Plan and non-public information related to the Change of Control transaction ("**Confidential Information**"). You understand and agree that you will not reveal any Confidential Information without the express written consent of the Company except to the extent necessary to enforce your rights hereunder or as otherwise required under applicable law, provided, however, that you may disclose Confidential Information to your personal lawyer or tax and financial advisors for the purposes of personal legal, tax, financial and estate planning advice. The Company has the right to cancel any Bonus Amounts otherwise payable to you under the Plan following any unauthorized disclosure of any Confidential Information by you.

You understand and agree that discussing, revealing or in any way communicating the Confidential Information to a non-authorized person or entity is grounds for immediate termination of employment or other service relationship.

You acknowledge and agree that payments under the Plan shall be subject to all applicable federal, state and local withholding taxes that the Company reasonably determines should be withheld with respect to such payments.

By their signatures below, you and the Company agree that the Plan and any Bonus Amounts are governed by this Participation Agreement and by the provisions (specifically including, but not limited to, the conditions precedent to receiving a distribution under the Plan and the amendment provisions) of the Plan, a copy of which is attached to and made a part of this document. You acknowledge receipt of a copy of the Plan, represent that you have read and are familiar with its provisions and acknowledge that decisions and determinations by the Administrator under the Plan shall be final and binding on you.

COMPANY:

DFine, Inc.

By: _____
Name: _____
Title: _____

Accepted and Agreed:

PARTICIPANT:

_____
(Signature of Participant)

Name: _____
Address: _____
_____
_____

E-Mail: _____

Exhibit D-9

ATTACHMENT: DFine, Inc. 2016 Management Bonus Plan

Exhibit E – Distribution Agent Agreement

Certain portions of this exhibit have been omitted pursuant to Rule 24b-2 and are subject to a confidential treatment request. Copies of this exhibit containing the omitted information have been filed separately with the Securities and Exchange Commission. The omitted portions of this document are marked with a *.**

Exhibit A

to

Disbursing Agent Agreement

Exhibit E-2

Name	Payable Amount (Initial Closing)	Pro Rata Share of Escrow Funds	1099 Tax Reporting	Reportable Amount (If Different than Payable Amount)	Wire Instructions or Mailing Address for Check	Initial Closing Payment Made By Parent	Initial Closing Payment Made By Disbursing Agent
BBT Fund, L.P.	***	***	N/A	N/A	***		
Floyd G. Larson	***	***		N/A	***		
J. Casey McGlynn	***	***		N/A	***		
OrbiMed Private Investments IV, LP	***	***	N/A	N/A	***	Yes	
Polycomp Trust Company Cust FBO J. Casey McGlynn A/C#CMJ1500	***	***		N/A			
Prospect Venture Partners III, L.P.	***	***	N/A	N/A	***		
Saint John's University	***	***		N/A	***		
SightLine Healthcare Opportunity Fund, LLC	***	***	N/A	N/A	***	Yes	
Sightline Healthcare Opportunity Fund II, L.P.	***	***	N/A	N/A	***	Yes	
Sightline Healthcare Opportunity Fund II-A, L.P.	***	***	N/A	N/A	***	Yes	
Sightline Healthcare Opportunity Fund II-B, L.P.	***	***	N/A	N/A	***	Yes	
Sightline Partners LLC	***	***	N/A	N/A	***	Yes	
Split Rock Partners II, LP	***	***	N/A	N/A	***	Yes	
Split Rock Partners, LP	***	***	N/A	N/A	***	Yes	
Stephen Brandt	***	***		N/A			
The Board of Trustees of The Leland Stanford Junior University (DAPER I)	***	***	N/A	N/A	***		
Trellis Health Ventures II L.P.	***	***		N/A			
Vanguard VII Accredited Affiliates Fund, L.P.	***	***	N/A	N/A	***		
Vanguard VII Qualified Affiliates Fund, L.P.	***	***	N/A	N/A	***		
Vanguard VII, L.P.	***	***	N/A	N/A	***		
Vanguard VII-A, L.P.	***	***	N/A	N/A	***		
WS Investment Company, LLC (2009A)	***	***	N/A	N/A	***		
WS Investment Company, LLC (2009C)	***	***	N/A	N/A	***		
WS Investment Company, LLC (2010A)	***	***	N/A	N/A	***		
WS Investment Company, LLC (2011A)	***	***	N/A	N/A	***		
WS Investments Company, LLC	***	***		N/A	***		
Total	**$51,331,461.21**	**100.00%**					
Total Paid By Parent at Closing	***						
Total Payable by Disbursing Agent	***						

Exhibit F – Form of Certificate of Merger

CERTIFICATE OF MERGER

MERGING

MMS TRANSACTION CO.

INTO

DFINE, INC.

* * * * * * *

Pursuant to Title 8, Section 251(c) of the Delaware General Corporation Law (the "Law"), DFine, Inc., a corporation organized and existing pursuant to the Law ("DFine"),

DOES HEREBY CERTIFY:

FIRST: The name and state of incorporation of each of the constituent corporations of the Merger (as defined below) are:

(a) DFine, Inc., a Delaware corporation, and

(b) MMS Transaction Co., a Delaware corporation ("MMS").

SECOND: That an Agreement and Plan of Merger (the "Agreement") has been approved, adopted, executed and acknowledged by each of DFine and MMS, in accordance with Section 251 of the Law, whereby MMS shall be merged with and into DFine (the "Merger"), with DFine being the surviving corporation.

THIRD: That the name of the surviving corporation is DFine, Inc.

FOURTH: That the Amended and Restated Certificate of Incorporation of DFine, which is attached hereto as Exhibit A, shall be the Certificate of Incorporation of the surviving corporation until thereafter amended in accordance with applicable law and such Certificate of Incorporation.

FIFTH: An executed copy of the Agreement is on file at the office of the surviving corporation, located at 1600 West Merit Parkway, South Jordan, Utah 84095.

SIXTH: A copy of the Agreement will be furnished by the surviving corporation, without charge, at the request of any stockholder of DFine or MMS.

SEVENTH: That the Merger shall be effective upon the filing and acceptance of this Certificate of Merger with the Secretary of State of the State of Delaware.

[Signature Page Follows]

IN WITNESS WHEREOF, said DFine, Inc., a Delaware corporation, has caused this Certificate of Merger to be executed by an authorized officer on July 6, 2016.

DFine, Inc., a Delaware corporation

By: _____
Name:
Its:

EXHIBIT A

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
DFINE, INC.

* * * * * *

FIRST: The name of this corporation is DFine, Inc. (the "Corporation").

SECOND: Its Registered Office in the State of Delaware is to be located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The registered agent in charge thereof is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The total number of shares of capital stock which the Corporation shall have authority to issue is one thousand (1,000) shares of common stock, $0.01 par value.

FIFTH: The personal liability of any officer or director to the Corporation or to its shareholders for monetary damages for breach of fiduciary duty as an officer or a director is hereby eliminated to the fullest extent permitted by Delaware laws. In the event the applicable Delaware law or this Article Fifth is repealed or amended to decrease or limit in any manner the protection or rights available to directors hereunder, such repeal or amendment shall not be retroactively applied in determining the personal liability of a director pursuant to this Article Fifth prior to the enactment of such amendment.

SIXTH: The board of directors of the Corporation shall have the power to adopt, amend or repeal the bylaws of the Corporation.

SEVENTH: The Corporation shall indemnify the officers and directors of the Corporation to the fullest extent permitted by Delaware laws.

Exhibit G – Form of Letter of Transmittal

Letter of Transmittal
To Surrender Shares of Capital Stock of
DFine, Inc.
In Exchange for Closing Per Share Merger Consideration
(and such additional portion of the Merger Consideration to which the undersigned may be entitled)
Pursuant to the Merger
of
MMS Transaction Co.
with and into
DFine, Inc.

DELIVERY INSTRUCTIONS:

Merit Medical Systems, Inc.
1600 West Merit Parkway
South Jordan, Utah 84095
Attention: Brian G. Lloyd, Chief Legal Officer

For telephone assistance, please call: 801-253-1600

YOU WILL NOT RECEIVE ANY MERGER CONSIDERATION UNTIL YOU HAVE DELIVERED THIS LETTER OF TRANSMITTAL ALONG WITH YOUR COMPANY STOCK CERTIFICATE(S). DELIVERY OF THIS LETTER OF TRANSMITTAL TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE WILL *NOT CONSTITUTE* A VALID DELIVERY. YOU MUST SIGN THIS LETTER OF TRANSMITTAL IN THE APPROPRIATE SPACE PROVIDED BELOW, WITH SIGNATURE GUARANTEE (IF REQUIRED), AND COMPLETE THE SUBSTITUTE FORM W-9 SET FORTH BELOW (IF REQUIRED). YOU SHOULD CAREFULLY READ THE INSTRUCTIONS SET FORTH IN THIS LETTER OF TRANSMITTAL BEFORE COMPLETING THIS LETTER OF TRANSMITTAL.

Ladies and Gentlemen:

This Letter of Transmittal is being delivered to you in connection with the merger (the "**Merger**") of MMS Transaction Co. ("**Merger Sub**"), a Delaware corporation and a wholly owned subsidiary of Merit Medical Systems, Inc. ("**Parent**"), a Utah Corporation, with and into DFine, Inc. (the "**Company**"), a Delaware corporation pursuant to the Agreement and Plan of Merger by and among Parent, Merger Sub, the Company, the Priority Preferred Stockholders identified therein and Shareholder Representative Services LLC, as the Stockholder Representative (the "**Merger Agreement**"), dated July 6, 2016 (the "**Effective Time**"). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Merger Agreement. If you would like to request an additional copy of the Merger Agreement, please contact the office of the Corporate Secretary of Parent at Merit Medical Systems, Inc., 1600 West Merit Parkway, South Jordan, Utah 84095, Attn: Corporate Secretary.

Pursuant to the Merger Agreement, Merger Sub merged with and into the Company pursuant to Section 251 of the Delaware General Corporation Law (the "**DGCL**"), with the Company surviving the Merger as a wholly owned subsidiary of Parent. Other than any shares of Common Stock or Preferred

Stock of the Company (collectively "**Capital Stock**") owned by the Company, Parent, Merger Sub or any of their respective direct or indirect wholly owned subsidiaries (collectively, the "**Exception Shares**") or any shares of Capital Stock held by a holder who properly exercises appraisal rights of such shares in accordance with Section 262 of the DGCL or dissenters' rights in accordance with Chapter 13 of the California Corporations Code (the "**Dissenting Shares**" until such time as such holder fails to perfect or otherwise loses such holder's appraisal rights under the DGCL or dissenters' rights under the California Corporations Code (the "**CCC**"), with respect to such shares in which case such shares of Capital Stock will no longer be Dissenting Shares), at the Effective Time, each share of Capital Stock of the Company that was issued and outstanding immediately prior to the Effective Time (collectively, the "**Shares**") was cancelled and automatically converted into the right to the Closing Per Share Merger Consideration, if any, associated with the respective class and series of Capital Stock in cash, without interest, together with any amounts that may become payable in respect of such share of Capital Stock in the future from the Escrow Funds or in respect of the Post-Closing Adjustment or the Stockholder Representative Expense Fund, in each case, at the respective times and subject to the contingencies and terms specified in the Merger Agreement and the Escrow Agreement (collectively, the "**Per Share Consideration**"). The Exception Shares were cancelled without payment at the Effective Time in accordance with the applicable provisions of the Merger Agreement. The Dissenting Shares will be addressed as provided in Section 2.10 of the Merger Agreement, Section 262 of the DGCL and Chapter 13 of the CCC. Due to the liquidation preferences associated with the Series E Preferred Stock and Series F Preferred Stock, the Per Share Consideration associated with the Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock is zero. Each registered holder of Shares of Series E Preferred Stock and Series F Preferred Stock (the "**Priority Preferred Stock**") is entitled to receive in exchange for the surrender of such Shares an amount equal to the Per Share Consideration associated with such series of Priority Preferred Stock multiplied by the number of Shares surrendered, all on the terms and conditions set forth in the Merger Agreement (the "**Merger Consideration**").

Each registered holder of Shares, including each registered holder of any stock certificate(s) representing Shares as of immediately prior to the Effective Time ("Certificate(s)"), who wishes to surrender such Shares for the Merger Consideration must complete this Letter of Transmittal in its entirety and comply with all of its terms and conditions. Please read this entire Letter of Transmittal carefully. The instructions included in this Letter of Transmittal must be followed. Delivery of this Letter of Transmittal other than as set forth herein will not constitute a valid delivery. You must sign this Letter of Transmittal where indicated below (with signature guarantee, if required) and complete the Substitute Form W-9 provided herein (if required).

The undersigned hereby surrenders the above-described Shares for the purpose of receiving the Merger Consideration in exchange for such Shares, pursuant to and subject to the terms set forth in the Merger Agreement and this Letter of Transmittal, receipt of which is hereby acknowledged. The undersigned agrees that the surrender of such Shares shall be irrevocable. Delivery of any Certificate(s) shall be effected, and risk of loss with respect to such Certificate(s) shall pass, only upon proper delivery thereof in accordance with this Letter of Transmittal. The Disbursing Agent shall be Citibank, N.A. The undersigned understands that surrender is not made in acceptable form until the receipt by Parent, of this Letter of Transmittal, or copy hereof, duly completed and signed, and of the Shares surrendered hereby, together with all accompanying evidences of authority, which evidences of authority shall be in form reasonably satisfactory to Parent.

The undersigned hereby confirms that (i) the undersigned has full power and authority to execute and deliver this Letter of Transmittal and to surrender, sell, assign and transfer the Shares surrendered herein, (ii) immediately prior to consummation of the Merger, the undersigned had good and unencumbered title to such Shares, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claim, and (iii) the payment of the Merger Consideration in exchange for such Shares surrendered hereby will discharge completely any and all obligations of Parent, the Company and the Disbursing Agent with respect to such Shares. The undersigned will, upon request, execute and deliver any additional

documents deemed by Parent to be necessary or desirable to complete the surrender of such Shares and the delivery of any Certificate(s) for the Merger Consideration.

The undersigned acknowledges and agrees (i) to the appointment of Shareholder Representative Services LLC as the undersigned's representative and agent pursuant to the terms of the Merger Agreement and (ii) to be bound by the terms and conditions set forth in Articles VII and VIII of the Merger Agreement as a Priority Preferred Stockholder, including without limitation the indemnification provisions in favor of the Stockholder Representative in Section 8.01(c) thereof.

Unless otherwise indicated herein under "Special Payment Instructions," the Disbursing Agent will mail a check (or if wire instructions are indicated on the signature page hereof, send a wire transfer) for the Merger Consideration in the name(s) of the undersigned. Similarly, unless otherwise indicated under "Special Delivery Instructions," the Disbursing Agent will mail a check (or if wire instructions are indicated on the signature page hereof, send a wire transfer) for the Merger Consideration for the Shares (and accompanying documents as appropriate) to the undersigned at the address shown below the undersigned's signature(s). In the event that both "Special Payment Instructions" and "Special Delivery Instructions" are completed, the Disbursing Agent will issue the check (or if wire instructions are indicated on the signature page hereof, send a wire transfer) for the Merger Consideration for the Shares surrendered hereby in the name(s) of, and mail the check to, the person so indicated.

All questions as to the validity of any surrender of Shares or mailing or delivery of this Letter of Transmittal will be determined by Parent (which may delegate power to make such determination in whole or in part to its legal counsel), and such determination will be final and binding. Parent reserves the absolute right to reject any or all Shares surrendered hereby or Letters of Transmittal to the extent not in the form required by the Merger Agreement or the instructions hereto or the payment for which is unlawful. Parent also reserves the absolute right to waive any defect or irregularity in the surrender of any Shares, Certificate(s) or Letters of Transmittal. None of the Company, Parent (or any of its affiliates), the Disbursing Agent nor any other person will be under any duty to give notification of any defects or irregularities in any surrender of Shares, Certificate(s) or Letter of Transmittal or will incur any liability for failure to give any such notification to any person (even if such notification is given to other persons). A surrender will not be deemed to have been made until all irregularities have been cured or waived.

If any Certificate(s) you are surrendering has been mutilated, lost, stolen or destroyed, upon the making of an affidavit (in form and substance reasonably satisfactory to Parent) of that fact by you claiming such Certificate(s) to be mutilated, lost, stolen or destroyed and, if required by Parent, the payment by you of any applicable fees of Parent, Parent will, in exchange for such mutilated, lost, stolen or destroyed Certificate(s), pay or cause to be paid the consideration deliverable in respect of the Shares formerly represented by such Certificate(s) pursuant to the Merger Agreement. If any Certificate(s) you are surrendering has been mutilated, lost, stolen or destroyed, see Instruction 8.

IN ORDER TO RECEIVE THE MERGER CONSIDERATION, YOU MUST FOLLOW THE INSTRUCTIONS IN THIS LETTER OF TRANSMITTAL. NO INTEREST WILL ACCRUE ON ANY CASH PAYMENT DUE TO YOU.
NOTE: SIGNATURES MUST BE PROVIDED BELOW.

DESCRIPTION OF SHARES SURRENDERED

	Shares Surrendered (Attach additional list if necessary)			
Name(s) and Address(es) of Registered Holder(s) (Please fill in, if blank, exactly as name(s) appear(s) on Share Certificate(s))	**Certificate Number(s)**	**Class and Series of Stock***	**Total Number of Shares Represented by Certificate(s)**	**Number of Shares Surrendered****
Total:				
Series E Preferred Stock				
Series F Preferred Stock				
Other Capital Stock				

* Please list shares of a different class and series separately.

** Unless otherwise indicated, it will be assumed that all Shares represented by any certificates delivered to Parent are being surrendered.

THE INSTRUCTIONS ACCOMPANYING THIS LETTER OF TRANSMITTAL SHOULD BE READ CAREFULLY BEFORE THIS LETTER OF TRANSMITTAL IS COMPLETED.

You must sign this Letter of Transmittal in the appropriate space provided below, with signature guarantee if required, and complete, as applicable, Internal Revenue Service Form W-9, the Substitute Form W-9 provided below, or the appropriate Internal Revenue Service Form W-8.

NOTE: SIGNATURES MUST BE PROVIDED BELOW

PLEASE READ ACCOMPANYING INSTRUCTIONS CAREFULLY

☐ CHECK HERE IF SHARE CERTIFICATES HAVE BEEN MUTILATED, LOST, STOLEN OR DESTROYED. SEE INSTRUCTION 8.

☐ CHECK HERE IF SURRENDERED SHARES ARE ENCLOSED HEREWITH.

☐ CHECK IF YOU ARE REQUESTING A WIRE TRANSFER (AND COMPLETE THE WIRE TRANSFER SECTION BELOW.

SPECIAL PAYMENT INSTRUCTIONS

(See Instructions 5, 6 and 7)

To be completed ONLY if the check (or if wire instructions are indicated on the signature page hereof, the wire transfer) for the Merger Consideration payable in respect of the Shares surrendered hereby (less the amount of any federal income and backup withholding taxes required to be withheld) is to be

issued in the name of someone other than the undersigned. The transferee must complete the Substitute Form W-9, or Internal Revenue Service Form W-9 or applicable Internal Revenue Service Form W-8.

☐ CHECK IF YOU ARE REQUESTING A CHECK (AND COMPLETE THE CHECK SECTION BELOW)

☐ CHECK IF YOU ARE REQUESTING A WIRE TRANSFER (AND COMPLETE THE WIRE TRANSFER SECTION BELOW.

Issue check to:

Name: _____
(Please Type or Print)
Address: _____
_____

_____
(**City, State, Zip Code)**

_____
(Taxpayer Identification Number)

Or

Make Wire Transfer to:

Bank Name: _____
Bank Address: _____
ABA #: _____
Account #: _____
Account Holder: _____

SPECIAL DELIVERY INSTRUCTIONS

(See Instructions 5, 6 and 7)

To be completed ONLY if the check for the Merger Consideration payable in respect of the Shares surrendered hereby (less the amount of any federal income and backup withholding taxes required to be withheld) is to be mailed to someone other than the undersigned or to the undersigned at an address other than that shown below the undersigned's signature(s).

Mail check to:
Name: _____
(Please Type or Print)
Address: _____
_____

_____

(**City, State, Zip Code)**

_____

(Taxpayer Identification Number)

Transfer Reason - Check only one: All transfers will be assumed to be gifts if no reason is provided. If we receive documentation (e.g., death certificate) indicating that the registered shareowner is deceased, the transfer reason will default to death.

☐ Gift - Date of Gift: / / (Gift applies to certificates only)

☐ Private Sale - Date of Sale: / / Value per Share: USD _____

☐ Death - Date of Death: / / Value per Share: USD _____

☐ None of the above - Please specify:

_____

_____

1. You may wish to consult with your tax advisor on the definition and tax implications for each type of transfer.

2. If not provided, gift date for certificates will default to the date that the transfer is processed. For book entry shares, the gift date will always be the date that the transfer is processed.

3. Date of Sale/Death will default to the date that the transfer is processed unless provided. For transfers due to death, date of death will default to the date indicated in the documents (e.g., death certificate) received with the transfer instructions, if any.

4. The requested information is required to determine cost basis to be applied per beneficiary.

SIGN HERE

(Please complete and submit the Substitute Form W-9 below, Internal Revenue Service Form W-9, or the appropriate Internal Revenue Service Form W-8, as applicable)

Signature(s) of Stockholder(s)	**Date**
_____	_____, 201_
_____	_____, 201_

Name(s): _____
(Please Type or Print)

_____
(Please Type or Print)

Capacity(full title): _____

☐ CHECK IF YOU ARE REQUESTING A CHECK (AND COMPLETE THE CHECK SECTION BELOW

☐ CHECK IF YOU ARE REQUESTING A WIRE TRANSFER (AND COMPLETE THE WIRE TRANSFER SECTION BELOW. NO WIRE TRANSFER FEE SHALL BE DEDUCTED FROM THE MERGER CONSIDERATION WITH RESPECT TO ANY WIRE TRANSFERS REQUESTED HEREUNDER.

Address: _____

_____
(City, State and Zip Code)

Area Code and Telephone Number: _____

Make Wire Transfer to:

Bank Name: _____
Bank Address:_____
ABA #:_____
Account #: _____
Account Holder:_____

(Must be signed by registered holder(s) exactly as name(s) appear(s) on stock certificate(s) or by person(s) authorized to become registered holder(s) by certificates and documents transmitted herewith. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, agent, officer of a corporation or other person acting in a fiduciary or representative capacity, please set forth full title and see Instruction 4.)

GUARANTEE OF SIGNATURE(S)

(If required; see Instructions 1 and 4)

(For use by Eligible Institutions only. Place medallion guarantee in space below.)

Name of Firm: _____

Address: _____

_____

(City, State and Zip Code)

Authorized Signature: _____

_____

Name: **(Please Type or Print)**

Area Code and Telephone Number: _____

Dated: _____, 201_

INSTRUCTIONS

1. Guarantee of Signatures. Signatures on this Letter of Transmittal need not be guaranteed (i) if this Letter of Transmittal is signed by the registered holder(s) of the Shares surrendered herewith and such holder(s) has not completed either the box entitled "Special Payment Instructions" or the box entitled "Special Delivery Instructions" on this Letter of Transmittal or (ii) if Shares surrendered herewith are surrendered for the account of an Eligible Institution. See Instruction 4. Except as provided in the preceding sentence, all signatures on this Letter of Transmittal must be guaranteed by a financial institution (including most banks, savings and loan associations and brokerage houses) that is a member in good standing of a recognized Medallion Program approved by The Securities Transfer Association, Inc., including the Securities Transfer Agents Medallion Program (STAMP), the Stock Exchange Medallion Program (SEMP) and the New York Stock Exchange, Inc. Medallion Signature Program (MSP) or any other "eligible guarantor institution" (as such term is defined in Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended) (each an "**Eligible Institution**").

2. Delivery of Letter of Transmittal and Certificate(s). This Letter of Transmittal should be completed and signed by the record holder or holders of the Shares listed in the box marked "Description of Shares Surrendered" beginning on page 2 of this Letter of Transmittal (unless the listed Shares have been transferred or assigned, in which case this Letter of Transmittal should be signed by the transferee or assignee). This Letter of Transmittal, together with any surrendered Certificate(s) listed on this form, should be delivered in the manner provided on page 1 of this Letter of Transmittal.

The method of delivery of this Letter of Transmittal, the Shares surrendered hereby and all other required documents is at the option and risk of the surrendering shareholder and the delivery will be deemed made only when actually received by Parent and otherwise in accordance with the terms of this Letter of Transmittal. If delivery is by mail, we recommend that any Certificate(s) and documents be sent by registered mail, properly insured, with return receipt requested.

All questions as to the validity of any surrender of Shares or Certificate(s) or mailing or delivery of this Letter of Transmittal will be determined by Parent (which may delegate power to make such determination in whole or in part to its legal counsel)), and such determination will be final and binding. Parent reserves the absolute right to reject any or all Shares or Certificate(s) surrendered hereby or Letters of Transmittal to the extent not in the form required by the Merger Agreement or the instructions hereto or the payment for which is unlawful. Parent also reserves the absolute right to waive any defect or irregularity in the surrender of any Shares or Certificate(s) or Letters of Transmittal. None of the Company, Parent (or any of its affiliates), the Disbursing Agent nor any other person will be under any duty to give notification of any defects or irregularities in any surrender of Shares or Certificate(s) or Letter of Transmittal or will incur any liability for failure to give any such notification to any person (even if such notification is given to other

persons). A surrender will not be deemed to have been made until all irregularities have been cured or waived.

3. Inadequate Space. If the space provided herein is inadequate, the Certificate numbers and/or the number of Shares and any other relevant information should be listed on a separate signed schedule attached hereto.

4. Signatures on Letter of Transmittal; Stock Powers and Endorsements.

(a) *Exact Signatures.*

If this Letter of Transmittal is signed by the registered holder(s) of the Shares surrendered hereby, the signature(s) must correspond with the name(s) as written on the face of the certificates without alteration, enlargement or any change whatsoever.

(b) *Joint Holders.*

If any of the Shares surrendered hereby are held of record by two or more persons, all such persons must sign this Letter of Transmittal.

(c) *Different Names on Certificates.*

If any of the Shares surrendered hereby are registered in different names on different certificates or (in the case of Shares not represented by certificates) in different accounts, it will be necessary to complete, sign and submit as many separate Letters of Transmittal as there are different registrations of Shares.

(d) *When Endorsements or Stock Powers are Not Required.*

If this Letter of Transmittal is signed by the registered holder(s) of the Shares surrendered hereby, no endorsements of certificates or separate stock powers are required unless payment of the Merger Consideration is to be made in the name of any person other than the registered holder(s). Signatures on any such certificates or stock powers must be guaranteed by an Eligible Institution.

(e) *When Endorsements or Stock Powers are Required.*

If this Letter of Transmittal is signed by a person other than the registered holder(s) of the Shares surrendered hereby, certificates must be endorsed or accompanied by appropriate stock powers, in either case, signed exactly as the name(s) of the registered holder(s) appear(s) on the certificates for such Shares. Signature(s) on any such certificates or stock powers must be guaranteed by an Eligible Institution. See Instruction 1.

(f) *Evidence of Fiduciary or Representative Capacity.*

If this Letter of Transmittal or any certificate or stock power is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, such person should so indicate when signing. Parent may, in its discretion, demand proper evidence satisfactory to Parent of the authority of such person so to act must be submitted.

5. Stock Transfer Taxes. Parent will pay any stock transfer taxes imposed on the sale and transfer of any Shares to it or its order (for the avoidance of doubt, transfer taxes do not include U.S. federal income taxes or backup withholding taxes). If, however, payment of the Merger Consideration is to be made to any person other than the registered holder(s), or if a transfer tax is imposed for any reason other than the sale or transfer of Shares to Parent pursuant to the Merger, then the amount of any stock transfer taxes (whether

imposed on the registered holder(s) or otherwise) will be deducted from the Merger Consideration unless satisfactory evidence of the payment of such taxes, or exemption therefrom, is submitted.

Except as provided in this Instruction 5, it will not be necessary for transfer tax stamps to be affixed to the Share certificates listed in this Letter of Transmittal.

6. Special Payment and Delivery Instructions. If payment for the Merger Consideration related to any Shares surrendered hereby is to be issued (or if wire instructions are indicated on the signature page hereof, the wire transfer is to be made) in the name of a person other than the person(s) signing this Letter of Transmittal, or if the check for the Merger Consideration is to be sent to an address different from that of the person signing this Letter of Transmittal, then the "Special Payment Instructions" on page 8 of this Letter of Transmittal and/or "Special Delivery Instructions" on page 9 of this Letter of Transmittal must be completed. To complete your transfer request you must also indicate above a Transfer Reason by executing the Transfer Reason box above.

7. Tax Information and Substitute Form W-9. Under U.S. federal income tax law, a stockholder that is a non-exempt U.S. person who surrenders Shares is required by law to provide Parent with its correct taxpayer identification number. Failure to provide Parent with the correct taxpayer identification number may subject the stockholder to penalties. In addition, under the U.S. federal income tax laws, Parent may be required to (or cause the Disbursing Agent to) withhold and pay over to the Internal Revenue Service backup withholding at a rate of 28% from any payments of the Merger Consideration made in respect of Shares surrendered hereby.

To avoid penalties and backup withholding, surrendering U.S. stockholders and, if applicable, any other payee, must provide Parent with the correct taxpayer identification number and certify that it is not subject to such backup withholding by completing the Substitute Form W-9 included in this Letter of Transmittal or Internal Revenue Service Form W-9. In general, if a stockholder or payee is an individual, the taxpayer identification number is the social security number of such individual.

Certain stockholders or payees (including, among others, corporations and certain foreign individuals) are not subject to these backup withholding requirements. Non-U.S. stockholders should certify their non-U.S. status on the appropriate Internal Revenue Service Form W-8 (a copy of which may be obtained from Parent or online at *www.irs.gov*) to avoid backup withholding. Such stockholders should consult a tax advisor to determine which Form W-8 is appropriate. For further information concerning backup withholding and instructions for completing the Substitute Form W-9 (including how to obtain a taxpayer identification number if you do not have one and how to complete the Substitute Form W-9 if Shares are held in more than one name), consult the enclosed *Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9*.

Failure to complete and provide Internal Revenue Service Form W-9 or the Substitute Form W-9 will not, by itself, cause Shares to be deemed invalidly surrendered, but may require Parent to (or cause the Disbursing Agent to) withhold 28% of the amount of any payments made pursuant to the Offer. Backup withholding tax is not an additional tax. Any amounts withheld under the backup withholding tax rules from a payment generally will be allowed as a credit against that holder's U.S. federal income tax liability and may entitle the holder to a refund, provided that the required information is timely furnished to the Internal Revenue Service. **Failure to complete and return Internal Revenue Service Form W-9 or the Substitute Form W-9 may result in backup withholding of 28% from any payments of Merger Consideration made to you in respect of Shares surrendered hereby. Please review the enclosed Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9 for additional details.**

8. Mutilated, Lost, Stolen or Destroyed Certificates. If the certificate(s) representing Shares to be surrendered have been mutilated, lost, stolen or destroyed, stockholders should (i) complete this Letter of Transmittal and check the appropriate box above and contact Bryan Allen, at Parr Brown Gee & Loveless,

counsel to Parent, at (801) 257-7963, for further instructions on replacing your certificate(s). This Letter of Transmittal and related documents cannot be processed until the procedures for replacing lost, mutilated, destroyed or stolen certificates have been completed.

9. Requests for Assistance or Additional Copies. Requests for assistance or additional copies of this Letter of Transmittal may be obtained from Bryan Allen, at Parr Brown Gee & Loveless, counsel to Parent, at (801) 257-7963.

<table>
<tr><td rowspan="2">SUBSTITUTE
FORM W-9

Department of the Treasury
Internal Revenue Service

Payer’s Request for Taxpayer
Identification Number</td><td>Part 1 - Please provide your taxpayer identification number in the box at right. See the Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9, below, for more information on what number to enter.</td><td>Social Security Number or Employer Identification Number

_____</td></tr>
<tr><td>CHECK APPROPRIATE BOX FOR FEDERAL TAX CLASSIFICATION.

☐ Individual/sole proprietor
☐ Trust/estate
☐ C corporation
☐ S corporation
☐ Limited liability company ☐ Partnership
☐ Other _____</td><td>CHECK APPROPRIATE BOX(ES) IF APPLICABLE. See the Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9, below, for more information.

☐ Exempt payee
☐ Awaiting Taxpayer Identification Number</td></tr>
<tr><td>PLEASE fill in your name and address.

Name

Address</td><td colspan="2">Part 2 - certification

Under penalties of perjury, I certify that:

The number shown on this form is my correct Taxpayer Identification Number (or I am waiting for a number to be issued to me), and
I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
I am a U.S. citizen or other U.S. person, including a U.S. resident alien.

You must cross out item 2 above if you have been notified by the IRS that you are subject to backup withholding because you have failed to report all interest and dividends on your tax return and 2(c) does not apply to you. The Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9, below, include the applicable definition of “U.S. person.”</td></tr>
<tr><td colspan="3">The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Signature _____ Date _____</td></tr>
</table>

YOU MUST COMPLETE THE FOLLOWING CERTIFICATE IF YOU CHECKED THE "AWAITING TAXPAYER IDENTIFICATION NUMBER" BOX IN PART 1 OF THE SUBSTITUTE FORM W-9

CERTIFICATE OF AWAITING TAXPAYER IDENTIFICATION NUMBER

I certify under penalties of perjury that a taxpayer identification number has not been issued to me, and either (a) I have mailed or delivered an application to receive a taxpayer identification number to the appropriate Internal Revenue Service Center or Social Security Administration Office or (b) I intend to mail or deliver an application in the near future. I understand that, notwithstanding the information I provided in Part 2 of the Substitute Form W-9 (and the fact that I have completed this Certificate of Awaiting Taxpayer Identification Number), 28 percent of all payments made to me pursuant to this Offer to Purchase shall be retained until I provide a Tax Identification Number to the payer and that, if I do not provide my Taxpayer Identification number within sixty (60) days, such retained amounts shall be remitted to the IRS as backup withholding.

Signature _____ Date _____

NOTE: **FAILURE TO COMPLETE AND RETURN THIS FORM MAY RESULT IN BACKUP WITHHOLDING ON PAYMENTS OF MERGER CONSIDERATION MADE TO YOU IN RESPECT OF SHARES SURRENDERED HEREBY. PLEASE REVIEW ENCLOSED *GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9* FOR ADDITIONAL DETAILS.**

GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION

NUMBER ON SUBSTITUTE FORM W-9

Use Internal Revenue Service Form W-9 (available online at *www.irs.gov*) or the Substitute Form W-9 included in this Letter of Transmittal to (1) provide your correct taxpayer identification number to the payer, (2) certify that the taxpayer information number you are giving is correct (or you are waiting for a number to be issued), (3) certify that you are not subject to backup withholding, or (4) claim exemption from backup withholding.

Parent will provide the Internal Revenue Service Form W-9 instructions upon request. These guidelines are intended to help payees complete the Substitute Form W-9 included in this Letter of Transmittal.

GUIDELINES FOR DETERMINING WHETHER YOU ARE A U.S. PERSON-For U.S. federal tax purposes, you are considered a U.S. person if you are: (a) an individual who is a U.S. citizen or U.S. resident alien, (b) a partnership, corporation, company, or association created or organized in the U.S. or under the laws of the U.S., (c) an estate (other than a foreign estate), or (d) a domestic trust (as defined in Treasury Regulations section 301.7701-7).

Resident aliens may be subject to special rules. Such stockholders should consult a tax advisor to determine their taxpayer identification number and the applicability of certain treaty benefits to them.

If you are not a U.S. person, do not complete Internal Revenue Service Form W-9 or the Substitute Form W-9. Instead, use the appropriate Internal Revenue Service Form W-8 (a copy of which may be obtained from the Depositary or online at www.irs.gov). Internal Revenue Service Form W-8BEN is the version of the Internal Revenue Service Form W-8 that is most likely to apply to non-U.S. stockholders claiming an exemption from backup withholding, but all non-U.S. stockholders should consult a tax advisor to determine which Internal Revenue Service Form W-8 is appropriate.

GUIDELINES FOR DETERMINING THE PROPER IDENTIFICATION NUMBER TO GIVE THE PAYER IN PART 1-Social Security numbers have nine digits separated by two hyphens: i.e.,

000-00-0000. Employer identification numbers have nine digits separated by only one hyphen: i.e., 00-0000000. The table below will help determine the number to give the payer.

For this type of account		**Give the SOCIAL SECURITY number of:**
1.	An individual's account	The individual
2.	Joint account of two or more individuals	The actual owner of the account or, if combined funds, the first individual on the account(1)
3.	Custodian account of a minor (Uniform Gift to Minors Act)	The minor(2)
4. a.	The usual revocable savings trust account (grantor is also trustee)	The grantor-trustee(1)
4. b.	So-called trust account that is not a legal or valid trust under state law	The actual owner(1)
5.	Account of sole proprietorship or disregarded entity owned by an individual	The owner(3)
For this type of account		**Give the EMPLOYER IDENTIFICATION number of:**
6.	Account of disregarded entity not owned by an individual	The owner
7.	Account of a valid trust, estate, or pension trust	Legal entity(4)
8.	Account of corporation or LLC electing corporate status	The corporation
9.	Account of association, club, religious, charitable, educational or other tax-exempt organization	The organization
10.	Account of partnership or multi-member LLC	The partnership
11.	Account of broker or registered nominee	The broker or nominee
12.	Account with the Department of Agriculture in the name of a public entity (such as a State or local government, school district or prison) that receives agricultural program payments	The public entity

(1)List first and circle the name of the person whose number you furnish. If only one person on a joint account has a social security number, that person's number must be furnished.

(2) Circle the minor's name and furnish the minor's social security number.

(3) You must show your individual name, but you may also enter your business or "doing business as" name. You may use either your social security number or employer identification number (if you have one).

(4) List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the identifying number of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

NOTE: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

GUIDELINES FOR PAYEES THAT DO NOT HAVE A TAXPAYER IDENTIFICATION NUMBER TO GIVE THE PAYER IN PART 1-If you don't have a taxpayer identification number or you don't

know your number, obtain Form SS-5, Application for a Social Security Number Card; Internal Revenue Service Form W-7, Application for IRS Individual Taxpayer Identification Number; or Form SS-4, Application for Employer Identification Number, either online at *www.ssa.gov* or *www.irs.gov*, or at the local office of the Social Security Administration or the Internal Revenue Service. Complete and submit the form according to its instructions. If you are completing the Substitute Form W-9, check the box marked "Awaiting Taxpayer Identification Number" and complete the Certificate of Awaiting Taxpayer Identification Number.

GUIDELINES FOR DETERMINING WHETHER A PAYEE CAN CHECK THE "EXEMPT PAYEE" BOX IN PART 1-If you are exempt from backup withholding, check the "Exempt payee" box and sign and date the form. Generally, individuals are not exempt from backup withholding. **Even if you are exempt from backup withholding, you should submit Internal Revenue Service Form W-9 or the Substitute Form W-9 to avoid possible erroneous backup withholding.**

Payments over $600 that are required to be reported and direct sales over $5,000 generally are exempt from backup withholding if made to the exempt payees listed at (1) through (7) below. Unless otherwise indicated, all "section" references are to the Internal Revenue Code of 1986, as amended.

Payees exempt from backup withholding on all payments include:

1. An organization exempt from tax under section 501(a), any Individual Retirement Account (IRA), or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2).

2. The U.S. or any of its agencies or instrumentalities.

3. A state, the District of Columbia, a possession of the U.S., or any of their political subdivisions or instrumentalities.

4. A foreign government or any of its political subdivisions, agencies, or instrumentalities.

5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding for certain types of payments include:

6. A corporation.

7. A foreign central bank of issue.

8. A dealer in securities or commodities required to register in the U.S., the District of Columbia, or a possession of the U.S.

9. A futures commission merchant registered with the Commodity Futures Trading Commission.

10. A real estate investment trust.

11. An entity registered at all times during the tax year under the Investment Company Act of 1940.

12. A common trust fund operated by a bank under section 584(a).

13. A financial institution.

14. A middleman known in the investment community as a nominee or custodian.

15. A trust exempt from tax under section 664 or described in section 4947.

Privacy Act Notice

Section 6109 requires most recipients of dividend, interest or other payments to give their correct taxpayer identification numbers to payers who must report the payments to the Internal Revenue Service. The Internal Revenue Service uses the numbers for identification purposes and to help verify the accuracy of tax returns. It may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. It may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, and to federal law enforcement and intelligence agencies to combat terrorism.

Payees must provide payers with their taxpayer identification numbers whether or not they are required to file a U.S. tax return. Payers must generally withhold 28% of taxable interest, dividend and certain other payments to a payee who does not furnish a taxpayer identification number to a payer. Certain penalties may also apply.

Penalties

(1) Penalty for Failure to Furnish Taxpayer Identification Number-If you fail to furnish your correct taxpayer identification number to a payer, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

(2) Civil Penalty for False Information With Respect to Withholding-If you make a false statement with no reasonable basis which results in no imposition of backup withholding, you are subject to a penalty of $500.

(3) Criminal Penalty for Falsifying Information-Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

FOR ADDITIONAL GUIDANCE REGARDING THE COMPLETION OF SUBSTITUTE FORM W-9, INTERNAL REVENUE SERVICE FORM W-9, OR THE APPROPRIATE INTERNAL REVENUE SERVICE FORM W-8, CONTACT YOUR TAX ADVISOR.

Exhibit H – Form of Lost Certificate Affidavit

AFFIDAVIT OF LOST STOCK CERTIFICATE

The undersigned to this Affidavit of Lost Certificate (this "**Affidavit**"), being duly sworn, upon his or her oath, hereby deposes and says as follows:

1. That the undersigned is the true, lawful, present and sole legal and beneficial owner (the "**Holder**") of the below-listed stock certificates (the "**Lost Certificates**") representing the below-specified shares (the "**Shares**") of stock of DFine, Inc. (the "**Company**").

Certificate No.	Date of Issuance	Class of Stock	Holder	Number of Shares

2. Holder has conducted or caused to be conducted a thorough and diligent search and has failed to find or recover the Lost Certificate. Holder believes that the Lost Certificate has been lost, mislaid, stolen or destroyed at some time during the period between the date of issuance thereof and the date hereof, and cannot now be produced.
3. The Lost Certificate and any rights or interests therein were not endorsed, and have not been pledged, hypothecated, sold, delivered, deposited under any agreement, transferred or assigned, or disposed of in any manner by or on behalf of Holder. Neither the undersigned nor anyone else on Holder's behalf has signed any power of attorney, assignment or authorization respecting the Lost Certificate which is now outstanding and in force. To the knowledge of Holder, no person, firm, company, agency, government or other entity has asserted any right, title, claim, equity or interest in, to, or respecting the Lost Certificate or the Shares, or any rights or interests therein or proceeds thereof.
4. Holder hereby requests that, and confirms that this Affidavit is made for the purpose of inducing the Company (i) to refuse to recognize any person other than Holder as the owner of the Lost Certificate, (ii) to refuse to take any other action with respect to the Lost Certificate pursuant to the request or demand of any person other than Holder or its attorneys-in-fact and (iii) to issue, execute and deliver to Holder a replacement stock certificate in form and substance identical to the Lost Certificate (the "Replacement Certificate") in substitution for the Lost Certificate; provided, however, if this Affidavit is being delivered together with a completed and executed Letter of Transmittal pursuant to the Agreement and Plan of Merger (the "Merger Agreement") among the Company, MMS Transaction Co., and Merit Medical Systems, Inc. ("Parent") in connection with the merger (the "Merger") described in the Merger Agreement, no Replacement Certificate shall be issued, and Holder shall be deemed to have satisfied its obligation with respect to the Merger to deliver the Lost Certificate.
5. If Holder should find or recover the Lost Certificate, Holder shall immediately surrender the same to the Company for cancellation without receiving any consideration thereof.
6. Holder shall, in consideration of the foregoing, indemnify and hold harmless the Company, its successors and assigns, from and against any and all costs, damages, losses, fees, penalties, judgments, taxes or expenses which it may incur by reason of its actions with respect to the misrepresentation of facts submitted in this Affidavit.

IN WITNESS WHEREOF, the undersigned has executed this Affidavit of Lost Certificate as Holder (if Holder is an individual) or as an authorized representative of Holder (if Holder is a trust or entity), on this _____ of _____ 2016.

HOLDER

_____
Print Name of Holder

_____
Authorized Signature

_____
Capacity of Signor if Holder
is a trust or entity

Sworn to before me this _____ of
_____, 2016

_____
Notary Public

Exhibit I – Form of Written Consent

AGREED FORM

ACTION BY WRITTEN CONSENT OF THE STOCKHOLDERS OF DFINE, INC.

In accordance with Section 228 and Section 251 of the Delaware General Corporation Law ("***DGCL***"), the undersigned stockholders of DFine, Inc., a Delaware corporation (the "***Company***") do hereby, pursuant to this Action by Written Consent, vote all shares of the Company's outstanding voting stock held of record by them FOR the adoption and approval of the following recitals and resolutions, without the formality of a meeting:

ADOPTION AND APPROVAL OF MERGER, MERGER AGREEMENT AND RELATED MATTERS

WHEREAS, the Company's Board of Directors (the "**Board**") has unanimously approved the acquisition of the Company by Merit Medical Systems, Inc., a Utah corporation ("***Parent***"), pursuant to an Agreement and Plan of Merger, dated as of July 6, 2016, as attached hereto as Exhibit A ("***Merger Agreement***"), by and among the Company, Parent, MMS Transaction Co., a Delaware corporation and a direct wholly-owned subsidiary of Parent ("***Merger Sub***"), the Priority Preferred Stockholders signatory thereto and Shareholder Representative Services LLC, solely in its capacity as the Stockholder Representative (the "***Stockholder Representative***") (capitalized terms used but not defined herein will have the meaning assigned to such terms in the Merger Agreement);

WHEREAS, pursuant to the Merger Agreement, Merger Sub will merge with and into the Company with the Company surviving as a direct wholly-owned subsidiary of Purchaser ("***Merger***");

WHEREAS, in connection with the Merger, among other things, and subject to the terms and conditions of the Merger Agreement, at the Effective Time of the Merger, (i) all of the issued and outstanding shares of capital stock of the Company will be converted into the right to receive an amount of cash as set forth in the Merger Agreement (subject to the terms and conditions of the Merger Agreement, including, without limitation, the indemnification and escrow provisions), (ii) each outstanding option to purchase shares of the Company's capital stock which is then outstanding and unexercised will be cancelled without payment of any consideration, (iii) each outstanding warrant to purchase shares of the Company's capital stock which is then outstanding and unexercised will be cancelled without payment of any consideration, and (iv) the Indemnification Escrow Amount and Integration Cost Escrow Amount (together, the "***Escrow Funds***") will be placed in escrow as partial security for the indemnification obligations of the Priority Preferred Stockholders as set forth in the Merger Agreement and for Integration Costs in excess of the Integration Cost Target as set forth in the Merger Agreement;

WHEREAS, pursuant to Section 144 of the DGCL, no contract or transaction between the Company and one or more of its directors or officers, or between the Company and any other corporation, partnership, association or other

organization in which one or more of its directors or officers is a director or officer of, or has a financial interest in (any such party is referred to herein individually as an "***Interested Party***," or collectively as the "***Interested Parties***," and any such contract or transaction is referred to herein as an "***Interested Party Transaction***"), will be void or voidable solely for that reason, or solely because the director or officer is present at or participates in the meeting of the Board which authorized the Interested Party Transaction or solely because the vote of any such director is counted for such purpose, if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract are disclosed or known to the Board, and the Board in good faith authorizes the contract or transaction by affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transactions are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Company as of the time it is authorized, approved or ratified by the Board or of the stockholders;

WHEREAS, it is hereby disclosed or made known to the stockholders that Greg Barrett ("***Barrett***"), a director and officer of the Company, is a participant in the Company's 2016 Management Bonus Plan (the "***Management Plan***") and that, as such, Barrett may receive a bonus under the Management Plan in connection with the Merger and will be offered a continuing employment package in connection with and contingent upon the consummation of the Merger, such that Barrett is an Interested Party and the Merger is an Interested Party Transaction;

WHEREAS, it is hereby disclosed or made known to the stockholders that Brian Farley ("***Farley***"), a director of the Company, is a participant in the Company's 2016 Change Of Control Incentive Plan (the "***Change of Control Plan***") and that, as such, Farley may receive a bonus under the Change of Control Plan in connection with the Merger, such that Farley is an Interested Party and the Merger is an Interested Party Transaction;

WHEREAS, it is hereby disclosed or made known to the stockholders that Joe Biller ("***Biller***"), a director of the Company, has a financial interest in Sightline Healthcare Opportunity Fund, Sightline Partners and/or certain of their affiliates (collectively, "***Sightline***"), and that Sightline is a holder of Company's Series E Preferred Stock and Series F Preferred Stock and as such, will receive a portion of the Merger Consideration upon consummation of the Merger, such that Biller is an Interested Party and the Merger is an Interested Party Transaction;

WHEREAS, it is hereby disclosed or made known to the stockholders that Russell Hirsch ("***Hirsch***"), a director of the Company, has a financial interest in Prospect Venture Partners III, L.P. and/or certain of its affiliates (collectively, "***Prospect***"), and that Prospect is a holder of Company's Series E Preferred Stock and Series F Preferred Stock and as such, will receive a portion of the Merger Consideration upon consummation of the Merger, such that Hirsch is an Interested Party and the Merger is an Interested Party Transaction;

WHEREAS, it is hereby disclosed or made known to the stockholders that Jonathan Silverstein ("***Silverstein***"), a director of the Company, has a financial

interest in OrbiMed Private Investments IV, LP and/or certain of its affiliates (collectively, "***OrbiMed***"), and that OrbiMed is a holder of Company's Series E Preferred Stock and Series F Preferred Stock and as such, will receive a portion of the Merger Consideration upon consummation of the Merger, such that Silverstein is an Interested Party and the Merger is an Interested Party Transaction;

WHEREAS, it is hereby disclosed or made known to the stockholders that Josh Baltzell ("***Baltzell***"), a director of the Company, has a financial interest in Split Rock Partners, LP and/or certain of its affiliates (collectively, "***Split Rock***"), and that Split Rock is a holder of Company's Series E Preferred Stock and Series F Preferred Stock and as such, will receive a portion of the Merger Consideration upon consummation of the Merger, such that Baltzell is an Interested Party and the Merger is an Interested Party Transaction;

WHEREAS, in accordance with the DGCL and the Company's Amended and Restated Certificate of Incorporation (as amended, the "***Restated Certificate***"), the affirmative vote of the following is required to approve certain of the actions described herein: the holders of (i) a majority of the outstanding shares of Company Capital Stock, (ii) a majority of the outstanding shares of Company Common Stock and (iii) a majority of the outstanding shares of Company Preferred Stock (voting together as a single class and on an as- converted basis) (collectively, the "***Requisite Stockholders***");

WHEREAS, the undersigned stockholders are aware of the material facts related to the Merger and have had an adequate opportunity to ask questions regarding, and investigate the nature of, the relationships and/or interests of the Interested Parties with and in the Company in connection with the Merger;

WHEREAS, the undersigned stockholders have received and reviewed the terms of the Merger Agreement and such other information as they believe necessary to make an informed decision, and they have had the opportunity to consult with their legal, tax and/or financial advisors regarding the consequences to them of the Merger and the Merger Agreement;

WHEREAS, the Board of Directors has unanimously determined that the Merger Agreement and the transactions contemplated thereby, including the Merger, are advisable, fair to and in the best interests of the Company and its stockholders and has recommended that the stockholders of the Company adopt the Merger Agreement and approve the Merger; and

WHEREAS, after careful consideration, the undersigned stockholders, who collectively constitute the Requisite Stockholders, have determined that the terms and conditions of the proposed Merger are just and equitable and fair as to the Company and that it is in the best interests of the Company and the stockholders of the Company to enter into the Merger subject to the terms and conditions set forth in the Merger Agreement, including, without limitation, the indemnification and escrow provisions of the Merger Agreement, and the provisions regarding the appointment of the Stockholder Representative to act on behalf of the Priority Preferred Stockholders pursuant to the authority granted therein.

NOW, THEREFORE, BE IT RESOLVED, that the Merger Agreement, the terms and conditions thereof, and the transactions contemplated thereby, including the Merger, are hereby adopted and approved in all respects.

RESOLVED FURTHER, that, by virtue of the approval of the Merger Agreement, each of the undersigned stockholders hereby, on his, her or its own behalf and on the behalf of all other Priority Preferred Stockholders, irrevocably nominates, constitutes and appoints Shareholder Representative Services LLC as the Stockholder Representative to serve as the agent and true and lawful attorney in fact of the Indemnifying Parties, with full power of substitution, to act in the name, place and stead of the Indemnifying Parties for purposes of executing any documents and taking any actions that the Stockholder Representative may, in its sole discretion, determine to be necessary, desirable or appropriate in accordance with the terms of the Merger Agreement.

RESOLVED FURTHER, that each of the undersigned stockholders, with respect only to himself, herself or itself, hereby waives any appraisal or dissenters' rights under the DGCL, the California Corporations Code or any other applicable law in connection with the Merger.

RESOLVED FURTHER, that the indemnification and escrow obligations of the Indemnifying Parties as set forth in the Merger Agreement be, and hereby are, approved and adopted in all respects and that by signing this Action by Written Consent of Stockholders, the undersigned agrees to be bound by the indemnification and escrow provisions set forth in the Merger Agreement and the Escrow Agreement.

RESOLVED FURTHER, that the deposit of the amounts of cash equal to the Escrow Funds pursuant to the terms of the Merger Agreement is approved and adopted in all respects.

RESOLVED FURTHER, that each of the undersigned stockholders hereby acknowledges and agrees that the portion of Merger Consideration payable to them in the Merger is fair and reasonable to the Company and its stockholders.

RESOLVED FURTHER, that each of the undersigned stockholders hereby waives, on its own behalf and on behalf of all Company stockholders, any notice with respect to the Merger and the other transactions contemplated by the Merger Agreement which such stockholder may be entitled pursuant to the Restated Certificate, the Bylaws of the Company or any agreement by and between the Company and such stockholder, each as in effect as of the date hereof.

RESOLVED FURTHER, that this Action by Written Consent will be irrevocably effective and binding on all stockholders of the Company upon its execution by at least the Requisite Stockholders.

RESOLVED FURTHER, that the appropriate officers of the Company be, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Company, to prepare, execute, deliver and file or cause to be

prepared, executed, delivered and filed such further agreements, certificates, instruments and documents and to take such actions as contemplated by the Merger Agreement or as such officer or officers deem necessary, appropriate or advisable to carry out the intent of the foregoing resolutions.

GENERAL AUTHORIZING RESOLUTIONS

RESOLVED, that the officers of the Company are hereby authorized and directed, for and on behalf of the Company, to take such further action and execute and deliver such additional agreements, certificates or documents as each may deem necessary or appropriate to carry out the purposes of the above resolutions, and that the taking of such further actions and the execution and delivery of such additional agreements, certificates or documents by such officer or officers each will be conclusive evidence of his or her determination and the approval of the stockholders and the Company.

* * *

Exhibit 10.1

Published CUSIP Number: 58988XAA9
Revolving Credit CUSIP Number: 58988XAB7
Term Loan CUSIP Number: 58988XAC5

$425,000,000

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

dated as of July 6, 2016

by and among

MERIT MEDICAL SYSTEMS, INC.,
as Borrower,

the Lenders referred to herein,
as Lenders,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent,
Swingline Lender and Issuing Lender

WELLS FARGO SECURITIES, LLC,
as Sole Lead Arranger and Sole Bookrunner

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EXHIBITS

SCHEDULES

SECOND AMENDED AND RESTATED CREDIT AGREEMENT, dated as of July 6, 2016, by and among MERIT MEDICAL SYSTEMS, INC., a Utah corporation, as Borrower, the lenders who are party to this Agreement pursuant to the terms hereof, as Lenders, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Administrative Agent for the Lenders.

STATEMENT OF PURPOSE

The Borrower has requested, and subject to the terms and conditions set forth in this Agreement, the Administrative Agent and the Lenders have agreed to extend certain credit facilities to the Borrower.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, such parties hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Definitions. The following terms when used in this Agreement shall have the meanings assigned to them below:

"Administrative Agent" means Wells Fargo, in its capacity as Administrative Agent hereunder, and any successor thereto appointed pursuant to Section 13.6.

"Administrative Agent's Office" means, with respect to any currency, the office of the Administrative Agent specified in or determined in accordance with the provisions of Section 14.1(c), with respect to such currency.

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

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. Notwithstanding the foregoing, none of the Administrative Agent, the Arranger, the Lenders, the Issuing Lender, the L/C Participants, the Revolving Credit Lenders, the Term Loan Lenders or the Swingline Lender shall be an Affiliate of a Person solely because of the provisions of the Loan Documents.

"Agreement" means this Second Amended and Restated Credit Agreement.

"Alternative Currency" means (a) each of (i) Euro and (ii) Sterling, in each case to the extent such currencies (A) are freely transferable and convertible into Dollars, (B) are dealt with in the London interbank deposit market and (C) are not subject to any requirement by any central bank or other governmental authorization in the country of issue of such currency to give authorization for the use of such currency by any Lender for making Loans unless such authorization has been obtained and remains in full force and effect and (b) each other currency (other than Dollars) that is approved in accordance with Section 1.13.

"Alternative Currency Equivalent" means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the

Administrative Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

"Alternative Currency Sublimit" means the lesser of (a) $15,000,000 and (b) the Revolving Credit Commitment.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, and the rules and regulations thereunder.

"Anti-Money Laundering Laws" means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules applicable to a Credit Party, its Subsidiaries or Affiliates related to terrorism financing or money laundering, including any applicable provision of the Patriot Act and The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act," 31 U.S.C. §§ 5311-5330 and 12U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

"Applicable Law" means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities and all orders and decrees of all courts and arbitrators.

"Applicable Margin" means the corresponding percentages per annum as set forth below based on the Consolidated Total Leverage Ratio:

			Revolving Credit Loans		Term Loan	
Pricing Level	**Consolidated Total Leverage Ratio**	**Commitment Fee**	**Eurocurrency Rate +**	**Base Rate +**	**Eurocurrency Rate +**	**Base Rate +**
I	Less than 1.75 to 1.00	0.15%	1.00%	0.00%	1.00%	0.00%
II	Greater than or equal to 1.75 to 1.00, but less than 2.25 to 1.00	0.20%	1.25%	0.25%	1.25%	0.25%
III	Greater than or equal to 2.25 to 1.00, but less than 2.75 to 1.00	0.25%	1.50%	0.50%	1.50%	0.50%
IV	Greater than or equal to 2.75 to 1.00, but less than 3.25 to 1.00	0.30%	1.75%	0.75%	1.75%	0.75%
V	Greater than or equal to 3.25 to 1.00, but less than 3.75 to 1.00	0.35%	2.00%	1.00%	2.00%	1.00%
VI	Greater than or equal to 3.75 to 1.00, but less than 4.25 to 1.00	0.40%	2.25%	1.25%	2.25%	1.25%
VII	Greater than or equal to 4.25 to 1.00	0.40%	2.50%	1.50%	2.50%	1.50%

The Applicable Margin shall be determined and adjusted quarterly on the date ten (10) Business Days after the day by which the Borrower provides an Officer's Compliance Certificate pursuant to Section 8.2(a) for the most recently ended fiscal quarter of the Borrower (each such date, a "Calculation Date"); provided that (a) the Applicable Margin shall be based on Pricing Level VII until the first Calculation Date following the receipt by the Administrative Agent of the financial statements and the related Officer's Compliance Certificate for the first full fiscal quarter ending after the Closing Date and, thereafter the Pricing Level shall be determined by reference to the Consolidated Total Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Borrower preceding the applicable Calculation Date, and (b) if the Borrower fails to provide the Officer's Compliance Certificate when due as required by Section 8.2 for the most recently ended fiscal quarter of the Borrower preceding the applicable Calculation Date, the Applicable Margin from the date on which such Officer's Compliance Certificate was required to have been delivered shall be based on Pricing Level VII until such time as such Officer's Compliance Certificate is provided, at which time the Pricing Level shall be determined by reference to the Consolidated Total Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Borrower preceding such Calculation Date. The applicable Pricing Level shall be effective from one Calculation Date until the next Calculation Date. Any adjustment in the Pricing Level shall be applicable to all Extensions of Credit then existing or subsequently made or issued.

Notwithstanding the foregoing, in the event that any financial statement or Officer's Compliance Certificate delivered pursuant to Section 8.1 or Section 8.2(a) is shown to be inaccurate (regardless of whether (i) this Agreement is in effect, (ii) any Commitments are in effect, or (iii) any Extension of Credit is outstanding when such inaccuracy is discovered or such financial statement or Officer's Compliance Certificate was delivered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an "Applicable Period") than the Applicable Margin applied for such Applicable Period, then (A) the Borrower shall immediately deliver to the Administrative Agent a corrected Officer's Compliance Certificate for such Applicable Period, (B) the Applicable Margin for such Applicable Period shall be determined as if the Consolidated Total Leverage Ratio in the corrected Officer's Compliance Certificate were applicable for such Applicable Period, and (C) the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent the accrued additional interest and fees owing as a result of such increased Applicable Margin for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with Section 5.4. Nothing in this paragraph shall limit the rights of the Administrative Agent and Lenders with respect to Sections 5.1(b) and 12.2 nor any of their other rights under this Agreement or any other Loan Document. The Borrower's obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations hereunder.

The Applicable Margins set forth above shall be increased as, and to the extent, required by Section 5.13.

"Applicable Time" means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arranger" means Wells Fargo Securities, LLC, in its capacity as sole lead arranger and sole bookrunner.

"Asset Disposition" means the disposition of any or all of the assets (including, without limitation, any Capital Stock owned thereby) of any Credit Party or any Subsidiary thereof whether by sale, lease, transfer or otherwise. The term "Asset Disposition" shall not include any Equity Issuance.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 14.10), and accepted by the Administrative Agent, in substantially the form attached as ***Exhibit G*** or any other form approved by the Administrative Agent.

"Attributable Indebtedness" means, on any date of determination, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease, the capitalized amount or principal amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

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

"Bail-In Legislation" means, 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 for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bankruptcy Code" means 11 U.S.C. §§ 101 *et seq.*

"Base Rate" means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) the Eurocurrency Rate for an Interest Period of one month plus 1.0%; each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or the Eurocurrency Base Rate (provided that clause (c) shall not be applicable during any period in which the Eurocurrency Rate is unavailable or unascertainable). Notwithstanding the foregoing, if the Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Base Rate Loan" means any Loan bearing interest at a rate based upon the Base Rate as provided in Section 5.1(a). All Base Rate Loans shall be denominated in Dollars and shall be made to the Borrower.

"Borrower" Merit Medical Systems, Inc., a Utah corporation.

"Borrower Materials" has the meaning assigned thereto in Section 8.4.

"Business Day" means any day other than a Saturday, Sunday or legal holiday on which banks in Salt Lake City, Utah, Charlotte, North Carolina and New York, New York, are open for the conduct of their commercial banking business and:

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any London Banking Day;

(b) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Rate Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any TARGET Day;

(c) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and

(d) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars or Euro in respect of a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, or any other dealings in any currency other than Dollars or Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

"Calculation Date" has the meaning assigned thereto in the definition of Applicable Margin.

"Capital Asset" means, with respect to the Borrower and its Subsidiaries, any asset that should, in accordance with GAAP, be classified and accounted for as a capital asset on a Consolidated balance sheet of the Borrower and its Subsidiaries.

"Capital Expenditures" means, with respect to the Borrower and its Subsidiaries for any period, the aggregate cost of all Capital Assets acquired by the Borrower and its Subsidiaries during such period (excluding any Permitted Acquisition), as determined in accordance with GAAP, net of any Net Cash Proceeds received from (a) any disposition of Capital Assets (to the extent permitted hereunder) that have actually been reinvested during such period in other Capital Assets in accordance with Section 4.4(b)(iii) or (b) any Insurance and Condemnation Event that have actually been reinvested during such period in other Capital Assets in accordance with Section 4.4(b)(iv); provided that (i) Capital Expenditures shall not be less than zero and (ii) the Administrative Agent shall have received a certificate, in form and substance satisfactory to the Administrative Agent, executed by a Responsible Officer of the Borrower, certifying as to the other Capital Assets invested in with any such Net Cash Proceeds, the dates of such investments and the amount of such investments.

"Capital Lease" means any lease of any property by the Borrower or any of its Subsidiaries, as lessee, that should, in accordance with GAAP, be classified and accounted for as a capital lease on a Consolidated balance sheet of the Borrower and its Subsidiaries.

"Capital Stock" means (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership interests, (e) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person and (f) any and all warrants, rights or options to purchase any of the foregoing.

"Cash Collateralize" means to pledge and deposit with, or deliver to, the Administrative Agent, or directly to the Issuing Lender (with notice thereof to the Administrative Agent), for the benefit of the Issuing Lender, the Swingline Lender or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations or Swingline Loans, cash or deposit account balances or, if the Administrative Agent and the Issuing Lender and the Swingline Lender shall agree, in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent, the Issuing Lender and the Swingline Lender, as applicable. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Equivalents" means, collectively, (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency thereof maturing within two hundred seventy (270) days from the date of acquisition thereof, (b) commercial paper maturing no more than two hundred seventy (270) days from the date of creation thereof and currently having the highest rating obtainable from either Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., or Moody's Investors Service, Inc., (c) certificates of deposit maturing no more than two hundred seventy (270) days from the date of creation thereof issued by commercial banks incorporated under the laws of the United States, each having combined capital, surplus and undivided profits of not less than $500,000,000 and having a rating of "A" or better by a nationally recognized rating agency;

provided that the aggregate amount invested in such certificates of deposit shall not at any time exceed $5,000,000 for any one such certificate of deposit and $10,000,000 for any one such bank, or (d) time deposits maturing no more than thirty (30) days from the date of creation thereof with commercial banks or savings banks or savings and loan associations each having membership either in the FDIC or the deposits of which are insured by the FDIC and in amounts not exceeding the maximum amounts of insurance thereunder.

"Cash Management Agreement" means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card (including non-card electronic payables and purchasing cards), electronic funds transfer, foreign exchange and other cash management arrangements.

"Cash Management Bank" means any Person that, (a) at the time it enters into a Cash Management Agreement with a Credit Party, is a Lender, an Affiliate of a Lender, the Administrative Agent or an Affiliate of the Administrative Agent, or (b) at the time it (or its Affiliate) becomes a Lender or the Administrative Agent (including on the Closing Date), is a party to a Cash Management Agreement with a Credit Party, in each case in its capacity as a party to such Cash Management Agreement.

"Cash Management Swingline Loans" means the collective reference to the Swingline Loans made pursuant to, and in accordance with, the terms of the Loan Sweep Agreement as contemplated by Section 2.2(a), and "Cash Management Swingline Loan" means any of such Swingline Loans.

"Change in Control" means an event or series of events by which:

(a) (i) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a "person" or "group" shall be deemed to have "beneficial ownership" of all Capital Stock that such "person" or "group" has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of more than thirty-five percent (35%) of the Capital Stock of the Borrower entitled to vote in the election of members of the board of directors (or equivalent governing body) of the Borrower or (ii) a majority of the members of the board of directors (or other equivalent governing body) of the Borrower shall not constitute Continuing Directors; or

(b) there shall have occurred under any indenture or other instrument evidencing any Indebtedness or Capital Stock in excess of $20,000,000 any "change in control" or similar provision (as set forth in the indenture, agreement or other evidence of such Indebtedness) obligating the Borrower or any of its Subsidiaries to repurchase, redeem or repay all or any part of the Indebtedness or Capital Stock provided for therein.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that 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 or foreign

regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, implemented or issued.

"Class" means, when used in reference to any Loan, whether such Loan is a Revolving Credit Loan, Swingline Loan or Term Loan and, when used in reference to any Commitment, whether such Commitment is a Revolving Credit Commitment or a Term Loan Commitment.

"Closing Date" means the date of this Agreement or such later Business Day upon which each condition described in Section 6.1 shall be satisfied or waived in all respects in a manner acceptable to the Administrative Agent, in its sole discretion.

"Code" means the Internal Revenue Code of 1986, and the rules and regulations promulgated thereunder.

"Collateral" means the collateral security for the Secured Obligations pledged or granted pursuant to the Security Documents.

"Collateral Agreement" means the collateral agreement of even date herewith executed by the Credit Parties in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, which shall be in form and substance acceptable to the Administrative Agent.

"Commitment Fee" has the meaning assigned thereto in Section 5.3(a).

"Commitment Percentage" means, as to any Lender, such Lender's Revolving Credit Commitment Percentage or Term Loan Percentage, as applicable.

"Commitments" means, collectively, as to all Lenders, the Revolving Credit Commitments and the Term Loan Commitments of such Lenders.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated" means, when used with reference to financial statements or financial statement items of any Person, such statements or items on a consolidated basis in accordance with applicable principles of consolidation under GAAP.

"Consolidated EBITDA" means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Borrower and its Subsidiaries in accordance with GAAP:

(a) Consolidated Net Income for such period;

plus

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

(i) income and franchise taxes paid during such period;

(ii) Consolidated Interest Expense for such period paid or payable in cash;

(iii) amortization, depreciation and other non-cash charges for such period (except to the extent that such non-cash charges are reserved for cash charges to be taken in the future);

(iv) non-cash charges or expenses related to equity incentives for such period, including stock-based compensation;

(v) extraordinary losses during such period (excluding extraordinary losses from discontinued operations);

(vi) Transaction Costs during such period in connection with the Transactions (including the Dfine Acquisition), any Permitted Acquisition and any Equity Issuance; provided that (A) the aggregate amount of all Transaction Costs added pursuant to this clause (vi) shall not exceed $50,000,000 during the term of this Agreement, (B) the aggregate amount of such Transaction Costs added pursuant to this clause (vi) in connection with the Dfine Acquisition shall not exceed $20,000,000 during the term of this Agreement and (C) commencing with the applicable period ending March 31, 2018, the aggregate amount of all Transaction Costs under clause (b) of the definition thereof added pursuant to this clause (vi) shall not exceed 15% of the Consolidated EBITDA (determined without giving effect to this clause (b)(vi) and clause (b)(ix));

(vii) fees paid to the Lenders and/or Administrative Agent under any Loan Document or pursuant to any amendment or waiver thereof during such period;

(viii) proceeds from business interruption insurance to the extent not already included in calculating Consolidated Net Income for such period; and

(ix) other nonrecurring charges for such period acceptable to the Administrative Agent in its sole discretion; provided that the aggregate amount of all nonrecurring charges added pursuant to this clause (b)(ix) shall not exceed 15% of the Consolidated EBITDA (determined without giving effect to clause (b)(vi) and this clause (b)(ix));

less

(c) interest income and any extraordinary gains during such period;

less

(d) non-cash gains for such period.

For purposes of this Agreement, Consolidated EBITDA shall be adjusted on a Pro Forma Basis. Notwithstanding the foregoing, Consolidated EBITDA for each of the fiscal quarters ended September 30, 2015, December 31, 2015 and March 31, 2016, respectively, shall be deemed to equal $20,254,000, $21,467,000 and $19,878,000, respectively.

"Consolidated Fixed Charges" means, for any period, the sum of the following determined on a Consolidated basis for such period, without duplication, for the Borrower and its Subsidiaries in accordance with GAAP: (a) Consolidated Interest Expense and (b) scheduled principal payments

(excluding, for the avoidance of doubt, (i) any voluntary prepayment, (ii) any balloon payment of the Obligations on the Revolving Credit Maturity Date or Term Loan Maturity Date, as applicable, (iii) any payment of amounts owing under the Existing Credit Agreement, and (iv) any mandatory repayment required by Section 4.4(b) hereof) with respect to Indebtedness (including Attributable Indebtedness with respect to Capital Leases). For purposes of this Agreement, Consolidated Fixed Charges shall not be calculated on a Pro Forma Basis.

"Consolidated Interest Expense" means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Borrower and its Subsidiaries in accordance with GAAP, interest expense (including, without limitation, interest expense attributable to Capital Leases and all net payment obligations pursuant to Hedge Agreements) for such period.

"Consolidated Net Income" means, for any period, the net income (or loss) of the Borrower and its Subsidiaries for such period, determined on a Consolidated basis, without duplication, in accordance with GAAP; provided, that in calculating Consolidated Net Income of the Borrower and its Subsidiaries for any period, there shall be excluded (a) the net income (or loss) of any Person (other than a Subsidiary which shall be subject to clause (c) below), in which the Borrower or any of its Subsidiaries has a joint interest with a third party, except to the extent such net income is actually paid in cash to the Borrower or any of its Subsidiaries by dividend or other distribution during such period, (b) the net income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower or any of its Subsidiaries or is merged into or consolidated with the Borrower or any of its Subsidiaries or that Person's assets are acquired by the Borrower or any of its Subsidiaries except to the extent included pursuant to the foregoing clause (a), and (c) the net income (if positive), of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary to the Borrower or any of its Subsidiaries of such net income (i) is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary or (ii) would be subject to any taxes payable on such dividends or distributions, but in each case only to the extent of such prohibition or taxes.

"Consolidated Total Funded Indebtedness" means, as of any date of determination with respect to the Borrower and its Subsidiaries on a Consolidated basis without duplication, the sum of all Indebtedness of the Borrower and its Subsidiaries described in, clauses (a), (c), (f) and (i) of the definition of "Indebtedness", but excluding intercompany indebtedness among the Credit Parties.

"Consolidated Total Leverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated Total Funded Indebtedness on such date to (b) Consolidated EBITDA for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date.

"Continuing Directors" means the directors (or equivalent governing body) of the Borrower on the Closing Date and each other director (or equivalent) of the Borrower, if, in each case, such other director's (or equivalent's) election or nomination for election to the board of directors (or equivalent governing body) of the Borrower is approved by at least fifty-one percent (51%) of the then Continuing Directors.

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

"Credit Facility" means, collectively, the Revolving Credit Facility, the Term Loan Facility, the Swingline Facility and the L/C Facility.

"Credit Parties" means, collectively, the Borrower and the Subsidiary Guarantors.

"Debt Issuance" means the issuance of any Indebtedness for borrowed money by any Credit Party or any of its Subsidiaries.

"Debtor Relief Laws" means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"Default" means any of the events specified in Section 12.1 which with the passage of time, the giving of notice or any other condition, would constitute an Event of Default.

"Defaulting Lender" means, subject to Section 5.15(b), any Lender that (a) has failed to (i) fund all or any portion of the Revolving Credit Loans, any Term Loan, participations in L/C Obligations or participations in Swingline Loans required to be funded by it hereunder within two Business Days of the date such Loans or participations were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing 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, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the FDIC or any other state or federal regulatory authority acting in such a capacity or (iii) has become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof 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. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 5.15(b)) upon delivery of written notice of such determination to the Borrower, the Issuing Lender, the Swingline Lender and each Lender.

"Dfine" means Dfine Inc., a Delaware corporation.

"Dfine Acquisition" means the merger of the Dfine Acquisition Subsidiary with and into Dfine (with the Dfine being the survivor of such merger and a Wholly-Owned Subsidiary of the Borrower) and the other transactions related to such merger, in each case as contemplated by the Dfine Acquisition Agreement and the other Dfine Acquisition Agreement Related Documents, including, without limitation, the formation by the Borrower of the Dfine Acquisition Subsidiary.

"Dfine Acquisition Subsidiary" means MMS Transaction Co., a Delaware corporation and a Wholly-Owned Subsidiary of the Borrower.

"Dfine Acquisition Agreement" means that certain Merger Agreement (including all schedules and exhibits thereto), dated as of July 6, 2016, by and among the Borrower, the Dfine Acquisition Subsidiary, Dfine, the Priority Preferred Stockholders party thereto, solely for the purposes of Article VII thereof, and Shareholder Representative Services LLC, solely in its capacity as the representative of the Priority Preferred Stockholders.

"Dfine Acquisition Agreement Related Documents" means, collectively, (a) the Dfine Acquisition Agreement, (b) the "Ancillary Documents" (as defined in the Dfine Acquisition Agreement) and (c) all other material documents entered into by the Borrower, the Dfine Acquisition Subsidiary or any Credit Party in connection with the Dfine Acquisition.

"Disputes" means any dispute, claim or controversy arising out of, connected with or relating to this Agreement or any other Loan Document, between or among parties hereto and to the other Loan Documents.

"Disqualified Capital Stock" means any Capital Stock that, 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 for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Capital Stock) (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), 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 91 days after the final maturity date applicable to the Credit Facility; provided, that if such Capital Stock is issued pursuant to a plan for the benefit of the Borrower or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

"Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

"Dollars" or "$" means, unless otherwise qualified, dollars in lawful currency of the United States.

"Domestic Subsidiary" means any Subsidiary organized under the laws of any political subdivision of the United States; provided that any Foreign Subsidiary (i) the Capital Stock of which is owned directly by any Credit Party and (ii) that is treated as a disregarded entity for tax purposes shall be deemed to be a Domestic Subsidiary.

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

Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 14.10(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 14.10(b)(iii)).

"Employee Benefit Plan" means (a) any employee benefit plan within the meaning of Section 3(3) of ERISA that is maintained for employees of any Credit Party or any ERISA Affiliate or (b) any Pension Plan or Multiemployer Plan that has at any time within the preceding six (6) years been maintained for the employees of any Credit Party or any current or former ERISA Affiliate.

"EMU" means the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1998.

"EMU Legislation" means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

"Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, accusations, allegations, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law, including, without limitation, any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to public health or the environment in connection with exposure to, or releases of, Hazardous Materials.

"Environmental Laws" means any and all federal, foreign, state, provincial and local laws, statutes, ordinances, codes, rules, standards and regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities, relating to the protection of public health or the environment, including, but not limited to, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of Hazardous Materials.

"Equity Issuance" means (a) any issuance by any Credit Party or any Subsidiary thereof to any Person that is not a Credit Party of (i) shares of its Capital Stock, (ii) any shares of its Capital Stock pursuant to the exercise of options or warrants or (iii) any shares of its Capital Stock pursuant to the conversion of any debt securities to equity and (b) any capital contribution from any Person that is not a Credit Party into any Credit Party or any Subsidiary thereof. The term "Equity Issuance" shall not include (A) any Asset Disposition or (B) any Debt Issuance.

"ERISA" means the Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder.

"ERISA Affiliate" means any Person who together with any Credit Party or any of its Subsidiaries is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

"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" and "€" means the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

"Eurocurrency Base Rate" means:

(a) with respect to any Extension of Credit denominated in Dollars, the rate of interest per annum determined on the basis of the rate for deposits in Dollars for a period equal to the applicable Interest Period which appears on Reuters Screen LIBOR01 Page (or any applicable successor page or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m. (London time) on the Rate Determination Date, or a comparable or successor rate which rate is approved by the Administrative Agent;

(b) with respect to any Extension of Credit denominated in Sterling, the rate of interest per annum determined on the basis of the rate for deposits in Sterling for a period equal to the applicable Interest Period which appears on Reuters Screen LIBOR01 Page (or any applicable successor page or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m. (London time) on the Rate Determination Date, or a comparable or successor rate which rate is approved by the Administrative Agent;

(c) with respect to any Extension of Credit denominated in Euro, the rate of interest per annum determined on the basis of the rate for deposits in Euro for a period equal to the applicable Interest Period which appears on Reuters Screen for Euribor (or any applicable successor page or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m. (London time) on the Rate Determination Date, or a comparable or successor rate which rate is approved by the Administrative Agent;

(d) with respect to a Credit Extension denominated in any other currency, the rate per annum as designated by the Administrative Agent and the Lenders with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the Lenders pursuant to Section 1.13(a); and

(e) for any rate calculation with respect to a Base Rate Loan on any date, the rate per annum which appears on Reuters Screen LIBOR01 Page (or any applicable successor page or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m. (London time) two (2) Business Days prior to such date for Dollar deposits with a term of one month commencing that day;
provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection with any rate set forth in this definition, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Each calculation by the Administrative Agent of the Eurocurrency Base Rate shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding the foregoing, if the Eurocurrency Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

Notwithstanding the foregoing, in no event shall the Eurocurrency Base Rate be less than 0%.

"Eurocurrency Rate" means a rate per annum determined by the Administrative Agent pursuant to the following formula:

$$\text{Eurocurrency Rate} = \frac{\text{Eurocurrency Base Rate}}{\text{1.00-Eurocurrency Reserve Percentage}}$$

"Eurocurrency Rate Loan" means any Loan bearing interest at a rate based upon the Eurocurrency Rate as provided in Section 5.1(a) (other than Swingline Loans). Eurocurrency Rate Loans may be denominated in Dollars or in an Alternative Currency.

"Eurocurrency Reserve Percentage" means, for any day, the percentage which is in effect for such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any basic, supplemental or emergency reserves) in respect of Eurocurrency liabilities or any similar category of liabilities for a member bank of the Federal Reserve System in New York City.

"Event of Default" means any of the events specified in Section 12.1; provided that any requirement for passage of time, giving of notice, or any other condition, has been satisfied.

"Excess Cash Flow" means, for the Borrower and its Subsidiaries on a Consolidated basis, in accordance with GAAP for any Fiscal Year, the excess, if any, of:

(a) the sum, without duplication, of (i) Consolidated Net Income for such Fiscal Year, (ii) an amount equal to the amount of all non-cash charges to the extent deducted in determining Consolidated Net Income for such Fiscal Year and (iii) decreases in Working Capital for such Fiscal Year, over
(b) the sum, without duplication, of (i) the aggregate amount of (A) cash actually paid by the Borrower and its Subsidiaries during such Fiscal Year on account of Capital Expenditures and Permitted

Acquisitions (other than any amounts that were committed during a prior Fiscal Year to the extent such amounts reduced Excess Cash Flow in such prior Fiscal Year per clause (b)(i)(B) below), (B) cash committed during such Fiscal Year to be used to make Capital Expenditures or Permitted Acquisitions which, in either case, have been actually made or consummated or for which a binding agreement exists as of the time of determination of Excess Cash Flow for such Fiscal Year and (C) Investments pursuant to Section 11.3(i) made during such Fiscal Year or committed during such Fiscal Year to be made and for which a binding agreement exists as of the time of determination of Excess Cash Flow for Fiscal Year (in each case under this clause (i) other than to the extent any such Capital Expenditure, Permitted Acquisition or other Investment is made or is expected to be made with the proceeds of Indebtedness, any Equity Issuance, casualty proceeds, condemnation proceeds or other proceeds that would not be included in Consolidated EBITDA), (ii) the aggregate amount of all scheduled principal payments or repayments of Indebtedness (other than mandatory prepayments of Loans) made by the Borrower and its Subsidiaries during such Fiscal Year, but only to the extent that such payments or repayments by their terms cannot be reborrowed or redrawn and do not occur in connection with a refinancing of all or any portion of such Indebtedness, (iii) an amount equal to the amount of all non-cash credits to the extent included in determining Consolidated Net Income for such Fiscal Year and (iv) increases to Working Capital for such Fiscal Year.

"Exchange Act" means the Securities Exchange Act of 1934.

"Excluded Swap Obligation" means, with respect to any Credit Party, any Swap Obligation if, and to the extent that, all or a portion of the liability of such Credit Party for or the guarantee of such Credit Party of, or the grant by such Credit Party of a security interest to secure, such Swap Obligation (or any liability or guarantee 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 Credit Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the liability for or the guarantee of such Credit Party or the grant of such security interest becomes effective with respect to such Swap Obligation (such determination being made after giving effect to any applicable keepwell, support or other agreement for the benefit of the applicable Credit Party, including under the keepwell provisions in the Guaranty Agreement). If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal for the reasons identified in the immediately preceding sentence of this definition.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being 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) that are Other Connection Taxes, (b) in the case of a Lender, United States 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 (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 5.12(b)) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 5.11, 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 attributable to such Recipient's failure to comply with Section 5.11(g) and (d) any United States federal withholding Taxes imposed under FATCA.

"Existing Credit Agreement" means that certain Amended and Restated Credit Agreement dated as of December 19, 2012 by and among the Borrower, as borrower, the lenders party thereto, as lenders, and Wells Fargo Bank, National Association, as administrative agent, as amended, restated, supplemented or otherwise modified as of the date hereof.

"Existing Dfine Credit Agreement" means that certain Loan and Security Agreement dated as of December 14, 2015 by and among Dfine, the lenders party thereto, as lenders, and Oxford Finance LLC, as collateral agent, as amended, restated, supplemented or otherwise modified as of the date hereof.

"Existing Letters of Credit" means those letters of credit existing on the Closing Date and identified on Schedule 1.1(a).

"Extensions of Credit" means, as to any Lender at any time, (a) an amount equal to the sum of (i) the aggregate principal amount of all Revolving Credit Loans made by such Lender then outstanding, (ii) such Lender's Revolving Credit Commitment Percentage of the L/C Obligations then outstanding, (iii) such Lender's Revolving Credit Commitment Percentage of the Swingline Loans then outstanding and (iv) the aggregate principal amount of the Term Loans made by such Lender then outstanding, or (b) the making of any Loan or participation in any Letter of Credit by such Lender, as the context requires.

"Facility Capital Expenditures" means Capital Expenditures of the Borrower and its Subsidiaries associated with the acquisition, building and expansion of manufacturing facilities, research facilities, customer service and distribution facilities and other facilities acquired, built or expanded by the Borrower and its Subsidiaries in connection with the business thereof (including, without limitation, the acquisition of property and plant related thereto).

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

"FDIC" means the Federal Deposit Insurance Corporation.

"Federal Funds 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 Federal Reserve Bank of New York 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 Rate for such day shall be the average of the quotation for such day on such transactions received by the Administrative Agent from three (3) federal funds brokers of recognized standing selected by the Administrative Agent. Notwithstanding the foregoing, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Fee Letters" means (i) the separate engagement letter agreement dated May 26, 2016 among the Borrower and the Arranger and (ii) the separate fee letter agreement dated as of the Closing Date among the Borrower and the Administrative Agent.

"First Tier Foreign Subsidiary" means any Foreign Subsidiary that is a "controlled foreign corporation" within the meaning of Section 957 of the Code and the Capital Stock of which is owned directly by any Credit Party.

"Fiscal Year" means the fiscal year of the Borrower and its Subsidiaries ending on December 31st.

"Foreign Lender" means (a) if the Borrower is a U.S. Person, any Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, any Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to the Issuing Lender, such Defaulting Lender's Revolving Credit Commitment Percentage of the outstanding L/C Obligations other than such L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof and (b) with respect to the Swingline Lender, such Defaulting Lender's Revolving Credit Commitment Percentage of outstanding Swingline Loans, other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

"Fund" means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Approvals" means all authorizations, consents, approvals, permits, licenses and exemptions of, and all registrations and filings with or issued by, Governmental Authorities.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guaranty Agreement" means the unconditional guaranty agreement of even date herewith executed by the Borrower and the Subsidiary Guarantors in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, which shall be in form and substance acceptable to the Administrative Agent.

"Guaranty Obligation" means, with respect to the Borrower and its Subsidiaries, without duplication, any obligation, contingent or otherwise, of any such Person pursuant to which such Person has directly or indirectly guaranteed any Indebtedness or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of any such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement condition or otherwise) or (b) entered into for the purpose of assuring in any other

manner the obligee of such Indebtedness or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, that the term Guaranty Obligation shall not include (i) endorsements for collection or deposit in the ordinary course of business and (ii) guarantees of obligations to reimburse Governmental Authorities in connection with an economic development incentive to the extent not considered a contingent obligation under GAAP unless and until demand is made for payment under the agreement evidencing such economic development incentive; provided, further, that the amount of any Guaranty Obligations shall be equal to the amount of the obligation so guaranteed or otherwise supported, if any, or, if less, the amount to which such Guaranty is specifically limited, unless such primary obligation and the amount for which such guarantor may be liable are not stated or determinable, in which case the amount of such Guaranty shall be such guarantor's maximum reasonably anticipated liability in respect thereof as determined by such guarantor in good faith.

"Hazardous Materials" means any substances or materials (a) which are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants, chemical substances or mixtures or toxic substances under any Environmental Law, (b) which are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise harmful to human health or the environment and are or become regulated by any Governmental Authority under Environmental Laws, (c) the presence of which require investigation or remediation under any Environmental Law, (d) the discharge or emission or release of which requires a permit or license under any Environmental Law or other Governmental Approval, (e) which are deemed to constitute a nuisance or a trespass which pose a health or safety hazard to Persons or neighboring properties, (f) which consist of underground or aboveground storage tanks, whether empty, filled or partially filled with any substance, or (g) which contain, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, petroleum hydrocarbons, petroleum derived substances or waste, crude oil, nuclear fuel, natural gas or synthetic gas.

"Hedge Agreement" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, 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, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (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.

"Hedge Bank" means any Person that, (a) at the time it enters into a Hedge Agreement with a Credit Party permitted under Article XI, is a Lender, an Affiliate of a Lender, the Administrative Agent or an Affiliate of the Administrative Agent or (b) at the time it (or its Affiliate) becomes a Lender or the Administrative Agent (including on the Closing Date), is a party to a Hedge Agreement with a Credit Party, in each case in its capacity as a party to such Hedge Agreement.

"Hedge Termination Value" means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date

referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

"Increased Amount Date" has the meaning assigned thereto in Section 5.13(a).

"Incremental Facilities Limit" means $100,000,000 less the total aggregate initial principal amount (as of the date of incurrence thereof) of all previously incurred unfunded Incremental Loan Commitments and Incremental Loans.

"Incremental Lender" has the meaning assigned thereto in Section 5.13(a).

"Incremental Loan Commitments" has the meaning assigned thereto in Section 5.13(a)(ii).

"Incremental Loans" has the meaning assigned thereto in Section 5.13(a)(ii).

"Incremental Revolving Credit Commitment" has the meaning assigned thereto in Section 5.13(a)(ii).

"Incremental Revolving Credit Increase" has the meaning assigned thereto in Section 5.13(a)(ii).

"Incremental Term Loan" has the meaning assigned thereto in Section 5.13(a)(i).

"Incremental Term Loan Commitment" has the meaning assigned thereto in Section 5.13(a)(i).

"Indebtedness" means, with respect to any Person at any date and without duplication, the sum of the following:

(a) all liabilities, obligations and indebtedness for borrowed money including, but not limited to, obligations evidenced by bonds, debentures, notes or other similar instruments of any such Person;

(b) all obligations to pay the deferred purchase price of property or services of any such Person (including, without limitation, all obligations under non-competition, earn-out or similar agreements), except trade payables (i) arising in the ordinary course of business not more than ninety (90) days past due, or (ii) that are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of such Person;

(c) the Attributable Indebtedness of such Person with respect to such Person's obligations in respect of Capital Leases and Synthetic Leases (regardless of whether accounted for as indebtedness under GAAP);

(d) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person to the extent of the value of such property (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);

(e) all Indebtedness of any other Person secured by a Lien on any asset owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention

agreements, except trade payables arising in the ordinary course of business), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all obligations, contingent or otherwise, of any such Person relative to the face amount of letters of credit, whether or not drawn, including, without limitation, any Reimbursement Obligation, and banker's acceptances issued for the account of any such Person;

(g) all obligations of any such Person in respect of Disqualified Capital Stock;

(h) all Net Hedging Obligations of any such Person; and

(i) all Guaranty Obligations of any such Person with respect to any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall 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, unless such Indebtedness is expressly made non-recourse to such Person.

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

"Initial Term Loan" means the term loan made, or to be made, to the Borrower by the Term Loan Lenders pursuant to Section 4.1.

"Insurance and Condemnation Event" means the receipt by any Credit Party or any of its Subsidiaries of any cash insurance proceeds or condemnation award payable by reason of theft, loss, physical destruction or damage, taking or similar event with respect to any of their respective Property.

"Interest Period" means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one (1), two (2), three (3), or six (6) months thereafter, in each case as selected by the Borrower in its Notice of Borrowing or Notice of Conversion/Continuation and subject to availability; provided that:

(a) the Interest Period shall commence on the date of advance of or conversion to any Eurocurrency Rate Loan and, in the case of immediately successive Interest Periods, each successive Interest Period shall commence on the date 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 with respect to a Eurocurrency Rate Loan 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 with respect to a Eurocurrency Rate Loan 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) no Interest Period shall extend beyond the Revolving Credit Maturity Date or the Term Loan Maturity Date, as applicable, and Interest Periods shall be selected by the Borrower so as to permit the Borrower to make the quarterly principal installment payments pursuant to Section 4.3 without payment of any amounts pursuant to Section 5.9; and

(e) there shall be no more than ten (10) Interest Periods in effect at any time.

"Investment Company Act" means the Investment Company Act of 1940 (15 U.S.C. § 80(a)(1), *et seq*.).

"IRS" means the United States Internal Revenue Service.

"ISP98" means the International Standby Practices (1998 Revision, effective January 1, 1999), International Chamber of Commerce Publication No. 590.

"Issuing Lender" means Wells Fargo, in its capacity as issuer thereof, or any successor thereto.

"L/C Commitment" means the lesser of (a) $15,000,000 and (b) the Revolving Credit Commitment.

"L/C Facility" means the letter of credit facility established pursuant to Article III.

"L/C Obligations" means at any time, an amount equal to the sum of (a) the aggregate undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate amount of drawings under Letters of Credit which have not then been reimbursed pursuant to Section 3.5.

"L/C Participants" means, with respect to any Letter of Credit, the collective reference to all the Revolving Credit Lenders other than the Issuing Lender.

"Lender" means each Person executing this Agreement as a Lender on the Closing Date and any other Person that shall have become a party to this Agreement as a Lender pursuant to an Assignment and Assumption or pursuant to Section 5.13, other than any Person that ceases to be a party hereto as a Lender pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term "Lenders" includes the Swingline Lender.

"Lender Joinder Agreement" means a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent delivered in connection with Section 5.13.

"Lending Office" means, with respect to any Lender, the office of such Lender maintaining such Lender's Extensions of Credit.

"Letter of Credit Application" means an application, in the form specified by the Issuing Lender from time to time, requesting the Issuing Lender to issue a Letter of Credit.

"Letters of Credit" means the collective reference to letters of credit issued pursuant to Section 3.1 and the Existing Letters of Credit.

"Lien" means, with respect to any asset, any mortgage, leasehold mortgage, lien, pledge, charge, security interest, hypothecation or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, a Person shall be deemed to own subject to a Lien any asset which it has acquired or

holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capital Lease or other title retention agreement relating to such asset.

"Loan Documents" means, collectively, this Agreement, each Note, the Letter of Credit Applications, the Security Documents, the Fee Letters and each other document, instrument, certificate and agreement executed and delivered by the Credit Parties or any of their respective Subsidiaries in favor of or provided to the Administrative Agent or any Secured Party in connection with this Agreement or otherwise referred to herein or contemplated hereby (excluding any Secured Hedge Agreement and any Secured Cash Management Agreement).

"Loan Sweep Activation Date" means the date which is twenty (20) Business Days after the date on which the Borrower shall have delivered to the Administrative Agent and the Swingline Lender a duly executed Loan Sweep Agreement.

"Loan Sweep Agreement" means, collectively, any document, instrument, certificate, note or agreement executed and delivered in connection with the treasury management services arrangement between the Borrower and Wells Fargo that governs the borrowing and repayment of Cash Management Swingline Loans, including, without limitation, the Master Agreement for Treasury Management Services, the Wells Fargo Stagecoach Sweep Service Description, the Acceptance of Services, the Master Repurchase Agreement, the applicable deposit account agreement and all other Service Documentation, as such term is defined in the Master Agreement for Treasury Management Services, each as may be, individually or collectively, amended, restated, supplemented or otherwise modified from time to time.

"Loan Sweep Termination Date" means the date which is ten (10) Business Days after the date on which the Borrower shall have delivered to the Administrative Agent a termination notice with respect to the Loan Sweep Agreement.

"Loans" means the collective reference to the Revolving Credit Loans, the Term Loan and the Swingline Loans (including, without limitation, the Cash Management Swingline Loans), and "Loan" means any of such Loans.

"London Banking Day" means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank Eurodollar market.

"Material Adverse Effect" means a material adverse effect on (a) the properties, business, operations, condition (financial or otherwise), assets or liabilities (whether actual or contingent) of the Borrower and its Subsidiaries, taken as a whole, (b) the ability of any such Person to perform its obligations under the Loan Documents to which it is a party, (c) the rights and remedies of the Administrative Agent or any Lender under any Loan Document or (d) the legality, validity, binding effect or enforceability against any Credit Party of any Loan Document to which it is a party.

"Minimum Collateral Amount" means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 105% of the sum of (i) the Fronting Exposure of the Issuing Lender with respect to Letters of Credit issued and outstanding at such time and (ii) the Fronting Exposure of the Swingline Lender with respect to all Swingline Loans outstanding at such time or (b) such lesser amount as may be determined by the Administrative Agent and the Issuing Lender in their sole discretion.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which any Credit Party or any ERISA Affiliate is making, or is accruing an obligation to make, or has accrued an obligation to make contributions within the preceding six (6) years.

"Net Cash Proceeds" means, as applicable, (a) with respect to any Asset Disposition or Insurance and Condemnation Event, the gross proceeds received by any Credit Party or any of its Subsidiaries therefrom (including any cash, Cash Equivalents, deferred payment pursuant to, or by monetization of, a note receivable or otherwise, as and when received) less the sum of (i) in the case of an Asset Disposition, all income taxes and other taxes assessed by a Governmental Authority as a result of such transaction, (ii) all reasonable and customary out-of-pocket fees and expenses incurred in connection with such transaction or event and (iii) the principal amount of, premium, if any, and interest on any Indebtedness secured by a Lien on the asset (or a portion thereof) disposed of, which Indebtedness is required to be repaid in connection with such transaction or event, and (b) with respect to any Equity Issuance or Debt Issuance, the gross cash proceeds received by any Credit Party or any of its Subsidiaries therefrom less all reasonable and customary out-of-pocket legal, underwriting and other fees and expenses incurred in connection therewith.

"Net Hedging Obligations" means, as of any date, the Hedge Termination Value of any Hedge Agreement on such date.

"Non-Consenting Lender" means any Lender that does not approve any consent, waiver, amendment, modification or termination that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 14.2 and (b) has been approved by the Required Lenders.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Non-Guarantor Subsidiary" means any Subsidiary of the Borrower that is not a Subsidiary Guarantor.

"Notes" means the collective reference to the Revolving Credit Notes, the Swingline Note and the Term Loan Notes.

"Notice of Account Designation" has the meaning assigned thereto in Section 2.3(b).

"Notice of Borrowing" has the meaning assigned thereto in Section 2.3(a).

"Notice of Conversion/Continuation" has the meaning assigned thereto in Section 5.2.

"Notice of Prepayment" has the meaning assigned thereto in Section 2.4(c).

"Obligations" means, in each case, whether now in existence or hereafter arising: (a) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) the Loans, (b) the L/C Obligations and (c) all other fees and commissions (including attorneys' fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Credit Parties to the Lenders, the Issuing Lender or the Administrative Agent, in each case under any Loan Document, with respect to any Loan or Letter of Credit of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note and including interest and fees that accrue after the commencement by or against any Credit Party of any proceeding under any Debtor Relief Laws,

naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control.

"Officer's Compliance Certificate" means a certificate of the chief financial officer or the treasurer of the Borrower substantially in the form attached as ***Exhibit F***.

"Ongoing Capital Expenditures" means, with respect to the Borrower and its Subsidiaries, Capital Expenditures less Facility Capital Expenditures.

"Operating Lease" means, as to any Person as determined in accordance with GAAP, any lease of Property (whether real, personal or mixed) by such Person as lessee which is not a Capital Lease.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such 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 Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 5.12).

"Participant" has the meaning assigned thereto in Section 14.10(d).

"Participant Register" has the meaning assigned thereto in Section 14.10(d).

"Participating Member State" means each state so described in any EMU Legislation.

"Patriot Act" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"PBGC" means the Pension Benefit Guaranty Corporation or any successor agency.

"Pearland Facility" means the Borrower's manufacturing facility in Pearland, Texas.

"Pearland Sale-Leaseback" means that certain sale-leaseback transaction by and between the Borrower, as seller, and Woodbury Strategic Partners Fund, L.P., a Utah limited partnership, or any of its Affiliates, or any other third party reasonably satisfactory to the Administrative Agent, as buyer, in connection with the Pearland Facility; provided that the triple net base rent payable under such leaseback is not greater than 7.75% of the total purchase price in the initial year, subject to annual increases not greater than 2.5% each year thereafter.

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV of ERISA or Section 412 of the Code and which (a) is maintained for the employees of any Credit Party or any ERISA Affiliate or (b) has at any time within the preceding six

(6) years been maintained for the employees of any Credit Party or any current or former ERISA Affiliates.

"Permitted Acquisition" means any acquisition by the Borrower or any Subsidiary thereof in the form of acquisitions of all or substantially all of the business or a line of business (whether by the acquisition of Capital Stock, assets or any combination thereof) of any other Person if each such acquisition meets all of the following requirements:

(a) with respect to any such acquisition:

(i) no less than ten (10) Business Days prior to the proposed closing date of such acquisition, the Borrower shall have delivered written notice of such acquisition to the Administrative Agent, which notice shall include the proposed closing date of such acquisition;

(ii) such acquisition shall have been approved by the board of directors (or equivalent governing body) of the Person to be acquired;

(iii) the Person or business to be acquired shall be in a substantially similar line of business as the Borrower and its Subsidiaries pursuant to Section 11.11;

(iv) if such transaction is a merger or consolidation, the Borrower or a Subsidiary Guarantor shall be the surviving Person and no Change in Control shall have been effected thereby;

(v) the Borrower shall have delivered to the Administrative Agent such documents reasonably requested by the Administrative Agent or the Required Lenders (through the Administrative Agent) pursuant to Section 9.11 to be delivered at the time required pursuant to Section 9.11; and

(vi) no Event of Default shall have occurred and be continuing both before and after giving effect to such acquisition and any Indebtedness incurred in connection therewith;

(b) with respect to any such acquisition with respect to which the Permitted Acquisition Consideration for such acquisition (or series of related acquisitions) exceeds $5,000,000, at least $15,000,000 in availability shall exist under the Revolving Credit Facility after giving effect to the acquisition;

(c) with respect to any such acquisition with respect to which the Permitted Acquisition Consideration for such acquisition (or series of related acquisitions) (1) individually, exceeds $20,000,000 or (2) together with all other acquisitions consummated during the calendar year in which such acquisition is consummated, exceeds $50,000,000:

(i) no later than five (5) Business Days prior to the proposed closing date of such acquisition, the Borrower shall have delivered to the Administrative Agent and the Lenders an Officer's Compliance Certificate for the most recent fiscal quarter end preceding such acquisition for which financial statements are available demonstrating, in form and substance reasonably satisfactory thereto, (A) compliance with each covenant contained in Article X (it being agreed and acknowledged that, notwithstanding anything to the contrary contained in this Agreement, (1) the covenant contained in Section 10.1 shall be calculated on a Pro Forma Basis as of the date of the acquisition and after giving effect thereto and any Indebtedness incurred in connection

therewith and (2) with respect to the covenant contained in Section 10.2, Consolidated EBITDA shall be calculated on a Pro Forma Basis as of the date of the acquisition and after giving effect thereto and any Indebtedness incurred in connection therewith, but no other component of the ratio set forth in Section 10.2 shall be calculated on a Pro Forma Basis) and (B) the Consolidated Total Leverage Ratio calculated on a Pro Forma Basis (as of the proposed closing date of the acquisition and after giving effect thereto and any Indebtedness incurred in connection therewith) at least 0.25 below the applicable ratio set forth in Section 10.1;

(ii) prior to the proposed closing date of such acquisition, to the extent requested by the Administrative Agent or any Lender (through the Administrative Agent), the Borrower (1) shall have delivered to the Administrative Agent promptly upon the finalization thereof copies of substantially final Permitted Acquisition Documents and (2) shall have delivered to, or made available for inspection by, the Administrative Agent any Permitted Acquisition Diligence Information delivered to the Borrower; and

(iii) the Borrower shall provide such other documents and other information as may be reasonably (both in scope of such request and timing of such request) requested by the Administrative Agent or the Required Lenders (through the Administrative Agent) in connection with the acquisition, provided such information is reasonably available to the Borrower; and

(d) with respect to any such acquisition with respect to which the Permitted Acquisition Consideration for such acquisition (or series of related acquisitions), together with all other acquisitions consummated during the calendar year in which such acquisition is consummated, exceeds $50,000,000, the Borrower shall be required to obtain the prior written consent of the Administrative Agent and the Required Lenders prior to the consummation of such acquisition.

For the avoidance of doubt, the Dfine Acquisition shall constitute a "Permitted Acquisition" for purposes of this Agreement.

"Permitted Acquisition Consideration" means the aggregate amount of the purchase price, including, but not limited to, any assumed debt, earn-outs (valued at the maximum amount payable thereunder), deferred payments, or Capital Stock of the Borrower, net of the applicable acquired company's cash and Cash Equivalents, balance (as shown on its most recent financial statements delivered in connection with the applicable Permitted Acquisition) in connection with any applicable Permitted Acquisition as set forth in the applicable Permitted Acquisition Documents executed by the Borrower or any of its Subsidiaries in order to consummate the applicable Permitted Acquisition.

"Permitted Acquisition Diligence Information" means with respect to any acquisition proposed by the Borrower or any Subsidiary Guarantor, to the extent applicable, all material financial information, all material contracts, all material customer lists, all material supply agreements, and all other material information, in each case, reasonably requested to be delivered to the Administrative Agent and which is made available to the Borrower or any Subsidiary Guarantor in connection with such acquisition (except to the extent that any such information is (a) subject to any confidentiality agreement, unless mutually agreeable arrangements can be made to preserve such information as confidential, (b) classified or (c) subject to any attorney-client privilege).

"Permitted Acquisition Documents" means with respect to any acquisition proposed by the Borrower or any Subsidiary Guarantor, final copies or substantially final drafts if not executed at the required time of delivery of the purchase agreement, sale agreement, merger agreement or other

agreement evidencing such acquisition, including, without limitation, all legal opinions and each other document executed, delivered, contemplated by or prepared in connection therewith and any amendment, modification or supplement to any of the foregoing.

"Permitted Equipment Sale-Leaseback Transaction" means any sale-leaseback by and between any Credit Party, as seller, and any third party reasonably satisfactory to the Administrative Agent, as buyer, in connection with equipment owned by such Credit Party; provided that (a) at the time of any such sale-leaseback, no Default or Event of Default shall exist or would result from such sale-leaseback, (b) the equipment which is the subject of any such sale-leaseback shall be sold for no less than the fair market value thereof, (c) the consideration received in connection with any such sale-leaseback shall be no less than one hundred percent (100%) in cash, (d) the lease executed in connection with any such sale-leaseback shall be an operating lease and shall be subject to customary market terms, and (e) the requirements of Section 4.4(b) are complied with in connection therewith.

"Permitted Liens" means the Liens permitted pursuant to Section 11.2.

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

"Platform" means Debt Domain, Intralinks, SyndTrak or a substantially similar electronic transmission system.

"Prime Rate" means, at any time, 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 as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

"Pro Forma Basis" means, for purposes of determining the effect of any Specified Transaction in calculating certain definitions and compliance with any test or financial covenant under this Agreement for any period, that such Specified Transaction (and all other Specified Transactions that have been consummated during the applicable period) and the following transactions in connection therewith shall be deemed to have occurred as of the first day of the applicable period of measurement in such test or covenant: (a) income statement items (whether positive or negative) attributable to the Property or Person subject to such Specified Transaction, (i) in the case of a disposition of all or substantially all of the Capital Stock of a Subsidiary or any division, business unit, product line or line of business or any classification of any asset, business unit, division or line of business as a discontinued operation, shall be excluded and (ii) in the case of a Permitted Acquisition, shall be included, (b) any retirement of Indebtedness and (c) any Indebtedness incurred or assumed by the Borrower or any of its Subsidiaries in connection therewith and if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination; provided, that the foregoing pro forma adjustments may be applied to any such definition, test or financial covenant solely to the extent that such adjustments (y) are reasonably expected to be realized within twelve (12) months of such Specified Transaction as set forth in reasonable detail on a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent and (z) are calculated on a basis consistent with GAAP and Regulation S-X of the Exchange Act or as approved by the Administrative Agent and the Required Lenders.

"Property" means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

"Public Lenders" has the meaning assigned thereto in Section 8.4.

"Qualified Capital Stock" means any Capital Stock that is not Disqualified Capital Stock.

"Rate Determination Date" means two (2) Business Days prior to the commencement of the applicable Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by the Administrative Agent; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such other day as otherwise reasonably determined by the Administrative Agent).

"Recipient" means (a) the Administrative Agent, (b) any Lender and (c) the Issuing Lender, as applicable.

"Register" has the meaning assigned thereto in Section 14.10(c).

"Reimbursement Obligation" means the obligation of the Borrower to reimburse the Issuing Lender pursuant to Section 3.5 for amounts drawn under Letters of Credit.

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

"Removal Effective Date" has the meaning assigned thereto in Section 11.6(b).

"Required Lenders" means, at any time, Lenders having Total Credit Exposures representing more than fifty percent (50%) of the Total Credit Exposures of all Lenders; provided that the Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time; provided further that if there are at least two (2) but not more than three (3) Non-Defaulting Lenders at such time, then Required Lenders must include at least two (2) such Non-Defaulting Lenders.

"Required Revolving Credit Lenders" means, at any date, any combination of Revolving Credit Lenders holding more than fifty percent (50%) of the sum of the aggregate amount of the Revolving Credit Commitment or, if the Revolving Credit Commitment has been terminated, any combination of Revolving Credit Lenders holding more than fifty percent (50%) of the aggregate Extensions of Credit under the Revolving Credit Facility; provided that the Revolving Credit Commitment of, and the portion of the Extensions of Credit under the Revolving Credit Facility, as applicable, held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Credit Lenders; provided further that if there are at least two (2) but not more than three (3) Non-Defaulting Lenders who are Revolving Credit Lenders at such time, then Required Revolving Credit Lenders must include at least two (2) such Non-Defaulting Lenders who are Revolving Credit Lenders.

"Resignation Effective Date" has the meaning assigned thereto in Section 11.6(a).

"Responsible Officer" means, as to any Person, the chief executive officer, president, chief financial officer, controller, treasurer or assistant treasurer of such Person or any other officer of such Person reasonably acceptable to the Administrative Agent, in such Person's capacity as such (and not on an individual basis); provided that, to the extent requested thereby, the Administrative Agent shall have

received a certificate of such Person certifying as to the incumbency and genuineness of the signature of each such officer. Any document delivered hereunder or under any other Loan Document that is signed by a Responsible Officer of a Person shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership and/or other action on the part of such Person and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Person.

"Restricted Payment" has the meaning assigned thereto in Section 11.6.

"Revaluation Date" means, with respect to any Revolving Credit Loan, each of the following: (i) each date of a borrowing of a Eurocurrency Rate Loan denominated in an Alternative Currency, (ii) each date of a continuation of a Eurocurrency Rate Loan denominated in an Alternative Currency and (iii) such additional dates as the Administrative Agent shall determine or the Required Lenders shall require.

"Revolving Credit Commitment" means (a) as to any Revolving Credit Lender, the obligation of such Revolving Credit Lender to make Revolving Credit Loans to, and to purchase participations in L/C Obligations and Swingline Loans for the account of, the Borrower hereunder in an aggregate principal Dollar amount at any time outstanding not to exceed the amount set forth opposite such Revolving Credit Lender's name on the Register, as such Dollar amount may be modified at any time or from time to time pursuant to the terms hereof (including, without limitation, Section 5.13) and (b) as to all Revolving Credit Lenders, the aggregate commitment of all Revolving Credit Lenders to make Revolving Credit Loans, as such Dollar amount may be modified at any time or from time to time pursuant to the terms hereof (including, without limitation, Section 5.13). The aggregate Revolving Credit Commitment of all the Revolving Credit Lenders on the Closing Date shall be $275,000,000. The initial Revolving Credit Commitment of each Revolving Credit Lender is set forth opposite the name of such Lender on Schedule 1.1(b).

"Revolving Credit Commitment Percentage" means, with respect to any Revolving Credit Lender at any time, the percentage of the total Revolving Credit Commitments of all the Revolving Credit Lenders represented by such Revolving Credit Lender's Revolving Credit Commitment. If the Revolving Credit Commitments have terminated or expired, the Revolving Credit Commitment Percentages shall be determined based upon the Revolving Credit Commitments most recently in effect, giving effect to any assignments. The Revolving Credit Commitment Percentage of each Revolving Credit Lender on the Closing Date is set forth opposite the name of such Lender on Schedule 1.1(b).

"Revolving Credit Exposure" means, as to any Revolving Credit Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Credit Loans and such Revolving Credit Lender's participation in L/C Obligations and Swingline Loans at such time.

"Revolving Credit Facility" means the revolving credit facility established pursuant to Article II (including any increase in such revolving credit facility established pursuant to Section 5.13).

"Revolving Credit Lenders" means, collectively, all of the Lenders with a Revolving Credit Commitment.

"Revolving Credit Loan" means any revolving loan made to the Borrower pursuant to Section 2.1, and all such revolving loans collectively as the context requires.

"Revolving Credit Maturity Date" means the earliest to occur of (a) July 6, 2021, (b) the date of termination of the entire Revolving Credit Commitment by the Borrower pursuant to Section 2.5, and (c) the date of termination of the Revolving Credit Commitment pursuant to Section 12.2(a).

"Revolving Credit Note" means a promissory note made by the Borrower in favor of a Revolving Credit Lender evidencing the Revolving Credit Loans made by such Revolving Credit Lender, substantially in the form attached as ***Exhibit A-1***, and any amendments, supplements and modifications thereto, any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

"Revolving Credit Outstandings" means the sum of (a) with respect to Revolving Credit Loans on any date of determination, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Credit Loans occurring on such date; plus (b) with respect to Swingline Loans, (i) on any date of determination that is prior to the Loan Sweep Activation Date or on or after the Loan Sweep Termination Date, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Swingline Loans occurring on such date and (ii) on any date of determination that is on and after the Loan Sweep Activation Date and prior to the Loan Sweep Termination Date, the Swingline Reserve; plus (c) with respect to any L/C Obligations on any date of determination, the Dollar Equivalent amount of the aggregate outstanding amount thereof on such date after giving effect to any Extensions of Credit occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

"Revolving Extensions of Credit" means (a) any Revolving Credit Loan then outstanding, (b) any Letter of Credit then outstanding or (c) any Swingline Loan then outstanding.

"Same Day Funds" means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

"Sanctioned Country" means at any time, a country or territory which is itself the subject or target of any Sanctions (including, as of the Closing Date, Cuba, Iran, North Korea, Sudan, Syria and Crimea).

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in clauses (a) and (b).

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

"SEC" means the U.S. Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Secured Cash Management Agreement" means any Cash Management Agreement between or among any Credit Party and any Cash Management Bank.

"Secured Hedge Agreement" means any Hedge Agreement between or among any Credit Party and any Hedge Bank.

"Secured Obligations" means, collectively, (a) the Obligations and (b) all existing or future payment and other obligations owing by any Credit Party under (i) any Secured Hedge Agreement and (ii) any Secured Cash Management Agreement; provided that the "Secured Obligations" of a Credit Party shall exclude any Excluded Swap Obligations with respect to such Credit Party.

"Secured Parties" means, collectively, the Administrative Agent, the Lenders, the Issuing Lender, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 13.5, any other holder from time to time of any of any Secured Obligations and, in each case, their respective successors and permitted assigns.

"Security Documents" means the collective reference to the Collateral Agreement, the Guaranty Agreements, and each other agreement or writing pursuant to which any Credit Party purports to pledge or grant a security interest in any Property or assets securing the Secured Obligations or any such Person purports to guaranty the payment and/or performance of the Secured Obligations.

"Solvent" and "Solvency" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Special Notice Currency" means at any time an Alternative Currency, other than the currency of a country that is a member of the Organization for Economic Cooperation and Development at such time located in North America or Europe.

"Specified Transactions" means (a) any disposition of all or substantially all of the assets or Capital Stock of any Subsidiary of the Borrower or any division, business unit, product line or line of business, (b) any Permitted Acquisition, (c) any incurrence of Indebtedness, (d) the classification of any asset, business unit, division or line of business as a discontinued operation, (e) the Transactions (other than the Dfine Acquisition).

"Spot Rate" means, for any currency, the rate determined by the Administrative Agent to be the rate quoted by the Administrative Agent as the spot rate for the purchase by the Administrative Agent of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Administrative Agent does not have as of the date of determination a spot buying rate for any such currency.

"Sterling" and "£" means the lawful currency of the United Kingdom.

"Subordinated Indebtedness" means the collective reference to any Indebtedness of any Credit Party or any Subsidiary thereof subordinated in right and time of payment to the Obligations and containing such other terms and conditions, in each case as are satisfactory to the Administrative Agent.

"Subsidiary" means as to any Person, any corporation, partnership, limited liability company or other entity of which more than fifty percent (50%) of the outstanding Capital Stock having ordinary voting power to elect a majority of the board of directors (or equivalent governing body) or other managers of such corporation, partnership, limited liability company or other entity is at the time owned by (directly or indirectly) or the management is otherwise controlled by (directly or indirectly) such Person (irrespective of whether, at the time, Capital Stock of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency). Unless otherwise qualified, references to "Subsidiary" or "Subsidiaries" herein shall refer to those of the Borrower.

"Subsidiary Guarantors" means, collectively, all direct and indirect Subsidiaries of the Borrower (other than the Borrower and Foreign Subsidiaries to the extent that and for so long as the guaranty of such Foreign Subsidiary would have material adverse tax consequences for the Borrower or any other Credit Party or result in a violation of Applicable Laws) in existence on the Closing Date or which becomes a party to the Guaranty Agreement pursuant to Section 9.11.

"Swap Obligation" means, with respect to any Credit Party, 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.

"Swingline Commitment" means the lesser of (a) $25,000,000 and (b) the Revolving Credit Commitment.

"Swingline Facility" means the swingline facility established pursuant to Section 2.2.

"Swingline Lender" means Wells Fargo in its capacity as swingline lender hereunder, or any successor thereto.

"Swingline Loan" means any swingline loan made by the Swingline Lender to the Borrower in Dollars pursuant to Section 2.2, and all such swingline loans collectively as the context requires.

"Swingline Note" means a promissory note made by the Borrower in favor of the Swingline Lender evidencing the Swingline Loans made by the Swingline Lender, substantially in the form attached as ***Exhibit A-2***, and any amendments, supplements and modifications thereto, any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

"Swingline Participation Amount" has the meaning assigned thereto in Section 2.2(b)(iii).

"Swingline Reserve" means, on any date of determination, the amount of the Swingline Commitment as of such date.

"Synthetic Lease" means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an Operating Lease in accordance with GAAP.

"TARGET Day" means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) payment system (or, if such payment system ceases to be operative, such other payment system (if any) determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

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

"Term Loan Commitment" means (a) as to any Term Loan Lender, the obligation of such Term Loan Lender to make a portion of the Initial Term Loan and/or Incremental Term Loans, as applicable, to the account of the Borrower hereunder on the Closing Date (in the case of the Initial Term Loan) or the applicable borrowing date (in the case of any Incremental Term Loan) in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on the Register, as such amount may be increased, reduced or otherwise modified at any time or from time to time pursuant to the terms hereof and (b) as to all Term Loan Lenders, the aggregate commitment of all Term Loan Lenders to make such Term Loans. The aggregate Term Loan Commitment with respect to the Initial Term Loan of all Term Loan Lenders on the Closing Date shall be $150,000,000. The Term Loan Commitment of each Term Loan Lender as of the Closing Date is set forth opposite the name of such Term Loan Lender on Schedule 1.1(b).

"Term Loan Facility" means the term loan facility established pursuant to Article IV (including any new term loan facility established pursuant to Section 5.13).

"Term Loan Lender" means any Lender with a Term Loan Commitment and/or outstanding Term Loans.

"Term Loan Maturity Date" means the first to occur of (a) July 6, 2021, and (b) the date of acceleration of the Term Loans pursuant to Section 12.2(a).

"Term Loan Note" means a promissory note made by the Borrower in favor of a Term Loan Lender evidencing the portion of the Term Loans made by such Term Loan Lender, substantially in the form attached as ***Exhibit A-3***, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

"Term Loan Percentage" means, with respect to any Term Loan Lender at any time, the percentage of the total outstanding principal balance of the Term Loan represented by the outstanding principal balance of such Term Loan Lender's Term Loan. The Term Loan Percentage of each Term Loan Lender as of the Closing Date is set forth opposite the name of such Lender on Schedule 1.1(b).

"Term Loans" means the Initial Term Loans and, if applicable, the Incremental Term Loans and "Term Loan" means any of such Term Loans.

"Termination Event" means, except for any such event or condition that could not reasonably be expected to have a Material Adverse Effect: (a) a "Reportable Event" described in Section 4043 of ERISA for which the notice requirement has not been waived by the PBGC, or (b) the withdrawal of any Credit Party or any ERISA Affiliate from a Pension Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2) of ERISA, or (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if the plan assets are not sufficient to pay all plan liabilities, or

(d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC, or (e) any other event or condition which would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, or (f) the imposition of a Lien pursuant to Section 430 of the Code or Section 303(k) of ERISA, or (g) the partial or complete withdrawal of any Credit Party or any ERISA Affiliate from a Multiemployer Plan if withdrawal liability is asserted by such plan, or (h) any event or condition which results in the reorganization or insolvency of a Multiemployer Plan under Sections 4241 or 4245 of ERISA, or (i) any event or condition which results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by PBGC of proceedings to terminate a Multiemployer Plan under Section 4042 of ERISA.

"Threshold Amount" means $10,000,000.

"Total Credit Exposure" means, as to any Lender at any time, the unused Commitments, Revolving Credit Exposure and outstanding Term Loans of such Lender at such time.

"Transaction Costs" means (a) all transaction fees, charges and other amounts related to the Transactions, any Permitted Acquisition consummated on or after the Closing Date and any Equity Issuance consummated on or after the Closing Date (including, without limitation, any financing fees, merger and acquisition fees, legal fees and expenses, due diligence fees or any other fees and expenses in connection therewith) and (b) severance costs, restructuring costs and inventory markup in connection with the Transactions, any Permitted Acquisition consummated on or after the Closing Date and any Equity Issuance consummated after the Closing Date, in each case, to the extent such costs, fees, charges and other amounts have been approved by the Administrative Agent.

"Transactions" means, collectively, (a) the repayment in full of all Indebtedness (other than Indebtedness permitted pursuant to Section 11.1) on the Closing Date, (b) the initial Extensions of Credit, (c) the Dfine Acquisition and (d) the payment of the Transaction Costs incurred in connection with items (a) through (c) above.

"UCC" means the Uniform Commercial Code as in effect in the State of New York.

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

"U.S. Tax Compliance Certificate" has the meaning assigned thereto in Section 5.11(g).

"Uniform Customs" means the Uniform Customs and Practice for Documentary Credits (2007 Revision), effective July, 2007 International Chamber of Commerce Publication No. 600.

"United States" means the United States of America.

"Wells Fargo" means Wells Fargo Bank, National Association, a national banking association.

"Wholly-Owned" means, with respect to a Subsidiary, that all of the shares of Capital Stock of such Subsidiary are, directly or indirectly, owned or controlled by the Borrower and/or one or more of its Wholly-Owned Subsidiaries (except for directors' qualifying shares or other shares required by Applicable Law to be owned by a Person other than the Borrower and/or one or more of its Wholly-Owned Subsidiaries).

"Withholding Agent" means the Borrower and the Administrative Agent.

"Working Capital" means, for the Borrower and its Subsidiaries on a Consolidated basis and calculated in accordance with GAAP, as of any date of determination, the excess of (a) current assets (other than cash and cash equivalents and taxes and deferred taxes) over (b) current liabilities, excluding, without duplication, (i) the current portion of any long-term Indebtedness, (ii) outstanding Revolving Credit Loans and Swingline Loans, (iii) the current portion of current taxes and deferred income taxes and (iv) the current portion of accrued Consolidated Interest Expense.

"Write-Down and Conversion Powers" means, 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.

SECTION 1.2 Other Definitions and Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document: (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined, (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms, (c) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation", (d) the word "will" shall be construed to have the same meaning and effect as the word "shall", (e) any reference herein to any Person shall be construed to include such Person's successors and assigns, (f) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (g) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (h) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (i) the term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form, (j) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including" and (k) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

SECTION 1.3 Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, as in effect from time to time and in a manner consistent with that used in preparing the audited financial statements required by Section 8.1(b), except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

SECTION 1.4 UCC Terms. Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by

those definitions. Subject to the foregoing, the term "UCC" refers, as of any date of determination, to the UCC then in effect.

SECTION 1.5 Rounding. Any financial ratios required to be maintained pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio or percentage is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.6 References to Agreement and Laws. Unless otherwise expressly provided herein, (a) any definition or reference to formation documents, governing documents, agreements (including the Loan Documents) and other contractual documents or instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (b) any definition or reference to any Applicable Law, including, without limitation, Anti-Corruption Laws, Anti-Money Laundering Laws, the Bankruptcy Code, the Code, the Commodity Exchange Act, ERISA, the Exchange Act, the Patriot Act, the UCC, the Investment Company Act, the Interstate Commerce Act, the Trading with the Enemy Act of the United States or any of the foreign assets control regulations of the United States Treasury Department, shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law.

SECTION 1.7 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

SECTION 1.8 Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit or the Letter of Credit Application therefor (at the time specified therefor in such applicable Letter of Credit or Letter of Credit Application and as such amount may be reduced by (a) any permanent reduction of such Letter of Credit or (b) any amount which is drawn, reimbursed and no longer available under such Letter of Credit).

SECTION 1.9 Guaranty Obligations/Earn-Outs. Unless otherwise specified, (a) the amount of any Guaranty Obligation shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Guaranty Obligation and (b) the amount of any earn-out or similar obligation shall be the amount of such obligation as reflected on the balance sheet of such Person in accordance with GAAP.

SECTION 1.10 Covenant Compliance Generally. For purposes of determining compliance under Sections 11.1, 11.2, 11.3, 11.5 and 11.6, any amount in a currency other than Dollars will be converted to Dollars in a manner consistent with that used in calculating Consolidated Net Income in the most recent annual financial statements of the Borrower and its Subsidiaries delivered pursuant to Section 8.1(b). Notwithstanding the foregoing, for purposes of determining compliance with Sections 11.1, 11.2 and 11.3, with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no breach of any basket contained in such sections shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Indebtedness or Investment is incurred; provided that for the avoidance of doubt, the foregoing provisions of this Section 1.10 shall otherwise

apply to such Sections, including with respect to determining whether any Indebtedness or Investment may be incurred at any time under such Sections.

SECTION 1.11 Exchange Rates; Currency Equivalents.

(a) The Administrative Agent shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Extensions of Credit and Revolving Credit Outstandings denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Credit Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent.

(b) Wherever in this Agreement in connection with a borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan, an amount, such as a required minimum, a required maximum or multiple amount, is expressed in Dollars, but such Eurocurrency Rate Loan is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent.

SECTION 1.12 Change of Currency.

(a) The obligation of the Borrower to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that if any borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency

SECTION 1.13 Additional Alternative Currencies.

(a) The Borrower may from time to time request that Eurocurrency Rate Loans be made in a currency other than those specifically listed in the definition of “Alternative Currency”; provided that such requested currency (i) is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars, (ii) is dealt with in the London interbank deposit market and (iii)

is not subject to any requirement by any central bank or other governmental authorization in the country of issue of such currency to give authorization for the use of such currency by any Lender for making Loans unless such authorization has been obtained and remains in full force and effect. In the case of any such request with respect to the making of Eurocurrency Rate Loans, such request shall be subject to the approval of the Administrative Agent and the Lenders.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., 20 Business Days prior to the date of the desired Extension of Credit (or such other time or date as may be agreed by the Administrative Agent, in its sole discretion). In the case of any such request pertaining to Eurocurrency Rate Loans, the Administrative Agent shall promptly notify each Lender thereof. Each Lender (in the case of any such request pertaining to Eurocurrency Rate Loans) shall notify the Administrative Agent, not later than 11:00 a.m., ten Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Eurocurrency Rate Loans in such requested currency.

(c) Any failure by a Lender to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender to permit Eurocurrency Rate Loans to be made in such requested currency. If the Administrative Agent and all of the Lenders consent to making Eurocurrency Rate Loans in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Revolving Credit Loans to be denominated as Eurocurrency Rate Loans. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.13, the Administrative Agent shall promptly so notify the Borrower.

ARTICLE II

REVOLVING CREDIT FACILITY

SECTION 2.1 Revolving Credit Loans. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth herein, each Revolving Credit Lender severally agrees to make Revolving Credit Loans to the Borrower in Dollars or one or more Alternative Currencies from time to time from the Closing Date to, but not including, the Revolving Credit Maturity Date as requested by the Borrower in accordance with the terms of Section 2.3; provided, that (a) the Revolving Credit Outstandings shall not exceed the Revolving Credit Commitment, (b) the Revolving Credit Exposure of any Revolving Credit Lender shall not at any time exceed such Revolving Credit Lender's Revolving Credit Commitment and (c) the aggregate principal amount of all outstanding Revolving Credit Loans denominated in Alternative Currencies shall not exceed the Alternative Currency Sublimit. Each Revolving Credit Loan by a Revolving Credit Lender shall be in a principal amount equal to such Revolving Credit Lender's Revolving Credit Commitment Percentage of the aggregate principal amount of Revolving Credit Loans requested on such occasion. Subject to the terms and conditions hereof, the Borrower may borrow, repay and reborrow Revolving Credit Loans hereunder from the Closing Date through and including the Revolving Credit Maturity Date.

SECTION 2.2 Swingline Loans.

(a) Availability.

(i) Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth herein, prior to the

Loan Sweep Activation Date or on or after the Loan Sweep Termination Date, the Swingline Lender agrees to make Swingline Loans in Dollars to the Borrower from time to time from the Closing Date through, but not including, the Revolving Credit Maturity Date; provided, that (A) after giving effect to any amount requested, the Revolving Credit Outstandings shall not exceed the Revolving Credit Commitment and (B) the aggregate principal amount of all outstanding Swingline Loans (after giving effect to any amount requested), shall not exceed the lesser of (1) the Revolving Credit Commitment less the sum of all outstanding Revolving Credit Loans and the L/C Obligations and (2) the Swingline Commitment.

(ii) Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth herein, on and after the Loan Sweep Activation Date and prior to the Loan Sweep Termination Date, the Swingline Lender agrees to make Swingline Loans in Dollars to the Borrower from time to time from the Closing Date through, but not including, the Revolving Credit Maturity Date pursuant to, and in accordance with, the Loan Sweep Agreement; provided, that (A) after giving effect to any amount requested, the Revolving Credit Outstandings shall not exceed the Revolving Credit Commitment and (B) the aggregate principal amount of all outstanding Swingline Loans (after giving effect to any amount requested), shall not exceed the lesser of (1) the Revolving Credit Commitment less the sum of all outstanding Revolving Credit Loans and the L/C Obligations and (2) the Swingline Commitment.

(b) Refunding.

(i) The Swingline Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), by written notice given no later than 11:00 a.m. on any Business Day request each Revolving Credit Lender to make, and each Revolving Credit Lender hereby agrees to make, a Revolving Credit Loan as a Base Rate Loan in an amount equal to such Revolving Credit Lender's Revolving Credit Commitment Percentage of the aggregate amount of the Swingline Loans outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Credit Lender shall make the amount of such Revolving Credit Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such notice. The proceeds of such Revolving Credit Loans shall be immediately made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Swingline Loans. No Revolving Credit Lender's obligation to fund its respective Revolving Credit Commitment Percentage of a Swingline Loan shall be affected by any other Revolving Credit Lender's failure to fund its Revolving Credit Commitment Percentage of a Swingline Loan, nor shall any Revolving Credit Lender's Revolving Credit Commitment Percentage be increased as a result of any such failure of any other Revolving Credit Lender to fund its Revolving Credit Commitment Percentage of a Swingline Loan.

(ii) The Borrower shall pay to the Swingline Lender on demand, and in any event on the Revolving Credit Maturity Date, in immediately available funds the amount of such Swingline Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. In addition, the Borrower hereby irrevocably authorizes the Administrative Agent to charge any account maintained by the Borrower with the Swingline Lender (up to the amount available therein) in order to immediately pay the Swingline Lender the amount of such Swingline Loans to

the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. If any portion of any such amount paid to the Swingline Lender shall be recovered by or on behalf of the Borrower from the Swingline Lender in bankruptcy or otherwise, the loss of the amount so recovered shall be ratably shared among all the Revolving Credit Lenders in accordance with their respective Revolving Credit Commitment Percentages.

(iii) If for any reason any Swingline Loan cannot be refinanced with a Revolving Credit Loan pursuant to Section 2.2(b)(i), each Revolving Credit Lender shall, on the date such Revolving Credit Loan was to have been made pursuant to the notice referred to in Section 2.2(b)(i), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the "Swingline Participation Amount") equal to such Revolving Lender's Revolving Credit Commitment Percentage of the aggregate principal amount of Swingline Loans then outstanding. Each Revolving Credit Lender will immediately transfer to the Swingline Lender, in immediately available funds, the amount of its Swingline Participation Amount. Whenever, at any time after the Swingline Lender has received from any Revolving Credit Lender such Revolving Credit Lender's Swingline Participation Amount, the Swingline Lender receives any payment on account of the Swingline Loans, the Swingline Lender will distribute to such Revolving Credit Lender its Swingline Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Revolving Credit Lender's pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swingline Loans then due); provided that in the event that such payment received by the Swingline Lender is required to be returned, such Revolving Credit Lender will return to the Swingline Lender any portion thereof previously distributed to it by the Swingline Lender.

(iv) Each Revolving Credit Lender's obligation to make the Revolving Credit Loans referred to in Section 2.2(b)(i) and to purchase participating interests pursuant to Section 2.2(b)(iii) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right that such Revolving Credit Lender or the Borrower may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Article VI, (C) any adverse change in the condition (financial or otherwise) of the Borrower, (D) any breach of this Agreement or any other Loan Document by the Borrower, any other Credit Party or any other Revolving Credit Lender or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(v) If any Revolving Credit Lender fails to make available to the Administrative Agent, for the account of the Swingline Lender, any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.2(b) by the time specified in Section 2.2(b)(i) or 2.2(b)(iii), as applicable, the Swingline Lender shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the applicable Federal Funds Rate, plus any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Revolving Credit Lender pays such amount (with interest and fees as aforesaid), the amount so

paid shall constitute such Revolving Credit Lender's Revolving Credit Loan or Swingline Participation Amount, as the case may be. A certificate of the Swingline Lender submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (v) shall be conclusive absent manifest error.

(c) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, this Section 2.2 shall be subject to the terms and conditions of Section 5.14 and Section 5.15.

SECTION 2.3 Procedure for Advances of Revolving Credit Loans and Swingline Loans.

(a) Requests for Borrowing. The Borrower shall give the Administrative Agent irrevocable prior written notice substantially in the form of ***Exhibit B*** (a "Notice of Borrowing") not later than 11:00 a.m. (i) on the same Business Day as each Base Rate Loan and each Swingline Loan (other than Cash Management Swingline Loans), (ii) at least three (3) Business Days before each Eurocurrency Rate Loan denominated in Dollars and (iii) at least four (4) Business Days (or five (5) Business Days in the case of a Special Notice Currency) before each Eurocurrency Rate Loan denominated in an Alternative Currency, of its intention to borrow, specifying (A) the date of such borrowing, which shall be a Business Day, (B) the amount of such borrowing, which shall be, (x) with respect to Base Rate Loans (other than Swingline Loans) in an aggregate principal amount of $2,500,000 or a whole multiple of $1,000,000 in excess thereof, (y) with respect to Eurocurrency Rate Loans in an aggregate principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof and (z) with respect to Swingline Loans (other than Cash Management Swingline Loans) in an aggregate principal amount of $500,000 or a whole multiple of $100,000 in excess thereof, (C) whether such Loan denominated in Dollars is to be a Revolving Credit Loan or Swingline Loan, (D) in the case of a Revolving Credit Loan whether such Revolving Credit Loan is to be a Eurocurrency Rate Loan or Base Rate Loan, (E) in the case of a Eurocurrency Rate Loan, the duration of the Interest Period applicable thereto and (F) in the case of a Eurocurrency Rate Loan, whether such Loan is to be denominated in Dollars or an Alternative Currency. A Notice of Borrowing received after 11:00 a.m. shall be deemed received on the next Business Day. The Administrative Agent shall promptly notify the Revolving Credit Lenders of each Notice of Borrowing.

(b) Disbursement of Revolving Credit and Swingline Loans. Not later than 1:00 p.m., in the case of any Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent, in the case of any Loan denominated in an Alternative Currency, in each case on the proposed borrowing date, (i) each Revolving Credit Lender will make available to the Administrative Agent, for the account of the Borrower, in Same Day Funds at the Administrative Agent's Office for the applicable currency, such Revolving Credit Lender's Revolving Credit Commitment Percentage of the Revolving Credit Loans to be made on such borrowing date and (ii) the Swingline Lender will make available to the Administrative Agent, for the account of the Borrower, in Same Day Funds at the Administrative Agent's Office, the Swingline Loans (other than Cash Management Swingline Loans) to be made on such borrowing date. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of each borrowing requested pursuant to this Section 2.3 in Same Day Funds by crediting or wiring such proceeds to the deposit account of the Borrower identified in the most recent notice substantially in the form attached as ***Exhibit C*** (a "Notice of Account Designation") delivered by the Borrower to the Administrative Agent or as may be otherwise agreed upon by the Borrower and the Administrative Agent from time to time. Subject to Section 5.7 hereof, the Administrative Agent shall not be obligated to disburse the portion of the proceeds of any Revolving Credit Loan requested pursuant to this Section 2.3 to the extent that any Revolving Credit Lender has not made available to the Administrative Agent its Revolving Credit Commitment Percentage of such Loan. Revolving Credit

Loans to be made for the purpose of refunding Swingline Loans shall be made by the Revolving Credit Lenders as provided in Section 2.2(b).

(c) Cash Management Swingline Loans. Notwithstanding anything to the contrary contained in this Section 2.3, all borrowing requests and all disbursements in connection with Cash Management Swingline Loans shall be made pursuant to, and in accordance with, the Loan Sweep Agreement.

SECTION 2.4 Repayment and Prepayment of Revolving Credit and Swingline Loans.

(a) Repayment on Termination Date. The Borrower hereby agrees to repay the outstanding principal amount of (i) all Revolving Credit Loans in full on the Revolving Credit Maturity Date, and (ii) all Swingline Loans in accordance with Section 2.2(b) (but, in any event, no later than the Revolving Credit Maturity Date), together, in each case, with all accrued but unpaid interest thereon.

(b) Mandatory Prepayments.

(i) If at any time the Revolving Credit Outstandings exceed the Revolving Credit Commitment, the Borrower agrees to repay immediately upon notice from the Administrative Agent, by payment to the Administrative Agent for the account of the Revolving Credit Lenders, Extensions of Credit in an amount equal to such excess with each such repayment applied first, to the principal amount of outstanding Swingline Loans until paid in full, second to the principal amount of outstanding Revolving Credit Loans until paid in full and third, with respect to any Letters of Credit then outstanding, a payment of Cash Collateral into a Cash Collateral account opened by the Administrative Agent, for the benefit of the Revolving Credit Lenders, in an amount equal to the aggregate L/C Obligations then outstanding (such Cash Collateral to be applied in accordance with Section 12.2(b)).

(ii) If at any time the Revolving Credit Outstandings denominated in Alternative Currencies exceeds an amount equal to 105% of the Alternative Currency Sublimit then in effect, the Borrower agrees to repay immediately upon notice from the Administrative Agent, by payment to the Administrative Agent for the account of the Revolving Credit Lenders, Revolving Credit Loans denominated in Alterative Currencies in an aggregate amount thereof sufficient to reduce such outstanding amount as of such date of payment to an amount not to exceed 100% of the Alternative Currency Sublimit then in effect.

(iii) If at any time the outstanding Swingline Loans exceed the lesser of (A) the Revolving Credit Commitment less the sum of all outstanding Revolving Credit Loans and the L/C Obligations and (B) the Swingline Commitment, the Borrower agrees to repay immediately upon notice from the Administrative Agent, by payment to the Administrative Agent for the account of the Revolving Credit Lenders, Extensions of Credit in an amount equal to such excess with each such repayment applied to the principal amount of outstanding Swingline Loans.

(c) Optional Prepayments. The Borrower may at any time and from time to time prepay Revolving Credit Loans and Swingline Loans, in whole or in part, without premium or penalty (except as provided in subsection (d)), with irrevocable prior written notice to the Administrative Agent substantially in the form attached as ***Exhibit D*** (a "Notice of Prepayment") given not later than 11:00 a.m. (i) on the same Business Day as each Base Rate Loan and each Swingline Loan (other than a Cash Management Swingline Loan), (ii) at least three (3) Business Days before each Eurocurrency Rate Loan denominated in Dollars and (iii) at least four (4) Business Days (or five (5) Business Days, in the case of prepayment of Loans denominated in Special Notice Currencies) before each Eurocurrency Rate Loan denominated in an

Alternative Currency, specifying the date and amount of prepayment and whether the prepayment is of Eurocurrency Rate Loans, Base Rate Loans, Swingline Loans or a combination thereof, and, if of a combination thereof, the amount allocable to each; provided that the Borrower may at any time and from time to time prepay Cash Management Swingline Loans pursuant to, and in accordance with, the Loan Sweep Agreement. Upon receipt of such notice, the Administrative Agent shall promptly notify each Revolving Credit Lender. If any such notice is given, the amount specified in such notice shall be due and payable on the date set forth in such notice. Partial prepayments shall be in an aggregate amount of (w) $2,500,000 or a whole multiple of $1,000,000 in excess thereof with respect to Base Rate Loans (other than Swingline Loans), (x) $5,000,000 or a whole multiple of $1,000,000 in excess thereof with respect to Eurocurrency Rate Loans denominated in Dollars, (y) $2,500,000 or a whole multiple of $1,000,000 in excess thereof with respect to Eurocurrency Rate Loans denominated in Alternative Currencies and (z) $500,000 or a whole multiple of $100,000 in excess thereof with respect to Swingline Loans. A Notice of Prepayment received after 11:00 a.m. shall be deemed received on the next Business Day. Each such repayment shall be accompanied by any amount required to be paid pursuant to Section 5.9 hereof. Notwithstanding the foregoing, any Notice of a Prepayment delivered in connection with any refinancing of all of the Credit Facility with the proceeds of such refinancing or of any incurrence of Indebtedness, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence and may be revoked by the Borrower in the event such refinancing is not consummated (provided that the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 5.9).

(d) Prepayment of Revolving Credit Loans in connection with Mandatory Prepayments. In the event proceeds remain after the prepayments of Term Loan Facility pursuant to Section 4.4(b), the amount of such excess proceeds shall be used on the date of the required prepayment under Section 4.4(b) to prepay the outstanding principal amount of the Revolving Extensions of Credit, without a corresponding reduction of the Revolving Credit Commitment, with remaining proceeds, if any, refunded to the Borrower. Each prepayment pursuant to this subsection (d) shall be applied first, to the principal amount of outstanding Swingline Loans until paid in full, second to the principal amount of outstanding Revolving Credit Loans until paid in full and third, with respect to any Letters of Credit then outstanding, a payment of Cash Collateral into a Cash Collateral account opened by the Administrative Agent, for the benefit of the Revolving Credit Lenders, in an amount equal to the aggregate L/C Obligations then outstanding (such Cash Collateral to be applied in accordance with Section 12.2(b)).

(e) Limitation on Prepayment of Eurocurrency Rate Loans. The Borrower may not prepay any Eurocurrency Rate Loan on any day other than on the last day of the Interest Period applicable thereto unless such prepayment is accompanied by any amount required to be paid pursuant to Section 5.9 hereof.

(f) Hedge Agreements. No repayment or prepayment of the Extensions of Credit pursuant to this Section 2.4 shall affect any of the Borrower's obligations under any Hedge Agreement entered into with respect to the Extensions of Credit.

SECTION 2.5 Permanent Reduction of the Revolving Credit Commitment.

(a) Voluntary Reduction. The Borrower shall have the right at any time and from time to time, upon at least five (5) Business Days prior written notice to the Administrative Agent, to permanently reduce, without premium or penalty, (i) the entire Revolving Credit Commitment at any time or (ii) portions of the Revolving Credit Commitment, from time to time, in an aggregate principal amount not less than $500,000 or any whole multiple of $500,000 in excess thereof. Any reduction of the Revolving Credit Commitment shall be applied to the Revolving Credit Commitment of each Revolving

Credit Lender according to its Revolving Credit Commitment Percentage. All Commitment Fees accrued until the effective date of any termination of the Revolving Credit Commitment shall be paid on the effective date of such termination. Notwithstanding the foregoing, any notice to reduce the Revolving Credit Commitment delivered in connection with any refinancing of all of the Credit Facility with the proceeds of such refinancing or of any incurrence of Indebtedness or the occurrence of some other identifiable event or condition, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence or occurrence of such identifiable event or condition and may be revoked by the Borrower in the event such contingency is not met (provided that the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 5.9).

(b) Corresponding Payment. Each permanent reduction permitted pursuant to this Section 2.5 shall be accompanied by a payment of principal sufficient to reduce the aggregate outstanding Revolving Credit Loans, Swingline Loans and L/C Obligations, as applicable, after such reduction to the Revolving Credit Commitment as so reduced and if the aggregate amount of all outstanding Letters of Credit exceeds the Revolving Credit Commitment as so reduced, the Borrower shall be required to deposit Cash Collateral in a Cash Collateral account opened by the Administrative Agent in an amount equal to the amount of such excess. Such Cash Collateral shall be applied in accordance with Section 12.2(b). Any reduction of the Revolving Credit Commitment to zero shall be accompanied by payment of all outstanding Revolving Credit Loans and Swingline Loans (and furnishing of Cash Collateral satisfactory to the Administrative Agent for all L/C Obligations) and shall result in the termination of the Revolving Credit Commitment, the Swingline Commitment, the Alternative Currency Sublimit and the Revolving Credit Facility. If the reduction of the Revolving Credit Commitment requires the repayment of any Eurocurrency Rate Loan, such repayment shall be accompanied by any amount required to be paid pursuant to Section 5.9 hereof.

(c) Cash Management Swingline Loans. Notwithstanding anything in this Section 2.5 to the contrary, on and after the Loan Sweep Activation Date, the Borrower shall not be permitted to reduce the Revolving Credit Commitments to an amount that is less than the Swingline Commitment (unless the Swingline Commitment is reduced to an amount that is equal to or less than the aggregate amount of the Revolving Credit Commitments).

SECTION 2.6 Termination of Revolving Credit Facility. The Revolving Credit Facility and the Revolving Credit Commitments shall terminate on the Revolving Credit Maturity Date.

ARTICLE III

LETTER OF CREDIT FACILITY

SECTION 3.1 L/C Commitment.

(a) Availability. Subject to the terms and conditions of this Agreement, the Issuing Lender, in reliance on the agreements of the Revolving Credit Lenders set forth in Section 3.4(a), agrees to issue standby Letters of Credit for the account of the Borrower or, subject to Section 3.8, any Subsidiary thereof. Letters of Credit may be issued on any Business Day from the Closing Date through but not including the fifth (5th) Business Day prior to the Revolving Credit Maturity Date in such form as may be approved from time to time by the Issuing Lender; provided, that the Issuing Lender shall have no obligation to issue any Letter of Credit if, after giving effect to such issuance, (a) the L/C Obligations would exceed the L/C Commitment or (b) the Revolving Credit Outstandings would exceed the Revolving Credit Commitment. Each Letter of Credit shall (i) be denominated in Dollars in a minimum amount of $100,000 (or such lesser amount as agreed to by the Issuing Lender), (ii) be a standby letter of

credit issued to support obligations of the Borrower or any of its Subsidiaries, contingent or otherwise, incurred in the ordinary course of business, (iii) expire on a date no more than twelve (12) months after the date of issuance or last renewal of such Letter of Credit, which date shall be no later than the fifth (5th) Business Day prior to the Revolving Credit Maturity Date and (iv) be subject to ISP98 as set forth in the Letter of Credit Application or as determined by the Issuing Lender and, to the extent not inconsistent therewith, the laws of the State of New York. The Issuing Lender shall not at any time be obligated to issue any Letter of Credit hereunder if (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender from issuing such Letter of Credit, or any Applicable Law applicable to the Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Lender with respect to letters of credit generally or such Letter of Credit in particular any restriction or reserve or capital requirement (for which the Issuing Lender is not otherwise compensated) not in effect on the Closing Date, or any unreimbursed loss, cost or expense that was not applicable, in effect as of the Closing Date and that the Issuing Lender in good faith deems material to it, or (B) the conditions set forth in Section 6.2 are not satisfied. References herein to "issue" and derivations thereof with respect to Letters of Credit shall also include extensions or modifications of any outstanding Letters of Credit, unless the context otherwise requires. As of the Closing Date, each of the Existing Letters of Credit shall constitute, for all purposes of this Agreement and the other Loan Documents, a Letter of Credit issued and outstanding hereunder.

(b) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, Article III shall be subject to the terms and conditions of Section 5.14 and Section 5.15.

SECTION 3.2 Procedure for Issuance of Letters of Credit. The Borrower may from time to time request that the Issuing Lender issue a Letter of Credit by delivering to the Issuing Lender at the Administrative Agent's Office a Letter of Credit Application therefor, completed to the satisfaction of the Issuing Lender, and such other certificates, documents and other papers and information as the Issuing Lender may request. Upon receipt of any Letter of Credit Application, the Issuing Lender shall process such Letter of Credit Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall, subject to Section 3.1 and Article VI, promptly issue the Letter of Credit requested thereby (but in no event shall the Issuing Lender be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Letter of Credit Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed by the Issuing Lender and the Borrower. The Issuing Lender shall promptly furnish to the Borrower a copy of such Letter of Credit and promptly notify each Revolving Credit Lender of the issuance and upon request by any Revolving Credit Lender, furnish to such Revolving Credit Lender a copy of such Letter of Credit and the amount of such Revolving Credit Lender's participation therein.

SECTION 3.3 Commissions and Other Charges.

(a) Letter of Credit Commissions. Subject to Section 5.15(a)(iii)(B), the Borrower shall pay to the Administrative Agent, for the account of the Issuing Lender and the L/C Participants, a letter of credit commission with respect to each Letter of Credit in the amount equal to the daily amount available to be drawn under such standby Letters of Credit times the Applicable Margin with respect to Revolving Credit Loans that are Eurocurrency Rate Loans (determined, in each case, on a per annum basis). Such commission shall be payable quarterly in arrears on the last Business Day of each calendar quarter, on the

Revolving Credit Maturity Date and thereafter on demand of the Administrative Agent. The Administrative Agent shall, promptly following its receipt thereof, distribute to the Issuing Lender and the L/C Participants all commissions received pursuant to this Section 3.3 in accordance with their respective Revolving Credit Commitment Percentages.

(b) Issuance Fee. In addition to the foregoing commission, the Borrower shall pay directly to the Issuing Lender, for its own account, an issuance fee with respect to each Letter of Credit issued by the Issuing Lender as set forth in the applicable Fee Letter. Such issuance fee shall be payable quarterly in arrears on the last Business Day of each calendar quarter commencing with the first such date to occur after the issuance of such Letter of Credit, on the Revolving Credit Maturity Date and thereafter on demand of the Issuing Lender.

(c) Other Fees, Costs, Charges and Expenses. In addition to the foregoing fees and commissions, the Borrower shall pay or reimburse the Issuing Lender for such normal and customary fees, costs, charges and expenses as are incurred or charged by the Issuing Lender in issuing, effecting payment under, amending or otherwise administering any Letter of Credit.

SECTION 3.4 L/C Participations.

(a) The Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce the Issuing Lender to issue Letters of Credit hereunder, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender, on the terms and conditions hereinafter stated, for such L/C Participant's own account and risk an undivided interest equal to such L/C Participant's Revolving Credit Commitment Percentage in the Issuing Lender's obligations and rights under and in respect of each Letter of Credit issued hereunder and the amount of each draft paid by the Issuing Lender thereunder. Each L/C Participant unconditionally and irrevocably agrees with the Issuing Lender that, if a draft is paid under any Letter of Credit for which the Issuing Lender is not reimbursed in full by the Borrower through a Revolving Credit Loan or otherwise in accordance with the terms of this Agreement, such L/C Participant shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Participant's Revolving Credit Commitment Percentage of the amount of such draft, or any part thereof, which is not so reimbursed.

(b) Upon becoming aware of any amount required to be paid by any L/C Participant to the Issuing Lender pursuant to Section 3.4(a) in respect of any unreimbursed portion of any payment made by the Issuing Lender under any Letter of Credit, the Issuing Lender shall notify each L/C Participant of the amount and due date of such required payment and such L/C Participant shall pay to the Issuing Lender the amount specified on the applicable due date. If any such amount is paid to the Issuing Lender after the date such payment is due, such L/C Participant shall pay to the Issuing Lender on demand, in addition to such amount, the product of (i) such amount, times (ii) the daily average Federal Funds Rate as determined by the Administrative Agent during the period from and including the date such payment is due to the date on which such payment is immediately available to the Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. A certificate of the Issuing Lender with respect to any amounts owing under this Section 3.4 shall be conclusive in the absence of manifest error. With respect to payment to the Issuing Lender of the unreimbursed amounts described in this Section 3.4, if the L/C Participants receive notice that any such payment is due (A) prior to 1:00 p.m. on any Business Day, such payment shall be due that Business Day, and (B) after 1:00 p.m. on any Business Day, such payment shall be due on the following Business Day.

(c) Whenever, at any time after the Issuing Lender has made payment under any Letter of Credit and has received from any L/C Participant its Revolving Credit Commitment Percentage of such payment in accordance with this Section 3.4, the Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Borrower or otherwise), or any payment of interest on account thereof, the Issuing Lender will distribute to such L/C Participant its pro rata share thereof; provided, that in the event that any such payment received by the Issuing Lender shall be required to be returned by the Issuing Lender, such L/C Participant shall return to the Issuing Lender the portion thereof previously distributed by the Issuing Lender to it.

(d) Each L/C Participant's obligation to make the Revolving Credit Loans referred to in Section 3.4(b) and to purchase participating interests pursuant to Section 3.4(a) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Revolving Credit Lender or the Borrower may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Article VI, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Credit Party or any other Revolving Credit Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

SECTION 3.5 Reimbursement Obligation of the Borrower. In the event of any drawing under any Letter of Credit, the Borrower agrees to reimburse (either with the proceeds of a Revolving Credit Loan as provided for in this Section 3.5 or with funds from other sources), in Same Day Funds,, the Issuing Lender on each date on which the Issuing Lender notifies the Borrower of the date and amount of a draft paid under any Letter of Credit for the amount of (a) such draft so paid and (b) any amounts referred to in Section 3.3(c) incurred by the Issuing Lender in connection with such payment. Unless the Borrower shall immediately notify the Issuing Lender that the Borrower intends to reimburse the Issuing Lender for such drawing from other sources or funds, the Borrower shall be deemed to have timely given a Notice of Borrowing to the Administrative Agent requesting that the Revolving Credit Lenders make a Revolving Credit Loan as a Base Rate Loan on such date in the amount of (a) such draft so paid and (b) any amounts referred to in Section 3.3(c) incurred by the Issuing Lender in connection with such payment, and the Revolving Credit Lenders shall make a Revolving Credit Loan as a Base Rate Loan in such amount, the proceeds of which shall be applied to reimburse the Issuing Lender for the amount of the related drawing and costs and expenses. Each Revolving Credit Lender acknowledges and agrees that its obligation to fund a Revolving Credit Loan in accordance with this Section 3.5 to reimburse the Issuing Lender for any draft paid under a Letter of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, non-satisfaction of the conditions set forth in Section 2.3(a) or Article VI. If the Borrower has elected to pay the amount of such drawing with funds from other sources and shall fail to reimburse the Issuing Lender as provided above, or if the amount of such drawing is not fully refunded through a Base Rate Loan as provided above, the unreimbursed amount of such drawing shall bear interest at the rate which would be payable on any outstanding Base Rate Loans which were then overdue from the date such amounts become payable (whether at stated maturity, by acceleration or otherwise) until payment in full.

SECTION 3.6 Obligations Absolute. The Borrower's obligations under this Article III (including, without limitation, the Reimbursement Obligation) shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the Borrower may have or have had against the Issuing Lender or any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees that the Issuing Lender and the L/C Participants shall not be

responsible for, and the Borrower's Reimbursement Obligation under Section 3.5 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. The Issuing Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions caused by the Issuing Lender's gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final nonappealable judgment. The Borrower agrees that any action taken or omitted by the Issuing Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct shall be binding on the Borrower and shall not result in any liability of the Issuing Lender or any L/C Participant to the Borrower. The responsibility of the Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment substantially conforms to the requirements under such Letter of Credit.

SECTION 3.7 Effect of Letter of Credit Application. To the extent that any provision of any Letter of Credit Application related to any Letter of Credit is inconsistent with the provisions of this Article III, the provisions of this Article III shall apply.

SECTION 3.8 Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse, or to cause the applicable Subsidiary to reimburse, the Issuing Lender hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of any of its Subsidiaries inures to the benefit of the Borrower and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

ARTICLE IV

TERM LOAN FACILITY

SECTION 4.1 Initial Term Loan. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, each Term Loan Lender severally agrees to make the Initial Term Loan to the Borrower in Dollars on the Closing Date in a principal amount equal to such Lender's Term Loan Commitment as of the Closing Date. Notwithstanding the foregoing, if the total Term Loan Commitment as of the Closing Date is not drawn on the Closing Date, the undrawn amount shall automatically be cancelled.

SECTION 4.2 Procedure for Advance of Term Loans.

(a) Initial Term Loan. The Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing prior to 11:00 a.m. on the Closing Date requesting that the Term Loan Lenders make the Initial Term Loan as a Base Rate Loan on such date (provided that the Borrower may request, no later than three (3) Business Days prior to the Closing Date, that the Lenders make the Initial Term Loan as a

Eurocurrency Rate Loan if the Borrower has delivered to the Administrative Agent a letter in form and substance reasonably satisfactory to the Administrative Agent indemnifying the Lenders in the manner set forth in Section 5.9 of this Agreement). Upon receipt of such Notice of Borrowing from the Borrower, the Administrative Agent shall promptly notify each Term Loan Lender thereof. Not later than 1:00 p.m. on the Closing Date, each Term Loan Lender will make available to the Administrative Agent for the account of the Borrower, at the Administrative Agent's Office in immediately available funds, the amount of such Initial Term Loan to be made by such Term Loan Lender on the Closing Date. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of the Initial Term Loan in immediately available funds by wire transfer to such Person or Persons as may be designated by the Borrower in writing.

(b) Incremental Term Loans. Any Incremental Term Loan shall be borrowed pursuant to and in accordance with Section 5.13.

SECTION 4.3 Repayment of Term Loans.

(a) Initial Term Loan. The Borrower shall repay the aggregate outstanding principal amount of the Initial Term Loan in consecutive quarterly installments on the last Business Day of each of March, June, September and December commencing September 30, 2016 as set forth below, except as the amounts of individual installments may be adjusted pursuant to Section 4.4 hereof:

FISCAL YEAR	**PAYMENT DATE**	**PRINCIPAL INSTALLMENT ($)**
2016	September 30, 2016	2,500,000
	December 31, 2016	2,500,000
2017	March 31, 2017	2,500,000
	June 30, 2017	2,500,000
	September 30, 2017	2,500,000
	December 31, 2017	2,500,000
2018	March 31, 2018	2,500,000
	June 30, 2018	2,500,000
	September 30, 2018	3,750,000
	December 31, 2018	3,750,000
2019	March 31, 2019	3,750,000
	June 30, 2019	3,750,000
	September 30, 2019	3,750,000
	December 31, 2019	3,750,000
2020	March 31, 2020	3,750,000
	June 30, 2020	3,750,000
	September 30, 2020	5,000,000
	December 31, 2020	5,000,000
2021	March 31, 2021	5,000,000
	Term Loan Maturity Date	Remaining Initial Term Loan

If not sooner paid, the Initial Term Loan shall be paid in full, together with accrued interest thereon, on the Term Loan Maturity Date.

(b) Incremental Term Loans. The Borrower shall repay the aggregate principal amount of each Incremental Term Loan (if any) as determined pursuant to, and in accordance with, Section 5.13.

SECTION 4.4 Prepayments of Term Loans.

(a) Optional Prepayments. The Borrower shall have the right at any time and from time to time, without premium or penalty, to prepay the Term Loans, in whole or in part, upon delivery to the Administrative Agent of a Notice of Prepayment not later than 11:00 a.m. (i) on the same Business Day as each Base Rate Loan and (ii) at least three (3) Business Days before each Eurocurrency Rate Loan, specifying the date and amount of repayment, whether the repayment is of Eurocurrency Rate Loans or Base Rate Loans or a combination thereof, and if a combination thereof, the amount allocable to each and whether the repayment is of the Initial Term Loan, an Incremental Term Loan or a combination thereof, and if a combination thereof, the amount allocable to each. Each optional prepayment of the Term Loan hereunder shall be in an aggregate principal amount of at least $2,500,000 or any whole multiple of $1,000,000 in excess thereof and shall be applied, on a pro rata basis, to the outstanding principal installments of the Initial Term Loan and, if applicable, any Incremental Term Loans, as directed by the Borrower. Each repayment shall be accompanied by any amount required to be paid pursuant to Section 5.9 hereof. A Notice of Prepayment received after 11:00 a.m. shall be deemed received on the next Business Day. The Administrative Agent shall promptly notify the applicable Term Loan Lenders of each Notice of Prepayment. Notwithstanding the foregoing, any Notice of Prepayment delivered in connection with any refinancing of all of the Credit Facility with the proceeds of such refinancing or of any other incurrence of Indebtedness or the occurrence of some other identifiable event or condition, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence or occurrence of such other identifiable event or condition and may be revoked by the Borrower in the event such contingency is not met; provided that the delay or failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 5.9.

(b) Mandatory Prepayments.

(i) Debt Issuances. The Borrower shall make mandatory principal prepayments of the Extensions of Credit in the manner set forth in clause (vi) below in an amount equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from any Debt Issuance not otherwise permitted pursuant to Section 11.1. Such prepayment shall be made within three (3) Business Days after the date of receipt of the Net Cash Proceeds of any such Debt Issuance.

(ii) Equity Issuances. The Borrower shall make mandatory principal prepayments of the Extensions of Credit in the manner set forth in clause (vi) below in an amount equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from any Equity Issuance other than the exercise price on stock options issued as part of employee compensation. Such prepayment shall be made within three (3) Business Days after the date of receipt of the Net Cash Proceeds of any such Equity Issuance; provided that, so long as no Event of Default has occurred and is continuing, no prepayment shall be required under this Section 4.4(b)(ii) to the extent that such Net Cash Proceeds are committed to be used to finance a Permitted Acquisition or a Capital Expenditure permitted to be made hereunder within three (3) months after receipt of such Net Cash Proceeds and are thereafter actually used to finance a Permitted Acquisition or a Capital Expenditure permitted to be made hereunder within six (6) months after receipt of such Net Cash

Proceeds; provided further that any portion of such Net Cash Proceeds not committed to be used to finance a Permitted Acquisition or a Capital Expenditure permitted to be made hereunder pursuant to a legally binding agreement within such three (3) month period or actually reinvested within such six (6) month period shall be prepaid in accordance with this Section 4.4(b)(ii) on or before the last day of such applicable period.

(iii) Asset Dispositions. The Borrower shall make mandatory principal prepayments of the Extensions of Credit in the manner set forth in clause (vi) below in amounts equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from any Asset Disposition (other than any Asset Disposition permitted pursuant to, and in accordance with, clauses (a) through (i) and clause (k) of Section 11.5). Such prepayments shall be made within three (3) Business Days after the date of receipt of the Net Cash Proceeds of any such Asset Disposition by such Credit Party or any of its Subsidiaries; provided that, other than with respect to the Net Cash Proceeds of any Permitted Equipment Sale-Leaseback Transaction, so long as no Event of Default has occurred and is continuing, no prepayment shall be required under this Section 4.4(b)(iii) to the extent that such Net Cash Proceeds are committed to be reinvested pursuant to a legally binding agreement in assets used or useful in the business of the Borrower and its Subsidiaries within nine (9) months after receipt of such Net Cash Proceeds and are thereafter actually reinvested in assets used or useful in the business of the Borrower and its Subsidiaries within twelve (12) months after receipt of such Net Cash Proceeds by such Credit Party or such Subsidiary; provided further that any portion of such Net Cash Proceeds not committed to be reinvested pursuant to a legally binding agreement within such nine (9) month period or actually reinvested within such twelve (12) month period shall be prepaid in accordance with this Section 4.4(b)(iii) on or before the last day of such applicable period.

(iv) Insurance and Condemnation Events. The Borrower shall make mandatory principal prepayments of the Extensions of Credit in the manner set forth in clause (vi) below in an amount equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from any Insurance and Condemnation Event. Such prepayments shall be made within three (3) Business Days after the date of receipt of Net Cash Proceeds of any such Insurance and Condemnation Event by such Credit Party or such Subsidiary; provided that, so long as no Event of Default has occurred and is continuing, no prepayment shall be required under this Section 4.4(b)(iv) to the extent that such Net Cash Proceeds are committed to be reinvested pursuant to a legally binding agreement in assets used or useful in the business of the Borrower and its Subsidiaries within nine (9) months after receipt of such Net Cash Proceeds and are thereafter actually reinvested in assets used or useful in the business of the Borrower within eighteen (18) months after receipt of such Net Cash Proceeds by such Credit Party or such Subsidiary; provided further that any portion of the Net Cash Proceeds not committed to be reinvested pursuant to a legally binding agreement within such nine (9) month period or actually reinvested within such eighteen (18) month period shall be prepaid in accordance with this Section 4.4(b)(iv) on or before the last day of such applicable period.

(v) Excess Cash Flow. After the end of each Fiscal Year (commencing with the Fiscal Year ending December 31, 2016) with respect to which the Consolidated Total Leverage Ratio as of the end of such Fiscal Year is greater than or equal to 2.50 to 1.00, within five (5) Business Days after the earlier to occur of (A) the delivery of the financial statements and related Officer's Compliance Certificate for such Fiscal Year and (B) the date on which the financial statements and the related Officer's Compliance Certificate for such Fiscal Year are required to be delivered pursuant to Section 8.1(b) and Section 8.2, the Borrower shall make mandatory

principal prepayments of the Loans in the manner set forth in clause (vi) below in an amount equal to (1) twenty-five percent (25%) of Excess Cash Flow, if any, for such Fiscal Year minus (2) the aggregate amount of all optional prepayments of Revolving Credit Loans during such Fiscal Year (solely to the extent accompanied by permanent optional reductions in the Revolving Credit Commitment) and all optional prepayments of any Term Loan during such Fiscal Year, in each case solely to the extent that such prepayments are not funded with the incurrence of any Indebtedness, any Equity Issuance, any casualty proceeds, any condemnation proceeds or any other proceeds that would not be included in Consolidated EBITDA; provided that such percentage shall be reduced to zero percent (0%) for such Fiscal Year if such financial statements show that the Borrower and its Subsidiaries have a Consolidated Total Leverage Ratio of less than 2.50 to 1.00 as of the end of such Fiscal Year.

(vi) Notice; Manner of Payment. Upon the occurrence of any event triggering the prepayment requirement under clauses (i) through and including (v) above, the Borrower shall promptly deliver a Notice of Prepayment to the Administrative Agent and upon receipt of such notice, the Administrative Agent shall promptly so notify the Lenders. Each prepayment of the Extensions of Credit under this Section 4.4 shall be applied as follows: first, ratably between the Initial Term Loans and (unless otherwise agreed by the applicable Incremental Lenders) any Incremental Term Loans to reduce in inverse order of maturity the remaining scheduled principal installments of the Initial Term Loans and (unless otherwise agreed by the applicable Incremental Lenders) any Incremental Term Loans and (ii) second, to the extent of any excess, to repay the Revolving Extensions of Credit pursuant to Section 2.4(d), without a corresponding reduction in the Revolving Credit Commitment.

(vii) Prepayment of Eurocurrency Rate Loans. Each prepayment shall be accompanied by any amount required to be paid pursuant to Section 5.9; provided that, so long as no Default or Event of Default shall have occurred and be continuing, if any prepayment of Eurocurrency Rate Loans is required to be made under this Section 4.4(b) prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 4.4(b) in respect of any such Eurocurrency Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in its sole discretion, 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 account held at, and subject to the sole control of, the Administrative Agent until the last day of such Interest Period, at which time the Administrative Agent shall 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 Term Loans in accordance with this Section 4.4(b). Upon the occurrence and during the continuance of any Default or Event of Default, the Administrative Agent shall 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 Term Loans in accordance with the relevant provisions of this Section 4.4(b).

(viii) No Reborrowings. Amounts prepaid under the Term Loans pursuant to this Section 4.4 may not be reborrowed.

ARTICLE V

GENERAL LOAN PROVISIONS

SECTION 5.1 Interest.

(a) Interest Rate Options. Subject to the provisions of this Section 5.1, at the election of the Borrower, (i) Revolving Credit Loans denominated in Dollars and Term Loans shall bear interest at (A) the Base Rate plus the Applicable Margin or (B) the Eurocurrency Rate plus the Applicable Margin, (ii) Revolving Credit Loans denominated in an Alternative Currency shall bear interest at the Eurocurrency Rate plus the Applicable Margin and (iii) Swingline Loans shall bear interest at the Base Rate plus the Applicable Margin (provided that, notwithstanding the foregoing, the Eurocurrency Rate shall not be available until three (3) Business Days after the Closing Date in the case of Eurocurrency Rate Loans denominated in Dollars, four (4) Business Days (or five (5) Business Days in the case of Special Notice Currencies) after the Closing Date in the case of Eurocurrency Rate Loans denominated in an Alternative Currency, in each case unless the Borrower has delivered to the Administrative Agent a letter in form and substance reasonably satisfactory to the Administrative Agent indemnifying the Lenders in the manner set forth in Section 5.9 of this Agreement). The Borrower shall select the rate of interest and Interest Period, if any, applicable to any Loan at the time a Notice of Borrowing is given or at the time a Notice of Conversion/Continuation is given pursuant to Section 5.2.

(b) Default Rate. Subject to Section 12.3, (i) immediately upon the occurrence and during the continuance of an Event of Default under Section 12.1(a), (b), (h) or (i), or (ii) at the election of the Required Lenders (or the Administrative Agent at the direction of the Required Lenders), upon the occurrence and during the continuance of any other Event of Default, (A) the Borrower shall no longer have the option to request Eurocurrency Rate Loans, Swingline Loans or Letters of Credit, (B) all outstanding Eurocurrency Rate Loans shall bear interest at a rate per annum of two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Eurocurrency Rate Loans until the end of the applicable Interest Period and thereafter at a rate equal to two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Base Rate Loans, (C) all outstanding Base Rate Loans and other Obligations arising hereunder or under any other Loan Document shall bear interest at a rate per annum equal to two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Base Rate Loans or such other Obligations arising hereunder or under any other Loan Document and (D) all accrued and unpaid interest shall be due and payable on demand of the Administrative Agent. Interest shall continue to accrue on the Obligations after the filing by or against the Borrower of any petition seeking any relief in bankruptcy or under any act or law pertaining to insolvency or debtor relief, whether state, federal or foreign.

(c) Interest Payment and Computation. Interest on each Base Rate Loan shall be due and payable in arrears on the last Business Day of each calendar quarter commencing September 30, 2016; and interest on each Eurocurrency Rate Loan shall be due and payable on the last day of each Interest Period applicable thereto, and if such Interest Period extends over three (3) months, at the end of each three (3) month interval during such Interest Period. All computations of interest for (i) Base Rate Loans when the Base Rate is determined by the Prime Rate or (ii) Eurocurrency Rate Loans denominated in Sterling shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest provided hereunder shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365/366-day year), or, in the case of interest in respect of Revolving Credit Loans denominated in Alternative Currencies as to which market practice differs from the foregoing, in accordance with such market practice. With respect to any Alternative Currency (other than Dollars, Euro and Sterling), the calculation of the applicable interest rate shall be determined in accordance with market practice at the time such Alternative Currency is approved by the Administrative Agent and the Lenders pursuant to Section 1.13(a).

(d) Maximum Rate. In no contingency or event whatsoever shall the aggregate of all amounts deemed interest under this Agreement charged or collected pursuant to the terms of this Agreement exceed the highest rate permissible under any Applicable Law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that the Lenders have charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by Applicable Law and the Lenders shall at the Administrative Agent's option (i) promptly refund to the Borrower any interest received by the Lenders in excess of the maximum lawful rate or (ii) apply such excess to the principal balance of the Obligations. It is the intent hereof that the Borrower not pay or contract to pay, and that neither the Administrative Agent nor any Lender receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by the Borrower under Applicable Law.

SECTION 5.2 Notice and Manner of Conversion or Continuation of Loans. Provided that no Default or Event of Default has occurred and is then continuing, the Borrower shall have the option to (a) convert at any time following the third Business Day after the Closing Date all or any portion of any outstanding Base Rate Loans (other than Swingline Loans) in a principal amount equal to $2,500,000 or any whole multiple of $1,000,000 in excess thereof into one or more Eurocurrency Rate Loans denominated in Dollars or (b) upon the expiration of any Interest Period, (i) convert all or any part of its outstanding Eurocurrency Rate Loans denominated in Dollars in a principal amount equal to $5,000,000 or a whole multiple of $1,000,000 in excess thereof into Base Rate Loans (other than Swingline Loans), (ii) continue any Eurocurrency Rate Loans denominated in Dollars as Eurocurrency Rate Loans denominated in Dollars or (iii) continue any Eurocurrency Rate Loans denominated in an Alternative Currency as Eurocurrency Rate Loans denominated in same Alternative Currency. Whenever the Borrower desires to convert or continue Loans as provided above, the Borrower shall give the Administrative Agent irrevocable prior written notice in the form attached as ***Exhibit E*** (a "Notice of Conversion/Continuation") not later than (A) 11:00 a.m. three (3) Business Days in the case of Eurocurrency Rate Loans denominated in Dollars or (B) four (4) Business Days (or five (5) Business Days in the case of a Special Notice Currency) in the case of a Eurocurrency Rate Loan denominated in Alternative Currencies before the day on which a proposed conversion or continuation of such Loan is to be effective specifying (1) the Loans to be converted or continued, and, in the case of any Eurocurrency Rate Loan to be converted or continued, the last day of the Interest Period therefor, (2) the effective date of such conversion or continuation (which shall be a Business Day), (3) the principal amount of such Loans to be converted or continued, (4) the Interest Period to be applicable to such converted or continued Eurocurrency Rate Loan and (5) the currency in which any Revolving Credit Loan is denominated. The Administrative Agent shall promptly notify the affected Lenders of such Notice of Conversion/Continuation. If the Borrower fails to give a timely Notice of Conversion/Continuation prior to the end of the Interest Period for any Eurocurrency Rate Loan denominated in Dollars, then the applicable Eurocurrency Rate Loan shall be converted to a Base Rate Loan (which conversion shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loan), and if the Borrower fails to give a timely Notice of Conversion/Continuation prior to the end of the Interest Period for any Eurocurrency Rate Loan denominated in an Alternative Currency, then the applicable Eurocurrency Rate Loan shall be continued as a Eurocurrency Rate Loan in its original currency with an Interest Period of one month. If the Borrower requests a conversion to, or continuation of, Eurocurrency Rate Loans, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. No Revolving Credit Loan may be converted or continued as a Revolving Credit Loan denominated in a different currency, but instead must be repaid in the original currency of such Revolving Credit Loan and reborrowed in the other currency. Notwithstanding anything to the contrary herein, a Swingline Loan may not be converted to a Eurocurrency Rate Loan.

SECTION 5.3 Fees.

(a) Commitment Fee. Commencing on the Closing Date, subject to Section 5.15(a)(iii)(A), the Borrower shall pay to the Administrative Agent, for the account of the Revolving Credit Lenders, a non-refundable commitment fee (the "Commitment Fee") at a rate per annum equal to the amounts set forth under the heading "Commitment Fee" in the definition of Applicable Margin on the average daily unused portion of the Revolving Credit Commitment of the Revolving Credit Lenders (other than the Defaulting Lenders, if any); provided that the amount of outstanding Swingline Loans shall not be considered usage of the Revolving Credit Commitment for the purpose of calculating the Commitment Fee. The Commitment Fee shall be payable in arrears on the last Business Day of each calendar quarter during the term of this Agreement commencing September 30, 2016 and ending on the date upon which all Obligations (other than contingent indemnification obligations not then due) arising under the Revolving Credit Facility shall have been indefeasibly and irrevocably paid and satisfied in full, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Revolving Credit Commitment has been terminated. The Commitment Fee shall be distributed by the Administrative Agent to the Revolving Credit Lenders (other than any Defaulting Lender) pro rata in accordance with such Revolving Credit Lenders' respective Revolving Credit Commitment Percentages.

(b) Other Fees. The Borrower shall pay to the Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letters. The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified.

SECTION 5.4 Manner of Payment.

(a) Sharing of Payments.

(i) Each payment by the Borrower on account of the principal of or interest on the Loans (other than Cash Management Swingline Loans) denominated in Dollars or any fee, commission or other amounts (including the Reimbursement Obligation) payable to the Lenders under this Agreement (or any of them) shall be made not later than 1:00 p.m. on the date specified for payment under this Agreement to the Administrative Agent at the Administrative Agent's Office for the account of the Lenders entitled to such payment in Dollars, in Same Day Funds, and shall be made without any setoff, counterclaim or deduction whatsoever; provided that each payment by the Borrower on account of the principal of or interest on the Cash Management Swingline Loans shall be made in accordance with the Loan Sweep Agreement. Any payment received after such time but before 2:00 p.m. on such day shall be deemed a payment on such date for the purposes of Section 12.1, but for all other purposes shall be deemed to have been made on the next succeeding Business Day. Any payment received after 2:00 p.m. shall be deemed to have been made on the next succeeding Business Day for all purposes

(ii) Each payment by the Borrower on account of the principal of or interest on the Revolving Credit Loans denominated in an Alternative Currency shall be made not later than the Applicable Time specified by the Administrative Agent on the date specified for payment under this Agreement to the Administrative Agent at the applicable Administrative Agent's Office for the account of the Lenders entitled to such payment in such Alternative Currency, in Same Day Funds, and shall be made without any set off, counterclaim or deduction whatsoever. Any payment received after such time but before an hour after the Applicable Time specified by the Administrative Agent on such day shall be deemed a payment on such date for the purposes of

Section 12.1, but for all other purposes shall be deemed to have been made on the next succeeding Business Day. Any payment received after an hour after the Applicable Time specified by the Administrative Agent shall be deemed to have been made on the next succeeding Business Day for all purposes.

(iii) Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, the Borrower is prohibited by any Applicable Law from making any required payment hereunder in an Alternative Currency, such Borrower shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency payment amount. Upon receipt by the Administrative Agent of each such payment, the Administrative Agent shall distribute to each such Lender at its address for notices set forth herein its Commitment Percentage in respect of the relevant Credit Facility (or other applicable share as provided herein) of such payment and shall wire advice of the amount of such credit to each Lender. Each payment to the Administrative Agent on account of the principal of or interest on the Swingline Loans or of any fee, commission or other amounts payable to the Swingline Lender shall be made in like manner, but for the account of the Swingline Lender. Each payment to the Administrative Agent of the Issuing Lender's fees or L/C Participants' commissions shall be made in like manner, but for the account of the Issuing Lender or the L/C Participants, as the case may be. Each payment to the Administrative Agent of Administrative Agent's fees or expenses shall be made for the account of the Administrative Agent and any amount payable to any Lender under Sections 5.9, 5.10, 5.11 or 14.3 shall be paid to the Administrative Agent for the account of the applicable Lender. Subject to the definition of Interest Period, if any payment under this Agreement shall be specified to be made upon a day which is not a Business Day, it shall be made on the next succeeding day which is a Business Day and such extension of time shall in such case be included in computing any interest if payable along with such payment.

(b) Defaulting Lenders. Notwithstanding the foregoing, if there exists a Defaulting Lender each payment by the Borrower to such Defaulting Lender hereunder shall be applied in accordance with Section 5.15(a)(ii).

SECTION 5.5 Evidence of Indebtedness.

(a) Extensions of Credit. The Extensions of Credit made by each Lender and the Issuing Lender shall be evidenced by one or more accounts or records maintained by such Lender or the Issuing Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender or the Issuing Lender shall be conclusive absent manifest error of the amount of the Extensions of Credit made by the Lenders or the Issuing Lender to the Borrower and its Subsidiaries and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender or the Issuing Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Revolving Credit Note, Term Loan Note and/or Swingline Note, as applicable, which shall evidence such Lender's Revolving Credit Loans, Term Loans and/or Swingline Loans, as applicable, in addition to such accounts or records. Each Lender may attach schedules to its Notes and endorse thereon the date, amount, currency and maturity of its Loans and payments with respect thereto.

(b) Participations. In addition to the accounts and records referred to in subsection (a), each Revolving Credit Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Revolving Credit Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Revolving Credit Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

SECTION 5.6 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations (other than pursuant to Sections 5.9, 5.10, 5.11 or 14.3) greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) the application of Cash Collateral provided for in Section 5.14 or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Swingline Loans and Letters of Credit to any assignee or participant, other than to the Borrower or any of its Subsidiaries or Affiliates (as to which the provisions of this paragraph shall apply).

Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Credit Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Credit Party in the amount of such participation.

SECTION 5.7 Administrative Agent's Clawback.

(a) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender (i) in the case of Base Rate Loans, not later than 12:00 noon on the date of any proposed borrowing and (ii) otherwise, prior to the proposed date of any borrowing, that such Lender will not make available to the Administrative Agent such Lender's share of such borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Sections 2.3(b) and 4.2 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount

is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the daily average Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

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

(c) Nature of Obligations of Lenders Regarding Extensions of Credit. The obligations of the Lenders under this Agreement to make the Loans, to issue or participate in Letters of Credit and to make payments under this Section 5.7, Section 5.11(e), Section 14.3(c) or Section 14.7, as applicable, are several and are not joint and are not joint or joint and several. The failure of any Lender to make available its Commitment Percentage of any Loan requested by the Borrower shall not relieve it or any other Lender of its obligation, if any, hereunder to make its Commitment Percentage of such Loan available on the borrowing date, but no Lender shall be responsible for the failure of any other Lender to make its Commitment Percentage of such Loan available on the borrowing date.

SECTION 5.8 Changed Circumstances.

(a) Circumstances Affecting Eurocurrency Rate Availability. In connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof, if for any reason (i) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that deposits (whether in Dollars or an Alternative Currency) are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Loan, (ii) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for the ascertaining the Eurocurrency Rate for such Interest Period with respect to a proposed Eurocurrency Rate Loan (whether denominated in Dollars or an Alternative Currency) or (iii) the Required Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that the Eurocurrency Rate does not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans during such Interest Period, then the Administrative Agent shall promptly give

notice thereof to the Borrower. Thereafter, until the Administrative Agent notifies the Borrower that such circumstances no longer exist, the obligation of the Lenders to make Eurocurrency Rate Loans in the affected currency or currencies and the right of the Borrower to convert any Loan to or continue any Loan as a Eurocurrency Rate Loan in the affected currency or currencies shall be suspended, and the Borrower shall either (A) repay in full (or cause to be repaid in full) the then outstanding principal amount of each such Eurocurrency Rate Loan together with accrued interest thereon (subject to Section 5.1(d)), on the last day of the then current Interest Period applicable to such Eurocurrency Rate Loan; or (B) convert the then outstanding principal amount of each such Eurocurrency Rate Loan to a Base Rate Loan denominated in Dollars as of the last day of such Interest Period.

(b) Laws Affecting Eurocurrency Rate 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 Eurocurrency Rate Loan (whether denominated in Dollars or an Alternative Currency), such 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. Thereafter, until the Administrative Agent notifies the Borrower that such circumstances no longer exist, (i) the obligations of the Lenders to make Eurocurrency Rate Loans in the affected currency or currencies, and the right of the Borrower to convert any Loan to a Eurocurrency Rate Loan or continue any Loan as a Eurocurrency Rate Loan shall be suspended and thereafter the Borrower may select only Base Rate Loans denominated in Dollars and (ii) if any of the Lenders may not lawfully continue to maintain a Eurocurrency Rate Loan to the end of the then current Interest Period applicable thereto, the applicable Loan shall immediately be converted to a Base Rate Loan denominated in Dollars for the remainder of such Interest Period.

(c) Illegality. If, in any applicable jurisdiction, the Administrative Agent, the Issuing Lender or any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Administrative Agent, the Issuing Lender or any Lender to (i) perform any of its obligations hereunder or under any other Loan Document, (ii) to fund or maintain its participation in any Loan or (iii) issue, make, maintain, fund or charge interest or fees with respect to any Extension of Credit, such Person shall promptly notify the Administrative Agent, then, upon the Administrative Agent notifying the Borrower, and until such notice by such Person is revoked, any obligation of such Person to issue, make, maintain, fund or charge interest or fees with respect to any such Extension of Credit shall be suspended, and to the extent required by Applicable Law, cancelled. Upon receipt of such notice, the Loan Parties shall, (A) repay that Person's participation in the Loans or other applicable Obligations on the last day of the Interest Period for each Loan or other Obligation occurring after the Administrative Agent has notified the Borrower or, if earlier, the date specified by such Person in the notice delivered to the Administrative Agent (being no earlier than the last day of any applicable grace period permitted by Applicable Law) and (B) take all reasonable actions requested by such Person to mitigate or avoid such illegality.

SECTION 5.9 Indemnity. The Borrower hereby indemnifies each of the Lenders against any loss or expense (including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain a Eurocurrency Rate Loan or from fees payable to terminate the deposits from which such funds were obtained) which may arise or be attributable to each Lender's obtaining, liquidating or employing deposits or other funds acquired to effect, fund or maintain any Loan (a) as a

consequence of any failure by the Borrower to make any payment when due of any amount due hereunder in connection with a Eurocurrency Rate Loan, (b) due to any failure of the Borrower to borrow or continue a Eurocurrency Rate Loan or convert to a Eurocurrency Rate Loan on a date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation, (c) due to any payment, prepayment or conversion of any Eurocurrency Rate Loan on a date other than the last day of the Interest Period therefor, (d) due to any failure of the Borrower to make payment of any Eurocurrency Rate Loan (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency. The amount of such loss or expense shall be determined, in the applicable Lender's sole discretion, based upon the assumption that such Lender funded its Commitment Percentage of the Eurocurrency Rate Loans in the applicable offshore interbank market for such currency and using any reasonable attribution or averaging methods which such Lender deems appropriate and practical. A certificate of such Lender setting forth the basis for determining such amount or amounts necessary to compensate such Lender shall be forwarded to the Borrower through the Administrative Agent and shall be conclusively presumed to be correct save for manifest error.

SECTION 5.10 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurocurrency Rate) or the Issuing Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the Issuing Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurocurrency Rate Loans made by such Lender or any Letter of Credit or participation therein; and the result of any of the foregoing shall be to increase the cost to such Lender, the Issuing Lender or such other Recipient of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, the Issuing Lender or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, the Issuing Lender or such other Recipient hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender, the Issuing Lender or such other Recipient, the Borrower shall promptly pay to any such Lender, the Issuing Lender or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Lender or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the Issuing Lender determines that any Change in Law affecting such Lender or the Issuing Lender or any Lending Office of such Lender or such Lender's or the Issuing Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Lender's capital or liquidity requirements or on the capital of such Lender's or the Issuing Lender's holding company, if any, as a

consequence of this Agreement, the Revolving Credit Commitment of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Lender's policies and the policies of such Lender's or the Issuing Lender's holding company with respect to capital adequacy), then from time to time upon written request of such Lender or the Issuing Lender, the Borrower shall promptly pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company for any such reduction suffered.

(c) Exchange Indemnification Costs. The Borrower shall, upon demand from the Administrative Agent, pay to the Administrative Agent or any applicable Lender, the amount of (i) any loss or cost or increased cost incurred by the Administrative Agent or any applicable Lender, (ii) any reduction in any amount payable to or in the effective return on the capital to the Administrative Agent or any applicable Lender, or (iii) any currency exchange loss, that Administrative Agent or any Lender sustains as a result of any payment being made by the Borrower in a currency other than that originally extended to the Borrower or as a result of any other currency exchange loss incurred by the Administrative Agent or any applicable Lender under this Agreement.

(d) Certificates for Reimbursement. A certificate of a Lender, the Issuing Lender or such other Recipient setting forth the amount or amounts necessary to compensate such Lender, the Issuing Lender, such other Recipient or any of their respective holding companies, as the case may be, as specified in paragraphs (a) or (b) or (c) of this Section 5.10 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, the Issuing Lender or such other Recipient, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(e) Delay in Requests. Failure or delay on the part of any Lender or the Issuing Lender or such other Recipient to demand compensation pursuant to this Section 5.10 shall not constitute a waiver of such Lender's or the Issuing Lender's or such other Recipient's right to demand such compensation; provided that the Borrower shall not be required to compensate any Lender or the Issuing Lender or any other Recipient pursuant to this Section 5.10 for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or the Issuing Lender or such other Recipient, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or the Issuing Lender's or such other Recipient's intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 5.11 Taxes.

(a) Defined Terms. For purposes of this Section 5.11, the term "Lender" includes the Issuing Lender and the term "Applicable Law" includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Credit Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such

payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Credit Party shall be increased as necessary so that, after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 5.11), the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Credit Parties. The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Credit Parties. The Credit Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 5.11) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Recipient (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Recipient, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any 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 14.10(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to setoff and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e). The agreements in paragraph (e) shall survive the resignation and/or replacement of the Administrative Agent.

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section 5.11, such Credit Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the

Administrative Agent, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.11(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing:

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

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

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

(2) executed copies of IRS Form W-8ECI;

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

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of

Exhibit H-2 or ***Exhibit H-3***, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of ***Exhibit H-4*** on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States 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

(D) if a payment made to a Lender under any Loan Document would be subject to United States federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

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

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5.11 (including by the payment of additional amounts pursuant to this Section 5.11), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 5.11 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) to the extent that such payment would place the indemnified party in a less favorable net after-Tax

position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 5.11 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

SECTION 5.12 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 5.10, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.11, then such Lender shall, at the request of the Borrower, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.10 or Section 5.11, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 5.10, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.11, and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 5.12(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 14.10), all of its interests, rights (other than its existing rights to payments pursuant to Section 5.10 or Section 5.11) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 14.10;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and funded participations in Letters of Credit and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 5.9) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 5.10 or payments required to be made pursuant to Section 5.11, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with Applicable Law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

(c) Miscellaneous. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 5.13 Incremental Loans.

(a) At any time following the Closing Date, the Borrower may by written notice to the Administrative Agent elect to request the establishment of:

(i) one or more incremental term loan commitments (any such incremental term loan commitment, an "Incremental Term Loan Commitment") to make one or more additional term loan(s), including a borrowing of an additional term loan the principal amount of which will be added to the outstanding principal amount of the existing tranche of Term Loans with the latest maturity date (any such additional term loan, an "Incremental Term Loan"); or

(ii) one or more increases in the Revolving Credit Commitments (any such increase, an "Incremental Revolving Credit Commitment" and, together with the Incremental Term Loan Commitments, the "Incremental Loan Commitments") to make revolving credit loans under the Revolving Credit Facility (any such increase, an "Incremental Revolving Credit Increase" and, together with the Incremental Term Loans, the "Incremental Loans ");

provided that (1) the total aggregate initial principal amount (as of the date of incurrence thereof) of all requested Incremental Loan Commitments (and the Incremental Loans made thereunder) shall not exceed the Incremental Facilities Limit and (2) the total aggregate initial principal amount (as of the date of incurrence thereof) of each requested Incremental Loan Commitment (and the Incremental Loans made thereunder) shall not be less than a minimum initial principal amount of $25,000,000 or, if less, the remaining amount permitted pursuant to the foregoing clause (1). Each such notice shall specify the date (each, an "Increased Amount Date") on which the Borrower proposes that any Incremental Loan Commitment shall be effective, which shall be a date not less than ten (10) Business Days after the date on which such notice is delivered to Administrative Agent (or such later date as may be approved by the Administrative Agent). The Borrower may invite any Lender, any Affiliate of any Lender and/or any Approved Fund, and/or any other Person reasonably satisfactory to the Administrative Agent, to provide an Incremental Loan Commitment (any such Person, an "Incremental Lender"). Any proposed Incremental Lender offered or approached to provide all or a portion of any Incremental Loan Commitment may elect or decline, in its sole discretion, to provide such Incremental Loan Commitment. Any Incremental Loan Commitment shall become effective as of such Increased Amount Date; provided that, each of the following conditions has been satisfied or waived as of such Increased Amount Date:

(i) no Default or Event of Default shall exist on such Increased Amount Date before or after giving effect to (1) any Incremental Loan Commitment, (2) the making of any Incremental Loans pursuant thereto and (3) any Permitted Acquisition consummated in connection therewith, if any;

(ii) the Administrative Agent and the Lenders shall have received from the Borrower an Officer's Compliance Certificate demonstrating, in form and substance reasonably satisfactory to the Administrative Agent, that the Borrower is in compliance with the financial covenants set forth in Article X, in each case based on the financial statements most recently delivered pursuant to Section 8.1(a) or 8.1(b), as applicable, both before and after giving effect (on a Pro Forma Basis) to (x) any Incremental Loan Commitment, (y) the making of any Incremental Loans pursuant thereto (with each Incremental Loan Commitment and the Revolving Credit Commitment being deemed to be fully funded) and (z) any Permitted Acquisition consummated in connection therewith, if any;

(iii) each of the representations and warranties contained in Article VII shall be true and correct in all material respects, except to the extent any such representation and warranty is qualified by materiality or reference to Material Adverse Effect, in which case, such representation and warranty shall be true, correct and complete in all respects, on such Increased Amount Date with the same effect as if made on and as of such date (except for any such representation and warranty that by its terms is made only as of an earlier date, which representation and warranty shall remain true and correct as of such earlier date);

(iv) the proceeds of any Incremental Loans shall be used for general corporate purposes of the Borrower and its Subsidiaries (including Permitted Acquisitions);

(v) each Incremental Loan Commitment (and the Incremental Loans made thereunder) shall constitute Obligations of the Borrower and shall be secured and guaranteed with the other Extensions of Credit on a pari passu basis;

(vi) (1) in the case of each Incremental Term Loan (the terms of which shall be set forth in the relevant Lender Joinder Agreement):

(x) such Incremental Term Loan will mature and amortize in a manner reasonably acceptable to the Administrative Agent, the Incremental Lenders making such Incremental Term Loan and the Borrower, but will not in any event have a shorter Weighted Average Life to Maturity than the remaining Weighted Average Life to Maturity of the Initial Term Loan or a maturity date earlier than the Term Loan Maturity Date;

(y) the Applicable Margin and pricing grid, if applicable, for such Incremental Term Loan shall be determined by the Administrative Agent, the applicable Incremental Lenders and the Borrower on the applicable Increased Amount Date; and

(z) except as provided above, all other terms and conditions applicable to any Incremental Term Loan, to the extent not consistent with the terms and conditions applicable to the Initial Term Loan, shall be reasonably satisfactory to the Administrative Agent and the Borrower (provided that such other terms and conditions, taken as a whole, shall not be materially more favorable to the Lenders under any Incremental Term Loans than such other terms and conditions, taken as a whole, under the Initial Term Loans);

(2) in the case of each Incremental Revolving Credit Increase (the terms of which shall be set forth in the relevant Lender Joinder Agreement):

(x) such Incremental Revolving Credit Increase shall mature on the Revolving Credit Maturity Date, shall bear interest and be entitled to fees, in each case at the rate applicable to the Revolving Credit Loans, and shall be subject to the same terms and conditions as the Revolving Credit Loans (except for interest rate margins, commitment fees and upfront fees); provided that if the interest rate margins and/or commitment fees in respect of any Incremental Revolving Credit Increase exceed the interest rate margins and/or commitment fees for any other Revolving Credit Commitments, then the interest rate margins and/or commitment fees, as applicable, for such other Revolving Credit Commitments shall be increased so that the interest rate margins and/or commitment fees, as applicable, are equal to the interest rate margins and/or commitment fees for such Revolving Credit Increase; provided, further, that in determining the interest rate margins applicable to the Incremental Revolving Credit Increase and the other Revolving Credit Commitments (x) upfront fees payable by the Borrower to the Lenders under the Incremental Revolving Credit Increase and the other Revolving Credit Commitments in the initial primary syndication thereof (with such upfront fees being equated to interest based on assumed four-year life to maturity) shall be included and the effects of any and all interest rate floors shall be included and (y) all customary arrangement or commitment fees payable to the Lead Arranger (or its affiliate) in connection with the other Revolving Credit Commitments or to one or more arrangers (or their affiliates) of any Incremental Revolving Credit Increase shall be excluded;

(y) the outstanding Revolving Credit Loans and Revolving Credit Commitment Percentages of Swingline Loans and L/C Obligations will be reallocated by the Administrative Agent on the applicable Increased Amount Date among the Revolving Credit Lenders (including the Incremental Lenders providing such Incremental Revolving Credit Increase) in accordance with their revised Revolving Credit Commitment Percentages (and the Revolving Credit Lenders (including the Incremental Lenders providing such Incremental Revolving Credit Increase) agree to make all payments and adjustments necessary to effect such reallocation and the Borrower shall pay any and all costs required pursuant to Section 5.9 in connection with such reallocation as if such reallocation were a repayment); and

(z) except as provided above, all of the other terms and conditions applicable to such Incremental Revolving Credit Increase shall, except to the extent otherwise provided in this Section 5.13, be identical to the terms and conditions applicable to the Revolving Credit Facility;

(vii) (1) any Incremental Lender making any Incremental Term Loan shall be entitled to the same voting rights as the existing Term Loan Lenders under the Term Loan Facility and (unless otherwise agreed by the applicable Incremental Lenders) each Incremental Term Loan shall receive proceeds of prepayments on the same basis as the Initial Term Loan (such prepayments to be shared pro rata on the basis of the original

aggregate funded amount thereof among the Initial Term Loan and the Incremental Term Loans); and

(2) any Incremental Lender with an Incremental Revolving Credit Increase shall be entitled to the same voting rights as the existing Revolving Credit Lenders under the Revolving Credit Facility and any Extensions of Credit made in connection with each Incremental Revolving Credit Increase shall receive proceeds of prepayments on the same basis as the other Revolving Credit Loans made hereunder;

(viii) such Incremental Loan Commitments shall be effected pursuant to one or more Lender Joinder Agreements executed and delivered by the Borrower, the Administrative Agent and the applicable Incremental Lenders (which Lender Joinder Agreement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section 5.13); and

(ix) the Borrower shall deliver or cause to be delivered any customary legal opinions or other documents (including, without limitation, a resolution duly adopted by the board of directors (or equivalent governing body) of each Credit Party authorizing such Incremental Loan and/or Incremental Term Loan Commitment), as may be reasonably requested by Administrative Agent in connection with any such transaction.

(b) (i) The Incremental Term Loans shall be deemed to be Term Loans; provided that any such Incremental Term Loan that is not added to the outstanding principal balance of a pre-existing Term Loan shall be designated as a separate tranche of Term Loans for all purposes of this Agreement.

(ii) The Incremental Lenders shall be included in any determination of the Required Lenders or Required Revolving Credit Lenders, as applicable, and, unless otherwise agreed, the Incremental Lenders will not constitute a separate voting class for any purposes under this Agreement.

(c) (i) On any Increased Amount Date on which any Incremental Term Loan Commitment becomes effective, subject to the foregoing terms and conditions, each Incremental Lender with an Incremental Term Loan Commitment shall make, or be obligated to make, an Incremental Term Loan to the Borrower in an amount equal to its Incremental Term Loan Commitment and shall become a Term Loan Lender hereunder with respect to such Incremental Term Loan Commitment and the Incremental Term Loan made pursuant thereto.

(ii) On any Increased Amount Date on which any Incremental Revolving Credit Increase becomes effective, subject to the foregoing terms and conditions, each Incremental Lender with an Incremental Revolving Credit Commitment shall become a Revolving Credit Lender hereunder with respect to such Incremental Revolving Credit Commitment.

SECTION 5.14 Cash Collateral. At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent, the Issuing Lender (with a copy to the Administrative Agent) or the Swingline Lender (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the Fronting Exposure of the Issuing Lender and/or the Swingline Lender, as applicable, with respect to such Defaulting Lender (determined after giving effect to

Section 5.15(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount equal to the Minimum Collateral Amount.

(a) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Lender and the Swingline Lender, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of L/C Obligations and Swingline Loans, to be applied pursuant to subsection (b) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent, the Issuing Lender and the Swingline Lender as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(b) Application. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, Cash Collateral provided under this Section 5.14 or Section 5.15 in respect of Letters of Credit and Swingline Loans shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of L/C Obligations and Swingline Loans (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(c) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the Fronting Exposure of the Issuing Lender and/or the Swingline Lender, as applicable, shall no longer be required to be held as Cash Collateral pursuant to this Section 5.14 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent, the Issuing Lender and the Swingline Lender that there exists excess Cash Collateral; provided that, subject to Section 5.15, the Person providing Cash Collateral, the Issuing Lender and the Swingline Lender may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations; and provided further that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

SECTION 5.15 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and Section 14.2.

(ii) Defaulting Lender Waterfall. 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 Article XII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 14.4 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 the Issuing Lender or the Swingline Lender hereunder; *third*, to Cash Collateralize the Fronting Exposure of the Issuing Lender and the Swingline Lender with respect to such Defaulting Lender in accordance with Section 5.14; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan or funded participation 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 (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans and funded participations under this Agreement and (B) Cash Collateralize the Issuing Lender's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit and Swingline Loans issued under this Agreement, in accordance with Section 5.14; *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Lender or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Lender or the Swingline Lender 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 exists, 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 (1) such payment is a payment of the principal amount of any Loans or funded participations in Swingline Loans or Letters of Credit in respect of which such Defaulting Lender has not fully funded its appropriate share, and (2) such Loans were made or the related Swingline Loans or Letters of Credit were issued at a time when the conditions set forth in Section 6.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and funded participations in Swingline Loans or Letters of Credit owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or funded participations in Swingline Loans or Letters of Credit owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Swingline Loans and L/C Obligations are held by the Lenders pro rata in accordance with the Revolving Credit Commitments under the applicable Revolving Credit Facility without giving effect to Section 5.15(a)(iv). 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 5.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(i) No Defaulting Lender shall be entitled to receive any Commitment Fee for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(ii) Each Defaulting Lender shall be entitled to receive letter of credit commissions pursuant to Section 3.3 for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Credit Commitment Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 5.14.

(iii) With respect to any Commitment Fee or letter of credit commission not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to the Issuing Lender and the Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Lender's or the Swingline Lender's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Credit Commitment Percentages (calculated without regard to such Defaulting Lender's Revolving Credit Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, repay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposure and (y) second, Cash Collateralize the Issuing Lender's Fronting Exposure in accordance with the procedures set forth in Section 5.14.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Issuing Lender and the Swingline Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with the Commitments under the applicable Credit Facility (without giving effect to Section 5.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE VI

CONDITIONS OF CLOSING AND BORROWING

SECTION 6.1 Conditions to Closing and the Initial Extensions of Credit. The obligation of the Lenders to close this Agreement and to make the initial Loans or issue or participate in the initial Letters of Credit, if any, is subject to the satisfaction of each of the following conditions:

(a) Executed Loan Documents. This Agreement, a Revolving Credit Note in favor of each Revolving Credit Lender requesting a Revolving Credit Note, a Term Loan Note in favor of each Term Loan Lender requesting a Term Loan Note, a Swingline Note in favor of the Swingline Lender (in each case, if requested thereby) and the Security Documents, together with any other applicable Loan Documents, shall have been duly authorized, executed and delivered to the Administrative Agent by the parties thereto and shall be in full force and effect and no Default or Event of Default shall exist hereunder or thereunder.

(b) Closing Certificates; Etc. The Administrative Agent shall have received each of the following in form and substance reasonably satisfactory to the Administrative Agent:

(i) Officer's Certificate. A certificate from a Responsible Officer of the Borrower to the effect that (A) all representations and warranties of the Credit Parties contained in this Agreement and the other Loan Documents are true, correct and complete in all material respects (except to the extent any such representation and warranty is qualified by materiality or reference to Material Adverse Effect, in which case, such representation and warranty shall be true, correct and complete in all respects); (B) none of the Credit Parties is in violation of any of the covenants contained in this Agreement and the other Loan Documents; (C) after giving effect to the Transactions, no Default or Event of Default has occurred and is continuing; (D) since December 31, 2015, no event has occurred or condition arisen, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect; and (E) each of the Credit Parties, as applicable, has satisfied each of the conditions set forth in Section 6.1 and Section 6.2.

(ii) Certificates of Secretary and Organizational Documents. With respect to each Credit Party, a certificate of a Responsible Officer of each such Person certifying as to the incumbency and genuineness of the signature of each officer of such Person executing Loan Documents to which it is a party and certifying that attached thereto is a true, correct and complete copy of (A) the articles or certificate of incorporation or formation (or equivalent), as applicable, of such Person and all amendments thereto, certified as of a recent date by the appropriate Governmental Authority in its jurisdiction of incorporation, organization or formation (or equivalent), as applicable, (B) the bylaws or other governing document of such Person as in effect on the Closing Date, (C) resolutions duly adopted by the board of directors (or other governing body) of such Person authorizing and approving the transactions contemplated hereunder and the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party, and (D) each certificate required to be delivered pursuant to Section 6.1(b)(iii).

(iii) Certificates of Good Standing. With respect to each Credit Party, certificates as of a recent date of the good standing of each such Person under the laws of its jurisdiction of incorporation, organization or formation (or equivalent) and, to the extent requested by the Administrative Agent, each other jurisdiction where such Person is qualified to do business and, to the extent available, a certificate of the relevant taxing authorities of such jurisdictions certifying that such Person has filed required tax returns and owes no delinquent taxes.

(iv) Opinions of Counsel. Favorable opinions of counsel to the Credit Parties addressed to the Administrative Agent and the Lenders with respect to the Credit Parties, the Loan Documents and such other matters as the Administrative Agent shall request (which such opinions shall expressly permit reliance by permitted successors and assigns of the Administrative Agent and the Lenders.

(c) Dfine Acquisition.

(i) The Administrative Agent shall have received, in form and substance reasonably satisfactory thereto, a true, correct and fully-executed copy of each Dfine Acquisition Agreement Related Document (certified by a Responsible Officer of the Borrower to be true, correct and complete).

(ii) Each Dfine Acquisition Agreement Related Document shall each be in full force and effect.

(iii) The Dfine Acquisition shall be consummated substantially concurrently with the initial Extensions of Credit in accordance with the Dfine Acquisition Agreement without giving effect to any amendments, modifications or waivers thereof that are materially adverse to the interests of the Lenders (as reasonably determined by the Administrative Agent) unless approved by the Administrative Agent.

(d) Personal Property Collateral.

(i) Filings and Recordings. The Administrative Agent shall have received all filings and recordations that are necessary to perfect the security interests of the Administrative Agent, on behalf of the Secured Parties, in the Collateral and the Administrative Agent shall have received evidence reasonably satisfactory to the Administrative Agent that upon such filings and recordations such security interests constitute valid and perfected first priority Liens thereon (subject to Permitted Liens).

(ii) Pledged Collateral. The Administrative Agent shall have received (A) original stock certificates or other certificates evidencing the Capital Stock pledged pursuant to the Security Documents, to the extent such Capital Stock is certificated, together with an undated stock power for each such certificate duly executed in blank by the registered owner thereof and (B) each original promissory note pledged, and required to be delivered to the Administrative Agent, pursuant to the Security Documents, together with an undated endorsement for each such promissory note duly executed in blank by the holder thereof.

(iii) Lien Search. The Administrative Agent shall have received the results of a Lien search (including a search as to judgments, bankruptcy, tax and intellectual property matters), in form and substance reasonably satisfactory thereto, made against the Credit Parties under the Uniform Commercial Code (or applicable judicial docket) as in effect in each jurisdiction in which filings or recordations under the Uniform Commercial Code should be made to evidence or perfect security interests in all assets of such Credit Party, indicating among other things that the assets of each such Credit Party are free and clear of any Lien (except for Permitted Liens).

(iv) Property and Liability Insurance. The Administrative Agent shall have received, in each case in form and substance reasonably satisfactory to the Administrative Agent, evidence of property, business interruption and liability insurance covering each Credit Party, evidence of

payment of all insurance premiums for the current policy year of each policy (with appropriate endorsements naming the Administrative Agent as lender's loss payee on all policies for property hazard insurance and as additional insured on all policies for liability insurance), and if requested by the Administrative Agent, copies of such insurance policies.

(v) Intellectual Property. The Administrative Agent shall have received security agreements duly executed by the applicable Credit Parties for all federally registered copyrights, copyright applications, patents, patent applications, trademarks and trademark applications included in the Collateral, in each case in proper form for filing with the U.S. Patent and Trademark Office or U.S. Copyright Office, as applicable.

(vi) Other Collateral Documentation. The Administrative Agent shall have received any documents reasonably requested thereby or as required by the terms of the Security Documents to evidence its security interest in the Collateral (including, without limitation, any landlord waivers or collateral access agreements, notices and assignments of claims required under Applicable Laws, bailee or warehouseman letters or filings with the FCC or any other applicable Governmental Authority).

(e) Governmental and Third Party Approvals. The Credit Parties shall have received all governmental, shareholder and third party consents and approvals necessary in connection with Credit Facility and all such governmental, shareholder and third party consents and approvals shall be in full force and effect.

(f) Financial Matters. The Administrative Agent shall have received, in each case in form and substance satisfactory thereto:

(i) Historical Dfine Financial Statements. Copies of (A) the unaudited Consolidated balance sheet of Dfine and its Subsidiaries as of December 31, 2015 and the related audited statements of income and retained earnings and cash flows for the fiscal year then ended and (B) unaudited Consolidated balance sheet of Dfine and its Subsidiaries as of March 31, 2016 and related unaudited interim statements of income and retained earnings for the fiscal quarter then ended.

(ii) Pro Forma Financial Statements. Pro forma unaudited consolidated financial statements for the Borrower and its Subsidiaries for the four fiscal quarter period ending on the last day of the most recent fiscal quarter ending at least forty-five (45) days before the Closing Date giving pro forma effect to the Transactions and a pro forma balance sheet of the Borrower and its subsidiaries as of the Closing Date giving pro forma effect to the Transactions.

(iii) Financial Projections. Projections prepared by management of the Borrower, of balance sheets, annual income statements and cash flow statements on an annual basis for each year after the Closing Date during the term of the Credit Facility (and except as disclosed promptly after discovery which will not be inconsistent with information provided to the Arranger prior to June 15, 2016).

(iv) Quality of Earnings Report. A quality of earnings report with respect to Dfine and its subsidiaries prepared by a third party reasonably satisfactory to the Lead Arranger.

(v) Financial Condition Certificate. A certificate, certified as accurate by the chief financial officer of the Borrower, that (A) after giving effect to the Transactions, each Credit Party

and each Subsidiary thereof is each Solvent, (B) attached thereto are calculations evidencing compliance on a Pro Forma Basis after giving effect to the Transactions with the covenants contained in Article X and (C) the financial projections previously delivered to the Administrative Agent represent the good faith estimates (utilizing reasonable assumptions) of the financial condition and operations of the Borrower and its Subsidiaries.

(g) Payment at Closing. The Borrower shall have paid (A) to the Administrative Agent, the Arranger and the Lenders the fees set forth or referenced in Section 5.3 and any other accrued and unpaid fees or commissions due hereunder, (B) all fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent accrued and unpaid prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent) and (C) to any other Person such amount as may be due thereto in connection with the transactions contemplated hereby, including all taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of any of the Loan Documents.

(h) Miscellaneous.

(i) Notice of Account Designation. The Administrative Agent shall have received a Notice of Account Designation specifying the account or accounts to which the proceeds of any Loans made on or after the Closing Date are to be disbursed.

(ii) Due Diligence. The Administrative Agent shall have completed, to its satisfaction, all legal, tax, environmental, business and other due diligence with respect to the business, assets, liabilities, operations and condition (financial or otherwise) of the Borrower and its Subsidiaries in scope and determination satisfactory to the Administrative Agent in its sole discretion.

(iii) Existing Indebtedness. All existing Indebtedness of the Borrower and its Subsidiaries (including (A) Indebtedness evidenced by the Existing Credit Agreement and (B) the Existing Dfine Credit Agreement, but excluding Indebtedness permitted pursuant to Section 11.1) shall be repaid in full, all commitments (if any) in respect thereof shall have been terminated and all guarantees therefor and security therefor shall be released, and the Administrative Agent shall have received pay-off letters in form and substance satisfactory to it evidencing such repayment, termination and release.

(iv) PATRIOT Act. At least five (5) Business Days prior to the Closing Date, the Borrower and each of the Subsidiary Guarantors shall have provided to the Administrative Agent and the Lenders the documentation and other information requested by the Administrative Agent in order to comply with requirements of any Anti-Money Laundering Laws, including, without limitation, the Patriot Act and any applicable “know your customer” rules and regulations.

(v) Other Documents. All opinions, certificates and other instruments and all proceedings in connection with the transactions contemplated by this Agreement shall be satisfactory in form and substance to the Administrative Agent. The Administrative Agent shall have received copies of all other documents, certificates and instruments reasonably requested thereby, with respect to the transactions contemplated by this Agreement.

Without limiting the generality of the provisions of the last paragraph of Section 13.3(c), for purposes of determining compliance with the conditions specified in this Section 6.1, the Administrative Agent and 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.

SECTION 6.2 Conditions to All Extensions of Credit. The obligations of the Lenders to make or participate in any Extensions of Credit (including the initial Extension of Credit) and/or the Issuing Lender to issue or extend any Letter of Credit are subject to the satisfaction of the following conditions precedent on the relevant borrowing, issuance or extension date:

(a) Continuation of Representations and Warranties. The representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects (except to the extent that any such representation and warranty is subject to a materiality or Material Adverse Effect qualifier, in which case it shall be true and correct in all respects) on and as of such borrowing, issuance or extension date with the same effect as if made on and as of such date, except for any representation and warranty made as of an earlier date, which representation and warranty shall remain true and correct in all material respects (except to the extent that any such representation and warranty is subject to a materiality or Material Adverse Effect qualifier, in which case it shall be true and correct in all respects) as of such earlier date.

(b) No Existing Default. No Default or Event of Default shall have occurred and be continuing (i) on the borrowing date with respect to such Loan or after giving effect to the Loans to be made on such date or (ii) on the issuance or extension date with respect to such Letter of Credit or after giving effect to the issuance or extension of such Letter of Credit on such date.

(c) Alternative Currency. In the case of a Revolving Credit Loan to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which in the reasonable opinion of the Administrative Agent or the Required Lenders would make it impracticable for such Revolving Credit Loan to be denominated in the relevant Alternative Currency.

(d) Notices. The Administrative Agent shall have received a Notice of Borrowing or Letter of Credit Application, as applicable, from the Borrower in accordance with Section 2.3(a), Section 3.2, Section 4.2 or Section 5.2, as applicable.

SECTION 6.3 Post-Closing Conditions. The Borrower shall execute and deliver the documents, take the actions and complete the tasks set forth on Schedule 6.3, in each case within the corresponding time limits specified on such schedule.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES OF THE CREDIT PARTIES

To induce the Administrative Agent and Lenders to enter into this Agreement and to induce the Lenders to make Extensions of Credit, the Credit Parties hereby represent and warrant to the Administrative Agent and the Lenders both before and after giving effect to the transactions contemplated hereunder, which representations and warranties shall be deemed made on the Closing Date and as otherwise set forth in Section 6.2, that:

SECTION 7.1 Organization; Power; Qualification. Each Credit Party and each Subsidiary thereof (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, (b) has the power and authority to own its Properties and to carry on its business as now being and hereafter proposed to be conducted and (c) is duly qualified and authorized to do business in each jurisdiction in which the character of its Properties or the nature of its business requires such qualification and authorization except in jurisdictions where the failure to be so qualified or in good standing could not reasonably be expected to result in a Material Adverse Effect. The jurisdictions in which each Credit Party and each Subsidiary thereof are organized and qualified to do business as of the Closing Date are described on Schedule 7.1. No Credit Party nor any Subsidiary thereof is an EEA Financial Institution.

SECTION 7.2 Ownership. Each Subsidiary of the Borrower as of the Closing Date is listed on Schedule 7.2. All outstanding shares have been duly authorized and validly issued and are fully paid and nonassessable, with no personal liability attaching to the ownership thereof, and not subject to any preemptive or similar rights, except as described in Schedule 7.2. The shareholders or other owners, as applicable, of each of the Borrower's Subsidiaries which are not traded on a public exchange and the number of shares owned by each as of the Closing Date are described on Schedule 7.2. As of the Closing Date, there are no outstanding stock purchase warrants, subscriptions, options, securities, instruments or other rights of any type or nature whatsoever, which are convertible into, exchangeable for or otherwise provide for or permit the issuance of Capital Stock of any Credit Party or any Subsidiary thereof, except as described on Schedule 7.2.

SECTION 7.3 Authorization; Enforceability. Each Credit Party and each Subsidiary thereof has the right, power and authority and has taken all necessary corporate and other action to authorize the execution, delivery and performance of this Agreement and each of the other Loan Documents to which it is a party in accordance with their respective terms. This Agreement and each of the other Loan Documents have been duly executed and delivered by the duly authorized officers of each Credit Party and each Subsidiary thereof that is a party thereto, and each such document constitutes the legal, valid and binding obligation of each Credit Party and each Subsidiary thereof that is a party thereto, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar state or federal Debtor Relief Laws from time to time in effect which affect the enforcement of creditors' rights in general and the availability of equitable remedies.

SECTION 7.4 Compliance of Agreement, Loan Documents and Borrowing with Laws, Etc. The execution, delivery and performance by each Credit Party and each Subsidiary thereof of the Loan Documents to which each such Person is a party, in accordance with their respective terms, the Extensions of Credit hereunder and the transactions contemplated hereby or thereby do not and will not, by the passage of time, the giving of notice or otherwise, (a) require any Governmental Approval or violate any Applicable Law relating to any Credit Party or any Subsidiary thereof where the failure to obtain such Governmental Approval or such violation could reasonably be expected to have a Material Adverse Effect, (b) conflict with, result in a breach of or constitute a default under the articles of incorporation, bylaws or other organizational documents of any Credit Party or any Subsidiary thereof, (c) conflict with, result in a breach of or constitute a default under any indenture, agreement or other instrument to which such Person is a party or by which any of its properties may be bound or any Governmental Approval relating to such Person, which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (d) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by such Person other than Permitted Liens or (e) require any consent or authorization of, filing with, or other act in respect of, an arbitrator or

Governmental Authority and no consent of any other Person is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement other than (i) consents, authorizations, filings or other acts or consents for which the failure to obtain or make could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (ii) consents or filings under the UCC and (iii) filings with the United States Copyright Office and/or the United States Patent and Trademark Office.

SECTION 7.5 Compliance with Law; Governmental Approvals. Each Credit Party and each Subsidiary thereof (a) has all Governmental Approvals required by any Applicable Law for it to conduct its business, each of which is in full force and effect, is final and not subject to review on appeal and is not the subject of any pending or, to its knowledge, threatened attack by direct or collateral proceeding, (b) is in compliance with each Governmental Approval applicable to it and in compliance with all other Applicable Laws relating to it or any of its respective properties and (c) has timely filed all material reports, documents and other materials required to be filed by it under all Applicable Laws with any Governmental Authority and has retained all material records and documents required to be retained by it under Applicable Law, except in each case of clauses (a), (b) or (c) above where the failure to have, comply or file could not reasonably be expected to have a Material Adverse Effect.

SECTION 7.6 Tax Returns and Payments. Each Credit Party and each Subsidiary thereof has duly filed or caused to be filed all federal, state, local and other tax returns required by Applicable Law to be filed, and has paid, or made adequate provision for the payment of, all federal, state, local and other taxes, assessments and governmental charges or levies upon it and its property, income, profits and assets which are due and payable (other than any amount the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of the relevant Credit Party). Such returns accurately reflect in all material respects all liability for taxes of any Credit Party or any Subsidiary thereof for the periods covered thereby. Except as set forth on Schedule 7.6, there is no ongoing audit or examination or, to the knowledge of each Credit Party and each Subsidiary thereof, other investigation by any Governmental Authority of the tax liability of any Credit Party or any Subsidiary thereof. No Governmental Authority has asserted any Lien or other claim against any Credit Party or any Subsidiary thereof with respect to unpaid taxes which has not been discharged or resolved (other than (a) any amount the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of the relevant Credit Party and (b) Permitted Liens). The charges, accruals and reserves on the books of each Credit Party and each Subsidiary thereof in respect of federal, state, local and other taxes for all Fiscal Years and portions thereof since the organization of any Credit Party or any Subsidiary thereof are in the judgment of the Borrower adequate, and the Borrower does not anticipate any additional taxes or assessments for any of such years.

SECTION 7.7 Intellectual Property Matters. Each Credit Party and each Subsidiary thereof owns or possesses rights to use all material franchises, licenses, copyrights, copyright applications, patents, patent rights or licenses, patent applications, trademarks, trademark rights, service mark, service mark rights, trade names, trade name rights, copyrights and other rights with respect to the foregoing which are reasonably necessary to conduct its business. No event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such rights, and no Credit Party nor any Subsidiary thereof is liable to any Person for infringement under Applicable Law with respect to any such rights as a result of its business operations except as could not reasonably be expected to have a Material Adverse Effect.

SECTION 7.8 Environmental Matters.

(a) To the knowledge of each Credit Party and each Subsidiary thereof, the properties owned, leased or operated by each Credit Party and each Subsidiary thereof now or in the past do not contain, and to their knowledge have not previously contained, any Hazardous Materials in amounts or concentrations which (i) constitute or constituted a material violation of applicable Environmental Laws (except for amounts which have been remediated in accordance with Environmental Laws) or (ii) could reasonably be expected to give rise to material liability under applicable Environmental Laws;

(b) To the knowledge of each Credit Party and each Subsidiary thereof, each Credit Party and each Subsidiary thereof and such properties and all operations conducted in connection therewith are in material compliance, and have been in material compliance, with all applicable Environmental Laws, and there is no contamination at, under or about such properties or such operations which could reasonably be expected to materially interfere with the continued operation of such properties or materially impair the fair saleable value thereof;

(c) No Credit Party nor any Subsidiary thereof has received any written notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters, Hazardous Materials, or compliance with Environmental Laws, nor does any Credit Party or any Subsidiary thereof have knowledge or reason to believe that any such notice will be received or is being threatened, except where such violation, alleged violation, non-compliance, liability or potential liability which is the subject of such notice could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect;

(d) To the knowledge of each Credit Party and each Subsidiary thereof, Hazardous Materials have not been transported or disposed of to or from the properties owned, leased or operated by any Credit Party or any Subsidiary thereof in violation of, or in a manner or to a location which could give rise to material liability under, Environmental Laws, nor have any Hazardous Materials been generated, treated, stored or disposed of at, on or under any of such properties in violation of, or in a manner that could reasonably be expected to give rise to material liability under, any applicable Environmental Laws;

(e) No judicial proceedings or governmental or administrative action is pending, or, to the knowledge of each Credit Party and each Subsidiary thereof, threatened, under any Environmental Law to which any Credit Party or any Subsidiary thereof is or will be named as a potentially responsible party with respect to any properties or operations conducted in connection therewith, 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 any Credit Party, any Subsidiary thereof or such properties or operations that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; and

(f) There has been no release, or to the knowledge of each Credit Party and each Subsidiary thereof, threat of release, of Hazardous Materials at or from properties owned, leased or operated by any Credit Party or any Subsidiary, now or in the past, in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

SECTION 7.9 Employee Benefit Matters.

(a) As of the Closing Date, no Credit Party nor any ERISA Affiliate maintains or contributes to, or has any obligation under, any Employee Benefit Plans other than those identified on Schedule 7.9;

(b) Each Credit Party and each ERISA Affiliate is in compliance with all applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans except for any required amendments for which the remedial amendment period as defined in Section 401(b) of the Code has not yet expired and except where a failure to so comply could not reasonably be expected to have a Material Adverse Effect. Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has been determined by the IRS to be so qualified, and each trust related to such plan has been determined to be exempt under Section 501(a) of the Code except for such plans that have not yet received determination letters but for which the remedial amendment period for submitting a determination letter has not yet expired or for which no letter is required because such Employee Benefit Plan is a prototype plan. No liability has been incurred by any Credit Party or any ERISA Affiliate which remains unsatisfied for any taxes or penalties assessed with respect to any Employee Benefit Plan or any Multiemployer Plan except for a liability that could not reasonably be expected to have a Material Adverse Effect;

(c) As of the Closing Date, no Pension Plan has been terminated, nor has any Pension Plan become subject to funding based benefit restrictions under Section 436 of the Code, nor has any funding waiver from the IRS been received or requested with respect to any Pension Plan, nor has there been any failure to meet the minimum funding standards of Sections 412 or 430 of the Code, nor has any Credit Party or any ERISA Affiliate failed to make any contributions or to pay any amounts due and owing as required by Sections 412 or 430 of the Code, Section 302 of ERISA or the terms of any Pension Plan prior to the due dates of such contributions under Sections 412 or 430 of the Code or Section 302 of ERISA, nor has there been any event requiring any disclosure under Section 4041(c)(3)(C) or 4063(a) of ERISA with respect to any Pension Plan;

(d) Except where the failure of any of the following representations to be correct could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no Credit Party nor any ERISA Affiliate has: (i) engaged in a nonexempt prohibited transaction described in Section 406 of the ERISA or Section 4975 of the Code, (ii) incurred any liability to the PBGC which remains outstanding other than the payment of premiums and there are no premium payments which are due and unpaid, (iii) failed to make a required contribution or payment to a Multiemployer Plan, or (iv) failed to make a required installment or other required payment under Sections 412 or 430 of the Code;

(e) No Termination Event has occurred or is reasonably expected to occur with respect to any Pension Plan or Multiemployer Plan, as applicable; and

(f) Except where the failure of any of the following representations to be correct could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no proceeding, claim (other than benefit claims in the ordinary course of business), lawsuit and/or investigation is existing or, to the knowledge of each Credit Party and each Subsidiary thereof, threatened concerning or involving any (i) employee welfare benefit plan (as defined in Section 3(1) of ERISA) currently maintained or contributed to by any Credit Party or any ERISA Affiliate, (ii) Pension Plan or (iii) Multiemployer Plan.

(g) No Credit Party nor any Subsidiary thereof is a party to any contract, agreement or arrangement that could, solely as a result of the delivery of this Agreement or the consummation of transactions contemplated hereby, result in the payment of any “excess parachute payment” within the meaning of Section 280G of the Code.

SECTION 7.10 Margin Stock.

(a) No Credit Party nor any Subsidiary thereof is engaged principally or as one of its activities in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" (as each such term is defined or used, directly or indirectly, in Regulation U of the Board of Governors of the Federal Reserve System). No part of the proceeds of any of the Loans or Letters of Credit will be used for purchasing or carrying margin stock or for any purpose which violates, or which would be inconsistent with, the provisions of Regulation T, U or X of such Board of Governors. If requested by any Lender (through the Administrative Agent) or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U 1 referred to in Regulation U.

(b) Following the application of the proceeds of each Extension of Credit, not more than twenty-five percent (25%) of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a consolidated basis) subject to the provisions of Section 11.2 or Section 11.5 or subject to any restriction contained in any agreement or instrument between any Credit Party and any Lender or any Affiliate of any Lender relating to Indebtedness in excess of the Threshold Amount will be "margin stock".

SECTION 7.11 Government Regulation. No Credit Party nor any Subsidiary thereof is an "investment company" or a company "controlled" by an "investment company" (as each such term is defined or used in the Investment Company Act of 1940) and no Credit Party nor any Subsidiary thereof is, or after giving effect to any Extension of Credit will be, subject to regulation under the Interstate Commerce Act, or any other Applicable Law which limits its ability to incur or consummate the transactions contemplated hereby.

SECTION 7.12 Employee Relations. No Credit Party or any Subsidiary thereof is party to any collective bargaining agreement, nor has any labor union been recognized as the representative of its employees except as set forth on Schedule 7.12. The Borrower knows of no pending or threatened strikes, work stoppage or other collective labor disputes involving its employees or those of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 7.13 Burdensome Provisions. The Credit Parties and their respective Subsidiaries do not presently anticipate that future expenditures needed to meet the provisions of any statutes, orders, rules or regulations of a Governmental Authority will be so burdensome as to have a Material Adverse Effect. No Subsidiary is party to any agreement or instrument or otherwise subject to any restriction or encumbrance that restricts or limits its ability to make dividend payments or other distributions in respect of its Capital Stock to the Borrower or any Subsidiary or to transfer any of its assets or properties to the Borrower or any other Subsidiary in each case other than existing under or by reason of the Loan Documents or Applicable Law.

SECTION 7.14 Financial Statements. The audited and unaudited financial statements delivered pursuant to Section 6.1(f)(i) are complete and correct and fairly present in all material respects, on a Consolidated basis, the assets, liabilities and financial position of the Borrower and its Subsidiaries as at such dates, and the results of the operations and changes of financial position for the periods then ended (other than customary year-end adjustments for unaudited financial statements). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP. Such financial statements show all material indebtedness and other material liabilities, direct or

contingent, of the Borrower and its Subsidiaries as of the date thereof, including material liabilities for taxes, material commitments, and Indebtedness, in each case, to the extent required to be disclosed under GAAP. The projections delivered pursuant to Section 5.2(f)(ii) and the pro forma financial statements delivered pursuant to Section 6.1(f)(ii) were prepared in good faith on the basis of the assumptions stated therein, which assumptions are believed to be reasonable in light of then existing conditions except that such financial projections and statements shall be subject to normal year end closing and audit adjustments (it being understood that projections are subject to significant uncertainties and contingencies).

SECTION 7.15 No Material Adverse Change. Since December 31, 2015, there has been no material adverse change in the properties, business, operations, condition (financial or otherwise), assets or liabilities (whether actual or contingent) of the Borrower and its Subsidiaries taken as a whole and no event has occurred or condition arisen, either individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect.

SECTION 7.16 Solvency. The Credit Parties, on a Consolidated basis, are Solvent.

SECTION 7.17 Titles to Properties. As of the Closing Date, the real property listed on Schedule 7.17 constitutes all of the real property that is owned, leased, subleased or used by any Credit Party or any of its Subsidiaries. Each Credit Party and each Subsidiary thereof has such title to the real property owned or leased by it as is necessary to the conduct of its business and valid and legal title to all of its personal property and assets, except those which have been disposed of by the Credit Parties and their Subsidiaries subsequent to such date which dispositions have been in the ordinary course of business or as otherwise expressly permitted hereunder.

SECTION 7.18 Insurance. The properties of each Credit Party and each Subsidiary thereof are insured with financially sound and reputable insurance companies not Affiliates of the Credit Parties and their Subsidiaries, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in locations where the Credit Parties and their Subsidiaries operate.

SECTION 7.19 Liens. None of the properties and assets of any Credit Party or any Subsidiary thereof is subject to any Lien, except Permitted Liens. No Credit Party or any Subsidiary thereof has signed any financing statement or any security agreement authorizing any secured party thereunder to file any financing statement, except to perfect those Permitted Liens.

SECTION 7.20 Indebtedness and Guaranty Obligations. Schedule 7.20 is a complete and correct listing of all Indebtedness and Guaranty Obligations of the Credit Parties and their respective Subsidiaries as of the Closing Date in excess of $100,000. The Credit Parties and their respective Subsidiaries have performed and are in compliance with all of the material terms of such Indebtedness and Guaranty Obligations and all instruments and agreements relating thereto, and no default or event of default, or event or condition which with notice or lapse of time or both would constitute such a default or event of default on the part of any of the Credit Parties or any of their respective Subsidiaries exists with respect to any such Indebtedness or Guaranty Obligation, which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 7.21 Litigation. There are no actions, suits or proceedings pending nor, to the knowledge of each Credit Party and each Subsidiary thereof, threatened against or in any other way relating adversely to or affecting any Credit Party or any Subsidiary thereof or any of their respective properties in any court or before any arbitrator of any kind or before or by any Governmental Authority

that (a) has or could reasonably be expected to have a Material Adverse Effect, or (b) materially adversely affects any transaction contemplated hereby.

SECTION 7.22 Absence of Defaults. No event has occurred or is continuing (a) which constitutes a Default or an Event of Default, or (b) which constitutes, or which with the passage of time or giving of notice or both would constitute, a default or event of default by any Credit Party or any Subsidiary thereof under any judgment, decree or order to which any Credit Party or any Subsidiary thereof is a party or by which any Credit Party or any Subsidiary thereof or any of their respective properties may be bound or which would require any Credit Party or any Subsidiary thereof to make any payment thereunder prior to the scheduled maturity date therefore that, in any case under this clause (b), could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 7.23 Anti-Corruption Laws and Sanctions.

(a) None of (i) the Borrower, any Subsidiary, any of their respective directors, officers, or, to the knowledge of the Borrower or such Subsidiary, any of their respective employees or Affiliates, or (ii) to the knowledge of the Borrower or any Subsidiary, any agent or representative of the Borrower or such Subsidiary that will act in any capacity in connection with or benefit from the Credit Facility, (A) is a Sanctioned Person or currently the subject or target of any Sanctions, (B) is controlled by or is acting on behalf of a Sanctioned Person, (C) has its assets located in a Sanctioned Country, (D) is under investigation for an alleged violation of, or received notice from or made a voluntary disclosure to any governmental entity regarding a possible violation of, Sanctions by a governmental authority that enforces Sanctions or any Anti-Corruption Laws or Anti-Money Laundering Laws, (E) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons, (F) has taken any action, directly or indirectly, that would result in a violation by such Persons of any Anti-Corruption Laws, or (G) has violated any Anti-Money Laundering Law. Each of the Borrower and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower and its Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Anti-Corruption Laws, Anti-Money Laundering Law and Sanctions. Each of the Borrower and its Subsidiaries, and to the knowledge of Borrower and each Subsidiary thereof, each director, officer, employee, agent and Affiliate of Borrower and each such Subsidiary, is in compliance with all Anti-Corruption Laws Anti-Money Laundering Law in all material respects and applicable Sanctions.

(b) No proceeds of any Extension of Credit have been used, directly or indirectly, by the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower or any of its Subsidiaries, any of its or their respective directors, officers, employees and agents (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, including any payments (directly or indirectly) to a Sanctioned Person or a Sanctioned Country or (iii) in any manner that would result in the violation of any Anti-Money Laundering Laws, Anti-Corruption Laws or any Sanctions applicable to any party hereto

SECTION 7.24 Investment Bankers' and Similar Fees. No Credit Party has any obligation to any Person in respect of any finders', brokers', investment banking or other similar fee in connection with any of the Transactions other than (a) the closing and other fees payable pursuant to this Agreement or otherwise payable to the Arranger and (b) any such fees payable to Canaccord Genuity in connection with the Dfine Acquisition.

SECTION 7.25 Disclosure. No financial statement, material report, material certificate or other material information furnished (whether in writing or orally) by or on behalf of any Credit Party or any Subsidiary thereof to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), taken together as a whole, contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, pro forma financial information, estimated financial information and other projected or estimated information, such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that forward looking and estimated information, including projections, are subject to significant uncertainties and contingencies).

ARTICLE VIII

FINANCIAL INFORMATION AND NOTICES

Until all of the Obligations (other than contingent indemnification obligations not then due) have been paid and satisfied in full in cash, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Commitments terminated, each Credit Party will, and will cause each of its Subsidiaries to:

SECTION 8.1 Financial Statements and Projections. Deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) Quarterly Financial Statements. As soon as practicable and in any event within forty-five (45) days (or, if earlier, on the date of any required public filing thereof) after the end of the first three fiscal quarters of each Fiscal Year (commencing with the fiscal quarter ended June 30, 2016), an unaudited Consolidated and consolidating balance sheet of the Borrower and its Subsidiaries as of the close of such fiscal quarter and unaudited Consolidated and consolidating statements of income, retained earnings and cash flows and a report containing management's discussion and analysis of such financial statements for the fiscal quarter then ended and that portion of the Fiscal Year then ended, including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the corresponding period in the preceding Fiscal Year and prepared by the Borrower in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the period, and certified by the chief financial officer of the Borrower to present fairly in all material respects the financial condition of the Borrower and its Subsidiaries on a Consolidated and consolidating basis as of their respective dates and the results of operations of the Borrower and its Subsidiaries for the respective periods then ended, subject to normal year end adjustments and the absence of footnotes.

(b) Annual Financial Statements. As soon as practicable and in any event within one hundred twenty (120) days (or, if earlier, on the date of any required public filing thereof) after the end of each Fiscal Year (commencing with the fiscal year ended December 31, 2016), an audited Consolidated and consolidating balance sheet of the Borrower and its Subsidiaries as of the close of such Fiscal Year and audited Consolidated and consolidating statements of income, retained earnings and cash flows and a report containing management's discussion and analysis of such financial statements for the Fiscal Year then ended, including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the preceding Fiscal Year and prepared in accordance with

GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the year. Such annual financial statements shall be audited by an independent certified public accounting firm of recognized national standing acceptable to the Administrative Agent, and accompanied by a report and opinion thereon by such certified public accountants prepared in accordance with generally accepted auditing standards that is not subject to any "going concern" or similar qualification or exception or any qualification as to the scope of such audit or with respect to accounting principles followed by the Borrower or any of its Subsidiaries not in accordance with GAAP.

(c) Annual Business Plan and Budget. As soon as practicable and in any event within forty-five (45) days after the end of each Fiscal Year, a business plan and operating and capital budget of the Borrower and its Subsidiaries for the ensuing four (4) fiscal quarters, such plan to be prepared in accordance with GAAP and to include, on a quarterly basis, the following: a quarterly operating and capital budget, a projected income statement, statement of cash flows and balance sheet, calculations demonstrating projected compliance with the financial covenants set forth in Article X and a report containing management's discussion and analysis of such budget with a reasonable disclosure of the key assumptions and drivers with respect to such budget, accompanied by a certificate from a Responsible Officer of the Borrower to the effect that such budget contains good faith estimates (utilizing assumptions believed to be reasonable at the time of delivery of such budget) of the financial condition and operations of the Borrower and its Subsidiaries for such period.

SECTION 8.2 Officer's Compliance Certificate. At each time financial statements are delivered pursuant to Sections 8.1(a) or (b) and at such other times as the Administrative Agent shall reasonably request, deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice) a duly completed Officer's Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower and a report containing management's discussion and analysis of such financial statements.

SECTION 8.3 Other Reports. Deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) Promptly upon receipt thereof, copies of all reports, if any, submitted to any Credit Party, any Subsidiary thereof or any of their respective boards of directors by their respective independent public accountants in connection with their auditing function, including, without limitation, any management report and any management responses thereto;

(b) Promptly upon the request thereof, such other information and documentation required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations (including, without limitation, the Patriot Act), as from time to time reasonably requested by the Administrative Agent or any Lender; and

(c) Such other information regarding the operations, business affairs and financial condition of any Credit Party or any Subsidiary thereof as the Administrative Agent or any Lender may reasonably request.

SECTION 8.4 Notice of Litigation and Other Matters. Promptly (but in no event later than ten (10) days after any Responsible Officer of any Credit Party obtains knowledge thereof) notify the Administrative Agent in writing of (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) the commencement of all proceedings and investigations by or before any Governmental Authority and all actions and proceedings in any court or before any arbitrator against or involving any Credit Party or any Subsidiary thereof or any of their respective properties, assets or businesses that if adversely determined could reasonably be expected to result in a Material Adverse Effect;

(b) any notice of any violation received by any Credit Party or any Subsidiary thereof from any Governmental Authority including, without limitation, any notice of violation of Environmental Laws which in any such case could reasonably be expected to have a Material Adverse Effect;

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

(d) any attachment, judgment, lien, levy or order exceeding the Threshold Amount that may be assessed against or threatened against any Credit Party or any Subsidiary thereof;

(e) the occurrence of (i) any Default or (ii) any Event of Default;

(f) (i) any unfavorable determination letter from the IRS regarding the qualification of an Employee Benefit Plan under Section 401(a) of the Code (along with a copy thereof), (ii) all notices received by any Credit Party or any ERISA Affiliate of the PBGC's intent to terminate any Pension Plan or to have a trustee appointed to administer any Pension Plan, (iii) all notices received by any Credit Party or any ERISA Affiliate from a Multiemployer Plan sponsor concerning the imposition or amount of withdrawal liability pursuant to Section 4202 of ERISA and (iv) the Borrower obtaining knowledge or reason to know that any Credit Party or any ERISA Affiliate has filed or intends to file a notice of intent to terminate any Pension Plan under a distress termination within the meaning of Section 4041(c) of ERISA;

(g) any event which makes any of the representations set forth in Article VII that is subject to materiality or Material Adverse Effect qualifications inaccurate in any respect or any event which makes any of the representations set forth in Article VII that is not subject to materiality or Material Adverse Effect qualifications inaccurate in any material respect;

(h) promptly upon the request thereof, such other information and documentation required by bank regulatory authorities under applicable Anti-Money Laundering Laws (including, without limitation, any applicable "know your customer" rules and regulations and the PATRIOT Act), as from time to time reasonably requested by the Administrative Agent or any Lender;

(i) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and not otherwise required to be delivered to the Administrative Agent pursuant hereto; and

(j) promptly, and in any event within five (5) Business Days after receipt thereof by any Credit Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Credit Party or any Subsidiary thereof.

Each notice pursuant to Section 8.4 (other than Sections 8.4(h) through (l)) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 8.4(e) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

Documents required to be delivered pursuant to this Section 8.1(a) or (b) or Section 8.4(i) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed in Section 14.1; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Officer's Compliance Certificates required by Section 8.2 to the Administrative Agent. Except for such Officer's Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders and the Issuing Lender materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on the Platform and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger, the Issuing Lender and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 14.11); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (z) the Administrative Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

SECTION 8.5 Accuracy of Information. All written information, reports, statements and other papers and data furnished by or on behalf of any Credit Party or any Subsidiary thereof to the Administrative Agent or any Lender whether pursuant to this Article VIII or any other provision of this Agreement, shall, at the time the same is so furnished, comply with the representations and warranties set forth in Section 7.26.

ARTICLE IX

AFFIRMATIVE COVENANTS

Until all of the Obligations (other than contingent indemnification obligations not then due) have been paid and satisfied in full in cash, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Commitments terminated, each Credit Party will, and will cause each of its Subsidiaries to:

SECTION 9.1 Preservation of Corporate Existence and Related Matters. Except as permitted by Section 11.4, preserve and maintain its separate corporate existence or equivalent form and all rights, franchises, licenses and privileges necessary to the conduct of its business, and qualify and remain qualified as a foreign corporation or other entity and authorized to do business in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect.

SECTION 9.2 Maintenance of Property and Licenses.

(a) Protect and preserve all Properties necessary in and material to its business, including copyrights, patents, trade names, service marks and trademarks; maintain in good working order and condition, ordinary wear and tear excepted, all buildings, equipment and other tangible real and personal property; and from time to time make or cause to be made all repairs, renewals and replacements thereof and additions to such Property necessary for the conduct of its business, so that the business carried on in connection therewith may be conducted in a commercially reasonable manner, in each case, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Maintain, in full force and effect in all material respects, each and every material license, permit, certification, qualification, approval or franchise issued by any Governmental Authority (each a "License") required for each of them to conduct their respective businesses as presently conducted, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 9.3 Insurance. Maintain insurance with financially sound and reputable insurance companies against at least such risks and in at least such amounts as are customarily maintained by similar businesses and as may be required by Applicable Law and as are required by any Security Document (including, without limitation, hazard and business interruption insurance). All such insurance shall (a) provide that no cancellation or material modification thereof shall be effective until at least 30 days after receipt by the Administrative Agent of written notice thereof (provided that if, after the use of commercially reasonable efforts by the Credit Parties to obtain such provision, the applicable insurance broker will not agree to such provision and provides evidence reasonably satisfactory to the Administrative Agent that it will not agree to such provision under similar circumstances, then (1) such insurance shall provide that no cancellation or material modification thereof shall be effective until at least 30 days after receipt by the Borrower of written notice thereof and (2) the Borrower shall agree to provide to the Administrative Agent prompt written notice thereof), (b) name the Administrative Agent as an additional insured party thereunder and (c) in the case of each casualty insurance policy, name the Administrative Agent as lender's loss payee. On the Closing Date and from time to time thereafter deliver to the Administrative Agent upon its request information in reasonable detail as to the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby.

SECTION 9.4 Accounting Methods and Financial Records. Maintain a system of accounting, and keep proper books, records and accounts (which shall be true and complete in all material

respects) as may be required or as may be necessary to permit the preparation of financial statements in accordance with GAAP and in compliance with the regulations of any Governmental Authority having jurisdiction over it or any of its properties.

SECTION 9.5 Payment of Taxes and Other Obligations. Pay and perform (a) all taxes, assessments and other governmental charges that may be levied or assessed upon it or any of its Property and (b) all other Indebtedness, obligations and liabilities in accordance with customary trade practices; provided, that the Borrower or such Subsidiary may contest any item described in clause (a) or (b) of this Section 9.5 in good faith so long as adequate reserves are maintained with respect thereto in accordance with GAAP.

SECTION 9.6 Compliance with Laws and Approvals. Observe and remain in compliance with all Applicable Laws and maintain in full force and effect all Governmental Approvals, in each case applicable to the conduct of its business except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 9.7 Environmental Laws. In addition to and without limiting the generality of Section 9.6, (a) comply with, and require such compliance by all tenants and subtenants with all applicable Environmental Laws and obtain and comply with and maintain, and require that all tenants and subtenants, if any, obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws, (b) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws, and promptly comply with all lawful orders and directives of any Governmental Authority regarding Environmental Laws, and (c) defend, indemnify and hold harmless the Administrative Agent and the Lenders, and their respective parents, Subsidiaries, Affiliates, employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature known or unknown, contingent or otherwise, arising out of, or in any way relating to the presence of Hazardous Materials, or the violation of, noncompliance with or liability under any Environmental Laws applicable to the operations of the Borrower or any such Subsidiary, or any orders, requirements or demands of Governmental Authorities related thereto, including, without limitation, reasonable attorney's and consultant's fees, investigation and laboratory fees, response costs, court costs and litigation expenses, except to the extent that any of the foregoing directly result from the gross negligence or willful misconduct of the party seeking indemnification therefor, as determined by a court of competent jurisdiction by final nonappealable judgment.

SECTION 9.8 Compliance with ERISA. In addition to and without limiting the generality of Section 9.7, (a) except where the failure to so comply could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) comply with applicable provisions of ERISA, the Code and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans, (ii) not take any action or fail to take action the result of which could reasonably be expected to result in a liability to the PBGC or to a Multiemployer Plan, (iii) not participate in any prohibited transaction that could result in any civil penalty under ERISA or Tax under the Code and (iv) operate each Employee Benefit Plan in such a manner that will not incur any tax liability under Section 4980B of the Code or violate Section 601 through Section 609 of ERISA and (b) furnish to the Administrative Agent upon the Administrative Agent's request such additional information about any Employee Benefit Plan as may be reasonably requested by the Administrative Agent.

SECTION 9.9 Compliance with Agreements. Comply in all material respects with each term, condition and provision of all leases, agreements and other instruments entered into in the conduct of its business; except (a) where such non-compliance could not reasonably be expected to have a Material Adverse Effect and (b) that the Borrower or any such Subsidiary may contest any such lease, agreement or other instrument in good faith through applicable proceedings so long as adequate reserves are maintained in accordance with GAAP

SECTION 9.10 Visits and Inspections; Lender Meetings.

(a) Permit representatives of the Administrative Agent or any Lender, from time to time upon prior reasonable notice and at such times during normal business hours, at the Borrower's expense, to visit and inspect its properties; inspect, audit and make extracts from its books, records and files, including, but not limited to, management letters prepared by independent accountants; and discuss with its principal officers, and its independent accountants, its business, assets, liabilities, financial condition, results of operations and business prospects; provided that so long as no Event of Default has occurred and is continuing, the Administrative Agent and the Lenders shall be limited to one (1) visit in the aggregate during any Fiscal Year (which visits shall be coordinated with the Administrative Agent). Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent or any Lender may do any of the foregoing, at the Borrower's expense, at any time without advance notice.

(b) Upon the request of the Administrative Agent or the Required Lenders, participate in a meeting of the Administrative Agent and Lenders once during each Fiscal Year, which meeting will be held at the Borrower's corporate offices (or such other location as may be agreed to by the Borrower and the Administrative Agent) at such time as may be agreed by the Borrower and the Administrative Agent.

SECTION 9.11 Additional Subsidiaries.

(a) Additional Domestic Subsidiaries. Notify the Administrative Agent prior to the creation or acquisition of any Domestic Subsidiary and promptly thereafter (and in any event within thirty (30) days after such creation or acquisition, as such time period may be extended by the Administrative Agent in its sole discretion) cause such Domestic Subsidiary to (i) become a Subsidiary Guarantor by delivering to the Administrative Agent a duly executed supplement to the Guaranty Agreement or such other document as the Administrative Agent shall deem appropriate for such purpose, (ii) grant a security interest in all Collateral (subject to the exceptions specified in the Collateral Agreement) owned by such Domestic Subsidiary by delivering to the Administrative Agent a duly executed supplement to each Security Document or such other document as the Administrative Agent shall deem appropriate for such purpose and comply with the terms of each Security Document, (iii) deliver to the Administrative Agent such opinions, documents and certificates referred to in Section 6.1 as may be reasonably requested by the Administrative Agent, (iv) if such Capital Stock is certificated, deliver to the Administrative Agent such original certificated Capital Stock or other certificates and stock or other transfer powers evidencing the Capital Stock of such Domestic Subsidiary, (v) deliver to the Administrative Agent such updated Schedules to the Loan Documents as requested by the Administrative Agent with respect to such Domestic Subsidiary, and (vi) deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(b) Additional Foreign Subsidiaries. Notify the Administrative Agent at the time that any Person becomes a First Tier Foreign Subsidiary, and promptly thereafter (and in any event within forty-five (45) days after such notification, as such time period may be extended by the Administrative Agent in

its sole discretion), cause (i) the applicable Credit Party to deliver to the Administrative Agent Security Documents pledging sixty-five percent (65%) of the total outstanding voting Capital Stock (and one hundred percent (100%) of the non-voting Capital Stock) of any such new First Tier Foreign Subsidiary and a consent thereto executed by such new First Tier Foreign Subsidiary (including, without limitation, if applicable, original stock certificates (or the equivalent thereof pursuant to the Applicable Laws and practices of any relevant foreign jurisdiction) evidencing the Capital Stock of such new First Tier Foreign Subsidiary, together with an appropriate undated stock or other transfer power for each certificate duly executed in blank by the registered owner thereof), (ii) such Person to deliver to the Administrative Agent such opinions, documents and certificates referred to in Section 6.1 as may be reasonably requested by the Administrative Agent, (iii) such Person to deliver to the Administrative Agent such updated Schedules to the Loan Documents as requested by the Administrative Agent with regard to such Person and (iv) such Person to deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(c) Merger Subsidiaries. Notwithstanding the foregoing, to the extent any new Subsidiary is created solely for the purpose of consummating a merger transaction pursuant to a Permitted Acquisition, and such new Subsidiary at no time holds any assets or liabilities other than any merger consideration contributed to it contemporaneously with the closing of such merger transaction, such new Subsidiary shall not be required to take the actions set forth in Section 9.11(a) or (b), as applicable, until the consummation of such Permitted Acquisition (at which time, the surviving entity of the respective merger transaction shall be required to so comply with Section 9.11(a) or (b), as applicable, within ten (10) Business Days of the consummation of such Permitted Acquisition, as such time period may be extended by the Administrative Agent in its sole discretion).

(d) Exclusions. The provisions of this Section 9.11 shall not apply to assets as to which the Administrative Agent shall reasonably determine in its sole discretion that the costs and burdens of obtaining a security interest therein or perfection thereof outweigh the value of the security afforded thereby.

SECTION 9.12 Use of Proceeds.

(a) Initial Term Loan. The Borrower shall use the proceeds of the Term Loan to (i) finance a portion of the consideration payable in connection with the consummation of the transactions contemplated pursuant to the Dfine Acquisition Agreement, (ii) refinance certain Indebtedness of the Borrower and its Subsidiaries (after giving effect to the Dfine Acquisition), including, without limitation, the Existing Credit Agreement and the Existing Dfine Credit Agreement, and (iii) pay fees and expenses incurred in connection with the Transactions.

(b) Incremental Term Loans and Incremental Revolving Credit Increases. The Borrower shall use the proceeds of any Incremental Term Loan and any Incremental Revolving Credit Increase as permitted pursuant to Section 5.13, as applicable.

(c) Revolving Credit Loans, Swingline Loans or any Letter of Credit. The Borrower shall use the proceeds of the Revolving Credit Loans, Swingline Loans or any Letter of Credit to (i) finance a portion of the consideration payable in connection with the consummation of the transactions contemplated pursuant to the Dfine Acquisition Agreement, (ii) refinance certain Indebtedness of the Borrower and its Subsidiaries (after giving effect to the Dfine Acquisition), including, without limitation, the Existing Credit Agreement and the Existing Dfine Credit Agreement, and (iii) for working capital and

general corporate purposes of the Borrower and its Subsidiaries, including the payment of certain fees and expenses incurred in connection with the Transactions.

(d) Anti-Corruption Laws and Sanctions. The Borrower will not request any Extension of Credit, and the Borrower shall not use, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Extension of Credit, directly or indirectly, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 9.13 Non-Consolidation. Maintain (a) entity records and books of account separate from those of any other entity which is an Affiliate of such entity, (b) not commingle its funds or assets with those of any other entity which is an Affiliate of such entity (except pursuant to cash management systems reasonably acceptable to the Administrative Agent) and (c) provide that its board of directors (or equivalent governing body) will hold all appropriate meetings to authorize and approve such entity's actions, which meetings will be separate from those of any other entity which is an Affiliate of such entity. For the purposes of this Section 9.13, "Affiliate" shall not include the Borrower or any Subsidiary thereof.

SECTION 9.14 Depository and Treasury Management. Within ninety (90) days following the Closing Date, each Credit Party (including Dfine) shall maintain all of its respective primary Cash Management Agreements, depository relationships and treasury management relationships with Wells Fargo or an Affiliate of Wells Fargo.

SECTION 9.15 Hedge Agreement. Not later than ninety (90) days after the Closing Date, enter into and maintain at all times thereafter, for a period through and including the Term Loan Maturity Date, Hedge Agreements with one or more Lenders or any other Person acceptable to the Administrative Agent, in an amount sufficient to cause at least fifty percent (50%) of the aggregate principal amount of the Initial Term Loan funded hereunder.

SECTION 9.16 Compliance with Anti-Corruption Laws and Sanctions. The Borrower will maintain in effect and enforce policies and procedures designed to promote and achieve compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

SECTION 9.17 Further Assurances. Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), which may be required under any Applicable Law, or which the Administrative Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Credit Parties. The Borrower also agrees to provide to the Administrative Agent, from time to time upon the reasonable request by the Administrative Agent, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

ARTICLE X

FINANCIAL COVENANTS

Until all of the Obligations (other than contingent indemnification obligations not then due) have been paid and satisfied in full in cash, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Commitments terminated, the Borrower and its Subsidiaries on a Consolidated basis will not:

SECTION 10.1 Consolidated Total Leverage Ratio. As of any fiscal quarter end during the periods set forth below, permit the Consolidated Total Leverage Ratio to be greater than the corresponding ratio set forth below:

Period	Maximum Ratio
Closing Date through and including March 31, 2017	4.50 to 1.00
April 1, 2017 through and including June 30, 2017	4.00 to 1.00
July 1, 2017 through and including December 31, 2017	3.75 to 1.00
January 1, 2018 through and including March 31, 2018	3.50 to 1.00
April 1, 2018 and thereafter	3.25 to 1.00

SECTION 10.2 Fixed Charge Coverage Ratio. As of any fiscal quarter end, permit the ratio of:

(a) the sum of (i) Consolidated EBITDA for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date less (ii) the sum of (A) federal, state, local and foreign income taxes paid in cash, (B) dividends and distributions paid in cash and (C) Ongoing Capital Expenditures (other than Ongoing Capital Expenditures which are financed (i) through a Debt Issuance permitted hereunder, (ii) through an Equity Issuance permitted hereunder or (iii) by the proceeds of an Insurance and Condemnation Event), in each case for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date;

to

(b) Consolidated Fixed Charges for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date;

to be less than 1.25 to 1.00.

SECTION 10.3 Consolidated Net Income.

(a) As of any fiscal quarter end, permit Consolidated Net Income for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date to be less than $0.

(b) As of any fiscal quarter end, permit Consolidated Net Income for each of the two (2) consecutive fiscal quarters ending on or immediately prior to such date to be less than $0 (such

calculation to be made individually for each such fiscal quarter and not collectively for both such fiscal quarters); provided, that for purposes of calculating Consolidated Net Income under this Section 10.3(b), the Borrower shall be permitted to add back to Consolidated Net Income, in each case without duplication and solely to the extent deducted in determining Consolidated Net Income, (i) certain non-recurring, non-cash charges incurred during such fiscal quarter related to any past or future acquisition of all or substantially all of the business or line of business (whether by the acquisition of Capital Stock, assets, or any combination thereof) of any other Person consummated by the Borrower or any of its Subsidiaries (including any Permitted Acquisition) and (ii) Transaction Costs during such period.

SECTION 10.4 Maximum Facility Capital Expenditures. Permit the aggregate amount of all Facility Capital Expenditures in any Fiscal Year to exceed $30,000,000. Notwithstanding the foregoing, the maximum amount of Facility Capital Expenditures permitted by this Section 10.4 in any Fiscal Year shall be increased by the amount of Facility Capital Expenditures that were permitted to be made under this Section 10.4 in the immediately preceding Fiscal Year (without giving effect to any carryover amount from prior Fiscal Years) over the amount of Facility Capital Expenditures actually made during such preceding Fiscal Year; provided that Facility Capital Expenditures in such Fiscal Year shall be counted last against any amount so carried forward; provided further that no Facility Capital Expenditures may be carried forward to the Fiscal Year ending December 31, 2016.

ARTICLE XI

NEGATIVE COVENANTS

Until all of the Obligations (other than contingent indemnification obligations not then due) have been paid and satisfied in full in cash, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Commitments terminated, the Credit Parties will not, and will not permit any of their respective Subsidiaries to:

SECTION 11.1 Limitations on Indebtedness. Create, incur, assume or suffer to exist any Indebtedness except:

(a) the Obligations (including the Guaranty Obligations with respect thereto);

(b) unsecured intercompany Indebtedness owed by:

(i) any Credit Party to any other Credit Party;

(ii) any Credit Party to any Subsidiary that is not a Credit Party;

(iii) any Subsidiary that is not a Credit Party to any Credit Party:

(i) existing on the Closing Date (as set forth on Schedule 11.1(b)(iii)); and

(ii) incurred after the Closing Date in an aggregate principal amount not to exceed at any time outstanding (1) $50,000,000 less (2) the amount of Guaranty Obligations incurred pursuant to Section 11.1(i) on the applicable date of determination less (3) the amount of Investments made in the form of Permitted Acquisitions pursuant to Section 11.3(e)(ii) during the term of this Agreement on the applicable date of determination less (4) the amount of Investments made pursuant to Section 11.3(g) during the term of this Agreement on the applicable date of determination; and

(iv) any Subsidiary that is not a Credit Party to any other Subsidiary that is not a Credit Party;

(c) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or other similar instrument drawn against insufficient funds in the ordinary course of business;

(d) Indebtedness of a Person existing at the time such Person became a Subsidiary or assets were acquired from such Person, to the extent that (i) such Indebtedness was not incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or the acquisition of such assets, (ii) neither the Borrower nor any of its Subsidiaries (other than such Person or any other Person that such Person merges with or that acquires the assets of such Person) shall have any liability or other obligation with respect to such Indebtedness and (iii) the aggregate amount of such Indebtedness does not exceed $10,000,000 at any time outstanding;

(e) Indebtedness incurred in connection with Capital Leases and purchase money Indebtedness, and any refinancing of the foregoing, in an aggregate amount not to exceed $25,000,000 at any time outstanding;

(f) Indebtedness and obligations owing under Hedge Agreements entered into in order to manage existing or anticipated interest rate, exchange rate or commodity price risks and not for speculative purposes;

(g) Guaranty Obligations of the Borrower or any of its Subsidiaries with respect to Indebtedness permitted pursuant to subsections (a), (e) and (f) of this Section 11.1;

(h) (i) Indebtedness of the Borrower or any of its Subsidiaries incurred in connection with Facility Capital Expenditures made on its own behalf in an aggregate amount not to exceed $50,000,000 at any time outstanding and (ii) to the extent that such Indebtedness is incurred by a Credit Party, Guaranty Obligations of any other Credit Party with respect to such Indebtedness (it being agreed and acknowledged by all parties hereto that, except to the extent permitted under subsection (i) below, to the extent that such Indebtedness is incurred by a Subsidiary that is not a Credit Party, no Credit Party shall be permitted to guaranty such Indebtedness);

(i) Guaranty Obligations of any Credit Party with respect to Indebtedness of any Subsidiary that is not a Credit Party in an aggregate amount not to exceed at any time outstanding (A) $50,000,000 less (B) the amount of Investments made in the form of Permitted Acquisitions pursuant to Section 11.3(e)(ii) during the term of this Agreement on the applicable date of determination less (C) the amount of Investments made in the form of Indebtedness pursuant to Section 11.3(f)(iv) during the term of this Agreement on the applicable date of determination less (D) the amount of Investments made pursuant to Section 11.3(g) during the term of this Agreement on the applicable date of determination;

(j) Indebtedness arising from agreements providing for indemnification, adjustment of purchase price or similar obligations (including, without limitation, in respect of the Dfine Acquisition), in connection with acquisitions or dispositions, otherwise permitted hereunder, of any assets of a Credit Party; and

(k) additional Indebtedness not otherwise permitted pursuant to this Section 11.1 in an aggregate principal amount not to exceed $10,000,000 at any time outstanding.

SECTION 11.2 Limitations on Liens. Create, incur, assume or suffer to exist, any Lien on or with respect to any of its Property, whether now owned or hereafter acquired, except:

(a) Liens created pursuant to the Loan Documents (including, without limitation, Liens in favor of the Swingline Lender and/or the Issuing Lender, as applicable, on Cash Collateral granted pursuant to the Loan Documents);

(b) Liens in existence on the Closing Date and described on Schedule 11.2; provided that the scope of any such Lien shall not be increased, or otherwise expanded, to cover any additional property or type of asset, as applicable, beyond that in existence on the Closing Date;

(c) Liens for taxes, assessments and other governmental charges or levies (excluding any Lien imposed pursuant to any of the provisions of ERISA or Environmental Laws) (i) not yet due or as to which the period of grace (not to exceed thirty (30) days), if any, related thereto has not expired or (ii) which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;

(d) the claims of materialmen, mechanics, carriers, warehousemen, processors or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business, (i) which are not overdue for a period of more than thirty (30) days or (ii) which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;

(e) Liens consisting of deposits or pledges made in the ordinary course of business in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance and other types of social security or similar legislation, or to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business, in each case, so long as no foreclosure sale or similar proceeding has been commenced with respect to any portion of the Collateral on account thereof;

(f) Liens constituting encumbrances in the nature of zoning restrictions, easements and rights or restrictions of record on the use of real property, which in the aggregate are not substantial in amount and which could not reasonably be expected to have a Material Adverse Effect;

(g) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to personal property leased pursuant to operating leases entered into in the ordinary course of business of the Borrower and its Subsidiaries;

(h) Liens securing Capital Lease Indebtedness and purchase money Indebtedness and any refinancing of the foregoing permitted under Section 11.1(e); provided that (i) such Liens shall be created substantially simultaneously with the acquisition or lease of the related Property, (ii) such Liens do not at any time encumber any Property other than the property financed by such Indebtedness, (iii) the amount of Indebtedness secured thereby is not increased and (iv) the principal amount of Indebtedness secured by any such Lien shall at no time exceed one hundred percent (100%) of the original purchase price or lease payment amount of such Property at the time it was acquired, or refinanced, as applicable;

(i) (i) Liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the Uniform Commercial Code in effect in the relevant jurisdiction and (ii) Liens of any depositary bank in connection with statutory, common law and contractual rights of set-off and recoupment with respect to any deposit account of the Borrower or any Subsidiary thereof;

(j) (i) contractual or statutory Liens of landlords to the extent relating to the property and assets relating to any lease agreements with such landlord, and (ii) contractual Liens of suppliers (including sellers of goods) or customers to the extent limited to the property or assets relating to such contract;

(k) Liens on tangible property or tangible assets of any Subsidiary of the Borrower which are in existence at the time that such Subsidiary of the Borrower is acquired pursuant to a Permitted Acquisition (provided that (i) such Liens (A) are not incurred in connection with, or in anticipation of, such Permitted Acquisition and (B) do not attach to any other property or assets of any Subsidiary thereof and (ii) the Indebtedness secured by such Liens is permitted under Section 11.1 of this Agreement);

(l) Liens securing judgments not giving rise to an Event of Default; provided, that the judgment secured thereby has been paid, discharged or vacated or the extension thereof has been stayed pending appeal within thirty (30) days after entry or filing of such judgment or appeal or surety bond;

(m) (i) any interest or title of a licensor, sublicensor, lessor or sublessor with respect to any assets under any license or lease agreement entered into in the ordinary course of business and (ii) licenses, sublicenses, leases or subleases with respect to any assets granted to third Persons in the ordinary course of business; provided that, in each of the foregoing clauses (i) and (ii), the same do not interfere in any material respect with the business of the Borrower and its Subsidiaries taken as a whole;

(n) Liens in favor of customs and revenues authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(o) [INTENTIONALLY OMITTED];

(p) Liens securing Facility Capital Expenditures Indebtedness permitted under Section 11.1(h); provided that (i) such Liens shall be created substantially simultaneously with the acquisition of the property (other than the real property) financed by such Indebtedness, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, (iii) the amount of Indebtedness secured thereby is not increased and (iv) the principal amount of Indebtedness secured by any such Lien shall at no time exceed the fair market value of the property financed by such Indebtedness at the time such property was acquired;

(q) inchoate Liens arising in the ordinary course of business under statutory provisions of Applicable Law with respect to obligations (i) not yet due or as to which the period of grace (not to exceed thirty (30) days), if any, related thereto has not expired or (ii) which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP; and

(r) deposits made in the ordinary course of business with public utilities or to Governmental Authorities as required by such public utilities or Governmental Authorities in connection with the supply of services in the ordinary course of business to any Credit Party, in each case, so long as no foreclosure sale or similar proceeding has been commenced with respect to any portion of the Collateral on account thereof.

SECTION 11.3 Limitations on Investments. Purchase, own, invest in or otherwise acquire, directly or indirectly, any Capital Stock, interests in any partnership or joint venture (including, without limitation, the creation or capitalization of any Subsidiary), evidence of Indebtedness or other obligation or security, substantially all or a portion of the business or assets of any other Person or any other

investment or interest whatsoever in any other Person, or make or permit to exist, directly or indirectly, any loans, advances or extensions of credit to, or any investment in cash or by delivery of Property in, any Person (all the foregoing, "Investments") except:

(a) (i) equity Investments existing on the Closing Date in Subsidiaries existing on the Closing Date, (ii) Investments existing on the Closing Date (other than Investments in Subsidiaries existing on the Closing Date) and described on Schedule 11.3 and (iii) equity Investments made after the Closing Date in Subsidiary Guarantors;

(b) Investments in cash and Cash Equivalents;

(c) Investments by the Borrower or any of its Subsidiaries in the form of Capital Expenditures permitted pursuant to this Agreement;

(d) purchases of assets in the ordinary course of business;

(e) Investments by the Borrower or any Subsidiary thereof in the form of:

(i) Permitted Acquisitions to the extent that any Person or Property acquired in such acquisition becomes a part of a Subsidiary Guarantor or becomes (whether or not such Person is a Wholly-Owned Subsidiary) a Subsidiary Guarantor in the manner contemplated by Section 9.11; and

(ii) Permitted Acquisitions to the extent that any Person or Property acquired in such acquisition does not become a Subsidiary Guarantor or a part of a Subsidiary Guarantor in an aggregate amount during the term of this Agreement not to exceed (A) $50,000,000 (excluding any portion thereof paid with the Net Cash Proceeds from any Equity Issuance by the Borrower other than any Equity Issuance related to any Disqualified Capital Stock) less (B) the amount of Guaranty Obligations incurred pursuant to Section 11.1(i) on the applicable date of determination less (C) the amount of Investments made in the form of Indebtedness pursuant to Section 11.3(f)(iv) during the term of this Agreement on the applicable date of determination less (D) the amount of Investments made pursuant to Section 11.3(g) during the term of this Agreement on the applicable date of determination;

(f) Investments in the form of Indebtedness permitted pursuant to (i) Section 11.1(b)(i), (ii) Section 11.1(b)(ii), (iii) Section 11.1(b)(iii)(A), (iv) Section 11.1(b)(iii)(B) and (v) Section 11.1(b)(iv);

(g) Investments in any Subsidiary that is not a Subsidiary Guarantor in an aggregate amount during the term of this Agreement not to exceed (i) $50,000,000 less (ii) the amount of Guaranty Obligations incurred pursuant to Section 11.1(i) on the applicable date of determination less (iii) the amount of Investments made in the form of Permitted Acquisitions pursuant to Section 11.3(e)(ii) during the term of this Agreement on the applicable date of determination less (iv) the amount of Investments made in the form of Indebtedness pursuant to Section 11.3(f)(iv) during the term of this Agreement on the applicable date of determination;

(h) the Dfine Acquisition; and

(i) other Investments, in addition to those permitted above, not to exceed $20,000,000 in the aggregate.

For purposes of determining the amount of any Investment outstanding for purposes of this Section 11.3, such amount shall be deemed to be the amount of such Investment when made, purchased or acquired less any amount realized in respect of such Investment upon the sale, collection or return of capital (not to exceed the original amount invested).

SECTION 11.4 Limitations on Fundamental Changes. Merge, consolidate or enter into any similar combination with any other Person or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution) except:

(a) (i) any Wholly-Owned Subsidiary of the Borrower may be merged, amalgamated or consolidated with or into the Borrower (provided that the Borrower shall be the continuing or surviving entity) or (ii) any Wholly-Owned Subsidiary of the Borrower may be merged, amalgamated or consolidated with or into any other Wholly-Owned Subsidiary (provided that, if either of such Wholly-Owned Subsidiaries is a Subsidiary Guarantor, (A) the Subsidiary Guarantor shall be the continuing or surviving entity or (B) simultaneously with such transaction, the continuing or surviving entity shall become a Subsidiary Guarantor and the Borrower shall comply with Section 9.12 in connection therewith);

(b) any Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding up or otherwise) to the Borrower or any Subsidiary Guarantor; provided that, with respect to any such disposition by any Non-Guarantor Subsidiary, the consideration for such disposition shall not exceed the fair value of such assets;

(c) any Wholly-Owned Subsidiary of the Borrower may merge with or into the Person such Wholly-Owned Subsidiary was formed to acquire in connection with a Permitted Acquisition, provided that (i) a Subsidiary Guarantor shall be the continuing or surviving entity or (ii) simultaneously with such transaction, the continuing or surviving entity shall become a Subsidiary Guarantor and the Borrower shall comply with Section 9.11 in connection therewith);

(d) any Person may merge into the Borrower or any of its Wholly-Owned Subsidiaries in connection with a Permitted Acquisition; provided that (i) in the case of a merger involving the Borrower or a Subsidiary Guarantor, the continuing or surviving Person shall be the Borrower or such Subsidiary Guarantor and (ii) the continuing or surviving Person shall be the Borrower or a Wholly-Owned Subsidiary of the Borrower; and

(e) any Asset Disposition permitted by Section 11.5 may be consummated.

SECTION 11.5 Limitations on Asset Dispositions. Make any Asset Disposition (including, without limitation, the sale of any receivables and leasehold interests) except:

(a) the sale of inventory in the ordinary course of business;

(b) the sale of obsolete, worn-out or surplus assets no longer used or usable in the business of the Borrower or any of its Subsidiaries;

(c) the transfer of assets to the Borrower or any Subsidiary pursuant to any transaction permitted pursuant to Section 11.4;

(d) the Borrower or any Subsidiary may write-off, discount, sell or otherwise dispose of defaulted or past due receivables and similar obligations in the ordinary course of business and not as part of an accounts receivable financing transaction;

(e) dispositions of Investments in cash and Cash Equivalents;

(f) any Credit Party may transfer assets to any other Credit Party;

(g) licenses and sublicenses of intellectual property rights in the ordinary course of business not interfering, individually or in the aggregate, in any material respect with the conduct of the business of the Borrower and its Subsidiaries taken as a whole; and

(h) leases, subleases, licenses or sublicenses of real or personal property granted by any Borrower or any of its Subsidiaries to others in the ordinary course of business not interfering in any material respect with the business of the Borrower and its Subsidiaries taken as a whole;

(i) Asset Dispositions in connection with Insurance and Condemnation Events; provided that the requirements of Section 4.4(b) are complied with in connection therewith;

(j) the sale of the equipment pursuant to the Permitted Equipment Sale-Leaseback Transactions; provided that the fair market value of any such equipment sold during Fiscal Year 2016 and each Fiscal Year thereafter shall not exceed $10,000,000 in the aggregate; and

(k) the sale or other disposition of assets by the Borrower or any Subsidiary not otherwise permitted under this Section 11.5 so long as the net book value of all assets sold or otherwise disposed of in any Fiscal Year does not exceed $5,000,000.

SECTION 11.6 Limitations on Restricted Payments. Declare or pay any dividend on, or make any payment or other distribution on account of, or purchase, redeem, retire or otherwise acquire (directly or indirectly), or set apart assets for a sinking or other analogous fund for the purchase, redemption, retirement or other acquisition of, any class of Capital Stock of any Credit Party or any Subsidiary thereof, or make any distribution of cash, property or assets to the holders of shares of any Capital Stock of any Credit Party or any Subsidiary thereof (all of the foregoing, the "Restricted Payments"); provided that:

(a) the Borrower or any Subsidiary thereof may pay dividends in shares of its own Qualified Capital Stock; and

(b) any Subsidiary of the Borrower may pay cash dividends to the Borrower or any Subsidiary Guarantor or ratably to all holders of its outstanding Qualified Capital Stock.

SECTION 11.7 Transactions with Affiliates. Directly or indirectly enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with (a) any officer, director, holder of any Capital Stock in, or other Affiliate of, the Borrower or any of its Subsidiaries or (b) any Affiliate of any such officer, director or holder, other than:

(a) transactions permitted by Sections 11.1, 11.3, 11.4, 11.5, 11.6 and 11.13;

(b) transactions in the ordinary course of business on terms as favorable as would be obtained by it on a comparable arm's-length transaction with an independent, unrelated third party as determined in good faith by the board of directors (or equivalent governing body) of the Borrower;

(c) employment and severance arrangements (including stock option plans and employee benefit plans and arrangements) with their respective officers and employees in the ordinary course of business; and

(d) payment of customary fees and reasonable out of pocket costs to, and indemnities for the benefit of, directors, officers and employees of the Borrower and its Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Subsidiaries.

SECTION 11.8 Certain Accounting Changes; Organizational Documents.

(a) Change its Fiscal Year end, or make (without the consent of the Administrative Agent) any material change in its accounting treatment and reporting practices except as required by GAAP; or

(b) Amend, modify or change its articles of incorporation (or corporate charter or other similar organizational documents) or amend, modify or change its bylaws (or other similar documents) in any manner which would materially and adversely affect the rights or interests of the Lenders.

SECTION 11.9 Limitation on Payments and Modifications of Subordinated Indebtedness.

(a) Amend, modify, waive or supplement (or permit the modification, amendment, waiver or supplement of) any of the terms or provisions of any Subordinated Indebtedness in any respect which would materially and adversely affect the rights or interests of the Administrative Agent and Lenders hereunder.

(b) Cancel, forgive, make any payment or prepayment on, or redeem or acquire for value (including, without limitation, (i) by way of depositing with any trustee with respect thereto money or securities before due for the purpose of paying when due and (ii) at the maturity thereof) any Subordinated Indebtedness, except:

(c) refinancings, refundings, renewals, extensions or exchange of any Subordinated Indebtedness to the extent incurred pursuant to Section 11.1(d) and by any subordination agreement applicable thereto; and

(d) the payment of interest, expenses and indemnities in respect of Subordinated Indebtedness to the extent incurred pursuant to Section 11.1(d) (other than any such payments prohibited by the subordination provisions thereof).

SECTION 11.10 No Further Negative Pledges; Restrictive Agreements.

(a) Enter into, assume or be subject to any agreement prohibiting or otherwise restricting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for such obligation if security is given for some other obligation, except (i) pursuant to this Agreement and the other Loan Documents, (ii) pursuant to any document or instrument governing capital lease Indebtedness and purchase money Indebtedness to the extent such Indebtedness is incurred pursuant to Section 11.1(e); provided, that any such restriction contained therein relates only to the asset or assets acquired in connection therewith, (iii) restrictions

contained in the organizational documents of any Credit Party as of the Closing Date and (iv) restrictions in connection with any Permitted Lien or any document or instrument governing any Permitted Lien (provided, that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien).

(b) Create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Credit Party or any Subsidiary thereof to (i) pay dividends or make any other distributions to any Credit Party or any Subsidiary on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, (ii) pay any Indebtedness or other obligation owed to any Credit Party, (iii) make loans or advances to any Credit Party, (iv) sell, lease or transfer any of its properties or assets to any Credit Party or (v) act as a Guarantor pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (i) through (v) above) for such encumbrances or restrictions existing under or by reason of (A) this Agreement and the other Loan Documents, (B) Applicable Law, (C) any document or instrument governing capital lease Indebtedness and purchase money Indebtedness to the extent such Indebtedness is incurred pursuant to Section 11.1(e) (provided, that any such restriction contained therein relates only to the asset or assets acquired in connection therewith), (D) any Permitted Lien or any document or instrument governing any Permitted Lien (provided, that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien), (E) obligations under any provision of any agreement or other instrument governing Indebtedness that are binding on a Person that becomes a Subsidiary of the Borrower, so long as (1) such obligations are not entered into in contemplation of such Person becoming a Subsidiary, (2) such Indebtedness is otherwise permitted to be incurred or assumed under this Agreement and (3) such obligations are not applicable to any Person, or the properties or assets of any Person, other than the Person that becomes a Subsidiary of the Borrower and (F) customary net worth provisions contained in leases and other agreements entered into by the Borrower or any of its Subsidiaries in the ordinary course of business.

SECTION 11.11 Nature of Business. With respect to the Borrower and its Subsidiaries, engage in any business other than the business conducted by the Borrower and its Subsidiaries as of the Closing Date and business activities reasonably related or ancillary thereto.

SECTION 11.12 Sale Leasebacks. Directly or indirectly become or remain liable as lessee or as guarantor or other surety with respect to any lease, whether an operating lease or a Capital Lease, of any Property (whether real, personal or mixed), whether now owned or hereafter acquired, (a) which any Credit Party or any Subsidiary thereof has sold or transferred or is to sell or transfer to a Person which is not another Credit Party or Subsidiary of a Credit Party or (b) which any Credit Party or any Subsidiary of a Credit Party intends to use for substantially the same purpose as any other Property that has been sold or is to be sold or transferred by such Credit Party or such Subsidiary to another Person which is not another Credit Party or Subsidiary of a Credit Party in connection with such lease; provided, however, (i) the Pearland Sale-Leaseback shall not be subject to the restrictions set forth in this Section 11.12 and (ii) the Permitted Equipment Sale-Leaseback Transactions shall not be subject to the restrictions set forth in this Section 11.12.

SECTION 11.13 Operating Lease Payments. Make operating lease payments in an aggregate amount exceeding $20,000,000 during any calendar year.

SECTION 11.14 Amendments of Dfine Acquisition Agreement. Amend, modify, waive or supplement (or permit modification, amendment, waiver or supplement of) any of the terms or provisions

of the Dfine Acquisition Agreement in any respect which would materially and adversely affect the rights or interests of the Administrative Agent and the Lenders hereunder, in each case, without the prior written consent of the Administrative Agent.

ARTICLE XII

DEFAULT AND REMEDIES

SECTION 12.1 Events of Default. Each of the following shall constitute an Event of Default, whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any Governmental Authority or otherwise:

(a) Default in Payment of Principal of Loans and Reimbursement Obligations. The Borrower shall default in any payment of principal of any Loan or Reimbursement Obligation when and as due (whether at maturity, by reason of acceleration or otherwise).

(b) Other Payment Default. The Borrower or any other Credit Party shall default in the payment when and as due (whether at maturity, by reason of acceleration or otherwise) of interest on any Loan or Reimbursement Obligation or the payment of any other Obligation, and such default shall continue for a period of five (5) Business Days.

(c) Misrepresentation. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Credit Party or any Subsidiary thereof in this Agreement, in any other Loan Document, or in any document delivered in connection herewith or therewith that is subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any respect when made or deemed made or any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Credit Party or any Subsidiary thereof in this Agreement, any other Loan Document, or in any document delivered in connection herewith or therewith that is not subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any material respect when made or deemed made.

(d) Default in Performance of Certain Covenants. Any Credit Party shall default in the performance or observance of any covenant or agreement contained in Sections 8.4(e), 9.1 (with respect to the Borrower), 9.10, 9.12 or Articles X or XI.

(e) Default in Performance of Other Covenants and Conditions. (i) Any Credit Party or any Subsidiary thereof shall default in the performance or observance of any term, covenant, condition or agreement contained Sections 6.3, 8.1, 8.2, 9.1 (other than with respect to the Borrower), 9.11, 9.15 or 9.17 and such default shall continue for a period of five (5) days or (ii) any Credit Party or any Subsidiary thereof shall default in the performance or observance of any term, covenant, condition or agreement contained in this Agreement (other than as specifically provided for in this Section 12.1) or any other Loan Document and such default shall continue for a period of thirty (30) days after the earlier of (A) the Administrative Agent's delivery of written notice thereof to the Borrower and (B) a Responsible Officer of any Credit Party having obtained knowledge thereof.

(f) Indebtedness Cross-Default. Any Credit Party or any Subsidiary thereof shall (i) default in the payment of any Indebtedness (other than the Loans or any Reimbursement Obligation) the aggregate outstanding amount, or with respect to any Hedge Agreement, the Hedge Termination Value, of which is in excess of the Threshold Amount beyond the period of grace if any, provided in the instrument

or agreement under which such Indebtedness was created, or (ii) default in the observance or performance of any other agreement or condition relating to any Indebtedness (other than the Loans or any Reimbursement Obligation) the aggregate outstanding amount, or with respect to any Hedge Agreement, the Hedge Termination Value, of which is in excess of the Threshold Amount or contained in any instrument or agreement evidencing, securing or relating thereto or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice and/or lapse of time, if required, any such Indebtedness to (A) become due, or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity (any applicable grace period having expired) or (B) be cash collateralized.

(g) Change in Control. Any Change in Control shall occur.

(h) Voluntary Bankruptcy Proceeding. Any Credit Party or any Subsidiary thereof shall (i) commence a voluntary case under any Debtor Relief Laws, (ii) file a petition seeking to take advantage of any Debtor Relief Laws, (iii) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under any Debtor Relief Laws, (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign, (v) admit in writing its inability to pay its debts as they become due, (vi) make a general assignment for the benefit of creditors, or (vii) take any corporate action for the purpose of authorizing any of the foregoing.

(i) Involuntary Bankruptcy Proceeding. A case or other proceeding shall be commenced against any Credit Party or any Subsidiary thereof in any court of competent jurisdiction seeking (i) relief under any Debtor Relief Laws, or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like for any Credit Party or any Subsidiary thereof or for all or any substantial part of their respective assets, domestic or foreign, and such case or proceeding shall continue without dismissal or stay for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding (including, but not limited to, an order for relief under such federal bankruptcy laws) shall be entered.

(j) Failure of Agreements. Any material provision of this Agreement or any provision of any other Loan Document shall cease to be valid and binding on any Credit Party or any Subsidiary thereof party thereto or any such Person shall so state in writing, or any Loan Document shall for any reason cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on, or security interest in, any of the Collateral purported to be covered thereby, in each case other than in accordance with the express terms hereof or thereof.

(k) Termination Event. The occurrence of any of the following events: (i) any Credit Party or any ERISA Affiliate fails to make full payment when due of all amounts which, under the provisions of any Pension Plan or Sections 412 or 430 of the Code, any Credit Party or any ERISA Affiliate is required to pay as contributions thereto, (ii) a failure to meet minimum funding standards in excess of the Threshold Amount occurs or exists, whether or not waived, with respect to any Pension Plan, (iii) a Termination Event or (iv) any Credit Party or any ERISA Affiliate as employers under one or more Multiemployer Plans makes a complete or partial withdrawal from any such Multiemployer Plan and the plan sponsor of such Multiemployer Plans notifies such withdrawing employer that such employer has incurred a withdrawal liability requiring payments in an amount exceeding the Threshold Amount.

(l) Judgment. A final judgment or order for the payment of money which causes the aggregate amount of all such final judgments or orders (net of any amounts paid or fully covered by independent third party insurance as to which the relevant insurance company does not dispute coverage) to exceed the Threshold Amount shall be entered against any Credit Party or any Subsidiary thereof by any court and such judgment or order shall continue without having been discharged, vacated or stayed for a period of thirty (30) consecutive days after the entry thereof.

SECTION 12.2 Remedies. Upon the occurrence and during the continuance of an Event of Default, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower:

(a) Acceleration; Termination of Credit Facility.

(i) Terminate the Revolving Credit Commitment and declare the principal of and interest on the Loans and the Reimbursement Obligations at the time outstanding, and all other amounts owed to the Lenders and to the Administrative Agent under this Agreement or any of the other Loan Documents (including, without limitation, all L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented or shall be entitled to present the documents required thereunder) and all other Obligations, to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Credit Party, anything in this Agreement or the other Loan Documents to the contrary notwithstanding, and terminate the Credit Facility and any right of the Borrower to request borrowings or Letters of Credit thereunder; provided, that upon the occurrence of an Event of Default specified in Section 12.1(h) or (i), the Credit Facility shall be automatically terminated and all Obligations shall automatically become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Credit Party, anything in this Agreement or in any other Loan Document to the contrary notwithstanding; and

(ii) exercise on behalf of the Lenders all of its other rights and remedies under this Agreement, the other Loan Documents and Applicable Law, in order to satisfy all of the Obligations.

(b) Letters of Credit. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to the preceding paragraph, demand that the Borrower deposit in a Cash Collateral account opened by the Administrative Agent an amount equal to 105% of the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts held in such Cash Collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay the other Secured Obligations in accordance with Section 10.3. After all such Letters of Credit shall have expired or been fully drawn upon, the Reimbursement Obligation shall have been satisfied and all other Secured Obligations shall have been paid in full, the balance, if any, in such Cash Collateral account shall be returned to the Borrower.

(c) Rights of Collection. Exercise on behalf of the Secured Parties all of its other rights and remedies under this Agreement, the other Loan Documents and Applicable Law, in order to satisfy all of the Secured Obligations.

SECTION 12.3 Rights and Remedies Cumulative; Non-Waiver; etc.

(a) The enumeration of the rights and remedies of the Administrative Agent and the Lenders set forth in this Agreement is not intended to be exhaustive and the exercise by the Administrative Agent and the Lenders of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative, and shall be in addition to any other right or remedy given hereunder or under the other Loan Documents or that may now or hereafter exist at law or in equity or by suit or otherwise. No delay or failure to take action on the part of the Administrative Agent or any Lender in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege or shall be construed to be a waiver of any Event of Default. No course of dealing between the Borrower, the Administrative Agent and the Lenders or their respective agents or employees shall be effective to change, modify or discharge any provision of this Agreement or any of the other Loan Documents or to constitute a waiver of any Event of Default.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 12.2 for the benefit of all the Lenders and the Issuing Lender; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the Issuing Lender or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity the Issuing Lender or the Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 14.4 (subject to the terms of Section 5.6), or (d) 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 Debtor Relief Law; and provided further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 12.2 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 5.6, 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.

SECTION 12.4 Crediting of Payments and Proceeds. In the event that the Obligations have been accelerated pursuant to Section 12.2 or the Administrative Agent or any Lender has exercised any remedy set forth in this Agreement or any other Loan Document, all payments received on account of the Secured Obligations and all net proceeds from the enforcement of the Secured Obligations shall be applied by the Administrative Agent as follows:

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such, the Issuing Lender in its capacity as such and the Swingline Lender in its capacity as such (ratably among the Administrative Agent, the Issuing Lender and Swingline Lender in proportion to the respective amounts described in this clause First payable to them);

Second, to payment of that portion of the Secured Obligations constituting fees (other than Commitment Fees and Letter of Credit commissions payable to the Revolving Credit Lenders), indemnities and other amounts (other than principal and interest) payable to the Lenders, the Issuing

Lender and the Swingline Lender under the Loan Documents, including attorney fees, ratably among the Lenders, the Issuing Lender and the Swingline Lender in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid Commitment Fees, Letter of Credit commissions payable to the Revolving Credit Lenders and interest on the Loans and Reimbursement Obligations, ratably among the Lenders, the Issuing Lender and the Swingline Lender in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans, Reimbursement Obligations and payment obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements (ratably among the Lenders, the Issuing Lender, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth payable to them);

Fifth, to the Administrative Agent for the account of the Issuing Lender, to Cash Collateralize any L/C Obligations then outstanding; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Applicable Law.

Notwithstanding the foregoing, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements 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 Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank 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 Article XIII for itself and its Affiliates as if a "Lender" party hereto.

SECTION 12.5 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Secured 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, the Issuing Lender and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Lender and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Lender and the Administrative Agent under Sections 3.3, 5.3 and 14.3) allowed in such judicial proceeding; and

(b) 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 the Issuing Lender to make such payments to the Administrative Agent and, in the event that the Administrative

Agent shall consent to the making of such payments directly to the Lenders and the Issuing Lender, 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 Sections 3.3, 5.3 and 14.3.

SECTION 12.6 Credit Bidding.

(a) The Administrative Agent, on behalf of itself and Secured Parties, shall have the right, exercisable at the discretion of the Required Lenders, to credit bid and purchase for the benefit of the Administrative Agent and the Secured Parties all or any portion of Collateral at any sale thereof conducted by the Administrative Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the United States Bankruptcy Code, including Section 363 thereof, or a sale under a plan of reorganization, or at any other sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with Applicable Law. Such credit bid or purchase may be completed through one or more acquisition vehicles formed by the Administrative Agent to make such credit bid or purchase and, in connection therewith, the Administrative Agent is authorized, on behalf of itself and the other Secured Parties, to adopt documents providing for the governance of the acquisition vehicle or vehicles, and assign the applicable Secured Obligations to any such acquisition vehicle in exchange for Capital Stock and/or debt issued by the applicable acquisition vehicle (which shall be deemed to be held for the ratable account of the applicable Secured Parties on the basis of the Secured Obligations so assigned by each Secured Party); provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Capital Stock thereof, shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 14.2

(b) Each Lender hereby agrees, on behalf of itself and each of its Affiliates that is a Secured Party, that, except as otherwise provided in any Loan Document or with the written consent of the Administrative Agent and the Required Lenders, it will not take any enforcement action, accelerate obligations under any of the Loan Documents, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral.

ARTICLE XIII

THE ADMINISTRATIVE AGENT

SECTION 13.1 Appointment and Authority.

(a) Each of the Lenders and the Issuing Lender hereby irrevocably designates and appoints Wells Fargo to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lender, and neither the Borrower nor any Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used

as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (including in its capacity as a potential Hedge Bank or Cash Management Bank) and the Issuing Lender hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the Issuing 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 Secured Obligations, together with such powers and discretion as are reasonably incidental thereto (including, without limitation, to enter into additional Loan Documents or supplements to existing Loan Documents on behalf of the Secured Parties). In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to this Article XIII for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of Articles XIII and XIV (including Section 14.3, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 13.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 13.3 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information

relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 14.2 and Section 12.2) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent by the Borrower, a Lender or the Issuing Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article VI or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

SECTION 13.4 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 13.5 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the Credit Facility as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

SECTION 13.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lender and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the Issuing Lender, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrower and such Person, remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable), (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Lender under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the Issuing Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 14.3 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(d) Any resignation by, or removal of, Wells Fargo as Administrative Agent pursuant to this Section 13.6 shall also constitute its resignation as the Issuing Lender and the Swingline Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall

succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender, if in its sole discretion it elects to, and Swingline Lender, (b) the retiring Issuing Lender and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor Issuing Lender, if in its sole discretion it elects to, shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Lender to effectively assume the obligations of the retiring Issuing Lender with respect to such Letters of Credit.

SECTION 13.7 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the Issuing Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 13.8 No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the syndication agents, documentation agents, co-agents, bookrunners, lead managers, arrangers, lead arrangers or co-arrangers listed on the cover page or signature pages hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the Issuing Lender hereunder.

SECTION 13.9 Collateral and Guaranty Matters.

(a) Each of the Lenders (including in its or any of its Affiliate's capacities as a potential Hedge Bank or Cash Management Bank) irrevocably authorize the Administrative Agent, at its option and in its discretion:

(i) to release any Lien on any Collateral granted to or held by the Administrative Agent, for the ratable benefit of the Secured Parties, under any Loan Document (A) upon the termination of the Revolving Credit Commitment and payment in full of all Secured Obligations (other than (1) contingent indemnification obligations and (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the Issuing Lender shall have been made), (B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition to a Person other than a Credit Party permitted under the Loan Documents, or (C) if approved, authorized or ratified in writing in accordance with Section 14.2;

(ii) to subordinate any Lien on any Collateral granted to or held by the Administrative Agent under any Loan Document to the holder of any Permitted Lien; and

(iii) to release any Subsidiary Guarantor from its obligations under any Loan Documents if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

(b) Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under the Guaranty Agreement pursuant to this Section 13.9. In each case as specified in this Section 13.9, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Credit Party such documents as such Credit Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Subsidiary Guarantor from its obligations under the Guaranty Agreement, in each case in accordance with the terms of the Loan Documents and this Section 13.9. In the case of any such sale, transfer or disposal of any property constituting Collateral in a transaction constituting an Asset Disposition permitted pursuant to Section 11.5 to a Person other than a Credit Party, the Liens created by any of the Security Documents on such property shall be automatically released without need for further action by any person.

(c) The Administrative Agent shall 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 Administrative Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

SECTION 13.10 Secured Hedge Agreements and Secured Cash Management Agreements. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 12.4 or any Collateral by virtue of the provisions hereof or of any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article XIII to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Secured Cash Management Agreements and Secured Hedge Agreements, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

ARTICLE XIV

MISCELLANEOUS

SECTION 14.1 Notices.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

If to the Borrower: Merit Medical Systems, Inc.
1600 West Merit Parkway
South Jordan, UT 84095
Attention of: Brian Lloyd, General Counsel
Telephone: (801) 208-4236
Facsimile: (801) 208-4238

Email: brian.lloyd@merit.com

With copies to: Parr Brown Gee & Loveless, PC
101 South 200 East, Suite 700
Salt Lake City, UT 84111
Attention of: Lamont Richardson
Telephone: (801) 532-7840
Facsimile: (801) 532-7750
Email: lrichardson@parrbrown.com

If to Wells Fargo as Administrative Agent: Wells Fargo Bank, National Association
MAC D1109-019
1525 West W.T. Harris Blvd.
Charlotte, NC 28262
Attention of: Syndication Agency Services
Telephone No.: (704) 590-2703
Facsimile No.: (704) 715-0092

With copies to: Wells Fargo Bank, National Association
MAC U1228-09A
P.O. Box 45490
Salt Lake City, UT 84145-0490
Telephone No.: (801) 246-1076
Facsimile No.: (801) 246-1645

If to any Lender: To the address of such Lender set forth on the Register with respect to deliveries of notices and other documentation that may contain material non-public information

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Issuing Lender pursuant to Article II or III if such Lender or the Issuing Lender, as applicable, has notified the Administrative Agent that is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as

by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or other communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Administrative Agent's Office. The Administrative Agent hereby designates its office located at the address set forth above, or any subsequent office which shall have been specified for such purpose by written notice to the Borrower and Lenders, as the Administrative Agent's Office referred to herein, to which payments due are to be made and at which Loans will be disbursed and Letters of Credit requested.

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, the Issuing Lender or the Swingline Lender may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. Any Lender may change its address or facsimile number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the Issuing Lender and the Swingline Lender.

(e) Platform.

(i) Each Credit Party agrees that the Administrative Agent may, but shall not be obligated to, make the Borrower Materials available to the Issuing Lender and the other Lenders by posting the Borrower Materials on the Platform.

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Borrower Materials or the adequacy of the Platform, and expressly disclaim liability for errors or omissions in the Borrower Materials. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Borrower Materials or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Credit Party, any Lender or any other Person or entity for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Credit Party's or the Administrative Agent's transmission of communications through the Internet (including, without limitation, the Platform), except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided that in no event shall any Agent Party have any liability to any Credit Party, any Lender, the Issuing Lender or any other Person for indirect, special, incidental, consequential or punitive damages, losses or expenses (as opposed to actual damages, losses or expenses).

SECTION 14.2 Amendments, Waivers and Consents. Except as set forth below or as specifically provided in any Loan Document, any term, covenant, agreement or condition of this Agreement or any of the other Loan Documents may be amended or waived by the Lenders, and any consent given by the Lenders, if, but only if, such amendment, waiver or consent is in writing signed by

the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and delivered to the Administrative Agent and, in the case of an amendment, signed by the Borrower; provided, that no amendment, waiver or consent shall:

(a) without the prior written consent of the Required Revolving Credit Lenders, amend, modify or waive (i) Section 6.2 or any other provision of this Agreement if the effect of such amendment, modification or waiver is to require the Revolving Credit Lenders (pursuant to, in the case of any such amendment to a provision hereof other than Section 6.2, any substantially concurrent request by the Borrower for a borrowing of Revolving Credit Loans or issuance of Letters of Credit) to make Revolving Credit Loans when such Revolving Credit Lenders would not otherwise be required to do so, (ii) the amount of the Swingline Commitment or (iii) the amount of the L/C Commitment;

(b) increase or extend the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 12.2) or increase the amount of Loans of any Lender, in any case, without the written consent of such Lender;

(c) waive, extend or postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or Reimbursement Obligation, or (subject to clause (iv) of the proviso set forth in the paragraph below) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby; provided that only the consent of the Required Lenders shall be necessary (i) to waive any obligation of the Borrower to pay interest at the rate set forth in Section 5.1(b) during the continuance of an Event of Default or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Obligation or to reduce any fee payable hereunder;

(e) change Section 5.6 or Section 12.4 in a manner that would alter the pro rata sharing of payments or order of application required thereby without the written consent of each Lender directly and adversely affected thereby;

(f) change Section 4.4(b)(vi) in a manner that would alter the order of application of amounts prepaid pursuant thereto without the written consent of each Lender directly and adversely affected thereby;

(g) except as otherwise permitted by this Section 14.2, change any provision of this Section 14.2 or reduce the percentages specified in the definitions of "Required Lenders," or "Required Revolving Credit Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender directly affected thereby;

(h) consent to the assignment or transfer by any Credit Party of such Credit Party's rights and obligations under any Loan Document to which it is a party (except as permitted pursuant to Section 11.4), in each case, without the written consent of each Lender;

(i) release (i) all of the Subsidiary Guarantors or (iii) Subsidiary Guarantors comprising substantially all of the credit support for the Secured Obligations, in any case, from any Guaranty Agreement (other than as authorized in Section 13.9), without the written consent of each Lender;

(j) release all or substantially all of the Collateral or release any Security Document (other than as authorized in Section 13.9 or as otherwise specifically permitted or contemplated in this Agreement or the applicable Security Document) without the written consent of each Lender; or

(k) amend the definition of "Alternative Currency" without the written consent of each Lender;

provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Issuing Lender in addition to the Lenders required above, affect the rights or duties of the Issuing Lender under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (iv) the Fee Letters may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; (v) each Letter of Credit Application may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; provided that a copy of such amended Letter of Credit Application shall be promptly delivered to the Administrative Agent upon such amendment or waiver; (vi) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section 14.2 if such Class of Lenders were the only Class of Lenders hereunder at the time and (vii) the Administrative Agent and the Borrower shall be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error, ambiguity, defect or inconsistency or omission of a technical or immaterial nature in any such provision. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (A) the Revolving Credit Commitment of such Lender may not be increased or extended without the consent of such Lender, and (B) any amendment, waiver, or consent hereunder which requires the consent of all Lenders or each affected Lender that by its terms disproportionately and adversely affects any such Defaulting Lender relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding anything in this Agreement to the contrary, each Lender hereby irrevocably authorizes the Administrative Agent on its behalf, and without further consent, to enter into amendments or modifications to this Agreement (including, without limitation, amendments to this Section 14.2) or any of the other Loan Documents or to enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to effectuate the terms of Section 5.13 (including, without limitation, as applicable, (1) to permit the Incremental Term Loans and the Incremental Revolving Credit Increases to share ratably in the benefits of this Agreement and the other Loan Documents, (2) to include the Incremental Term Loan Commitments and the Incremental Revolving Credit Increase, as applicable, or outstanding Incremental Term Loans and outstanding Incremental Revolving Credit Increase, as

applicable, in any determination of (i) Required Lenders or Required Revolving Credit Lenders, as applicable or (ii) similar required lender terms applicable thereto); provided that no amendment or modification shall result in any increase in the amount of any Lender's Commitment or any increase in any Lender's Commitment Percentage, in each case, without the written consent of such affected Lender and (3) to make amendments to any outstanding tranche of Term Loans to permit any Incremental Term Commitments and Incremental Term Loans to be "fungible" (including, without limitation, for purposes of the Code) with such tranche of Term Loans, including, without limitation, increases in the Applicable Margin or any fees payable to such outstanding tranche of Term Loans or providing such outstanding tranche of Term Loans with the benefit of any call protection or covenants that are applicable to the proposed Incremental Term Commitments or Incremental Term Loans; provided that any such amendments or modifications to such outstanding tranche of Term Loans shall not directly adversely affect the Lenders holding such tranche of Term Loans without their consent.

SECTION 14.3 Expenses; Indemnity.

(a) Costs and Expenses. The Borrower and any other Credit Party, jointly and severally, shall pay (i) all reasonable out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the Credit Facility, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out of pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out of pocket expenses incurred by the Administrative Agent, any Lender or the Issuing Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the Issuing Lender), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent, any Lender or the Issuing Lender, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 14.3, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the Issuing Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, and shall pay or reimburse any such Indemnitee for, any and all losses, claims (including, without limitation, any Environmental Claims or civil penalties or fines assessed by OFAC), damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless, each Indemnitee from, and shall pay or reimburse any such Indemnitee for, all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Credit Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated

by any Credit Party or any Subsidiary thereof, or any Environmental Claim related in any way to any Credit Party or any Subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Credit Party or any Subsidiary thereof, and regardless of whether any Indemnitee is a party thereto, or (v) any claim (including, without limitation, any Environmental Claims or civil penalties or fines assessed by the OFAC), investigation, litigation or other proceeding (whether or not the Administrative Agent or any Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including without limitation, reasonable attorneys and consultant's fees, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (B) result from a claim brought by any Credit Party or any Subsidiary thereof against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Credit Party or such Subsidiary has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 14.3(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under clause (a) or (b) of this Section 14.3 to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Lender, the Swingline Lender or such Related Party, 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 based on each Lender's share of the Total Credit Exposure at such time, or if the Total Credit Exposure has been reduced to zero, then based on such Lender's share of the Total Credit Exposure immediately prior to such reduction) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to the Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Credit Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Credit Lenders' Revolving Credit Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought or, if the Revolving Credit Commitment has been reduced to zero as of such time, determined immediately prior to such reduction); provided, further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 5.7.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, the Borrower and each other Credit Party shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any

information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section 14.3 shall be payable promptly after demand therefor.

(f) Survival. Each party's obligations under this Section 14.3 shall survive the termination of the Loan Documents and payment of the obligations hereunder.

SECTION 14.4 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Lender, the Swingline Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the Issuing Lender, the Swingline Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Credit Party against any and all of the obligations of the Borrower or such Credit Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, the Issuing Lender or the Swingline Lender or any of their respective Affiliates, irrespective of whether or not such Lender, the Issuing Lender, the Swingline Lender or any such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Credit Party may be contingent or unmatured or are owed to a branch or office of such Lender, the Issuing Lender, the Swingline Lender or such Affiliate different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender or any Affiliate thereof shall exercise any such right of setoff, (x) all amounts so setoff shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 5.15 and, pending such payment, shall be segregated by such Defaulting Lender or such Affiliate thereof from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Lender, the Swingline Lender and the Lenders, and (y) such Defaulting Lender or such Affiliate thereof shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender or such Affiliate thereof as to which it exercised such right of setoff. The rights of each Lender, the Issuing Lender, the Swingline Lender and their respective Affiliates under this Section 14.4 are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Lender, the Swingline Lender or their respective Affiliates may have. Each Lender, the Issuing Lender and the Swingline Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 14.5 Governing Law; Jurisdiction, Etc.

(a) Governing Law. This Agreement and the other Loan Documents and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, construed and enforced in accordance with, the law of the State of New York.

(b) Submission to Jurisdiction. The Borrower and each other Credit Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the

Administrative Agent, any Lender, the Issuing Lender, the Swingline Lender, or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent, any Lender, the Issuing Lender or the Swingline Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or any other Credit Party or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. The Borrower and each other Credit Party irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section 14.5. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 14.1. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

SECTION 14.6 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 14.6.

SECTION 14.7 Reversal of Payments. To the extent any Credit Party makes a payment or payments to the Administrative Agent for the ratable benefit of any of the Secured Parties or to any Secured Party directly or the Administrative Agent or any Secured Party receives any payment or proceeds of the Collateral or any Secured Party exercises its right of setoff, which payments or proceeds (including any proceeds of such 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 Debtor Relief Law, other Applicable Law or equitable cause, then, to the extent of such payment or proceeds repaid, the Secured Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by the Administrative Agent, and each Lender and the Issuing Lender severally agrees to pay to the

Administrative Agent upon demand its applicable ratable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent plus interest thereon at a per annum rate equal to the Federal Funds Rate from the date of such demand to the date such payment is made to the Administrative Agent.

SECTION 14.8 Injunctive Relief; Punitive Damages.

(a) The Borrower recognizes that, in the event the Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to the Lenders. Therefore, the Borrower agrees that the Lenders, at the Lenders' option, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

(b) The Administrative Agent, the Lenders and the Borrower (on behalf of itself and the other Credit Parties) hereby agree that no such Person shall have a remedy of punitive or exemplary damages against any other party to a Loan Document and each such Person hereby waives any right or claim to punitive or exemplary damages that they may now have or may arise in the future in connection with any Dispute, whether such Dispute is resolved through arbitration or judicially; provided that, notwithstanding the foregoing, nothing in this subsection (b) shall limit the obligations of the Borrower under Section 14.3(b).

SECTION 14.9 Accounting Matters. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement 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, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP

SECTION 14.10 Successors and Assigns; Participations.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section 14.10, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section 14.10 or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section 14.10 (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section 14.10 and, to the extent expressly contemplated hereby, the Related Parties 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) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and the Loans at the time owing to it); provided that, in each case with respect to any Credit Facility, any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(i) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it (in each case with respect to any Credit Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section 14.10 in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(ii) in any case not described in paragraph (b)(i)(A) of this Section 14.10, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $5,000,000, in the case of any assignment in respect of the Revolving Credit Facility or the Term Loan Facility, as applicable, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided that the Borrower shall be deemed to have given its consent five (5) Business Days after the date written notice thereof has been delivered by the assigning Lender (through the Administrative Agent) unless such consent is expressly refused by the Borrower prior to such fifth (5th) Business Day;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section 14.10 and, in addition:

(i) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(ii) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) the Revolving Credit Facility if such assignment is to a Person that is not a Lender with a Revolving Credit Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) the Term Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(iii) the consents of the Issuing Lender and the Swingline Lender shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500 for each assignment; provided that (A) only one such fee will be payable in connection with simultaneous assignments to two or more related Approved Funds by a Lender and (B) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of its Subsidiaries or Affiliates or (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested, but not funded by, the Defaulting Lender, to each of which the

applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lender, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Credit Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section 14.10, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 5.8, 5.9, 5.10, 5.11 and 14.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section 14.10 (other than a purported assignment to a natural Person or the Borrower or any of the Borrower's Subsidiaries or Affiliates, which shall be null and void).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in Charlotte, North Carolina, a copy of each Assignment and Assumption and each Lender Joinder Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amounts of (and stated interest on) the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender (but only to the extent of entries in the Register that are applicable to such Lender), at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's Subsidiaries or Affiliates) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Issuing Lender, the Swingline Lender and the other Lenders shall continue to deal solely and

directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 14.3(c) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 14.2(b), (c), (d) or (e) that directly and adversely affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 5.9, 5.10 and 5.11 (subject to the requirements and limitations therein, including the requirements under Section 5.11(g) (it being understood that the documentation required under Section 5.11(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 14.10; provided that such Participant (A) agrees to be subject to the provisions of Section 5.12 as if it were an assignee under paragraph (b) of this Section 14.10; and (B) shall not be entitled to receive any greater payment under Sections 5.10 or 5.11, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 5.12(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 14.4 as though it were a Lender; provided that such Participant agrees to be subject to Section 5.6 and Section 14.4 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 14.11 Confidentiality. Each of the Administrative Agent, the Lenders and the Issuing Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Related Parties in connection with the Credit Facility, this Agreement, the transactions contemplated hereby or in connection with marketing of services by such Affiliate or Related Party to the Borrower or any of its Subsidiaries (it being understood

that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by, or required to be disclosed to, any regulatory or similar authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners) or in accordance with the Administrative Agent's, the Issuing Lender's or any Lender's regulatory compliance policy if the Administrative Agent, the Issuing Lender or such Lender, as applicable, deems such disclosure to be necessary for the mitigation of claims by those authorities against the Administrative Agent, the Issuing Lender or such Lender, as applicable, or any of its Related Parties (in which case, the Administrative Agent, the Issuing Lender or such Lender, as applicable, shall use commercially reasonable efforts to, except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority, promptly notify the Borrower, in advance, to the extent practicable and otherwise permitted by Applicable Law), (c) as to the extent required by Applicable Laws or regulations or in any legal, judicial, administrative proceeding or other compulsory process, (d) to any other party hereto, (e) in connection with the exercise of any remedies under this Agreement, under any other Loan Document or under any Secured Hedge Agreement or Secured Cash Management Agreement, or any action or proceeding relating to this Agreement, any other Loan Document or any Secured Hedge Agreement or Secured Cash Management Agreement, or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 14.11, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the Credit Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Credit Facility, (h) with the consent of the Borrower, (i) deal terms and other information customarily reported to Thomson Reuters, other bank market data collectors and similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of the Loan Documents, (j) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 14.11 or (ii) becomes available to the Administrative Agent, any Lender, the Issuing Lender or any of their respective Affiliates from a third party that is not, to such Person's knowledge, subject to confidentiality obligations to the Borrower, (k) to the extent that such information is independently developed by such Person, or (l) for purposes of establishing a "due diligence" defense. For purposes of this Section 14.11, "Information" means all information received from any Credit Party or any Subsidiary thereof relating to any Credit Party or any Subsidiary thereof or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the Issuing Lender on a nonconfidential basis prior to disclosure by any Credit Party or any Subsidiary thereof; provided that, in the case of information received from a Credit Party or any Subsidiary thereof after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 14.11 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.

SECTION 14.12 Performance of Duties. Each of the Credit Party's obligations under this Agreement and each of the other Loan Documents shall be performed by such Credit Party at its sole cost and expense.

SECTION 14.13 All Powers Coupled with Interest. All powers of attorney and other authorizations granted to the Lenders, the Administrative Agent and any Persons designated by the Administrative Agent or any Lender pursuant to any provisions of this Agreement or any of the other Loan Documents shall be deemed coupled with an interest and shall be irrevocable so long as any of the Obligations remain unpaid or unsatisfied, any of the Commitments remain in effect or the Credit Facility has not been terminated.

SECTION 14.14 Survival.

(a) All representations and warranties set forth in Article VII and all representations and warranties contained in any certificate, or any of the Loan Documents (including, but not limited to, any such representation or warranty made in or in connection with any amendment thereto) shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement shall be made or deemed to be made at and as of the Closing Date (except those that are expressly made as of a specific date), shall survive the Closing Date and shall not be waived by the execution and delivery of this Agreement, any investigation made by or on behalf of the Lenders or any borrowing hereunder.

(b) Notwithstanding any termination of this Agreement, the indemnities to which the Administrative Agent and the Lenders are entitled under the provisions of this Article XIV and any other provision of this Agreement and the other Loan Documents shall continue in full force and effect and shall protect the Administrative Agent and the Lenders against events arising after such termination as well as before.

SECTION 14.15 Titles and Captions. Titles and captions of Articles, Sections and subsections in, and the table of contents of, this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

SECTION 14.16 Severability of Provisions. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction. In the event that any provision is held to be so prohibited or unenforceable in any jurisdiction, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such provision to preserve the original intent thereof in such jurisdiction (subject to the approval of the Required Lenders).

SECTION 14.17 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts; Integration; Effectiveness. This Agreement 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. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, the Issuing Lender, the Swingline Lender and/or the Arranger, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 6.1, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed

counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures 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.

SECTION 14.18 Term of Agreement. This Agreement shall remain in effect from the Closing Date through and including the date upon which all Obligations (other than contingent indemnification obligations not then due) arising hereunder or under any other Loan Document shall have been indefeasibly and irrevocably paid and satisfied in full, all Letters of Credit have been terminated or expired (or been Cash Collateralized) or otherwise satisfied in a manner acceptable to the Issuing Lender and the Revolving Credit Commitment has been terminated. No termination of this Agreement shall affect the rights and obligations of the parties hereto arising prior to such termination or in respect of any provision of this Agreement which survives such termination.

SECTION 14.19 USA PATRIOT Act. The Administrative Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the Patriot Act or any other Anti-Money Laundering Laws, each of them is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender to identify each Credit Party in accordance with the Patriot Act or such Anti-Money Laundering Law.

SECTION 14.20 Amendment and Restatement; No Novation. This Agreement constitutes an amendment and restatement of the Existing Credit Agreement, effective from and after the Closing Date. The execution and delivery of this Agreement shall not constitute a novation of any indebtedness or other obligations owing to the Lenders or the Administrative Agent under the Existing Credit Agreement based on facts or events occurring or existing prior to the execution and delivery of this Agreement. On the Closing Date, the credit facilities described in the Existing Credit Agreement, shall be amended, supplemented, modified and restated in their entirety by the facilities described herein, and all loans and other obligations of the Borrower outstanding as of such date under the Existing Credit Agreement, shall be deemed to be loans and obligations outstanding under the corresponding facilities described herein, without any further action by any Person, except that the Administrative Agent shall make such transfers of funds as are necessary in order that the outstanding balance of such Loans, together with any Loans funded on the Closing Date, reflect the respective Revolving Credit Commitment of the Lenders hereunder.

SECTION 14.21 Inconsistencies with Other Documents; Independent Effect of Covenants.

(a) In the event there is a conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall control; provided that any provision of the Security Documents which imposes additional burdens on the Borrower or any of its Subsidiaries or further restricts the rights of the Borrower or any of its Subsidiaries or gives the Administrative Agent or Lenders additional rights shall not be deemed to be in conflict or inconsistent with this Agreement and shall be given full force and effect.

(b) The Borrower expressly acknowledges and agrees that each covenant contained in Articles VIII, IX, X or XI hereof shall be given independent effect. Accordingly, the Borrower shall not engage in any transaction or other act otherwise permitted under any covenant contained in Articles VIII, IX, X or XI, before or after giving effect to such transaction or act, the Borrower shall or would be in breach of any other covenant contained in Articles VIII, IX, X or XI.

SECTION 14.22 No Advisory or Fiduciary Responsibility.

(a) In connection with all aspects of each transaction contemplated hereby, each Credit Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that (i) the facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Arranger and the Lenders, on the other hand, and the Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof), (ii) in connection with the process leading to such transaction, each of the Administrative Agent, the Arranger and the Lenders is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person, (iii) none of the Administrative Agent, the Arranger or the Lenders has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether the Administrative Agent, the Arranger or any Lender has advised or is currently advising the Borrower or any of its Affiliates on other matters) and none of the Administrative Agent, the Arranger or the Lenders has any obligation to the Borrower or any of its Affiliates with respect to the financing transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iv) the Administrative Agent, the Arranger and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of the Borrower and its Affiliates, and none of the Administrative Agent, the Arranger or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship and (v) the Administrative Agent, the Arranger and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Credit Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

(b) Each Credit Party acknowledges and agrees that the Administrative Agent, the Arranger, any Lender and any Affiliate thereof may lend money to, invest in, and generally engage in any kind of business with, any of the Borrower, any Affiliate thereof or any other person or entity that may do business with or own securities of any of the foregoing, all as if the Administrative Agent, the Arranger, such Lender, or such Affiliate thereof were not the Administrative Agent, the Arranger, a Lender or an Affiliate thereof (or an agent or any other person with any similar role under the Credit Facilities) and without any duty to account therefor to the Administrative Agent, the Arranger, any other Lender, the Borrower or any Affiliate of the foregoing. The Administrative Agent, the Arranger, any Lender and any Affiliate thereof may accept fees and other consideration from the Borrower or any Affiliate thereof for services in connection with this Agreement, the Credit Facility or otherwise without having to account for the same to the Administrative Agent, the Arranger, any other Lender, the Borrower or any Affiliate of the foregoing.

SECTION 14.23 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA 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 an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA 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 EEA 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 Loan Document; or

(i) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

SECTION 14.24 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable law).

[Signature pages to follow**]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal by their duly authorized officers, all as of the day and year first written above.

MERIT MEDICAL SYSTEMS, INC., as Borrower

By: /s/ Fred P. Lampropoulos
Name: Fred P. Lampropoulos
Title: President and Chief Executive Officer

AGENTS AND LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent, Swingline Lender, Issuing Lender and Lender

By: /s/ Jared Myres
Name: Jared Myres
Title: Vice President

BANK OF AMERICA, N.A., as Lender

By: /s/ Heath Lipson
Name: Heath Lipson
Title: Senior Vice President

U.S. BANK NATIONAL ASSOCIATION, as Lender

By: /s/ Nick Hintze
Name: Nick Hintze
Title: Vice President

HSBC BANK USA, NATIONAL ASSOCIATION, as Lender

By: /s/ Christoper M. Ames
Name: Christopher M. Ames
Title: Senior Vice President 19275
Commercial Banking
HSBC Bank USA, N.A.

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (the "Agreement") is made as of June 13, 2016 by and Between Merit Medical Systems, Inc., a Utah corporation ("Company"), and [name] ("Indemnitee").

RECITALS

A. The Company is aware that because of the increased exposure to litigation costs, talented and experienced persons are increasingly reluctant to serve or continue serving as directors and officers of corporations unless they are protected by comprehensive liability insurance and indemnification.

B. The statutes and judicial decisions regarding the duties of directors and officers are often difficult to apply, ambiguous, or conflicting, and therefore often fail to provide such directors and officers with adequate guidance regarding the proper course of action.

C. The Board of Directors of the Company (the "Board"), has concluded that, in order to retain and attract talented and experienced individuals to serve as officers and directors of the Company and its subsidiaries and to encourage such individuals to take the business risks necessary for the success of the Company and its subsidiaries, the Company should contractually indemnify its officers and directors, and the officers and directors of its subsidiaries, in connection with claims against such officers and directors relating to their services to the Company and its subsidiaries and has further concluded that the failure to provide such contractual indemnification could be detrimental to the Company, its subsidiaries and shareholders.

D. Indemnitee's willingness to serve as an officer of the Company is predicated, in substantial part, upon the Company's willingness to indemnify Indemnitee in accordance with the principles reflected above, to the fullest extent permitted by the laws of the State of Utah, and upon the other undertakings set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises made in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Company and Indemnitee, intending to be legally bound hereby, hereby agree as follows:

1. **Definitions**.

(a) **Agent**. "Agent" with respect to the Company means any person who is or was a director, officer, employee or other agent of the Company or a subsidiary; or is or was serving at the request of, for the convenience of, or to represent the interests of, the Company or a subsidiary as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including without limitation any employee benefit plan whether or not subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA")); or was a director, officer, employee or agent of a predecessor corporation (or other predecessor entity or enterprise) of the Company or a subsidiary, or was a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including without limitation any employee benefit plan whether or not subject to the ERISA) at the request of, for the convenience of, or to represent the interests of such predecessor.

(b) **Change in Control**. "Change in Control" shall mean, and shall be deemed to have occurred if, on or after the date of this Agreement: (i) any "person" (as such term is used in Sections 13

(d) and 14(d) of the Securities Exchange Act of 1934, as amended) or group acting in concert, other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company acting in such capacity or a corporation owned directly or indirectly by the shareholders of the Company in substantially the same proportions as their ownership of stock of the Company, becomes the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing more than 50% of the total voting power represented by the Company's then outstanding voting securities; (ii) during any period of two (2) consecutive years, individuals who at the beginning of such period constitute the Board and any new director whose election by the Board or nomination for election by the Company's shareholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; (iii) the shareholders of the Company approve a merger or consolidation of the Company with any other corporation other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least eighty percent (80%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or (iv) the shareholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one transaction or a series of related transactions) all or substantially all of the Company's assets.

(c) **Company**. References to the "Company" shall include, in addition to Merit Medical Systems, Inc., any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which Merit Medical Systems, Inc. (or any of its wholly-owned subsidiaries) is a party which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees, agents or fiduciaries, so that if Indemnitee is or was a director, officer, employee, agent or fiduciary of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(d) **Expenses**. "Expenses" means all direct and indirect costs of any type or nature whatsoever (including, without limitation, all reasonable attorneys' and experts' fees, costs of investigation and related disbursements) reasonably incurred by Indemnitee in connection with the investigation (whether formal or informal), settlement, defense or appeal of a Proceeding covered hereby or the establishment or enforcement of a right to indemnification under this Agreement, including without limitation in the case of an appeal the premium for, and other costs relating to, any costs bond or supercedes bond or other appeal bond or its equivalent.

(e) **Independent Legal Counsel**. "Independent Legal Counsel" shall mean an attorney or firm of attorneys, selected in accordance with the provisions of Section 2(i) hereof, who shall not have otherwise performed services for the Company or Indemnitee within the preceding three years (other than with respect to matters concerning the rights of Indemnitee under this Agreement, or of other Indemnitees under similar indemnity agreements).

(f) **Other References**. References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to "serving at the request of the Company" shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or its beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the interest of the participants and beneficiaries of an employee

benefit plan, Indemnitee shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

(g) **Proceeding**. "Proceeding" means any threatened, pending, or completed claim, suit, action, proceeding or alternative dispute resolution mechanism, or any hearing or investigation, whether civil, criminal, administrative, investigative or otherwise, including without limitation any situation which Indemnitee believes in good faith might lead to the institution of any such proceeding.

(h) **Reviewing Party**. "Reviewing Party" shall mean, subject to the provisions of Section 2(g), any person or body appointed by the Board in accordance with applicable law to review the Company's obligations hereunder and under applicable law, which may include a member or members of the Board, Independent Legal Counsel or any other person or body not a party to the particular Proceeding for which Indemnitee is seeking indemnification, as set forth in Section 2(i).

2. **Indemnification**.

(a) **Third Party Proceedings**. The Company shall defend, indemnify and hold harmless Indemnitee to the fullest extent permitted by the Utah Revised Business Corporation Act (the "Act") if Indemnitee is or was a party or is threatened to be made a party to any Proceeding (other than an action by or in the right of the Company) by reason of the fact that Indemnitee is or was or is claimed to be an Agent of the Company, or any subsidiary of the Company, by reason of any action or inaction on the part of Indemnitee while an Agent of the Company, against all Expenses and liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld)) actually and reasonably incurred by Indemnitee in connection with such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believe to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful.

(b) **Proceedings By or in the Right of the Company**. The Company shall defend, indemnify and hold harmless Indemnitee to the fullest extent permitted by the Act if Indemnitee was or is a party or is threatened to be made a party to any Proceeding by or in the right of the Company or any subsidiary of the Company to procure a judgment in its favor by reason of the fact that Indemnitee is or was or is claimed to be an Agent of the Company, all Expenses and liabilities of any type whatsoever (including, but not limited to, legal fees, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld)), in each case to the extent actually and reasonably incurred by Indemnitee in connection with the defense or settlement of such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and its stockholders, except that no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudicated by court order or judgment to be liable to the Company in the performance of Indemnitee's duty to the Company and its stockholders unless and only to the extent that the court in which such action or proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses, which such court shall deem proper.

(c) **Presumptions; Burden of Proof**. In making any determination concerning Indemnitee's right to indemnification, there shall be a presumption that Indemnitee has satisfied the applicable standard of conduct, and the Company may overcome such presumption only by its adducing clear and convincing evidence to the contrary. For purposes of this Agreement, the termination of any Proceeding by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by this Agreement or applicable law. In addition, neither the failure of any Reviewing Party to have made a determination as to whether Indemnitee has met any particular standard of conduct or had any particular belief, nor an actual

determination by any Reviewing Party that Indemnitee has not met such standard of conduct or did not have such belief, prior to the commencement of legal proceedings by Indemnitee to secure a judicial determination that Indemnitee should be indemnified under this Agreement under applicable law, shall be a defense to Indemnitee's claim or create a presumption that Indemnitee has not met any particular standard of conduct or did not have any particular belief. Any determination concerning Indemnitee's right to indemnification that is adverse to Indemnitee may be challenged by Indemnitee in the courts of the State of Utah. No determination by the Company (including without limitation by its directors or any Independent Legal Counsel) that Indemnitee has not satisfied any applicable standard of conduct shall be a defense to any claim by Indemnitee for indemnification or reimbursement or advance payment of Expenses by the Company hereunder or create a presumption that Indemnitee has not met any applicable standard of conduct.

(d) **Reliance as a Safe Harbor**. For purposes of this Agreement, and without creating any presumption as to a lack of good faith if the following circumstances do not exist, Indemnitee shall be deemed to have acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company if Indemnitee's actions or omissions to act are taken in good faith reliance upon the records of the Company, including its financial statements, or upon information, opinions, reports or statements furnished to Indemnitee by other Agents of the Company or any of its subsidiaries in the course of their duties, or by committees of the Board or by any other person (including legal counsel, accountants and financial advisors) as to matters Indemnitee reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company. In addition, the knowledge and/or actions, or failures to act, of any Agent of the Company shall not be imputed to Indemnitee for purposes of determining the right to indemnity hereunder.

(e) **Actions Where Indemnitee Is Deceased**. If Indemnitee was or is a party, or is threatened to be made a party, to any Proceeding by reason of the fact that Indemnitee is or was an Agent of the Company, or by reason of anything done or not done by Indemnitee in any such capacity, and prior to, during the pendency of, or after completion of, such Proceeding, Indemnitee shall die, then the Company shall defend, indemnify and hold harmless the estate, heirs and legatees of Indemnitee against any and all Expenses and liabilities reasonably incurred by or for such persons or entities in connection with the investigation, defense, settlement or appeal of such Proceeding on the same basis as provided for Indemnitee in Sections 2(a) and 2(b) above.

(f) **Extent of Insurance**. The Expenses and liabilities covered hereby shall be net of any payments made by D&O Insurance carriers or others.

(g) **Review of Indemnification Obligations**. Notwithstanding the foregoing, in the event any Reviewing Party shall have determined (in a written opinion, in any case in which Independent Legal Counsel is the Reviewing Party) that Indemnitee is not entitled to be indemnified hereunder under applicable law: (i) the Company shall have no further obligation under Section 2(a) or Section 2(b) to make any payments to Indemnitee not made prior to such determination by such Reviewing Party; and (ii) the Company shall be entitled to be reimbursed by Indemnitee (who hereby agrees to reimburse the Company) for all Expenses theretofore paid to Indemnitee to which Indemnitee is not entitled hereunder under applicable law; provided, however, that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee is entitled to be indemnified hereunder under applicable law, any determination made by any Reviewing Party that Indemnitee is not entitled to be indemnified hereunder under applicable law shall not be binding and Indemnitee shall not be required to reimburse the Company for any Expenses theretofore paid in indemnifying Indemnitee until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed). Indemnitee's obligation to reimburse the Company for any Expenses shall be unsecured and no interest shall be charged thereon.

(h) **Indemnitee Rights on Unfavorable Determination; Binding Effect**. If any Reviewing Party determines that Indemnitee substantively is not entitled to be indemnified hereunder in whole or in part under applicable law, Indemnitee shall have the right to commence litigation seeking an initial determination by the court or challenging any such determination by such Reviewing Party or any aspect thereof, including

the legal or factual bases therefor, and the Company hereby consents to service of process and to appear in any such proceeding. Absent such litigation, any determination by any Reviewing Party shall be conclusive and binding on the Company and Indemnitee.

(i) **Selection of Reviewing Party; Change in Control**. A determination, if required by applicable law, with respect to Indemnitee's entitlement to indemnification shall be made in accordance with the provisions of this paragraph (i). If there has not been a Change in Control, a Reviewing Party shall be selected by the Board, and if there has been such a Change in Control (other than a Change in Control which has been approved by a majority of the Board who were directors immediately prior to such Change in Control), any Reviewing Party with respect to all matters thereafter arising concerning the rights of Indemnitee to indemnification of Expenses under this Agreement or any other agreement or under the Company's Articles of Incorporation or Bylaws as now or hereafter in effect, or under any other applicable law, if desired by Indemnitee, shall be Independent Legal Counsel selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld). Such counsel, among other things, shall render its written opinion to the Company and Indemnitee as to whether and to what extent Indemnitee would be entitled to be indemnified hereunder under applicable law and the Company agrees to abide by such opinion. The Company agrees to pay the reasonable fees of the Independent Legal Counsel referred to above and to indemnify fully such counsel against any and all expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto. Notwithstanding any other provision of this Agreement, the Company shall not be required to pay Expenses of more than one Independent Legal Counsel in connection with all matters concerning a single Indemnitee, and such Independent Legal Counsel shall be the Independent Legal Counsel for any or all other Indemnitees unless: (i) the employment of separate counsel by one or more Indemnitees has been previously authorized by the Board in writing; or (ii) an Indemnitee shall have provided to the Company a written statement that such Indemnitee has reasonably concluded that there may be a conflict of interest between such Indemnitee and the other Indemnitees with respect to the matters arising under this Agreement.

3. **No Employment Rights**. Nothing contained in this Agreement is intended to create in Indemnitee any right to continued employment. Indemnitee specifically acknowledges that Indemnitee's employment with or services to the Company or any of its subsidiaries is at will and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment agreement between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director or officer of the Company, the Company's Articles of Incorporation and Bylaws, as applicable.

4. **Expenses; Indemnification Procedure**.

(a) **Advancement of Expenses**. The Company shall advance all expenses incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of any civil or Proceeding referred to in Section 2(a) or Section 2(b) hereof (including amounts actually paid in settlement of any such Proceeding if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld). Indemnitee hereby undertakes to repay such amounts advanced only if, and to the extent that, it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Company as authorized hereby.

(b) **Notice/Cooperation by Indemnitee**. Promptly after receipt by Indemnitee of notice of the commencement or threat of any Proceeding covered hereby, Indemnitee shall notify the Company of the commencement or threat thereof, provided that any failure to so notify shall not relieve the Company of any of its obligations hereunder, except to the extent that such failure prejudices the Company's ability to perform its obligations hereunder. Notice to the Company shall be directed to the Chief Executive Officer of the Company and shall be given in accordance with the provisions of Section 13(i) below. In addition, Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(c) **Notice to Insurers**. If, at the time of the receipt of a notice of a claim pursuant to Section 4(b) hereof, the Company has D&O Insurance (as defined in Section 7(a) below) in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(d) Indemnitee shall be entitled to retain one or more counsel from time to time selected by Indemnitee in Indemnitee's reasonable discretion to act as its counsel in and for the investigation, defense, settlement or appeal of each Proceeding. The Company shall not waive any privilege or right available to Indemnitee in any such Proceeding.

(e) The Company shall bear all reasonable fees and Expenses (including invoices for advance retainers) of such counsel, and all reasonable fees and Expenses invoiced by other persons or entities, in connection with the investigation, defense, settlement or appeal of each such Proceeding. Such fees and Expenses are referred to herein as "Covered Expenses."

(f) Until a determination to the contrary under Section 5 hereof is made, the Company shall advance all Covered Expenses in connection with each Proceeding. Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement which shall constitute an undertaking providing that Indemnitee undertakes to the fullest extent permitted by law to repay the advance if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required other than the execution of this Agreement. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement.

(g) **Selection of Counsel**. In the event the Company shall be obligated hereunder to provide indemnification for or make any advancement of Expenses with respect to the Expenses of any Proceeding, the Company, if appropriate, shall be entitled to assume the defense of such Proceeding with counsel selected by the Company, subject to approval by Indemnitee (which approval shall not be unreasonably withheld), upon the delivery to Indemnitee of written notice of the Company's election to do so. After delivery of such notice and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of separate counsel subsequently retained by or on behalf of Indemnitee with respect to the same Proceeding; provided that: (i) Indemnitee shall have the right to employ Indemnitee's separate counsel in any such Proceeding at Indemnitee's expense; and (ii) if (A) the employment of separate counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense, or (C) the Company shall not continue to retain such counsel to defend such Proceeding, then the fees and expenses of Indemnitee's separate counsel shall be Expenses for which Indemnitee may receive indemnification or advancement of Expenses hereunder.

(h) Each advance to be made hereunder shall be paid by the Company to Indemnitee within ten (10) business days following delivery of a written request therefor by Indemnitee to the Company.

(a) The Company acknowledges the potentially severe damage to Indemnitee should the Company fail timely to make such advances to Indemnitee.

(b) The Company shall not settle any Proceeding if, as a result of such settlement, any fine or obligation is imposed on Indemnitee without Indemnitee's prior written consent.

5. **Determination of Right to Indemnification**.

(a) To the extent Indemnitee has been successful on the merits or otherwise in defense of any Proceeding, claim, issue or matter covered hereby, Indemnitee need not repay any of the Expenses advanced in connection with the investigation, defense or appeal of such Proceeding.

(b) Indemnitee shall have the right to advancement by the Company prior to the final disposition of any Proceeding of any and all Expenses relating to, arising out of or resulting from any Proceeding paid or incurred by Indemnitee or which Indemnitee determines are reasonably likely to be paid or incurred by Indemnitee.

(c) Subject to the provisions of Section 2(g), notwithstanding a determination by a Reviewing Party or a court that Indemnitee is not entitled to indemnification with respect to a specific Proceeding, Indemnitee shall have the right to apply to the courts of the State of Utah for the purpose of enforcing Indemnitee's right to indemnification pursuant to this Agreement.

(d) Subject to the provisions of Section 2(i), the Company shall indemnify Indemnitee against all Expenses reasonably incurred by Indemnitee in connection with any Proceeding under Sections 5(b) or 5(c) and against all Expenses reasonably incurred by Indemnitee in connection with any other Proceeding between the Company and Indemnitee involving the interpretation or enforcement of the rights of Indemnitee under this Agreement unless a court of competent jurisdiction finds that each of the material claims and/or defenses of Indemnitee in any such Proceeding were frivolous or made in bad faith.

(e) The Company hereby agrees to indemnify Indemnitee to the fullest extent permitted by the Act, notwithstanding that such indemnification is not specifically authorized by the other provisions of this Agreement, the Company's Articles of Incorporation, the Company's Bylaws or by statute. In the event of any change after the date of this Agreement to the Act or in any applicable law, statute or rule which expands the right of a Utah corporation to indemnify a member of its board of directors or an officer, employee, agent or fiduciary, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits afforded by such change. In the event of any change to the Act or in any applicable law, statute or rule which narrows the right of a Utah corporation to indemnify its Agent, such change, to the extent not otherwise required by the Act or such law, statute or rule to be applied to this Agreement, shall have no effect on this Agreement or the parties' rights and obligations hereunder except as set forth in Section 9 hereof.

(f) **Nonexclusivity**. The indemnification and the payment of Expense advances provided by this Agreement shall be in addition to any rights to which Indemnitee may be entitled under the Company's Articles of Incorporation, its Bylaws, any other agreement, any vote of shareholders or disinterested directors, the Act, or otherwise. The indemnification and the payment or advancement of Expenses provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity even though subsequent thereto Indemnitee may have ceased to serve in such capacity.

(g) **No Duplication of Payments**. The Company shall not be liable under this Agreement to make any payment in connection with any Proceeding to the extent Indemnitee has otherwise actually received payment (under any insurance policy, provision of the Company's Articles of Incorporation, Bylaws or otherwise) of the amounts otherwise payable hereunder.

(h) **Partial Indemnification**. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses incurred in connection with any Proceeding, but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such Expenses to which Indemnitee is entitled.

6. **Mutual Acknowledgement**. Both the Company and Indemnitee acknowledge that in certain instances, Federal law or public policy may override applicable state law and prohibit the Company from indemnifying its directors and officers under this Agreement or otherwise. For example, the Company and Indemnitee acknowledge that the Securities and Exchange Commission (the "SEC") has taken the position that indemnification is not permissible for liabilities arising under certain federal securities laws, and federal legislation prohibits indemnification for certain ERISA violations. Indemnitee understands and acknowledges that the Company has undertaken or may be required in the future to undertake with the SEC to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee.

7. **Officer and Director Liability Insurance**.

(a) The Company hereby covenants and agrees with Indemnitee that, subject to Section 7(b), the Company shall obtain and maintain in full force and effect directors' and officers' liability insurance ("D&O Insurance"), in reasonable amounts as the Board shall determine from established and reputable insurers with an AM Best rating of A.VI or better, but no less than the amounts in effect upon initial procurement of the D&O Insurance. In all policies of D&O Insurance, Indemnitee shall be named as an insured.

(b) Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain D&O Insurance if the Board determines in good faith that the premium costs for such insurance are (i) disproportionate to the amount of coverage provided after giving effect to exclusions, and (ii) substantially more burdensome to the Company than the premiums charged to the Company for its initial D&O Insurance.

(c) To the extent the Company maintains liability insurance applicable to directors, officers, employees, agents or fiduciaries, Indemnitee shall be covered by such policies in such a manner as to provide Indemnitee the same rights and benefits as are provided to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's officers, if Indemnitee is not a director of the Company but is an officer; or of the Company's key employees, agents or fiduciaries, if Indemnitee is not an officer or director but is a key employee, agent or fiduciary.

8. **Severability**. Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. The provisions of this Agreement shall be severable as provided in this Section 8. If this Agreement or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify Indemnitee to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated, and the balance of this Agreement not so invalidated shall be enforceable in accordance with its terms.

1. **Exceptions**. Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) **Claims Initiated by Indemnitee**. To indemnify or advance expenses to Indemnitee with respect to Proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, other than: (i) Proceedings under Sections 5(b) or 5(c); (ii) Proceedings brought to establish or enforce a right to indemnification under this Agreement or the provisions of the Company's Articles of Incorporation or Bylaws unless a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such Proceeding were not made in good faith or were frivolous; or (iii) proceedings or claims instituted by Indemnitee with the approval by the Board;

(b) **Unauthorized Settlement**. To indemnify Indemnitee under this Agreement for any amounts paid in settlement of a Proceeding covered hereby without the prior written consent of the Company to such settlement, which consent will not be unreasonably withheld provided that the Company's consent is not required if the Company is refusing to indemnify or advance Expenses to Indemnitee;

(c) **Insured Claims**. To indemnify Indemnitee for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement) to the extent such expenses or liabilities have been paid directly to Indemnitee by an insurance carrier under a policy of officers' and directors; liability insurance maintained by the Company; or

(d) **Claims Under Section 16(b)**. To indemnify Indemnitee for expenses or the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute.

10. **Witness Expenses**. The Company agrees to compensate Indemnitee for the reasonable value of Indemnitee's time spent, and to reimburse Indemnitee for all Expenses (including reasonable attorneys' fees and travel costs) reasonably incurred by Indemnitee, in connection with being a witness, or if Indemnitee is threatened to be made a witness, with respect to any Proceeding, by reason of Indemnitee serving or having served as an Agent of the Company.

11. **Attorneys' Fees**. In the event that any action is instituted by Indemnitee under this Agreement to enforce or interpret any of the terms hereof, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee with respect to such action, unless as a part of such action, the court of competent jurisdiction determines that each of the material assertions made by Indemnitee as a basis for such action were not made in good faith or were frivolous. In the event of an action instituted by or in the name of the Company under this Agreement or to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be paid all court costs and expenses, including attorneys' fees, incurred by Indemnitee in defense of such action (including with respect to Indemnitee's counterclaims and cross-claims made in such action), unless as a part of such action the court determines that each of Indemnitee's material defenses to such action were made in bad faith or were frivolous.

12. **Duration**. All agreements and obligations of the Company contained herein shall continue during the period that Indemnitee is an Agent of the Company and shall continue thereafter (a) so long as Indemnitee may be subject to any possible claim for which Indemnitee may be indemnified hereunder (including any rights of appeal thereto) and (b) throughout the pendency of any Proceeding (including any rights of appeal thereto) commenced by Indemnitee to enforce or interpret Indemnitee's rights under this Agreement, even if, in either case, Indemnitee may have ceased to serve in such capacity at the time of any such Proceeding.

13. **Miscellaneous.**

(a) **Governing Law**. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Utah, without giving effect to principles of conflict of law.

(b) **Consent to Jurisdiction**. The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Utah for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement **and agree that any action instituted under this Agreement shall be commenced, prosecuted and continued only in the federal and state courts located in the State of Utah in and for Salt Lake County, which shall be the exclusive and only proper forum for adjudicating such a claim**.

(c) **Entire Agreement; Enforcement of Rights**. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

(d) **Construction**. This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed

to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

(e) **Counterparts**. This Agreement may be signed in counterparts. This Agreement constitutes a separate agreement between the Company and Indemnitee and may be supplemented or amended as to Indemnitee only by a written instrument signed by the Company and Indemnitee, with such amendment binding only the Company and Indemnitee. All waivers must be in a written document signed by the party to be charged. No waiver of any of the provisions of this Agreement shall be implied by the conduct of the parties. A waiver of any right hereunder shall not constitute a waiver of any other right hereunder.

(f) **Interpretation of Agreement**. This Agreement shall be interpreted and enforced so as to provide indemnification to Indemnitee to the fullest extent now or hereafter permitted by the Act.

(g) **Subrogation**. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company to effectively bring suit to enforce such rights.

(h) **Continuation of Indemnity; Binding Effect**. Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting an Agent of the Company and the benefits hereof shall inure to the benefit of the heirs, executors and administrators of Indemnitee. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(i) **Notices**. All notices, demands, consents, requests, approvals and other communications required or permitted hereunder shall be in writing and shall be deemed to have been properly given if hand delivered (effective upon receipt or when refused), or if sent by a courier freight prepaid (effective upon receipt or when refused), in the case of the Company, at the addresses listed below, or to such other addresses as the parties may notify each other in writing.

To Company: Merit Medical Systems, Inc.
Attention: Chief Executive Officer
1600 West Merit Parkway
South Jordan, Utah 84095

To Indemnitee: At Indemnitee's residence address and facsimile number on the records of the Company from time to time.

(j) **Evidence of Coverage**. Upon request by Indemnitee, the Company shall provide evidence of the liability insurance coverage required by this Agreement. The Company shall promptly notify Indemnitee of any change in the Company's D&O Insurance coverage.

[*Remainder of Page Intentionally Left Blank; Signatures appear on the following page*.]

[*Signature Page to Indemnification Agreement*]

The parties hereto have agree and accept this Agreement as of the day and year set forth on the first page of this Agreement.

MERIT MEDICAL SYSTEMS, INC.

By:/s/ Fred P. Lampropoulos
Name: Fred P. Lampropoulos
Title: Chief Executive Officer

INDEMNITEE:

_____

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into by and between Merit Medical Systems, Inc., a Utah corporation (the "Company") and [name] (the "Executive"), as of May 26, 2016.

RECITALS:

WHEREAS, the Executive currently serves as an executive employee of the Company; and

WHEREAS, the Board of Directors of the Company (the "Board") has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change in Control (as defined below) of the Company; and

WHEREAS, the Company and the Executive desire to enter into the Employment Agreement as follows:

AGREEMENT:

NOW, THEREFORE, the above recitals are incorporated herein and the parties agree as follows:

1. Certain Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "Affiliated Companies" shall mean any corporation, partnership, limited liability company or other business entity controlled by, controlling or under common control with the Company. One entity shall be presumed to control another if it owns directly, or indirectly through other Affiliated Companies, a majority of the outstanding voting equity interests of the other entity.

(b) "Change in Control" shall mean:

(i) The acquisition during any 12-month period in one or more integrated transactions by any individual, entity or "group" (within the meaning of Section 13(d) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"))(a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than 30% of the combined voting power of the then outstanding common stock and other voting securities of the Company entitled to vote generally in the election of directors of the Company (the "Outstanding Company Voting Securities");provided, however, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control: (A) any acquisition by the Company, an employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, or any corporation or other entity pursuant to a transaction which complies with clauses (A) and (B) of subsection (iii) of this Section 1(b); and (B) any acquisition which does also not constitute a "change in effective control" of the Company within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(vi)(A)(1);

(ii) The replacement during any 12-month period of a majority of the directors serving on the Board by directors whose appointment or election is not endorsed by at least a majority of the Board immediately before the date of any such appointment or election; provided that this subsection (ii) shall only apply to a change in the Board that constitutes a "change in effective control" of the Company within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(vi)(A)(2); and

(iii) The sale or other disposition of all or substantially all of the assets of the Company (an "Asset Sale"), including a disposition by merger or consolidation, in a transaction that also constitutes a "change in ownership of a substantial portion" of the Company's assets within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(vii); provided, however, that a transaction will not constitute a Change in Control under his subsection (iii) if: (A) the beneficial owners of the Outstanding Company Voting Securities immediately prior to such Asset Sale beneficially own, directly or indirectly, 50% or more of the then outstanding

shares of common stock and the combined voting power of the then outstanding voting securities of the acquiror or resulting corporation in such Asset Sale in substantially the same proportions as their ownership, immediately prior to such Asset Sale of the Outstanding Company Voting Securities; and (B) no Person beneficially owns, directly or indirectly, more than 30% of the combined voting power of the then outstanding voting securities of the acquiror or resulting corporation except to the extent that such ownership existed prior to the Asset Sale. For avoidance of doubt, no transaction or event will constitute a "Change in Control" under this Agreement unless it also constitutes a "change in effective control" of the Company within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(vi) or a "change in ownership of a substantial portion" of the Company's assets within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(vii).

(c) "Code" means the Internal Revenue Code of 1986, as amended.

(d) "Company" shall mean Merit Medical Systems, Inc.

(e) "Employment Period" shall mean the period commencing on the date hereof and continuing through the effective date of termination of Executive's employment as provided below.

(f) "Executive" shall mean the executive employee of the Company named in the first introductory paragraph of this Agreement.

(g) "Separation from Service" means "separation from service" (as defined in Treasury Regulation Section 1.409A-1(h) from the Company.

(h) "Treasury Regulation" means the regulations promulgated under the Code. Any reference in this Agreement to a Treasury Regulation shall include such regulation as amended from time to time and shall be deemed to incorporate herein the full text of such regulation.

2. Employment. Subject to termination as provided below, the Company hereby agrees to continue the Executive in its employ "at will", and the Executive hereby agrees to remain in the employ of the Company "at will", subject to the terms and conditions of this Agreement. As an "at will" employee, the Company may terminate the Executive's employment, and the Executive may resign his employment with the Company, at any time and for any or no reason.

3. Terms of Employment.

(a) Position and Duties.

(i) During the Employment Period, the Executive's position and title shall be [title]. Notwithstanding the foregoing, upon a Change in Control: (A) the Executive's position (including offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with the most significant of those held, exercised and assigned at any time during the 120-day period immediately preceding the effective date of a Change in Control; and (B) the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office or location less than 35 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to: (A) serve on corporate, civic or charitable boards or committees, provided that the Executive obtains the Company's prior, written consent, which will not be unreasonably withheld; (B) deliver lectures, fulfill speaking engagements or teach at educational institutions; and (C) manage personal investments, so

long as such activities do not significantly interfere with the performance of the Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the effective date of a Change in Control, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the effective date shall not thereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

(b) Compensation.

(i) Base Salary. During the Employment Period the Executive shall receive an annual base salary ("Annual Base Salary"), which shall be paid in equal monthly installments, at least equal to the Executive's then current salary or such other amount as is authorized by the Compensation Committee of the Board; provided, however that following a Change in Control, the Executive's rate of Annual Base Salary for any fiscal year of the Company following the Change in Control shall not be less than 12 times the highest monthly base salary paid or payable (including any base salary which has been earned but deferred) to the Executive by the Company and its Affiliated Companies in respect of the 12-month period immediately preceding the month in which the Change in Control occurs. During the Employment Period, the Annual Base Salary shall be reviewed no more than 12 months after the last salary increase or decrease applicable to the Executive and thereafter at least annually. Any increase or decrease in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement.

(ii) Annual Bonus. In addition to Annual Base Salary, for each fiscal year of the Company that ends during the Employment Period (a "Bonus Award Year") the Executive shall be awarded an annual bonus (the "Annual Bonus") in cash in such amount as the Board determines in its sole discretion; provided that (A) no Annual Bonus shall be payable for a particular Bonus Award Year unless the Executive is still employed by the Company on the last day of the Bonus Award Year in question (or such earlier dater as the Annual Bonus is paid); and (B) for any Company fiscal year ending on or after the effective date of a Change in Control, the Annual Bonus shall be at least equal to the Executive's average annual cash bonus for the last three full 12-month fiscal years ending prior to the Change in Control (or such lesser number of full fiscal years as the Executive has completed with the Company, and annualized in the event that the Executive was not employed by the Company for the whole of any such full 12-month Company fiscal year) (the "Average Annual Bonus"). Each such Annual Bonus shall be paid to the Executive not later than the 15th day of the third month following the calendar year in which the Annual Bonus is earned, unless the Executive shall elect to defer the receipt of such Annual Bonus pursuant to a non-qualified deferred compensation plan maintained by the Company that complies with the requirements of Code Section 409A. The Executive shall not be entitled to any Annual Bonus for a Bonus Award Year unless the Executive remains employed by the Company through the earlier of the date the Annual Bonus is paid or the last day of the Bonus Award Year in question.

(iii) Commissions. In addition to the Annual Base Salary and Annual Bonus, the Executive may, at the Board's discretion, be awarded monthly or quarterly commissions (the "Commissions"), at least equal to the Executive's then current commissions or such other amount as is authorized by the Board; provided, however that for any company fiscal year ending on or after the effective date of a Change in Control, the Executive's Commissions shall not be less than the Executive's average annual commissions for the last three full 12-month fiscal years ending prior to the Change of Control (or such lesser number of full fiscal years as the Executive has completed with the company, and annualized in the event the Executive was not employed by the Company for the whole of any such full 12-month Company fiscal year (the "Average Annual Commissions"). During the Employment Period, the Commissions shall be reviewed no more than 12 months after the last commission increase or decrease applicable to the Executive and thereafter at least annually. Any increase or decrease in Commissions shall not serve to limit or reduce any other obligation to the Executive under this Agreement.

(iv) Stock Incentive and Retirement Plans. During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and

programs applicable generally to other peer executives of the Company and its Affiliated Companies. In no event shall such plans, practices, policies and programs provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, to the extent, if any, that such distinction is applicable), savings opportunities and retirement benefit opportunities, in each case, materially less favorable, in the aggregate following the effective date of a Change in Control, than the those provided by the Company and its Affiliated Companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 120-day period immediately preceding the Change in Control or if more favorable to the Executive, those provided generally at any time after the Change in Control to other peer executives of the Company and its Affiliated Companies.

(v) Welfare Benefit Plans. During the Employment Period, the Executive shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its Affiliated Companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs for the Executive, the Executive's spouse and the Executive's qualifying dependent children) to the extent applicable generally to other peer executives of the Company and its Affiliated Companies, but in no event shall such plans, practices, policies and programs provide the Executive with benefits following a Change in Control which are materially less favorable, in the aggregate, than the plans, practices, policies and programs in effect for the Executive at any time during the 120-day period immediately preceding the Change in Control or, if more favorable to the Executive, those provided generally at any time after the Change in Control to other peer executives of the Company and its Affiliated Companies.

(vi) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its Affiliated Companies. In no event shall such policies, practices and procedures be materially less favorable, in the aggregate, following a Change in Control than the policies, practices and procedures in effect for the Executive at any time during the 120-day period immediately preceding the Change in Control or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliated Companies. All such expense reimbursements shall be paid promptly following submission for the applicable expense reimbursement requests and appropriate substitution but in no event later than the end of the calendar year following the calendar year in which the expense in question is incurred by the Executive. No reimbursement shall be exchanged or liquidated for another benefit and the amount of expenses eligible for reimbursement in a particular calendar year shall not affect the expense eligible for reimbursement in another taxable year.

(vii) Fringe Benefits. During the Employment Period, the Executive shall be entitled to fringe benefits, including, without limitation, tax and financial planning services, payment of club dues, and, if applicable, use of an automobile and payment of related expenses, in accordance with the generally applicable plans, practices and programs of the Company for its executive employees. In no event shall such policies and programs be materially less favorable following a Change in control than the most favorable plans, practices, programs and policies of the Company and its Affiliated Companies in effect for the Executive at any time during the 120-day period immediately preceding the Change in Control or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliated Companies.

(viii) Office and Support Staff. During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, generally provided to other executive officers of the Company and its Affiliated Companies.

(ix) Vacation. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the generally applicable plans, practices and programs of the Company for its executive employees. In no event shall such policies and programs be materially less favorable following a Change in Control than the most favorable plans, policies, programs and practices of the Company and its Affiliated

Companies as in effect for the Executive at any time during the 120-day period immediately preceding the Change in Control or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliated Companies.

4. Termination of Employment.

(a) Death or Disability. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. If the Company determines in good faith that the Disability of the Executive has occurred during the Employment Period (pursuant to the definition of Disability set forth below), it may give to the Executive written notice in accordance with Section 10(b) of this Agreement of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Executive (the "Disability Effective Date"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "Disability" shall mean the absence of the Executive from the Executive's duties with the Company on a full-time basis for 180 consecutive business days as a result of incapacity due to mental or physical illness which is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative.

(b) By the Company for Cause. The Company may terminate the Executive's employment at any time during the Employment Period for Cause to be effective on the applicable Date of Terminations et forth in Section 4(g). For purposes of this Agreement, "Cause" shall mean:

(i) the willful and continued failure of the Executive to perform substantially all of the Executive's duties with the Company or one of its Affiliates (other than any such failure results from incapacity due to physical mental illness), after a written demand for substantial performance is delivered to the Executive by the Board or the Chief Executive Officer of the Company which specifically identifies the manner in which the Board or Chief Executive Officer believes that the Executive has not substantially performed the Executive's duties,

(ii) the Executive willfully engaging in illegal conduct, intentional misconduct or gross negligence which is materially and demonstrably injurious to the Company, or

(iii) the Executive's violation of written Company policies prohibiting workplace discrimination, sexual harassment and alcohol or substance abuse.

For purposes of this provision, no act or failure to act, on the part of the Executive, shall be considered "willful" unless it is done, or omitted to be done, by the Executive in bad faith or without reasonable belief that the Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the instructions of the Chief Executive Officer or a senior officer of the Company or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company. Following a Change in Control, the cessation of employment of the Executive shall not be deemed to be for Cause unless and until there shall have been delivered to the Executive a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice is provided to the Executive and the Executive is given an opportunity, together with counsel, to be heard before the Board), finding that, in the good faith opinion of the Board, the Executive is guilty of the conduct described in subparagraph (i) or (ii) above, and specifying the particulars thereof in detail.

(c) By the Company without Cause. The Company, acting through the Board, may terminate the Executive's employment with the Company at any time "at will" without Cause for any or no reason upon written notice of termination to the Executive to be effective on the applicable Date of Termination set forth in Section 4(g).

(d) By the Executive for Good Reason. The Executive may terminate and resign the Executive's employment for Good Reason effective on or after the date of a Change in Control upon not less than ten (10) days advance written notice of termination to the Company. For purposes of this Agreement, "Good Reason" shall mean:

(i) the Company's assignment to the Executive upon or within two (2) years after a Change in Control of any duties inconsistent in any respect with the Executive's position (including offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 3(a) of this Agreement, or any other action by the Company upon or within two (2) years after a Change in Control which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) the Company's failure upon or within two (2) years following a Change in Control to comply with any of the provisions of Section 3(b) of this Agreement, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) upon or within two (2) years following a Change in Control, the Company's requiring the Executive to be based at any office or location other than as provided in Section 3(a)(i)(B) hereof or the Company's requiring the Executive to travel on Company business to a substantially greater extent than required immediately prior to the Effective Date; and

(iv) any failure by the Company to comply with and satisfy Section 9(c) of this Agreement.

Additionally, if the Executive resigns and terminates the Executive's employment with the Company on or within 30 days after the date of a Change in Control for any other reason (as determined in the Executive's sole discretion), the Executive shall be deemed to have resigned and terminated the Executive's employment for Good Reason notwithstanding any other provision in this Agreement.

(e) By Executive without Good Reason. The Executive may resign and terminate the Executive's employment with the Company without Good Reason at any time "at will" upon written notice of termination to the Company to be effective on the applicable Date of Termination set forth in Section 4(g).

(f) Notice of Termination. Any termination by the Company for Cause, by the Executive for Good Reason, or by either party without Cause or Good Reason shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 10(b) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which

(i) indicates the specific termination provision in this Agreement relied upon,

(ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated, and

(iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall be as set forth Section 4(g)). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder.

(g) Date of Termination. For purposes of this Agreement the term "Date of Termination" means:

(i) if the Executive's employment is terminated by the Company for Cause, or upon or following a Change in Control by the Executive for Good Reason, the date of the receipt of the Notice of Termination;

(ii) if the Executive's employment is terminated by the Company other than for Cause, death or Disability; the Date of Termination shall be the tenth (10th) day after the Company notifies the Executive of such termination, provided that the Notice of Termination may specify a later effective Date of Termination (which date shall not be more than 30 days after the giving of such notice);

(iii) if the Executive voluntarily resigns his employment (other than for Good Reason upon or following a Change in Control), the Date of Termination shall be the tenth (10th) day after the Executive notifies the Company of such resignation, provided that the Notice of Termination may specify a later Date of Termination (which date shall not be more than 30 days after the giving of such notice); and

(iv) if the Executive's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the Disability Effective Date, as the case may be.

5. Obligations of the Company upon Termination of Executive's Employment.

(a) General. Upon termination of the Executive's employment with the Company the Company shall provide the Executive with the payments and benefits set forth in the applicable subsection of this Section 5. The amounts payable under this Section 5 are in addition to the Company's obligations to the Executive under the Company's various retirement, deferred compensation, stock option and long-term incentive, employee stock purchase and welfare benefit plans. The Company's obligations under this Section 5 vary depending upon whether or not the Executive's termination of employment is in "Connection with a Change in Control." For purposes of this Agreement, termination of the Executive's employment shall be deemed to be in "Connection with a Change in Control" if and only if:

(i) the Executive's Date of Termination is on or within two (2) years after the effective date of a Change in Control; or

(ii) the Company terminates the Executive's employment without Cause within six (6) months prior to the date on which a Change in Control occurs and the Executive reasonably demonstrates that such termination of employment (A) was at the request of a third party who has taken steps reasonably calculated to effect a Change in Control; or (B) otherwise arose in connection with or anticipation of a Change in Control.

(b) Termination Other Than in Connection with a Change in Control. If the Executive's employment shall terminate for any reason, voluntarily or involuntarily with or without Cause, other than in Connection with a Change in Control, the Company shall pay to the Executive (or if deceased to the Executive's estate) the following amounts:

(i) a lump sum cash payment equal to the Executive's Annual Base Salary earned through the Date of Termination to the extent not theretofore paid and any accrued vacation pay through the Date of Termination, which lump sum shall be paid ten (10) days after the Date of Termination;

(ii) a lump sum cash payment equal to the Executive's accrued Annual Bonus earned for the last Company fiscal year ending immediately prior to the Date of Termination to the extent not theretofore paid, which lump sum shall be paid within the time period set forth in Section 3(b)(ii);

(iii) if applicable to Executive, a lump sum Commissions payment earned through the Date of Termination to the extent not theretofore paid, which lump sum shall be paid ten (10) days after the date the applicable Commissions would have been calculated by the Company had the Executive's employment not been terminated; and

(iii) such additional severance benefits, if any, as the Board approves in its sole and absolute discretion without reference to the amount of severance benefits, if any, paid to any other executive officer or employee of the Company; provided, however, that no such discretionary severance benefits shall be paid in a manner or amount that renders such payments non-qualified deferred compensation subject to additional tax or interest under Section 409A(a)(1)(B) of the Code.

(c) Resignation for Good Reason or Termination without Cause in Connection with a Change in Control. If the Executive resigns for Good Reason in Connection with a Change in Control (i.e., on or within two (2) years after the date of a Change in Control) or the Company terminates the Executive without Cause in Connection with a Change in Control, the Company shall:

(i) Pay to the Executive the following amounts:

(A) a lump sum cash payment equal to the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid and any accrued unpaid vacation pay through the Date of Termination, which lump sum shall be paid ten (10) days after the Date of Termination (on a date within that 10 day period designated by the Company);

(B) a lump sum cash payment equal to the Executive's accrued Annual Bonus, if any, for the last Company fiscal year ending immediately prior to the Date of Termination to the extent not theretofore paid, which lump sum shall be paid within the time period set forth in Section 3(b)(ii). The sum of the amounts described in clauses (A) and (B) shall be hereinafter referred to as the "Accrued Obligations;" and

(C) if applicable to Executive, a lump sum Commissions payment earned through the Date of Termination to the extent not theretofore paid, which lump sum shall be paid ten (10) days after the date the applicable Commissions would have been calculated by the Company had the Executive's employment not been terminated; and

(ii) Pay to the Executive a cash severance benefit (the "Severance Benefit") in an amount equal to two (2) times the sum of: (A) the Executive's Annual Base Salary (computed at the highest rate in effect at any time during the 12-month period immediately preceding the Change in Control); (B) the Executive's Average Annual Bonus as defined in Section 3(b)(ii); and (C) if applicable to Executive, the Executive's Average Annual Commissions as defined in Section 3(b)(iii). The Severance Benefit payable under this Section 5(c)(ii) shall be paid:

(A) In a cash lump sum within 30 days after the later of the date of the Executive's Separation from Service with the Company or the date of the Change in Control to the limited extent the amount so paid constitutes "separation pay" due to an "involuntary separation from service" within the meaning and dollar limitations of Treasury Regulation Section 1.409A-1(b)(9)(iii), or is otherwise exempt from Code Section 409A under Treasury Regulation Section 1.409A-1(b); and

(B) the balance, in a separate cash lump sum on the date that is six months and one day after the date of the Executive's Separation from Service with the Company. The balance of the Severance Benefit payable under this clause (B) shall bear interest from the Executive's Date of Termination at an annual rate equal to the "prime rate" of Wells Fargo Bank, NA in effect on the Date of Termination plus four (4) percentage points, which interest the Company shall pay to the Executive contemporaneously with payment of the Severance Benefit under this clause (B).

This Section 5(c)(ii) shall be interpreted and applied to permit the payment of the Change in Control Severance Benefit prior to the date that is six months and one day after Executive's Separation from Service with the Company only to the extent such payments would not thereby constitute a deferral of compensation subject to Code Section 409A. Neither the Company nor the Executive shall have the right to accelerate or defer such payments except as permitted or required by Code Section 409A.

(iii) To the extent permitted by law and the Company's applicable insurance policies, for two (2) years after the Executive's Date of Termination, continue benefits to the Executive and/or the Executive's eligible spouse and dependent children at least equal to those which would have been provided to them in accordance with the welfare plans, programs, practices and policies described in Section 3 of this Agreement if the Executive's employment had not been terminated or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliated Companies and their families, provided, however, that if the Executive becomes reemployed with another employer and is eligible to receive medical and other welfare benefits described herein shall be secondary to those provided under such other plan during such applicable period of eligibility.

(iv) Provide at the Company's sole expense for a period not to exceed twelve (12) months the Executive with reasonable outplacement services the scope and provider of which shall be selected by the Executive in his reasonable discretion; and

(v) To the extent not theretofore paid or provided, the Company shall timely pay or provide to the Executive any other amounts or benefits required to be paid or provided or which the Executive is eligible to receive under any plan, program, policy or practice or contract or agreement of the Company and its Affiliated Companies (such other amounts and benefits shall be hereinafter referred to as the "Other Benefits") in accordance with the terms of such other plans, programs, policies or practices.

(d) Death on or after Change in Control. If the Executive's employment is terminated by reason of the Executive's death on or after the date of a Change in Control, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. Accrued Obligations shall be paid to the Executive's estate or beneficiary, as applicable, in cash in the manner and within the time frames set forth in Section 5(b)(i) and (ii), as applicable. With respect to the provision of Other Benefits, the term Other Benefits as utilized in this Section 5(d) shall include, without limitation, and the Executive's estate and/or beneficiaries shall be entitled to receive, benefits at least equal to the most favorable benefits provided by the Company and Affiliated Companies to the estates and beneficiaries of peer executives of the Company and such Affiliated Companies under such plans, programs, practices and policies relating to death benefits, if any, as in effect with respect to other peer executives and their beneficiaries at any time during the 120-day period immediately preceding the Effective Date of a Change in Control, or, if more favorable to the Executive's estate and/or the Executive's beneficiaries, as in effect on the date of the Executive's death with respect to other peer executives of the Company and its Affiliated Companies and their beneficiaries.

(e) Disability on or after Change in Control. If the Executive's employment is terminated by reason of the Executive's Disability on or after the date of a Change in Control, this Agreement shall terminate without further obligations to the Executive, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. Accrued Obligations shall be paid to the Executive in cash in the manner and within the time frames set forth in Section 5(b)(i) and (ii), as applicable. With respect to the provision of Other Benefits, the term Other Benefits as utilized in this Section 5(e) shall include, and the Executive shall be entitled after the Disability Effective Date to receive, disability and other benefits at least equal to the most favorable of those generally provided by the Company and its Affiliated Companies to disabled executives and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time during the 120-day period immediately preceding the Effective Date of a Change in Control, or, if more favorable to the Executive and/or the Executive's family, as in

effect at any time thereafter generally with respect to other peer executives of the Company and its Affiliated Companies and their families.

(f) Termination for Cause or Resignation Other than for Good Reason on or after a Change in Control. If the Company terminates the Executive's for Cause on or after the date of a Change in Control, this Agreement shall terminate without further obligations to the Executive hereunder other than the obligation to pay to the Executive (i) his Annual Base Salary, Commissions, if applicable, and accrued vacation through the Date of Termination, and (ii) Other Benefits, in each case to the extent theretofore unpaid. If the Executive voluntarily terminates employment upon or following a Change in Control (excluding a resignation for Good Reason in Connection with a Change in Control) this Agreement shall terminate without further obligations to the Executive under, other than for Accrued Obligations and timely payment or provision of Other Benefits. In such case, all Accrued Obligations shall be paid to the Executive in cash in the manner and within the time frames set forth in Section 5(b)(i) and (ii), as applicable.

(g) Golden Parachute Payments. Any provision of this Agreement to the contrary notwithstanding, if any amount otherwise payable to the Executive under this Agreement would, when added to all other "parachute payments" to the Executive within the meaning of Section 280G of the Code, result in the payment of an "excess parachute payment" to the Executive within the meaning of Section 280G and 4999 of the Code, then:

(i) the cash payments otherwise owed to the Executive hereunder shall be reduced by the minimum amount necessary to avoid imposition of an excise or penalty tax on the Executive under Code Section 4999 (or any successor provision thereto) provided the amount of such reduction in payments does not exceed one thousand dollars ($1,000.00); or

(ii) in all other cases, the Company shall pay to the Executive an additional amount (on a fully-grossed-up, after-tax basis) sufficient to place the Executive in the same after-tax position that the Executive would have been in had the payments under this Agreement not been subject to the excise tax under Code Section 4999 (or any successor provision thereto). Such additional payment to the Executive shall include the amount of the excise tax payable under Code Section 4999 and all income, employment and additional excise taxes on the amount payable under this paragraph (ii).

Unless the Company and the Executive otherwise agree in writing, the determination of the amount of reduction required under Section 5(g)(i) or the additional amount required to be paid under Section 5(g)(ii), as applicable, shall be made in writing by the Company's independent auditors who are primarily used by the Company immediately prior to the Change in Control (the "Accountants"). For purposes of making the calculations required by this Section, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Executive shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under Section 5(g). Company shall bear all reasonable costs and expenses incurred in connection with the performance of the calculations contemplated by this Section 5(g). The Company shall pay any amount due under this Section 5(g)(ii) to the Executive as soon as reasonably practicable after the calculation of the amount of tax gross-up payment due and in no event later than the close of the calendar year following the calendar year in which the Executive remits the underlying Code Section 4999 excise tax to the Internal Revenue Service.

(h) Limits on Timing of Post-employment Payments. Notwithstanding any provision in this Agreement to the contrary, payments under Sections 5(b) and 5(c) shall be bifurcated into two portions, the first consisting of the portion that does not constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Code and the second consisting of the portion of such payments that does constitute such "nonqualified deferred compensation." Such payments shall first be made from the portion that does not constitute "nonqualified deferred compensation" until it is exhausted and then from the portion that constitutes "nonqualified deferred compensation." Because Executive is a "specified employee" within the meaning of Code Section 409A, the commencement and delivery of any such payments that constitute "nonqualified deferred compensation" shall

be delayed to the date that is six months and one day after the date of Executive's Separation from Service with the Company. The determination of whether, and the extent to which, payments under Section 5(b) or Section 5(c) are "nonqualified deferred compensation" shall be made after the application of all applicable exclusions under Treasury Regulation Section 1.409A-1(b). Similarly, continuation coverage under each employee benefit plan pursuant to Section 5.2(c)(iii) and outplacement assistance under Section 5.2(c)(iv) shall be treated as separate plans from each other and from the cash payments under Section 5.2(c)(i) and (ii). Each type of employee benefit plan continuation coverage specified in Section 5.2(c)(iii) and the outplacement assistance described in Section 5.2(c)(iv) shall also be bifurcated into two portions, one consisting of the maximum portion of such employee benefit plan continuation coverage or outplacement assistance, as applicable, that does not constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Code, and the second portion consisting of the element that does constitute "nonqualified deferred compensation" within the meaning of Code Section 409A." Provision of the portion of any benefit under Section 5(c)(iii) and 5(c)(iv) that constitutes "nonqualified deferred compensation" shall be deferred until six months and one day after the date of Executive's Separation from Service with the Company.

6. Non-exclusivity of Rights. Nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its Affiliated Companies and for which the Executive may qualify, nor shall anything herein limit or otherwise affect such rights as the Executive may have under any contract or agreement with the Company or any of its Affiliated Companies. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its Affiliated Companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

7. Full Settlement. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not the Executive obtains other employment.

8. Confidential Information. Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its Affiliated Companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its Affiliated Companies and which shall not be or become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it, or use such confidential information. In no event shall an asserted violation of the provisions of this Section 8 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

9. Successors.

(a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such success had taken place. As used in this Agreement, "Company" shall mean the

Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumed and agrees to perform this Agreement by operation of law, or otherwise.

10. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives. No waiver of any party's rights or benefits under this Agreement shall be effective unless such party signs a written waiver of its rights or benefits.

(b) All notices and other communications hereunder shall be writing and shall be given by hand delivery to the other party by registered or certified mail, return receipt requested, postage prepaid, or in the case of notices to the Executive by electronic mail (email) addressed as follows:

If to the Executive:
To the Executive's most current home address (or email address, as applicable) on file with the Company's Human Resources Department

If to the Company:
Merit Medical Systems, Inc.
1600 West Merit Parkway
South Jordan, Utah 84095
Attention: Chief Legal Officer

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from all compensation payable hereunder applicable withholding taxes. Except as provided in Section 5(g), neither the Company, any Affiliated Companies of the Company, nor any director, officer, employee or agent of the Company or any of its Affiliated Companies shall have any obligation or liability to gross-up, reimburse or indemnify the Executive for any taxes (including tax-related interest and penalties) imposed on Executive.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason, shall not be deemed to be a waiver of such provision or right of this Agreement.

(f) This Agreement constitutes the entire agreement between the parties with respect to the Executive's employment by the Company and supersedes and replaces all other agreements, oral or written, between the parties with respect to the subject matter hereof.

(g) The Company and the Executive irrevocably: (i) agree that any claim, law suit, cause of action or dispute arising under or with respect to this Agreement or the Executive's employment hereunder (a "Claim") shall be adjudicated solely in the United States Federal District Court or Utah State Courts situated in Salt Lake City, Utah (collectively the "Utah Courts"); (ii) consent and submit to the personal jurisdiction of the Utah Courts with respect to any Claim; (iii) agree that the Utah Courts shall have exclusive subject matter jurisdiction over any such Claims and that venue with respect to any such Claims is proper and most convenient in the Utah

Courts; and (iv) agree and covenant not to assert any objection to personal jurisdiction, subject matter jurisdiction or venue in the Utah Courts with respect to any Claim. TO THE FULLEST EXTENT PERMITTED BY LAW, THE COMPANY AND THE EXECUTIVE IRREVOCABLY WAIVE AND RELEASE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT OR THE EXECUTIVE'S EMPLOYMENT BY THE COMPANY.

(h) If the Executive or the Company retains legal counsel and/or incurs other costs and expenses in connection with the enforcement of any or all of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs, and expenses incurred by the prevailing party in connection with the enforcement of this Agreement. Notwithstanding the foregoing, in the event that following a Change in Control the Executive engages legal counsel to enforce the Executive's rights or seek a determination under this Agreement, the Company shall pay the expenses of such legal counsel regardless of the outcome of any legal proceeding resulting therefrom; provided that such claim is not determined by a trier of fact to be frivolous or in bad faith.

[*Remainder of Page Intentionally Left Blank-Signature Page Follows*]

WITNESS WHEREOF, the Executive and Company have caused this Agreement to be executed as of the date first set forth above.

EXECUTIVE:

Name: [name]
Title: [title]

COMPANY: MERIT MEDICAL SYSTEMS, INC.

Name: Fred Lampropoulos
Title: Chairman and Chief Executive Officer

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into by and between Merit Medical Systems, Inc., a Utah corporation (the "Company") and Fred P. Lampropoulos (the "Executive"), as of May 26, 2016.

RECITALS:

WHEREAS, the Executive currently serves as an executive employee of the Company; and

WHEREAS, the Board of Directors of the Company (the "Board") has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change in Control (as defined below) of the Company; and

WHEREAS, the Company and the Executive desire to enter into the Employment Agreement as follows:

AGREEMENT:

NOW, THEREFORE, the above recitals are incorporated herein and the parties agree as follows:

1. Certain Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "Affiliated Companies" shall mean any corporation, partnership, limited liability company or other business entity controlled by, controlling or under common control with the Company. One entity shall be presumed to control another if it owns directly, or indirectly through other Affiliated Companies, a majority of the outstanding voting equity interests of the other entity.

(b) "Change in Control" shall mean:

(i) The acquisition during any 12-month period in one or more integrated transactions by any individual, entity or "group" (within the meaning of Section 13(d) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"))(a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than 30% of the combined voting power of the then outstanding common stock and other voting securities of the Company entitled to vote generally in the election of directors of the Company (the "Outstanding Company Voting Securities");provided, however, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control: (A) any acquisition by the Company, an employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, or any corporation or other entity pursuant to a transaction which complies with clauses (A) and (B) of subsection (iii) of this Section 1(b); and (B) any acquisition which does also not constitute a "change in effective control" of the Company within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(vi)(A)(1);

(ii) The replacement during any 12-month period of a majority of the directors serving on the Board by directors whose appointment or election is not endorsed by at least a majority of the Board immediately before the date of any such appointment or election; provided that this subsection (ii) shall only apply to a change in the Board that constitutes a "change in effective control" of the Company within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(vi)(A)(2); and

(iii) The sale or other disposition of all or substantially all of the assets of the Company (an "Asset Sale"), including a disposition by merger or consolidation, in a transaction that also constitutes a "change in ownership of a substantial portion" of the Company's assets within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(vii); provided, however, that a transaction will not constitute a Change in Control under his subsection (iii) if: (A) the beneficial owners of the Outstanding Company Voting Securities immediately prior to such Asset Sale beneficially own, directly or indirectly, 50% or more of the then outstanding

shares of common stock and the combined voting power of the then outstanding voting securities of the acquiror or resulting corporation in such Asset Sale in substantially the same proportions as their ownership, immediately prior to such Asset Sale of the Outstanding Company Voting Securities; and (B) no Person beneficially owns, directly or indirectly, more than 30% of the combined voting power of the then outstanding voting securities of the acquiror or resulting corporation except to the extent that such ownership existed prior to the Asset Sale. For avoidance of doubt, no transaction or event will constitute a "Change in Control" under this Agreement unless it also constitutes a "change in effective control" of the Company within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(vi) or a "change in ownership of a substantial portion" of the Company's assets within the meaning of Treasury Regulation Section 1.409A-3(i)(5)(vii).

(c) "Code" means the Internal Revenue Code of 1986, as amended.

(d) "Company" shall mean Merit Medical Systems, Inc.

(e) "Employment Period" shall mean the period commencing on the date hereof and continuing through the effective date of termination of Executive's employment as provided below.

(f) "Executive" shall mean the executive employee of the Company named in the first introductory paragraph of this Agreement.

(g) "Separation from Service" means "separation from service" (as defined in Treasury Regulation Section 1.409A-1(h) from the Company.

(h) "Treasury Regulation" means the regulations promulgated under the Code. Any reference in this Agreement to a Treasury Regulation shall include such regulation as amended from time to time and shall be deemed to incorporate herein the full text of such regulation.

2. Employment. Subject to termination as provided below, the Company hereby agrees to continue the Executive in its employ "at will", and the Executive hereby agrees to remain in the employ of the Company "at will", subject to the terms and conditions of this Agreement. As an "at will" employee, the Company may terminate the Executive's employment, and the Executive may resign his employment with the Company, at any time and for any or no reason.

3. Terms of Employment.

(a) Position and Duties.

(i) During the Employment Period, the Executive's position and title shall be [title]. Notwithstanding the foregoing, upon a Change in Control: (A) the Executive's position (including offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with the most significant of those held, exercised and assigned at any time during the 120-day period immediately preceding the effective date of a Change in Control; and (B) the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office or location less than 35 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to: (A) serve on corporate, civic or charitable boards or committees, provided that the Executive obtains the Company's prior, written consent, which will not be unreasonably withheld; (B) deliver lectures, fulfill speaking engagements or teach at educational institutions; and (C) manage personal investments, so

long as such activities do not significantly interfere with the performance of the Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the effective date of a Change in Control, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the effective date shall not thereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

(b) Compensation.

(i) Base Salary. During the Employment Period the Executive shall receive an annual base salary ("Annual Base Salary"), which shall be paid in equal monthly installments, at least equal to the Executive's then current salary or such other amount as is authorized by the Compensation Committee of the Board; provided, however that following a Change in Control, the Executive's rate of Annual Base Salary for any fiscal year of the Company following the Change in Control shall not be less than 12 times the highest monthly base salary paid or payable (including any base salary which has been earned but deferred) to the Executive by the Company and its Affiliated Companies in respect of the 12-month period immediately preceding the month in which the Change in Control occurs. During the Employment Period, the Annual Base Salary shall be reviewed no more than 12 months after the last salary increase or decrease applicable to the Executive and thereafter at least annually. Any increase or decrease in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement.

(ii) Annual Bonus. In addition to Annual Base Salary, for each fiscal year of the Company that ends during the Employment Period (a "Bonus Award Year") the Executive shall be awarded an annual bonus (the "Annual Bonus") in cash in such amount as the Board determines in its sole discretion; provided that (A) no Annual Bonus shall be payable for a particular Bonus Award Year unless the Executive is still employed by the Company on the last day of the Bonus Award Year in question (or such earlier dater as the Annual Bonus is paid); and (B) for any Company fiscal year ending on or after the effective date of a Change in Control, the Annual Bonus shall be at least equal to the Executive's average annual cash bonus for the last three full 12-month fiscal years ending prior to the Change in Control (or such lesser number of full fiscal years as the Executive has completed with the Company, and annualized in the event that the Executive was not employed by the Company for the whole of any such full 12-month Company fiscal year) (the "Average Annual Bonus"). Each such Annual Bonus shall be paid to the Executive not later than the 15th day of the third month following the calendar year in which the Annual Bonus is earned, unless the Executive shall elect to defer the receipt of such Annual Bonus pursuant to a non-qualified deferred compensation plan maintained by the Company that complies with the requirements of Code Section 409A. The Executive shall not be entitled to any Annual Bonus for a Bonus Award Year unless the Executive remains employed by the Company through the earlier of the date the Annual Bonus is paid or the last day of the Bonus Award Year in question.

(iii) Commissions. In addition to the Annual Base Salary and Annual Bonus, the Executive may, at the Board's discretion, be awarded monthly or quarterly commissions (the "Commissions"), at least equal to the Executive's then current commissions or such other amount as is authorized by the Board; provided, however that for any company fiscal year ending on or after the effective date of a Change in Control, the Executive's Commissions shall not be less than the Executive's average annual commissions for the last three full 12-month fiscal years ending prior to the Change of Control (or such lesser number of full fiscal years as the Executive has completed with the company, and annualized in the event the Executive was not employed by the Company for the whole of any such full 12-month Company fiscal year (the "Average Annual Commissions"). During the Employment Period, the Commissions shall be reviewed no more than 12 months after the last commission increase or decrease applicable to the Executive and thereafter at least annually. Any increase or decrease in Commissions shall not serve to limit or reduce any other obligation to the Executive under this Agreement.

(iv) Stock Incentive and Retirement Plans. During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and

programs applicable generally to other peer executives of the Company and its Affiliated Companies. In no event shall such plans, practices, policies and programs provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, to the extent, if any, that such distinction is applicable), savings opportunities and retirement benefit opportunities, in each case, materially less favorable, in the aggregate following the effective date of a Change in Control, than the those provided by the Company and its Affiliated Companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 120-day period immediately preceding the Change in Control or if more favorable to the Executive, those provided generally at any time after the Change in Control to other peer executives of the Company and its Affiliated Companies.

(v) Welfare Benefit Plans. During the Employment Period, the Executive shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its Affiliated Companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs for the Executive, the Executive's spouse and the Executive's qualifying dependent children) to the extent applicable generally to other peer executives of the Company and its Affiliated Companies, but in no event shall such plans, practices, policies and programs provide the Executive with benefits following a Change in Control which are materially less favorable, in the aggregate, than the plans, practices, policies and programs in effect for the Executive at any time during the 120-day period immediately preceding the Change in Control or, if more favorable to the Executive, those provided generally at any time after the Change in Control to other peer executives of the Company and its Affiliated Companies.

(vi) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its Affiliated Companies. In no event shall such policies, practices and procedures be materially less favorable, in the aggregate, following a Change in Control than the policies, practices and procedures in effect for the Executive at any time during the 120-day period immediately preceding the Change in Control or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliated Companies. All such expense reimbursements shall be paid promptly following submission for the applicable expense reimbursement requests and appropriate substitution but in no event later than the end of the calendar year following the calendar year in which the expense in question is incurred by the Executive. No reimbursement shall be exchanged or liquidated for another benefit and the amount of expenses eligible for reimbursement in a particular calendar year shall not affect the expense eligible for reimbursement in another taxable year.

(vii) Fringe Benefits. During the Employment Period, the Executive shall be entitled to fringe benefits, including, without limitation, tax and financial planning services, payment of club dues, and, if applicable, use of an automobile and payment of related expenses, in accordance with the generally applicable plans, practices and programs of the Company for its executive employees. In no event shall such policies and programs be materially less favorable following a Change in control than the most favorable plans, practices, programs and policies of the Company and its Affiliated Companies in effect for the Executive at any time during the 120-day period immediately preceding the Change in Control or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliated Companies.

(viii) Office and Support Staff. During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, generally provided to other executive officers of the Company and its Affiliated Companies.

(ix) Vacation. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the generally applicable plans, practices and programs of the Company for its executive employees. In no event shall such policies and programs be materially less favorable following a Change in Control than the most favorable plans, policies, programs and practices of the Company and its Affiliated

Companies as in effect for the Executive at any time during the 120-day period immediately preceding the Change in Control or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliated Companies.

4. Termination of Employment.

(a) Death or Disability. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. If the Company determines in good faith that the Disability of the Executive has occurred during the Employment Period (pursuant to the definition of Disability set forth below), it may give to the Executive written notice in accordance with Section 10(b) of this Agreement of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Executive (the "Disability Effective Date"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "Disability" shall mean the absence of the Executive from the Executive's duties with the Company on a full-time basis for 180 consecutive business days as a result of incapacity due to mental or physical illness which is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative.

(b) By the Company for Cause. The Company may terminate the Executive's employment at any time during the Employment Period for Cause to be effective on the applicable Date of Terminations et forth in Section 4(g). For purposes of this Agreement, "Cause" shall mean:

(i) the willful and continued failure of the Executive to perform substantially all of the Executive's duties with the Company or one of its Affiliates (other than any such failure results from incapacity due to physical mental illness), after a written demand for substantial performance is delivered to the Executive by the Board or the Chief Executive Officer of the Company which specifically identifies the manner in which the Board or Chief Executive Officer believes that the Executive has not substantially performed the Executive's duties,

(ii) the Executive willfully engaging in illegal conduct, intentional misconduct or gross negligence which is materially and demonstrably injurious to the Company, or

(iii) the Executive's violation of written Company policies prohibiting workplace discrimination, sexual harassment and alcohol or substance abuse.

For purposes of this provision, no act or failure to act, on the part of the Executive, shall be considered "willful" unless it is done, or omitted to be done, by the Executive in bad faith or without reasonable belief that the Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the instructions of the Chief Executive Officer or a senior officer of the Company or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company. Following a Change in Control, the cessation of employment of the Executive shall not be deemed to be for Cause unless and until there shall have been delivered to the Executive a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice is provided to the Executive and the Executive is given an opportunity, together with counsel, to be heard before the Board), finding that, in the good faith opinion of the Board, the Executive is guilty of the conduct described in subparagraph (i) or (ii) above, and specifying the particulars thereof in detail.

(c) By the Company without Cause. The Company, acting through the Board, may terminate the Executive's employment with the Company at any time "at will" without Cause for any or no reason upon written notice of termination to the Executive to be effective on the applicable Date of Termination set forth in Section 4(g).

(d) By the Executive for Good Reason. The Executive may terminate and resign the Executive's employment for Good Reason effective on or after the date of a Change in Control upon not less than ten (10) days advance written notice of termination to the Company. For purposes of this Agreement, "Good Reason" shall mean:

(i) the Company's assignment to the Executive upon or within two (2) years after a Change in Control of any duties inconsistent in any respect with the Executive's position (including offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 3(a) of this Agreement, or any other action by the Company upon or within two (2) years after a Change in Control which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) the Company's failure upon or within two (2) years following a Change in Control to comply with any of the provisions of Section 3(b) of this Agreement, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) upon or within two (2) years following a Change in Control, the Company's requiring the Executive to be based at any office or location other than as provided in Section 3(a)(i)(B) hereof or the Company's requiring the Executive to travel on Company business to a substantially greater extent than required immediately prior to the Effective Date; and

(iv) any failure by the Company to comply with and satisfy Section 9(c) of this Agreement.

Additionally, if the Executive resigns and terminates the Executive's employment with the Company on or within 30 days after the date of a Change in Control for any other reason (as determined in the Executive's sole discretion), the Executive shall be deemed to have resigned and terminated the Executive's employment for Good Reason notwithstanding any other provision in this Agreement.

(e) By Executive without Good Reason. The Executive may resign and terminate the Executive's employment with the Company without Good Reason at any time "at will" upon written notice of termination to the Company to be effective on the applicable Date of Termination set forth in Section 4(g).

(f) Notice of Termination. Any termination by the Company for Cause, by the Executive for Good Reason, or by either party without Cause or Good Reason shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 10(b) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which

(i) indicates the specific termination provision in this Agreement relied upon,

(ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated, and

(iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall be as set forth Section 4(g)). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder.

(g) Date of Termination. For purposes of this Agreement the term "Date of Termination" means:

(i) if the Executive's employment is terminated by the Company for Cause, or upon or following a Change in Control by the Executive for Good Reason, the date of the receipt of the Notice of Termination;

(ii) if the Executive's employment is terminated by the Company other than for Cause, death or Disability; the Date of Termination shall be the tenth (10th) day after the Company notifies the Executive of such termination, provided that the Notice of Termination may specify a later effective Date of Termination (which date shall not be more than 30 days after the giving of such notice);

(iii) if the Executive voluntarily resigns his employment (other than for Good Reason upon or following a Change in Control), the Date of Termination shall be the tenth (10th) day after the Executive notifies the Company of such resignation, provided that the Notice of Termination may specify a later Date of Termination (which date shall not be more than 30 days after the giving of such notice); and

(iv) if the Executive's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the Disability Effective Date, as the case may be.

5. Obligations of the Company upon Termination of Executive's Employment.

(a) General. Upon termination of the Executive's employment with the Company the Company shall provide the Executive with the payments and benefits set forth in the applicable subsection of this Section 5. The amounts payable under this Section 5 are in addition to the Company's obligations to the Executive under the Company's various retirement, deferred compensation, stock option and long-term incentive, employee stock purchase and welfare benefit plans. The Company's obligations under this Section 5 vary depending upon whether or not the Executive's termination of employment is in "Connection with a Change in Control." For purposes of this Agreement, termination of the Executive's employment shall be deemed to be in "Connection with a Change in Control" if and only if:

(i) the Executive's Date of Termination is on or within two (2) years after the effective date of a Change in Control; or

(ii) the Company terminates the Executive's employment without Cause within six (6) months prior to the date on which a Change in Control occurs and the Executive reasonably demonstrates that such termination of employment (A) was at the request of a third party who has taken steps reasonably calculated to effect a Change in Control; or (B) otherwise arose in connection with or anticipation of a Change in Control.

(b) Termination Other Than in Connection with a Change in Control. If the Executive's employment shall terminate for any reason, voluntarily or involuntarily with or without Cause, other than in Connection with a Change in Control, the Company shall pay to the Executive (or if deceased to the Executive's estate) the following amounts:

(i) a lump sum cash payment equal to the Executive's Annual Base Salary earned through the Date of Termination to the extent not theretofore paid and any accrued vacation pay through the Date of Termination, which lump sum shall be paid ten (10) days after the Date of Termination;

(ii) a lump sum cash payment equal to the Executive's accrued Annual Bonus earned for the last Company fiscal year ending immediately prior to the Date of Termination to the extent not theretofore paid, which lump sum shall be paid within the time period set forth in Section 3(b)(ii);

(iii) if applicable to Executive, a lump sum Commissions payment earned through the Date of Termination to the extent not theretofore paid, which lump sum shall be paid ten (10) days after the date the applicable Commissions would have been calculated by the Company had the Executive's employment not been terminated; and

(iii) such additional severance benefits, if any, as the Board approves in its sole and absolute discretion without reference to the amount of severance benefits, if any, paid to any other executive officer or employee of the Company; provided, however, that no such discretionary severance benefits shall be paid in a manner or amount that renders such payments non-qualified deferred compensation subject to additional tax or interest under Section 409A(a)(1)(B) of the Code.

(c) Resignation for Good Reason or Termination without Cause in Connection with a Change in Control. If the Executive resigns for Good Reason in Connection with a Change in Control (i.e., on or within two (2) years after the date of a Change in Control) or the Company terminates the Executive without Cause in Connection with a Change in Control, the Company shall:

(i) Pay to the Executive the following amounts:

(A) a lump sum cash payment equal to the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid and any accrued unpaid vacation pay through the Date of Termination, which lump sum shall be paid ten (10) days after the Date of Termination (on a date within that 10 day period designated by the Company);

(B) a lump sum cash payment equal to the Executive's accrued Annual Bonus, if any, for the last Company fiscal year ending immediately prior to the Date of Termination to the extent not theretofore paid, which lump sum shall be paid within the time period set forth in Section 3(b)(ii). The sum of the amounts described in clauses (A) and (B) shall be hereinafter referred to as the "Accrued Obligations;" and

(C) if applicable to Executive, a lump sum Commissions payment earned through the Date of Termination to the extent not theretofore paid, which lump sum shall be paid ten (10) days after the date the applicable Commissions would have been calculated by the Company had the Executive's employment not been terminated; and

(ii) Pay to the Executive a cash severance benefit (the "Severance Benefit") in an amount equal to three (3) times the sum of: (A) the Executive's Annual Base Salary (computed at the highest rate in effect at any time during the 12-month period immediately preceding the Change in Control); (B) the Executive's Average Annual Bonus as defined in Section 3(b)(ii); and (C) if applicable to Executive, the Executive's Average Annual Commissions as defined in Section 3(b)(iii)**.** The Severance Benefit payable under this Section 5(c)(ii) shall be paid:

(A) In a cash lump sum within 30 days after the later of the date of the Executive's Separation from Service with the Company or the date of the Change in Control to the limited extent the amount so paid constitutes "separation pay" due to an "involuntary separation from service" within the meaning and dollar limitations of Treasury Regulation Section 1.409A-1(b)(9)(iii), or is otherwise exempt from Code Section 409A under Treasury Regulation Section 1.409A-1(b); and

(B) the balance, in a separate cash lump sum on the date that is six months and one day after the date of the Executive's Separation from Service with the Company. The balance of the Severance Benefit payable under this clause (B) shall bear interest from the Executive's Date of Termination at an annual rate equal to the "prime rate" of Wells Fargo Bank, NA in effect on the Date of Termination plus four (4) percentage points, which interest the Company shall pay to the Executive contemporaneously with payment of the Severance Benefit under this clause (B).

This Section 5(c)(ii) shall be interpreted and applied to permit the payment of the Change in Control Severance Benefit prior to the date that is six months and one day after Executive's Separation from Service with the Company only to the extent such payments would not thereby constitute a deferral of compensation subject to Code Section 409A. Neither the Company nor the Executive shall have the right to accelerate or defer such payments except as permitted or required by Code Section 409A.

(iii) To the extent permitted by law and the Company's applicable insurance policies, for three (3) years after the Executive's Date of Termination, continue benefits to the Executive and/or the Executive's eligible spouse and dependent children at least equal to those which would have been provided to them in accordance with the welfare plans, programs, practices and policies described in Section 3 of this Agreement if the Executive's employment had not been terminated or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its Affiliated Companies and their families, provided, however, that if the Executive becomes reemployed with another employer and is eligible to receive medical and other welfare benefits described herein shall be secondary to those provided under such other plan during such applicable period of eligibility.

(iv) Provide at the Company's sole expense for a period not to exceed twelve (12) months the Executive with reasonable outplacement services the scope and provider of which shall be selected by the Executive in his reasonable discretion; and

(v) To the extent not theretofore paid or provided, the Company shall timely pay or provide to the Executive any other amounts or benefits required to be paid or provided or which the Executive is eligible to receive under any plan, program, policy or practice or contract or agreement of the Company and its Affiliated Companies (such other amounts and benefits shall be hereinafter referred to as the "Other Benefits") in accordance with the terms of such other plans, programs, policies or practices.

(d) Death on or after Change in Control. If the Executive's employment is terminated by reason of the Executive's death on or after the date of a Change in Control, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. Accrued Obligations shall be paid to the Executive's estate or beneficiary, as applicable, in cash in the manner and within the time frames set forth in Section 5(b)(i) and (ii), as applicable. With respect to the provision of Other Benefits, the term Other Benefits as utilized in this Section 5(d) shall include, without limitation, and the Executive's estate and/or beneficiaries shall be entitled to receive, benefits at least equal to the most favorable benefits provided by the Company and Affiliated Companies to the estates and beneficiaries of peer executives of the Company and such Affiliated Companies under such plans, programs, practices and policies relating to death benefits, if any, as in effect with respect to other peer executives and their beneficiaries at any time during the 120-day period immediately preceding the Effective Date of a Change in Control, or, if more favorable to the Executive's estate and/or the Executive's beneficiaries, as in effect on the date of the Executive's death with respect to other peer executives of the Company and its Affiliated Companies and their beneficiaries.

(e) Disability on or after Change in Control. If the Executive's employment is terminated by reason of the Executive's Disability on or after the date of a Change in Control, this Agreement shall terminate without further obligations to the Executive, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. Accrued Obligations shall be paid to the Executive in cash in the manner and within the time frames set forth in Section 5(b)(i) and (ii), as applicable. With respect to the provision of Other Benefits, the term Other Benefits as utilized in this Section 5(e) shall include, and the Executive shall be entitled after the Disability Effective Date to receive, disability and other benefits at least equal to the most favorable of those generally provided by the Company and its Affiliated Companies to disabled executives and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time during the 120-day period immediately preceding the Effective Date of a Change in Control, or, if more favorable to the Executive and/or the Executive's family, as in

effect at any time thereafter generally with respect to other peer executives of the Company and its Affiliated Companies and their families.

(f) Termination for Cause or Resignation Other than for Good Reason on or after a Change in Control. If the Company terminates the Executive's for Cause on or after the date of a Change in Control, this Agreement shall terminate without further obligations to the Executive hereunder other than the obligation to pay to the Executive (i) his Annual Base Salary, Commissions, if applicable, and accrued vacation through the Date of Termination, and (ii) Other Benefits, in each case to the extent theretofore unpaid. If the Executive voluntarily terminates employment upon or following a Change in Control (excluding a resignation for Good Reason in Connection with a Change in Control) this Agreement shall terminate without further obligations to the Executive under, other than for Accrued Obligations and timely payment or provision of Other Benefits. In such case, all Accrued Obligations shall be paid to the Executive in cash in the manner and within the time frames set forth in Section 5(b)(i) and (ii), as applicable.

(g) Golden Parachute Payments. Any provision of this Agreement to the contrary notwithstanding, if any amount otherwise payable to the Executive under this Agreement would, when added to all other "parachute payments" to the Executive within the meaning of Section 280G of the Code, result in the payment of an "excess parachute payment" to the Executive within the meaning of Section 280G and 4999 of the Code, then:

(i) the cash payments otherwise owed to the Executive hereunder shall be reduced by the minimum amount necessary to avoid imposition of an excise or penalty tax on the Executive under Code Section 4999 (or any successor provision thereto) provided the amount of such reduction in payments does not exceed one thousand dollars ($1,000.00); or

(ii) in all other cases, the Company shall pay to the Executive an additional amount (on a fully-grossed-up, after-tax basis) sufficient to place the Executive in the same after-tax position that the Executive would have been in had the payments under this Agreement not been subject to the excise tax under Code Section 4999 (or any successor provision thereto). Such additional payment to the Executive shall include the amount of the excise tax payable under Code Section 4999 and all income, employment and additional excise taxes on the amount payable under this paragraph (ii).

Unless the Company and the Executive otherwise agree in writing, the determination of the amount of reduction required under Section 5(g)(i) or the additional amount required to be paid under Section 5(g)(ii), as applicable, shall be made in writing by the Company's independent auditors who are primarily used by the Company immediately prior to the Change in Control (the "Accountants"). For purposes of making the calculations required by this Section, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Executive shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under Section 5(g). Company shall bear all reasonable costs and expenses incurred in connection with the performance of the calculations contemplated by this Section 5(g). The Company shall pay any amount due under this Section 5(g)(ii) to the Executive as soon as reasonably practicable after the calculation of the amount of tax gross-up payment due and in no event later than the close of the calendar year following the calendar year in which the Executive remits the underlying Code Section 4999 excise tax to the Internal Revenue Service.

(h) Limits on Timing of Post-employment Payments. Notwithstanding any provision in this Agreement to the contrary, payments under Sections 5(b) and 5(c) shall be bifurcated into two portions, the first consisting of the portion that does not constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Code and the second consisting of the portion of such payments that does constitute such "nonqualified deferred compensation." Such payments shall first be made from the portion that does not constitute "nonqualified deferred compensation" until it is exhausted and then from the portion that constitutes "nonqualified deferred compensation." Because Executive is a "specified employee" within the meaning of Code Section 409A, the commencement and delivery of any such payments that constitute "nonqualified deferred compensation" shall

be delayed to the date that is six months and one day after the date of Executive's Separation from Service with the Company. The determination of whether, and the extent to which, payments under Section 5(b) or Section 5(c) are "nonqualified deferred compensation" shall be made after the application of all applicable exclusions under Treasury Regulation Section 1.409A-1(b). Similarly, continuation coverage under each employee benefit plan pursuant to Section 5.2(c)(iii) and outplacement assistance under Section 5.2(c)(iv) shall be treated as separate plans from each other and from the cash payments under Section 5.2(c)(i) and (ii). Each type of employee benefit plan continuation coverage specified in Section 5.2(c)(iii) and the outplacement assistance described in Section 5.2(c)(iv) shall also be bifurcated into two portions, one consisting of the maximum portion of such employee benefit plan continuation coverage or outplacement assistance, as applicable, that does not constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Code, and the second portion consisting of the element that does constitute "nonqualified deferred compensation" within the meaning of Code Section 409A." Provision of the portion of any benefit under Section 5(c)(iii) and 5(c)(iv) that constitutes "nonqualified deferred compensation" shall be deferred until six months and one day after the date of Executive's Separation from Service with the Company.

6. Non-exclusivity of Rights. Nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its Affiliated Companies and for which the Executive may qualify, nor shall anything herein limit or otherwise affect such rights as the Executive may have under any contract or agreement with the Company or any of its Affiliated Companies. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its Affiliated Companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

7. Full Settlement. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not the Executive obtains other employment.

8. Confidential Information. Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its Affiliated Companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its Affiliated Companies and which shall not be or become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it, or use such confidential information. In no event shall an asserted violation of the provisions of this Section 8 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

9. Successors.

(a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such success had taken place. As used in this Agreement, "Company" shall mean the

Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumed and agrees to perform this Agreement by operation of law, or otherwise.

10. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives. No waiver of any party's rights or benefits under this Agreement shall be effective unless such party signs a written waiver of its rights or benefits.

(b) All notices and other communications hereunder shall be writing and shall be given by hand delivery to the other party by registered or certified mail, return receipt requested, postage prepaid, or in the case of notices to the Executive by electronic mail (email) addressed as follows:

If to the Executive:
To the Executive's most current home address (or email address, as applicable) on file with the Company's Human Resources Department

If to the Company:
Merit Medical Systems, Inc.
1600 West Merit Parkway
South Jordan, Utah 84095
Attention: Chief Legal Officer

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from all compensation payable hereunder applicable withholding taxes. Except as provided in Section 5(g), neither the Company, any Affiliated Companies of the Company, nor any director, officer, employee or agent of the Company or any of its Affiliated Companies shall have any obligation or liability to gross-up, reimburse or indemnify the Executive for any taxes (including tax-related interest and penalties) imposed on Executive.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason, shall not be deemed to be a waiver of such provision or right of this Agreement.

(f) This Agreement constitutes the entire agreement between the parties with respect to the Executive's employment by the Company and supersedes and replaces all other agreements, oral or written, between the parties with respect to the subject matter hereof.

(g) The Company and the Executive irrevocably: (i) agree that any claim, law suit, cause of action or dispute arising under or with respect to this Agreement or the Executive's employment hereunder (a "Claim") shall be adjudicated solely in the United States Federal District Court or Utah State Courts situated in Salt Lake City, Utah (collectively the "Utah Courts"); (ii) consent and submit to the personal jurisdiction of the Utah Courts with respect to any Claim; (iii) agree that the Utah Courts shall have exclusive subject matter jurisdiction over any such Claims and that venue with respect to any such Claims is proper and most convenient in the Utah

Courts; and (iv) agree and covenant not to assert any objection to personal jurisdiction, subject matter jurisdiction or venue in the Utah Courts with respect to any Claim. TO THE FULLEST EXTENT PERMITTED BY LAW, THE COMPANY AND THE EXECUTIVE IRREVOCABLY WAIVE AND RELEASE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT OR THE EXECUTIVE'S EMPLOYMENT BY THE COMPANY.

(h) If the Executive or the Company retains legal counsel and/or incurs other costs and expenses in connection with the enforcement of any or all of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs, and expenses incurred by the prevailing party in connection with the enforcement of this Agreement. Notwithstanding the foregoing, in the event that following a Change in Control the Executive engages legal counsel to enforce the Executive's rights or seek a determination under this Agreement, the Company shall pay the expenses of such legal counsel regardless of the outcome of any legal proceeding resulting therefrom; provided that such claim is not determined by a trier of fact to be frivolous or in bad faith.

[*Remainder of Page Intentionally Left Blank-Signature Page Follows*]

IN WITNESS WHEREOF, the Executive and Company have caused this Agreement to be executed as of the date first set forth above.

EXECUTIVE:

/s/ Fred Lampropoulos

Name: Fred Lampropoulos
Title: Chairman and Chief Executive Officer

COMPANY:

/s/ Bernard Birkett

Name: Bernard Birkett
Title: Chief Financial Officer

EXHIBIT 31.1

CERTIFICATION

I, Fred P. Lampropoulos, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q (the "Report") of Merit Medical Systems, Inc. (the "Registrant");

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 general 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 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.

Date:August 8, 2016

/s/ Fred P. Lampropoulos

Fred P. Lampropoulos
President and Chief Executive Officer
(principal executive officer)

EXHIBIT 31.2

CERTIFICATION

I, Bernard J. Birkett, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q (the "Report") of Merit Medical Systems, Inc. (the "Registrant");

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 controls 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 general 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 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.

Date:August 8, 2016

/s/ Bernard J. Birkett

Bernard J. Birkett
Chief Financial Officer
(principal financial officer)

EXHIBIT 32.1

Certification of Principal Executive Officer
Pursuant to 18 U.S.C. Section 1350, as Adopted
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report on Form 10-Q of Merit Medical Systems, Inc. (the "Company") for the quarter ended June 30, 2016, as filed with the Securities and Exchange Commission (the "Report"), I, Fred P. Lampropoulos, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my 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.

Date:August 8, 2016

/s/ Fred P. Lampropoulos
Fred P. Lampropoulos
President and Chief Executive Officer
(principal executive officer)

This certification accompanies the foregoing Report pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Registrant for purposes of Section 18 of the Securities Exchange Act of 1934, as amended. A signed original of this certification has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

EXHIBIT 32.2

Certification of Chief Financial Officer
Pursuant to 18 U.S.C. Section 1350, as Adopted
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report on Form 10-Q of Merit Medical Systems, Inc. (the "Company") for the quarter ended June 30, 2016, as filed with the Securities and Exchange Commission (the "Report"), I, Bernard J. Birkett, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my 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.

Date:August 8, 2016

/s/ Bernard J. Birkett
Bernard J. Birkett
Chief Financial Officer
(principal financial officer)

This certification accompanies the foregoing Report pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Registrant for purposes of Section 18 of the Securities Exchange Act of 1934, as amended. A signed original of this certification has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.